

Aaron Guikema, State Director
USDA APHIS WS Program in New Jersey
140 C Locust Grove Road, Pittstown, NJ 08867-4049
908-735-5654 Ext.7
Aaron.T.Guikema@usda.gov

2. To conduct activities at sites designated by Cooperator as described in the Work and Financial Plans. APHIS-WS will provide qualified personnel and other resources necessary to implement the approved WDM activities delineated in the Work Plan and Financial Plan of this agreement.
3. That the performance of wildlife damage management actions by APHIS-WS under this agreement is contingent upon a determination by APHIS-WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable federal statutes. APHIS-WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance.
4. To invoice Cooperator quarterly for actual costs incurred by APHIS-WS during the performance of services agreed upon and specified in the Work Plan. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of APHIS-WS pertaining to such claims for reimbursement to the extent permitted by Federal law and regulations.

ARTICLE 6 – CONTINGENCY STATEMENT

This agreement is contingent upon the passage by Congress of an appropriation from which expenditures may be legally met and shall not obligate APHIS-WS upon failure of Congress to so appropriate. This agreement may also be reduced or terminated if Congress only provides APHIS-WS funds for a finite period under a Continuing Resolution.

ARTICLE 7 – NON-EXCLUSIVE SERVICE CLAUSE

Nothing in this agreement shall prevent APHIS-WS from entering into separate agreements with any other organization or individual for the purpose of providing wildlife damage management services exclusive of those provided for under this agreement.

ARTICLE 8 – CONGRESSIONAL RESTRICTIONS

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise therefrom.

ARTICLE 9 – LAWS AND REGULATIONS

This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS-WS provides goods or services on a cost recovery basis to nonfederal recipients, in accordance with all applicable laws, regulations and policies.

ARTICLE 10 – LIABILITY

APHIS-WS assumes no liability for any actions or activities conducted under this agreement except to the extent that recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), and 2671-2680).

ARTICLE 11 – NON-DISCRIMINATION CLAUSE

The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. Not all prohibited bases apply to all programs.

ARTICLE 12 - DURATION, REVISIONS, EXTENSIONS, AND TERMINATIONS

This agreement shall become effective on February 1, 2020 and shall continue through September 30, 2020, not to exceed five years. This Cooperative Service Agreement may be amended by mutual agreement of the parties in writing. The Cooperator must submit a written request to extend the end date at least 10 days prior to expiration of the agreement. Also, this agreement may be terminated at any time by mutual agreement of the parties in writing, or by one party provided that party notifies the other in writing at least 60 days prior to effecting such action. Further, in the event the Cooperator does not provide necessary funds, APHIS-WS is relieved of the obligation to provide services under this agreement.

In accordance with the Debt Collection Improvement Act of 1996, the Department of Treasury requires a Taxpayer Identification Number for individuals or businesses conducting business with the agency.

Cooperator's Tax ID No.: 22-6002470

APHIS-WS's Tax ID: 41-0696271

COOPERATOR

Joseph A. Bella, Executive Director
Passaic County Water Commission
800 Union Boulevard, Totowa, NJ 07512-2211

Date

**UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES**

Aaron Guikema, State Director
USDA, APHIS, WS
140C Locust Grove Road, Pittstown, NJ 08867-4049

Date

Prepared by (APHIS-WS employee): April Simnor

WORK PLAN

In accordance with the Cooperative Service Agreement between Passaic Valley Water Commission and the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS), this Work Plan sets forth the objectives, activities and budget of this project during the period of this agreement.

The USDA is authorized to protect American agriculture and other resources from damage associated with wildlife. The primary authorities for APHIS-WS are the Act of March 2, 1931 (46 Stat. 1468; 7 USCA 8351-7 USCA 8352) as amended, and the Act of December 22, 1987 (101Stat. 1329-331, 7 USCA 8353). APHIS-WS activities are conducted in cooperation with other Federal, State and local agencies; private organizations; and individuals.

The APHIS-WS program uses an Integrated Wildlife Damage Management (IWDM) approach in which a series of methods may be used or recommended to reduce wildlife damage. These methods include the alteration of cultural practices as well as habitat and behavioral modification to prevent damage. However, managing wildlife damage may require that the offending animal(s) be removed or that the local populations of the offending species be reduced.

Program Objective

The wildlife damage management program at Passaic Valley Water Commission will be directed primarily at reducing human health and safety risks and property damage associated with Canada geese.

Plan of Action

Canada goose presence on Passaic Valley Water Commission property(s) can result in accumulation of feces (nuisance, potential human health concerns, lower water quality), consumption of turf or vegetation, aggression during the nesting season (potential human safety problems), creation of hazards on roadways or to aviation, and/or other problems that affect the quality of life for residents, patrons and/or employees.

Passaic Valley Water Commission has employed on their property(s) non-lethal Canada goose management techniques prior to this agreement and will continue non-lethal techniques in the future. Non-lethal techniques include, but are not limited to, harassment, exclusion (e.g., fencing), habitat modification, visual deterrents and/or reproductive control (e.g., egg addling). In addition, a "no feeding" policy exists at Passaic Valley Water Commission property(s).

APHIS-WS Wildlife Biologists and Specialists, who have been trained in wildlife damage management, will conduct operational activities including nest and egg management (egg addling), capture and euthanasia, and population monitoring. Activities will be carried out on Passaic Valley Water Commission property(s) and if applicable, agreed upon neighboring properties after obtaining a Work Initiation Document for Wildlife Damage Management (WS Form 12A).

Nest and egg management inhibits reproduction to help control the local population and associated problems. Treatment and/or destruction of Canada goose nests and eggs will be conducted throughout the nesting season, typically March through May.

Population monitoring may occur throughout the length of the agreement. Population monitoring can include post-nesting and pre-capture surveys, migratory goose population surveys, and/or surveys of mute swans, feral/domestic geese, and feral/domestic ducks.

Capture and euthanasia of Canada geese will occur one day during the molt period in June or July. APHIS-WS and Passaic Valley Water Commission will determine if other capture methods, such as cannon nets, bow nets, and/or other proposed methods as agreed upon by both parties, are appropriate outside of the molt period. Birds are euthanized in accordance with recommendations by the American Veterinary Medical Association and APHIS-WS policy. When applicable, euthanized birds will be sampled and tested for research purposes. Euthanized birds will be disposed of as permitted by the U.S. Fish and Wildlife Service (USFWS) by burial, incineration or donation for non-human consumption.

APHIS-WS will conduct activities and record take under a USFWS Migratory Bird Depredation Permit issued to the APHIS-WS program. APHIS-WS will provide a Cooperator Final Report to Passaic Valley Water Commission summarizing Canada goose management pursuant to this agreement no later than September 30, 2020.

FINANCIAL PLAN

Cost Element		Full Cost
Personnel Compensation		\$ 6,793
Travel		\$ 1,663
Vehicles		\$ 415
Other Services		\$ -
Supplies and Materials		\$ 357
Equipment		\$ -
Subtotal (Direct Charges)		\$ 9,228
Pooled Job Costs (for non-Over-the-Counter projects)	11.00%	\$ 1,015
Indirect Costs	16.15%	\$ 1,490
Aviation Flat Rate Collection		\$ -
Agreement Total		\$ 11,733
<p>The distribution of the budget from this Financial Plan may vary as necessary to accomplish the purpose of this agreement, but may not exceed: \$11,733.</p> <p>APHIS-WS costs are not based on number of nests found or birds captured, but are instead based on the above line items. Minimal costs will be charged for supplies purchased and personnel time already expended in regards to the terms of this agreement, should activities be deemed as unnecessary.</p>		

Financial Point of Contact/Billing Address:

Passaic Valley Water Commission

APHIS-WS New Jersey State Office

Name: _____
 Address: _____

 Phone: _____


 Email: _____

Lisa Spinelli, Budget Analyst
 140 C Locust Grove Road
 Pittstown, NJ 08867-4049
 908-735-5654 Ext. 5
lisa.l.spinelli@usda.gov

Purchase orders, if applicable, should be submitted to APHIS-WS contact above.

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES

WORK INITIATION DOCUMENT FOR
WILDLIFE DAMAGE MANAGEMENT

1. WORK INITIATION DOCUMENT NUMBER		2. STATUS <input type="checkbox"/> NEW <input checked="" type="checkbox"/> RENEWAL						
SECTION 1	3A. TYPE OF WORK INITIATION DOCUMENT (mark all that apply)		3B. ASSIGN TO THESE SPECIAL GROUPS					
	<input checked="" type="checkbox"/> PRIVATE PROPERTY <input type="checkbox"/> NON-PRIVATE PROPERTY <input type="checkbox"/> TEMPORARY/CIVIL <input type="checkbox"/> ADJACENT LANDOWNER <input type="checkbox"/> AMENDMENT TO AN EXISTING WORK INITIATION DOCUMENT		(1) _____ (2) _____ (3) _____ (4) _____					
SECTION 2	4. COOPERATOR NAME (last, first, MI) Simone, Wendy							
	5. COOPERATOR MAILING ADDRESS 800 Union Blvd, Totowa, NJ 07512							
	6. COMMON NAME Passaic Valley Water Commission		7. COOPERATOR TELEPHONE NUMBER 973-237-2044					
	8. OWNER OR REPRESENTATIVE NAME (if different from Cooperator)		9. OWNER OR REPRESENTATIVE TELEPHONE NUMBER					
	10. OWNER OR REPRESENTATIVE ADDRESS (if different from Cooperator)							
SECTION 3	11. PROPERTY / LAND CLASS INFORMATION				12. ADJOINING PROPERTY WID NO.'s		13. TARGETED SPECIES	
		COUNTY	PROPERTY	LAND CLASS	ACRES			
	A.	Passaic	Passaic Vall	Private	attachment	A.	A. Geese, Canada	F
	B.					B.	B. Swana, Mute	G.
	C.					C.	C. Geese, Feral	H.
	D.					D.	D. Ducks, Feral	I.
E.					E.	E. Ducks, Mallards	J.	
	STATE	NJ	TOTAL ACRES		attachment	<input type="checkbox"/> 14. There are additional targeted species (complete and attach WS Form 12 Addendum)		
SECTION 4	15. In consideration of the benefits to be derived from the proper management of damage caused by those species listed in Item 13 (and Item 14 if applicable), I, the undersigned Cooperator or Cooperator's representative, do hereby give my consent and concurrence to the Animal and Plant Health Inspection Service (APHIS) (to include its officials, employees, and agents) to use, upon lands owned, leased, or otherwise controlled by me, and identified by this Work Initiation Document, the following methods and devices (COMPONENTS)							
	A. Car/truck		B. Boat		C. Hand tools			
	D. Handcaught/gathered		E. Traps, drive		F. _____			
<input type="checkbox"/> 16. There are additional components (complete and attach WS Form 12 Addendum)								
SECTION 5	17. I, the Cooperator or Cooperator's representative, have been informed of the methods and the manner in which the control materials and devices listed in Section 4 will be used, and of the possible hazards associated with their use. I understand that APHIS (to include its officers, employees, and agents) will exercise reasonable precautions to safeguard all persons to prevent injury to animal life other than those listed in Section 3, Item 13 (and Item 14, if applicable); guard against the mishandling of control devices and materials; and exercise due caution and proper judgment in all wildlife damage management operations. I understand that APHIS, WS, will maintain restricted use pesticide application records on applications made under the Work Initiation Document, and that APHIS-WS will provide copies of the records or record information promptly upon the property owner's or cooperator's request. I understand that APHIS may collect Global Positioning System (GPS) coordinates at the project site as part of component or activity tracking or as wildlife disease monitoring or research data.							
	18. In consideration of these understandings and of the benefits to be derived, I, the Cooperator or Cooperator's representative, agree to take reasonable precautions to prevent injury to livestock and other domestic animals; assume responsibility for injury to my property under my control when said injury is not the result of negligence on the part of APHIS; assist in maintaining such warning signs as APHIS may place for the purpose of notifying persons entering onto such lands of the possible hazards associated with wildlife damage management measures in use thereon; and to give adequate warning of these possible hazards to persons I authorize to enter onto such lands. Further, in recognition of the benefits to be derived from the use of specified methods and devices authorized by this Work Initiation Document, I, the cooperator or cooperator's representative, agree not to concurrently use or allow to be used upon lands covered by this Work Initiation Document any toxic material that might reasonably be expected to take a species listed above in Section 3, Item 13 (and Item 14, if applicable), unless such use of said toxicant is agreed to by APHIS in writing.							
19. SPECIAL CONSIDERATIONS Mute swans will only be surveyed.								
20A. LANDOWNER, LESSEE, OR ADMINISTRATOR NAME AND TITLE			20B. SIGNATURE			20C. DATE		
21A. APHIS REPRESENTATIVE NAME April Sinnor			21B. SIGNATURE 			21C. DATE 12/18/19		
21D. APHIS REPRESENTATIVE TELEPHONE NUMBER 908-258-4417			21E. STATE OFFICE ADDRESS 140C Locust Grove Road, Pittstown, NJ 08867					

NJ MIS AGREEMENT: Passaic Valley Water Commission

Name	Land Class	Acres
Great Notch	Private	120
Levine Reservoir	Private	120
Little Falls Water Treatment Plant	Private	120
New Street Reservoir	Private	100
Passaic Valley Water Commission	Private	1
Point View Reservoir	Private	500
		961 Acres total

Cooperator signature: _____

APHIS representative: April M. 12/18/19

PASSAIC VALLEY WATER COMMISSION
SHARED (COOPERATIVE) SERVICES AGREEMENT WITH USDA FOR
CANADA GOOSE DAMAGE MANAGEMENT PROJECT
PVWC'S FINANCIAL CERTIFICATION SHEET
EXHIBIT B

OFFICE OF THE COMPTROLLER

CERTIFICATION OF AVAILABILITY OF FUNDS

It is hereby certified that, subject to Commission approval of future budgets, there are or will be sufficient funds for expenditures to be incurred as a result of any contract or commitment to be entered by Passaic Valley Water Commission as follows:

Description of Project or Contract: Interlocal Government Services Agreement for Canada Goose damage management project (USDA) from February 1, 2020 – September 30, 2020

Total Amount of Project or Contract: \$11,733

Acct #: 001-2002-423-40-21 GROUNDSKEEPING

Other Comments:

Total amount charged to this account number not to exceed \$40,000 for 2020

Date of Certification: January 3, 2020



Yitzchak Weiss, CPA
Comptroller and Chief Financial Officer
Passaic Valley Water Commission

YW:yw

**RESOLUTION # 20-10
RESOLUTION OF PASSAIC VALLEY WATER COMMISSION
TO ENTER INTO AN ADMINISTRATIVE
CONSENT ORDER (ACO) FOR PVWC'S HIGH
CREST DISTRIBUTION SYSTEM**

DATE OF ADOPTION: JANUARY 15, 2020

Approved as to form and legality by Law Department on the basis of facts set forth by Executive Director, Purchasing, and Finance Departments.

Introduced by Commissioner: **SANCHEZ**

Seconded by Commissioner: **COTTON**

WHEREAS, Passaic Valley Water Commission ("PVWC") owns and operates public community water system as defined by N.J.A.C. 7:10-1.3 (commonly known as the High Crest System which holds Public Water System Identification number 1615003) which serves approximately 1,132 people in the High Crest Lake Community located in the Township of West Milford, Passaic County, New Jersey; and

WHEREAS, treated water purchased by PVWC from the Borough of Butler for distribution to the High Crest community is periodically monitored by PVWC on a quarterly basis for Maximum Contaminant Levels (MCL's) of Total Trihalomethanes (THHM's) and Haloacetic Acids (HAA5's); all in accordance with N.J.A.C. 7:10-5.2(a)12i; and

WHEREAS, elevated levels of THHM's found in PVWC's High Crest System have occurred due to higher-than-average water temperatures, algal conditions at Butler's Water Treatment Plant water source, and water age due to below-average system demand resulting from unusually wet weather, as well as from other conditions beyond PVWC's direct influence or control; and

WHEREAS, in an effort to address these elevated levels of THHM's, PVWC retrofitted a water recirculation system in PVWC High Crest Storage Tanks and placed it into operation; and

WHEREAS, based on experience gained from operation of this water recirculation system, PVWC subsequently determined that

additional enhancements will be needed to help ensure levels of THHM's in the High Crest System remain consistently below regulatory limits; and

WHEREAS, these additional enhancements include extensive reconfiguring of piping in the High Crest distribution system to prevent bypassing of the storage tank recirculation system during periods of peak demand; and

WHEREAS, in response to NJDEP's Notice of Noncompliance (NONC) issued March 7, 2019, on April 5, 2019 PVWC advised NJDEP that PVWC would design and construct a new reconfigured water main from the discharge of the High Crest Pump station to the High Crest tank inlet and upgrade the pump station, if and to the extent required, such that all flow into the High Crest System is treated at the tanks, however, PVWC further advised NJDEP that, due to the nature and scope of extensive additional work contemplated, compliance with NJDEP's November 7, 2019 deadline set forth in the NONC could not be assured; and

WHEREAS, PVWC and NJDEP have agreed to enter into an Administrative Consent Order (ACO) to bring the High Crest System water into compliance, and a copy of a form of ACO dated December 20, 2019 (the "ACO") is attached hereto and made a part hereof and included in Exhibit B referenced below; and

WHEREAS, the Executive Director and the Director of Engineering, and the General Counsel (as to form and legality), have reviewed the ACO and recommend that the Commission authorize and approve entering into the ACO and a memorandum from the Executive Director and Director of Engineering dated January 2, 2020 is attached hereto and made a part hereof as Exhibit A; and

WHEREAS, copies of the ACO issued by NJDEP and included as Exhibit B, along with this Resolution, are also on file in the office of the Administrative Secretary and available for inspection;

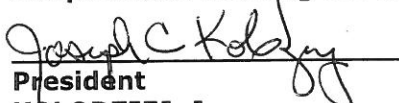
NOW, THEREFORE, BE IT RESOLVED, by Passaic Valley Water Commission, in the County of Passaic, New Jersey;

1. That PVWC hereby authorizes and approves entering into the ACO for PVWC's High Crest System; and
2. That the appropriate officers of PVWC, on behalf of PVWC, are hereby authorized and directed to execute the ACO and the Secretary of PVWC to attest to the ACO, and such other officers, employees and officials of PVWC are hereby authorized to perform such acts and execute such documents as are necessary to implement the terms and intentions of this Resolution, and
3. That this matter shall be advertised as required by New Jersey law, in accordance with an appropriate form of notice, and a copy of this Resolution and ACO shall be placed on file and made available for inspection at the office of the Administrative Secretary of Passaic Valley Water Commission.


RECORD OF COMMISSION VOTE ON FINAL PASSAGE

	AYE	NAY	ABSTAIN	ABSENT
FRIEND, G.	<u>X</u>	___	___	___
VANNOY, R.	___	___	___	<u>X</u>
LEVINE, J.	<u>X</u>	___	___	___
SANCHEZ, R.	<u>X</u>	___	___	___
VAN RENSA LIER, R.	<u>X</u>	___	___	___
COTTON, E.	<u>X</u>	___	___	___
KO LODZIEJ, J.	<u>X</u>	___	___	___

Adopted at a meeting of Passaic Valley Water Commission.



President
KO LODZIEJ, J.

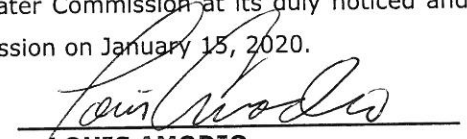


Secretary
GERALD FRIEND

This Resolution, when adopted, must remain in the custody of the Administrative Secretary.

CERTIFICATION

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on January 15, 2020.



LOUIS AMODIO
Administrative Secretary

PASSAIC VALLEY WATER COMMISSION

**RESOLUTION OF PASSAIC VALLEY WATER COMMISSION
TO ENTER INTO AN ADMINISTRATIVE
CONSENT ORDER (ACO) FOR PVWC'S HIGH
CREST DISTRIBUTION SYSTEM**

**EXECUTIVE DIRECTOR AND DIRECTOR OF ENGINEERING'S
MEMORANDUM DATED JANUARY 2, 2020**

EXHIBIT A

**PASSAIC VALLEY WATER COMMISSION
INTEROFFICE MEMORANDUM**

Date: January 2, 2020

To: Hon. Commissioners

From: J. Bella & J. Duprey

cc: G. Hanley
L. Amodio

Re: Administrative Consent Order (ACO) issued by
NJDEP December 20, 2019 for PVWC's High Crest System

Attached is a copy of the ACO (issued by NJDEP December 20, 2019 for PVWC's High Crest System that was previously distributed to the Commission.

Passaic Valley Water Commission ("PVWC") owns and operates a public community water system as defined by N.J.A.C. 7:10-1.3 (commonly known as the High Crest which holds Public Water System Identification number 1615003) which serves approximately 1,132 people in the High Crest Lake Community located in the Township of West Milford, Passaic County, New Jersey.

Treated water purchased by PVWC from the Borough of Butler for distribution to the High Crest community is periodically monitored by PVWC on a quarterly basis for Maximum Contaminant Levels (MCL's) of Total Trihalomethanes (THHM's) and Haloacetic Acids (HAA5's); all in accordance with N.J.A.C. 7:10-5.2(a)12i.

Elevated levels of THHM's found in PVWC's High Crest System have occurred due to higher-than-average water temperatures, algal conditions at Butler's water Treatment Plant water source, and water age due to below-average system demand resulting from unusually wet weather, as well as from other conditions beyond PVWC's direct influence or control.

In an effort to address these elevated levels of THHM's, PVWC retrofitted a water recirculation system in PVWC High Crest Storage Tanks and placed it into operation.

Based on experience gained from operation of this water recirculation system, PVWC subsequently determined that additional enhancements will be needed to help ensure levels of THHM's in the High Crest System remain consistently below regulatory limits.

These additional enhancements include extensive reconfiguring of piping in the High Crest distribution system to prevent bypassing of the storage tank recirculation system during periods of peak demand.

In response to NJDEP's Notice of Noncompliance (NONC) issued March 7, 2019, on April 5, 2019 PVWC advised NJDEP that PVWC would design and construct a new reconfigured water main from the discharge of the High Crest Pump station to the High Crest tank inlet and upgrade the pump station, if and to the extent required, such that all flow into the High Crest System is treated at the tanks, however, PVWC further advised NJDEP that, due to the nature and scope of extensive additional work contemplated, compliance with NJDEP's November 7, 2019 deadline set forth in the NONC could not be assured.

PVWC and NJDEP have agreed to enter into an Administrative Consent Order (ACO) to bring the High Crest System water into compliance, and a copy of a form of ACO (the "ACO") dated December 20, 2019 is attached hereto as Exhibit B.

It is recommended that, subject to review and approval by the Law Department, the Commission authorize and approve entering into the ACO for the High Crest System.

PASSAIC VALLEY WATER COMMISSION

**RESOLUTION OF PASSAIC VALLEY WATER COMMISSION
TO ENTER INTO AN ADMINISTRATIVE
CONSENT ORDER (ACO) FOR PVWC'S HIGH
CREST DISTRIBUTION SYSTEM**

ACO DATED DECEMBER 20, 2019

EXHIBIT B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PHIL MURPHY

Governor

SHEILA OLIVER

Lt. Governor

Northern Bureau of Water Compliance and Enforcement

7 Ridgedale Ave. Ste. 202

Cedar Knolls, New Jersey 07927-1112

Telephone (973) 656-4099 Fax (973) 656-4400

CATHERINE R. McCABE

Commissioner

December 20, 2019

HAND DELIVERY
WITH ACKNOWLEDGEMENT
OF RECEIPT FORM

Joseph Bella, Executive Director
Passaic Valley Water Commission
1525 Main Ave.
Clifton, New Jersey 07011

Dear Mr. Bella:

Re: Administrative Consent Order
Passaic Valley Water Commission – High Crest System
EAID# NEA 190001 - 1615003

Enclosed is an Administrative Consent Order which was prepared by the New Jersey Department of Environmental Protection (Department) in order for the Passaic Valley Water Commission (Commission) to make improvements to its High Crest system by installing a dedicated water main to pump water from the High Crest pump station to the water storage tanks for treatment by aeration in order to decrease TTHM concentrations.

I have signed the enclosed copies. Both Administrative Consent Order originals should be executed by a duly authorized representative of the Commission and one signed original returned to the Northern Bureau of Water Compliance and Enforcement within forty-five (45) days of your receipt of this letter. Written certification that the person signing the Administrative Consent Order is authorized to do so by the Commission must be submitted with the signed original.

If you should have any questions regarding this matter, please contact Lisa Tracy, of my staff, at (973) 656-4099 or by letter through this Bureau.

Very truly yours,

Donald Hirsch, Chief
Northern Bureau of Water
Compliance and Enforcement

Enclosure

c: George T. Hanley, Esq., Law Department, PVWC
Nicole Foley Kraft, USEPA Region II (by email)
Patricia Gardner, Director, Division of Water Supply and Geoscience (by email)
Richard T. Paul, Director, Water and Land Use Compliance and Enforcement (by email)



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Water Compliance & Enforcement
Northern Regional Office
7 Ridgedale Avenue
Cedar Knolls, NJ 07927

CATHERINE R. MCCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

IN THE MATTER OF : ADMINISTRATIVE
PASSAIC VALLEY WATER : CONSENT
COMMISSION - HIGH CREST SYSTEM : ORDER

NEA 190001 – 1615003

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.) and the Safe Drinking Water Act regulations (N.J.A.C. 7:10-1 et seq.), and is duly delegated to the Bureau Chief of the Northern Bureau of Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Passaic Valley Water Commission (PVWC) owns and operates a public community water system (system) commonly known as the High Crest system, as defined by N.J.A.C. 7:10-1.3. The High Crest system holds Public Water System Identification number 1615003 and serves approximately 1,132 people in the High Crest Lake community located in the Township of West Milford, Passaic County, New Jersey (High Crest community). PVWC purchases treated surface water from the Borough of Butler for distribution as drinking water to the High Crest community. Butler obtains its water from the Kakeout Reservoir, with treatment at the Butler water treatment plant (Butler WTP).
2. The New Jersey Safe Drinking Water Act regulations, specifically N.J.A.C. 7:10-5.1, adopt in total, with specific limited exceptions, the most current National Primary Drinking Water Regulations at 40 CFR Parts 141 and 142.
3. 40 CFR 141.64(b) sets forth Maximum Contaminant Levels (MCL) for Total Trihalomethanes (TTHM) of 0.080 milligrams per liter (mg/L) and Haloacetic Acids (HAA5) of 0.060 mg/L. The Department refers to the MCLs for TTHM and HAA5 as 80 micrograms per liter (ug/l) and 60 ug/l, respectively, in its correspondence. 40 CFR 141.132(b) sets forth the monitoring requirements for TTHM and HAA5. Although the Stage 1 Disinfectant/Disinfection Byproduct Rule (Stage 1 Rule), Subpart L of the National Primary Drinking Water Regulations, 40 CFR 141.130 – 141.135, did not specifically require monitoring of TTHM and HAA5 by

consecutive systems, N.J.A.C. 7:10-5.2(a)12i, effective January 1, 2004, and for the period of time during which the Stage 1 Rule was in effect, set forth the requirement that a supplier of water from a bulk purchase system that regularly derived its water from another water system using a surface water source and that provided water to more than 100 service connections (such as the High Crest system) shall, at a minimum, collect a quarterly DBP sample from a point within the distribution system with maximum residence time to be tested for TTHM and HAA5. 40 CFR 141.133(b)1(i) states that, for systems monitoring quarterly, compliance with MCLs in 40 CFR 141.64 must be based on a running annual arithmetic average (RAA), computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by 40 CFR 141.132(b)(1). 40 CFR 141.620 sets forth the requirements pertaining to operational evaluation levels (OEL). 40 CFR 141.64(b)2 specifies that Subpart V MCLs for TTHM and HAA5 must be complied with as a locational running annual average (LRAA) at each monitoring location beginning the date specified for Subpart V compliance in 40 CFR 141.620(c).

4. During the period of January 2004 through September 2013, PVWC monitored for TTHM and HAA5 at one (1) distribution system monitoring location, once per calendar quarter, as required by N.J.A.C. 7:10-5.2(a)12i.

5. The High Crest system exceeded the TTHM MCL during the third calendar quarter of 2005 with a RAA of 0.082 mg/L, in violation of 40 CFR 141.64(b).

6. The Department issued a letter dated September 8, 2005, and a Notice of Violation dated October 6, 2005, to PVWC for the TTHM MCL violation indicated in paragraph five (5) above. PVWC was required to take appropriate actions to bring the water into compliance with the applicable MCL within one year of the violation pursuant to N.J.A.C. 7:10-5.7(a). PVWC returned to compliance within one (1) year.

7. The High Crest system exceeded the TTHM MCL during the third calendar quarter of 2011 with a RAA of 0.081 mg/L and the fourth calendar quarter of 2011 with a RAA of 0.089 mg/L, in violation of 40 CFR 141.64(b).

8. The Department issued Notices of Non-Compliance (NONC) dated October 13, 2011 and December 15, 2011 to PVWC for the TTHM MCL violations indicated in paragraph seven (7) above. The NONCs required PVWC to take any action necessary to bring the water into compliance with the MCL within one year after receipt of the results that demonstrate an exceedance that constitutes a violation, pursuant to N.J.A.C. 7:10-5.7.

9. On November 18, 2011 and January 30, 2012, PVWC responded to the October 13, 2011 and December 15, 2011 NONCs. PVWC advised that it had contracted CH2MHill to help identify recommended corrective actions. PVWC and CH2MHill investigated immediate operational modifications that could be made at the Butler WTP, evaluated the piping configuration of the Butler and High Crest distribution systems to determine options to reduce water age, implemented flushing of both systems, and conducted a full-scale trial of in-tank aeration options for the water storage tanks in the High Crest system.

10. The High Crest system exceeded the TTHM MCL during the first calendar quarter of 2012 with a RAA of 0.087 mg/L, in violation of 40 CFR 141.64(b).

11. The Department issued a NONC dated March 23, 2012 to PVWC for the TTHM MCL violation indicated in paragraph ten (10) above. The NONC required PVWC to take any action necessary to bring the water into compliance with the MCL within one year after receipt of the results that demonstrate an exceedance that constitutes a violation, pursuant to N.J.A.C. 7:10-5.7. In 2012, PVWC added diffused air in-tank treatment systems at both water storage tanks in the High Crest system.

12. During the period of October 2013 through March 2015, PVWC monitored for TTHM at one (1) distribution system monitoring location, site S2, and for HAA5 at one (1) distribution system monitoring location, site S1, each once per calendar quarter, as required by the Stage 2 Disinfectants/Disinfection Byproduct Rule, Subpart V of the National Primary Drinking Water Regulations, 40 CFR 141.620 – 141.629 (Stage 2 Rule). Beginning April 2015, and continuing to the present, PVWC has monitored for both TTHM and HAA5 at the same single distribution system monitoring location, site S2, as required by 40 CFR 141.64(b)2.

13. The High Crest system exceeded the OEL for TTHM during the fourth calendar quarter of 2016 with a LRAA of 0.0856 mg/L at monitoring site S2.

14. The Department issued a letter dated December 1, 2016 to PVWC for the TTHM OEL indicated in paragraph thirteen (13) above. The letter required PVWC to complete an Operational Evaluation by March 1, 2017.

15. On January 24, 2017, PVWC responded to the December 1, 2016 OEL letter. In its Operational Evaluation Report, PVWC identified higher than average water temperatures, an algal condition at the Butler WTP's source, and the malfunction of a recirculation pump serving the water storage tanks as probable causes of the high TTHM concentrations obtained during the third and fourth calendar quarters of 2016. PVWC advised that it would keep a spare pump in stock, install a signal light in the control panel for the recirculation system as a visual symbol of operation, and add the recirculation pump system to PVWC's System Control and Data Acquisition (SCADA) system.

16. The High Crest system exceeded the OEL for TTHM during the third calendar quarter of 2018 with a LRAA of 0.0854 mg/L at monitoring site S2.

17. The Department issued a letter dated August 17, 2018 to PVWC for the TTHM OEL indicated in paragraph sixteen (16) above. The letter required PVWC to complete an Operational Evaluation by November 15, 2018.

18. On October 24, 2018, PVWC responded to the August 17, 2018 OEL letter. In its Operational Evaluation Report, PVWC identified increased water age due to below average system demand because of unusually wet weather, an algal condition at the Butler WTP's source, and the bypass of the storage tank recirculation pump system during periods of peak demand when the High Crest system's booster pump sends water directly into the distribution system as

well as to the storage tanks, as probable causes of the high TTHM concentrations obtained during the third calendar quarter of 2018. PVWC advised that it would direct as much of the water coming into the High Crest system as possible through the water storage tanks' recirculation system and perform annual distribution system flushing to reduce water age. On January 16, 2019, the Department responded to PVWC's Operational Evaluation Report, concurring with the actions being taken by PVWC.

19. The High Crest system exceeded the TTHM MCL during the fourth calendar quarter of 2018 with a LRAA of 0.082 mg/L at monitoring site S2, in violation of 40 CFR 141.64(b).

20. The Department issued a NONC dated November 9, 2018 to PVWC for the TTHM MCL violation indicated in paragraph nineteen (19) above. The NONC required PVWC to complete Tier 2 public notification by December 7, 2018, submit a remedial measures report within thirty (30) calendar days of receipt of the NONC, and take any action necessary to bring the water into compliance within one (1) year after receipt of the results that demonstrated an exceedance that constitutes a violation, i.e., no later than November 7, 2019. PVWC submitted proof of public notification on December 4, 2018.

21. On December 19, 2018, PVWC responded to the November 9, 2018 NONC. The Department determined that PVWC's response was inadequate and sent a Remedial Measures Report Deficient letter (letter) dated January 22, 2019 to PVWC. The letter required PVWC to submit a revised Remedial Measures Report within fourteen (14) business days of the date of the letter and bring the water into compliance within one (1) year after receipt of the results that demonstrated an exceedance that constitutes a violation, i.e., no later than November 7, 2019.

22. On January 28, 2019, PVWC submitted its revised Remedial Measures Report. PVWC advised that it would update hydraulic modeling of the High Crest distribution system, conduct a study to investigate the reduction of TTHM formation at the Butler WTP, implement distribution system enhancements based on the results of the hydraulic modeling and water quality analyses that it planned to perform to reduce water age, if feasible, and implement an alternate disinfection chemical system, if feasible.

23. The High Crest system exceeded the TTHM MCL during the first calendar quarter of 2019 with a LRAA of 0.081 mg/L at monitoring site S2, in violation of 40 CFR 141.64(b).

24. The Department issued a NONC dated March 7, 2019 to PVWC for the TTHM MCL violation indicated in paragraph twenty-three (23) above. The NONC required PVWC to complete Tier 2 public notification by March 28, 2019, submit a remedial measures report within thirty (30) calendar days of receipt of the NONC, and take any action necessary to bring the water into compliance within one (1) year after receipt of the initial results that demonstrated an exceedance that constitutes a violation, i.e., no later than November 7, 2019. PVWC submitted proof of public notification on March 26, 2019.

25. On April 5, 2019, PVWC responded to the March 7, 2019 NONC. PVWC advised that it no longer intended to update hydraulic modeling of the High Crest distribution system or conduct a study to investigate the reduction of TTHM formation at the Butler WTP. PVWC advised that it

would, instead, design and construct a new water main from the discharge of the High Crest pump station to the inlet of the High Crest water storage tanks and upgrade the pump station so that all flow into the High Crest system is treated with aeration at the storage tanks.

26. During a conference call held between PVWC and Department representatives on March 15, 2019, PVWC advised that it intended to take actions to bring the High Crest system into compliance with the TTHM MCL, but will not be able to comply with the November 7, 2019 deadline.

27. The High Crest system exceeded the TTHM MCL during the second calendar quarter of 2019 with a LRAA of 0.081 mg/L at monitoring site S2, in violation of 40 CFR 141.64(b).

28. The Department issued a NONC dated May 14, 2019 to PVWC for the TTHM MCL violation indicated in paragraph twenty-seven (27) above. The NONC required PVWC to complete Tier 2 public notification within thirty (30) days of learning of the violation, submit a remedial measures report within thirty (30) calendar days of receipt of the NONC, and take any action necessary to bring the water into compliance within one (1) year after receipt of the initial results that demonstrated an exceedance that constitutes a violation, i.e., no later than November 7, 2019. PVWC submitted proof of public notification on June 6, 2019.

29. On June 17, 2019, PVWC responded to the May 14, 2019 NONC. PVWC advised that it would design and construct a new water main from the discharge of the High Crest pump station to the inlet of the High Crest water storage tanks and upgrade the pump station so that all water flowing into the High Crest system is treated with aeration in the storage tanks.

30. On August 16, 2019, PVWC submitted, via email, a schedule for actions required to attain and maintain compliance with the TTHM MCL. PVWC proposed to install a dedicated water main to pump water from the High Crest pump station into the High Crest system's storage tanks, where it would be treated by the existing spray nozzle recirculation system. All water serving the High Crest system would be treated inside the storage tanks prior to entering the distribution system (proposed construction activities).

31. Based on the facts set forth in these FINDINGS, the Department has determined that PVWC will violate the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:10-5.1 et seq.

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

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. COMPLIANCE SCHEDULE

33. PVWC shall take whatever actions are necessary to achieve and maintain compliance with the Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.) and the Safe Drinking Water Act regulations (N.J.A.C. 7:10-1 et seq.) in accordance with the schedule set forth as follows:

34. On or before April 1, 2020, PVWC shall award a construction contract for its proposed construction activities, specifically the installation of a dedicated water main to pump water from the High Crest pump station into the High Crest system's storage tanks, where all water will be treated by the existing storage tank spray nozzle recirculation systems. This project will cause all water serving the High Crest system to be treated by aeration inside the storage tanks prior to entering the High Crest distribution system in order to meet the TTHM MCL in the High Crest system. All necessary Department permits and approvals for these construction activities must be obtained by PVWC prior to beginning the construction noted in this paragraph.

35. On or before March 31, 2021, PVWC shall complete its proposed construction activities noted in paragraph thirty-four (34) above, and all the drinking water serving the High Crest community shall be treated by the water storage tank aeration systems.

36. Allowing for two (2) consecutive quarterly sampling events to show compliance with the TTHM MCL once the construction activities noted in paragraph thirty-four (34) above are completed, on or before October 1, 2021, PVWC shall comply with the TTHM MCL.

37. Regardless of whether PVWC is able to achieve compliance by taking the above actions, PVWC 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.

B. PROGRESS REPORTS

38. PVWC shall submit to the Department quarterly progress reports. The quarters shall be January through March, April through June, July through September, and October through December of each calendar year. Each progress report shall be submitted on or before the last day of the month following the quarter being reported. PVWC shall submit the first progress report to the Department by January 31, 2020, for the fourth (4th) quarter of 2019. Each progress report shall detail the status of PVWC's compliance with this ACO and shall include, but not be limited to, the following:

- A. identification of site and reference to this ACO;
- B. status of permitting and planning approvals needed to complete the COMPLIANCE SCHEDULE SECTION of this ACO;

- C. the status of any work at the site and progress to date;
- D. identification of any difficulties or problems encountered during the reporting period;
- E. all actions taken to rectify any difficulties or problems;
- F. identification of the COMPLIANCE SCHEDULE SECTION activities planned for the next reporting period;
- G. required and actual completion date for each COMPLIANCE SCHEDULE SECTION activity required by this ACO;
- H. an explanation of any non-compliance with the COMPLIANCE SCHEDULE SECTION provisions of this ACO; and performance evaluation of all corrective measures implemented to date.

Progress reports may be submitted by email sent to Don.Hirsch@dep.nj.gov and Lisa.Tracy@dep.nj.gov.

C. **RESERVATION OF RIGHT TO SEEK PENALTIES**

39. The Department reserves the right to seek civil and /or administrative penalties for present and future violations committed by PVWC.

D. **STIPULATED PENALTIES**

40. PVWC shall pay stipulated penalties to the Department, as set forth below, for each failure to comply with the deadlines specified in the COMPLIANCE SCHEDULE SECTION and the PROGRESS REPORTS SECTION of this ACO. However, PVWC shall not be liable for the following stipulated penalties for violations of the COMPLIANCE SCHEDULE SECTION if the Department has notified PVWC in writing pursuant to the FORCE MAJEURE SECTION of this ACO that it has extended PVWC's deadline for a particular period of time for specific violations of the COMPLIANCE SCHEDULE SECTION.

<u>Calendar Days Past Compliance Date</u>	<u>Per Calendar Day</u>
1-7	\$100
8-14	\$200
15 or more	\$500

For all violations of deadlines in the PROGRESS REPORT SECTION the stipulated penalty to be paid by PVWC is \$50.00 for each calendar day that PVWC is late on the submittal of the Progress Report.

Stipulated penalties for each violation of the COMPLIANCE SCHEDULE SECTION and the PROGRESS REPORT SECTION of this ACO shall begin to accrue daily until performance is satisfactorily completed.

Penalties for violations of the ACO that are not addressed by the preceding paragraphs may be sought civilly and/or assessed administratively under the Act noted above.

41. Nothing in this ACO shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this ACO.

42. All stipulated penalties shall be due and payable sixty (60) calendar days following PVWC's receipt of a written demand from the Department. Payment of stipulated penalties shall be made by certified check payable to "Treasurer, State of New Jersey" in the amount of the stipulated penalties demanded by the Department. Payment shall be mailed with the bottom portion of the included invoice to the Division of Revenue at the address set forth in the invoice.

43. If PVWC fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may institute civil proceedings to collect the stipulated penalties allowable under the Act and implementing regulations noted above for the violations of this ACO or take any other appropriate enforcement action.

44. The payment of stipulated penalties does not alter PVWC's responsibility to complete all requirements of this ACO.

E. **FORCE MAJEURE**

45. If any event occurs which is beyond the control of PVWC and which PVWC believes will or may cause delay in the achievement of the COMPLIANCE SCHEDULE (paragraphs thirty-four (34) through thirty-seven (37) above) provisions of this ACO, PVWC 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, PVWC 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. PVWC shall take all necessary action to prevent or minimize any such delay.

46. The Department may extend the deadlines in the COMPLIANCE SCHEDULE SECTION of this ACO for a period no longer than the delay if the Department finds that:

- A. PVWC has complied with the notice requirements of paragraph forty-five (45) above;
- B. The delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of PVWC; and
- C. PVWC has taken all necessary actions to prevent or minimize the delay.

47. If the Department denies PVWC's force majeure request, PVWC will be subject to stipulated penalties and/or other civil and/or administrative enforcement actions. The burden of proving that any delay is caused by circumstances beyond the control of PVWC and the length of any such delay attributable to those circumstances shall rest with PVWC. Neither contractor's breach nor increases in the cost or expenses incurred by PVWC in fulfilling the requirements of this ACO shall 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. No extension

of time shall be granted pursuant to this FORCE MAJEURE SECTION of this ACO for any other provisions of this ACO.

F. **RESERVATION OF RIGHTS SECTION**

48. Nothing in this ACO shall constitute a waiver of any statutory, regulatory or common law rights of the Department pertaining to any of the laws of the State of New Jersey.

49. Nothing in this ACO shall preclude the Department from taking enforcement or penalty action against PVWC that the Department may deem appropriate for matters or violations not set forth in the FINDINGS of this ACO which the Department is entitled to bring under the laws of the State of New Jersey.

50. The Department reserves all statutory, regulatory, and common law rights to require PVWC to take additional actions(s) should the Department determine that such actions are necessary to protect public health, safety, welfare and/or the environment. Nothing in this ACO shall constitute a waiver of any right of the Department to require such additional actions should the Department determine that such actions are necessary.

51. Nothing in this ACO restricts or precludes the Department from raising the above FINDINGS in any other proceeding including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).

G. **MODIFICATIONS SECTION**

52. No modification or waiver of this ACO shall be valid except by written amendment duly executed by PVWC and the Department or by the Department's written modification pursuant to the FORCE MAJEURE SECTION herein above.

53. PVWC shall not construe any unwritten advice, unwritten guidance, unwritten suggestions, or other unwritten comments by the Department, or by person(s) acting on its behalf, as relieving PVWC of its obligations under this ACO, the Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.), and the Safe Drinking Water Act regulations (N.J.A.C. 7:10-1 et seq.).

H. **RIGHT OF ENTRY AND INSPECTION SECTION**

54. In addition to the Department's statutory and regulatory rights to enter and inspect, PVWC shall allow the Department and any person(s) acting on its behalf, access to the site at all times for the purpose of monitoring compliance with this ACO.

I. TERMINATION SECTION

55. This ACO shall terminate upon receipt by PVWC of written notice from the Department that all the requirements of this ACO have been satisfied. Termination of this ACO shall not relieve PVWC of its liability for any unpaid penalties previously demanded by the Department pursuant to the terms and conditions of this ACO, nor shall it affect in any way the Department's right and ability to collect said unpaid penalties.

56. The Department reserves the right to unilaterally terminate this ACO and to take any lawful additional enforcement action it deems necessary, in the event PVWC violates its terms and/or conditions.

57. The Department reserves the right to unilaterally terminate this ACO if the Department determines it no longer serves the purpose for which it was intended. In the event the Department invokes this provision, the Department shall provide written justification for its action and shall also set forth in writing the date of termination of the ACO.

58. If any provision of this ACO or the application thereof to any person or circumstance shall to any extent be found to be invalid or unenforceable, the remainder of this ACO (or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable) shall not be affected thereby and each provision of this ACO shall be valid and enforceable 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 remainder of this ACO does not serve the purpose for which it was intended.

J. GENERAL PROVISIONS SECTION

59. This ACO settles and resolves only the violations cited and is not a settlement of any other civil or administrative action arising from those violations; provided however that nothing in this ACO resolves or precludes criminal prosecution against PVWC for criminal violations, if applicable.

60. PVWC agrees that the PENALTY SECTION provisions set forth above do not constitute criminal punishment. PVWC further waives any right it may have to claim that double jeopardy attaches to the penalty settlement set forth above (if applicable) or to the stipulated penalties set forth in paragraphs forty (40) through forty-two (42) above.

61. This ACO shall be binding on PVWC, its successors, assigns, agents, subsequent purchasers, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. This ACO shall also be binding on PVWC's principals, directors, officers, members, employees, and any other individuals who are responsible corporate officials within the meaning of the Acts set forth in this ACO.

62. This ACO shall not be construed to be a permit or to be in lieu of a permit for any activities which require permits. PVWC shall obtain and comply with all applicable federal, state, and

local permits as well as all applicable statutes, regulations, rules, codes, and orders while carrying out the obligations imposed by this ACO, including, but not limited to the statutes, regulations, and permits cited herein.

63. This ACO shall not preclude the Department from requiring PVWC to apply for any permit or permit modification issued by the Department under its statutory or regulatory authority for the matters covered herein. When such a permit or permit modification becomes effective, the terms and conditions of any such permit or permit modification shall not be pre-empted by the terms and conditions of this ACO, even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this ACO.

64. The obligations or penalties imposed by this ACO 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, and are not intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding.

65. Compliance with the requirements of this ACO by PVWC is not conditioned in any way on receipt by PVWC of any federal, state, local, or public funding.

66. All appendices and/or attachments referenced in this ACO, if any, and all reports, work plans and other documents required under the terms of this ACO are, upon approval of the Department, incorporated into this ACO by reference and made a part hereof.

67. PVWC shall perform all work required by this ACO in accordance with prevailing professional standards.

68. This ACO shall be governed and interpreted under the laws of the State of New Jersey.

69. This ACO shall be construed as if drafted by both parties.

70. PVWC agrees not to contest the authority or jurisdiction of the Department to issue this ACO. PVWC also agrees not to contest the terms or conditions of this ACO, except that PVWC may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce the terms and conditions of this ACO.

71. PVWC hereby consents to and agrees that this ACO is a final agency order, may be docketed with the clerk of the Superior Court pursuant to N.J.S.A. 2A:58-10, N.J.S.A. 58:1A-1 et seq., and 58:12A-1 et seq., and is fully enforceable as a final order in the New Jersey Superior Court upon the filing of a summary action for compliance with the Safe Drinking Water Act.

72. PVWC shall give written notice of this ACO to any successor in interest at least thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO or the property on which such facility is/facilities are located or where the violations occurred, and shall simultaneously notify the Department in writing that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirement(s) arising from the transfer of ownership or control of PVWC's facility(ies) or