

IN THE MATTER OF

ADMINISTRATIVE  
CONSENT ORDER

Trenton Water Works  
Trenton City/ Mercer County

EA ID #NEA180001 - 1111001

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq., the Safe Drinking Water Act (N.J.S.A. 58:12A-1 et seq.), the Safe Drinking Water Act regulations (N.J.A.C. 7:10-1 et seq.), the New Jersey Water Supply & Wastewater Operators' Licensing Act (N.J.S.A. 58:11-64 et seq.), the Licensing of Water Supply and Wastewater Treatment System Operators regulations (N.J.A.C. 7:10A-1 et seq.), the Water Supply Management Act (58:1A-1 et seq.), the Water Supply Allocation Permits regulations (N.J.A.C. 7:19-1 et seq.), the National Primary Drinking Water Regulations 40 CFR 141.714 and duly delegated to the Chief of Central Bureau of Water Compliance and Enforcement pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. The City of Trenton owns and operates the facility known as Trenton Water Works (hereinafter "TWW"), a public water system, as defined by N.J.A.C. 7:10-1.3, which has the Public Water System Identification No. 1111001 and located in the City of Trenton, New Jersey.
2. On March 31, 2009, the Department issued and signed an Administrative Consent Order ("ACO"), NEA090001-1111001 with TWW to establish an enforceable schedule to construct a floating cover for TWW's uncovered finished water reservoir in accordance with 40 CFR 141.714. The ACO established March 1, 2013 as the date to complete construction of the uncovered reservoir floating cover system.
3. As a result of an engineering review conducted by TWW of the matter, on October 1, 2010, TWW requested a modification and extension for the above mentioned ACO. Upon Department review, the ACO was amended by a modified ACO, effective February 1, 2014, with a final project completion date of July 30, 2019.
4. On July 21, 2017 and January 5, 2018, the Department issued a Notice of Violation ("NOV") to TWW.
5. TWW conducted a Technical, Managerial and Financial assessment and submitted a report dated September 25, 2017 ("TMF report"), which revealed, in part, that TWW operated with 68 vacancies, which represented 39% of TWW's staffing positions.

6. This ACO supersedes the requirements set for in the modified ACO and the NOV's issued to TWW on July 21, 2017 and January 5, 2018.
7. In order to resolve this matter without trial or adjudication, TWW has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

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

A. ENFORCEMENT COMPLIANCE SCHEDULE

System Operations

8. TWW shall properly operate and maintain the system, including but not limited to the following:
  - A. On or before June 29, 2018, TWW shall submit a plan that describes, in detail, TWW's existing asset management program including:
    - i. Submit a description of TWW's current asset inventory of assets, including whether said inventory includes the following information: Type of asset, Size/length; Age; Service history; Location; Present value; replacement cost; and Operations and Maintenance data (date and type of last service); and a plan to improve and expand TWW's current inventory.
    - ii. Describe whether TWW has assessed criticality and vulnerability of assets and if so, how assessment was conducted.
    - iii. Provide a report describing costs associated with operation, maintenance, repair, replacement or major capital improvements accomplished in the previous year and planned for the coming year, for the entire system and a description of the prioritization procedure used to inform future spending plans.
  - B. On or about June 29, 2018, TWW shall provide updates and schedules of the Ewing Booster Station project that was recently awarded which includes upgrades to the pumps and motors and architectural improvements to the station.

- C. On or before December 31, 2018, TWW shall provide a detailed plan for compliance with the Water Quality Accountability Act, N.J.S.A. 58:31-1 et seq, for the entire system.
  - D. On or before April 19, 2019, TWW shall submit an asset management program plan, in compliance with the Water Quality Accountability Act and the Department's Asset Management Guidance at <http://www.nj.gov/dep/assetmanagement/policy.html>, including:
    - a. Asset Inventory
    - b. Criticality and Vulnerability Assessments
    - c. Capital Improvement Plan
    - d. Long-Term Funding strategy
    - e. Water Loss Audit - a schedule and plan for the assessment of unaccounted-for water under N.J.A.C. 7:19-6.4, as well as conduct a water audit to address leaks within the distribution system in accordance to the Delaware River Basin Commission (DRBC) requirement.
9. TWW shall develop a protocol for the system designed to ensure that each employee associated with the system is acquainted with his or her particular responsibilities and obligations, including the protocol to be followed in the event of an emergency within the system or an intervening factor which mandates deviation from routine operation and maintenance (O&M) procedures, including but not limited to the following:
- A. On or before June 29, 2018, TWW shall provide the Department with documentation indicating all system employees have received training regarding his or her responsibilities and obligations within the system, including relevant existing standard operating procedures and existing emergency protocols for emergencies, water filtration plant events and distribution system events.
    - i. These events include, but not limited to the following: treatment plant shutdowns due to turbidity (pre and post), emergency operation of the interconnections, reservoir level draw down, chemical pump misfeeds, etc.
10. TWW shall have readily available written, detailed O&M procedures designed to maximize preventative maintenance and operational techniques, including but not limited to the following:



- A. On or before June 29, 2018, TWW shall submit to the Department all system routine inspection as well as preventative maintenance procedures and schedules. Logs should be retained onsite for Department review.
  - B. On or before December 31, 2018, TWW shall have its O&M manuals and procedures evaluated by a third party with the appropriate level of expertise and a report of the evaluation submitted to the Department.
  - C. Any deficiencies identified by the evaluation report or the Department shall be corrected within sixty (60) days of receipt of written notice by the Department.
11. On or before December 31, 2018, TWW shall conduct interconnection flow tests for all interconnections within the system that are six inches or larger in diameter and submit the test results to the Department in accordance with N.J.A.C. 7:19-6.9(d).
12. TWW shall engage in all reasonable attempts to execute a written agreement on or before December 31, 2018 with the other water systems for all of the interconnections in the system that are six inches or larger in diameter and submit to the Department the written interconnection agreements in accordance with N.J.A.C. 7:19-6.9(g). While NJ American Water has provided TWW with water on an emergency basis through two existing interconnections, no written agreement is in place. TWW shall engage in good faith negotiations to reach a written agreement for the interconnections. On or before December 31, 2018, TWW shall submit evidence of its good faith efforts in furtherance of reaching a written agreement, including proposed agreements made by TWW.
13. On or before June 29, 2018, TWW shall submit to the Department its action plan and schedule for providing validation protocols, such as empirical grab samples to supplement and verify SCADA system readings (i.e. turbidity, chemical feeds, and reservoir levels), which are considered unreliable until such time that the SCADA system installation and calibration is complete.

#### Emergency Response Plan (ERP)

14. TWW shall develop an adequate emergency response plan, including but not limited to the following:
- A. On or before June 29, 2018, TWW shall modify its existing ERP to reflect the deficiencies noted by the Department in Appendix A.
  - B. On or before June 29, 2018, TWW shall improve its telephone outreach system so that it includes all customers within the City of Trenton water service area. TWW may provide other means of direct electronic notifications (i.e. texts and emails) that are in addition to the telephone outreach. For those customers (residents) located outside of the City of Trenton, TWW will notify local government leadership and support communications, where possible, to help ensure that all residents that utilize

TWW water are properly and promptly notified. TWW shall develop a procedure for ensuring that all customers receive such notifications. TWW shall provide such notifications as follows:

- i. When TWW becomes aware of any problem that may have a current or near future impact on the water quality or the delivery of water or may impact human health, safety, welfare or the environment, TWW shall immediately notify the Department.
  - ii. When TWW becomes aware of any problem that may have a current impact on the water quality or the delivery of water or may have a current impact on human health, safety, welfare or the environment, TWW shall immediately notify: 1) customers within the City of Trenton by their telephone outreach system; 2) DEP by telephone at 877-WARN-DEP; 3) Mercer County OEM; 4) Trenton police; 5) the owners of emergency interconnections with TWW's system, and 6) identified local government leadership for all affected communities served by TWW outside the City of Trenton.
- C. For any problem that TWW has notified customers in accordance with the previous paragraph, TWW shall use its telephone outreach system, or other means of direct electronic notifications in addition to the telephone outreach, to notify customers once the problem has been resolved.
- D. On or before June 29, 2018, TWW shall train all TWW staff on the Incident Command System/National Incident Management System (ICS/NIMS) commensurate with their job responsibilities, and to make this training standard for employees.
- E. On or before June 29, 2018, TWW shall develop a map that clearly delineates the extent of the impacted service areas any time that an advisory is issued, and have those maps readily available for public review during such an advisory.
- F. On or before June 29, 2018, TWW shall provide detailed reservoir metrics indicating key action levels and TWW's emergency response to each level to the Department.
- G. On or before June 29, 2018, TWW shall conduct an interconnection evaluation for each interconnection noted in their ERP.
  - i. This shall include a schedule for the exercise and routine maintenance of the interconnections, procedures for operators to properly open and close interconnections, as well as notification procedures ensuring that the interconnected system is provided with sufficient time to prepare and activate the interconnection.



15. On or before April 5, 2018, TWW shall notify the Department whether the NJ American Water Emergency Interconnection Phase II project outlined in the TMF report is a feasible project. In the event TWW determines the Phase II project is feasible, on or before June 29, 2019, TWW shall complete the design stages of the TWW- NJ American Water Emergency Interconnection Phase II project outlined in the TMF report which would increase interconnection capacity from 10 Million Gallons per Day (MGD) to 20 MGD. In the event TWW determines the Phase II project is not feasible, on or before June 29, 2019, TWW shall submit an alternatives analysis and identify the selected alternative.

A. On or before March 31, 2021, TWW shall complete the project.

B. On or before June 30, 2021, TWW shall complete all testing, evaluation and training on proper operation of the project.

#### Staffing

16. TWW shall fully and adequately staff the water treatment system and water distribution systems, including but not limited to the following essential staff:

A. Chief Pump Operator, 3 Senior Operators, 5 Operators, 4 Assistant Operators, 5 laboratory positions and 11 Water Repairer positions as identified in the TMF report.

B. On or before February 5, 2018, TWW shall employ at least 10 individuals in the positions identified in A above.

C. On or before March 5, 2018, TWW shall employ at least 10 more individuals in the positions identified in A above.

D. On or before April 5, 2018 TWW shall employ the remaining number of individuals needed to satisfy the critical positions identified in A above.

E. On or before August 5, 2018 TWW shall submit a letter to the Department identifying how it intends to meet the full staffing level (by direct employment, long-term contract of no less than 10 years, or combination of both) specified in the TMF report.

i. On or before February 5, 2019 TWW shall provide full staffing as specified in the TMF Report.

Reservoir Covering Project

17. TWW shall achieve and maintain compliance with the Reservoir Covering Permit in accordance to N.J.A.C. 7:10-5.1, 40 CFR 141, including but not limited to the following:

- A. On or before June 29, 2018, TWW shall designate and retain a primary contact for the Department to provide status updates and address issues as they relate to the Reservoir Covering Project.
- B. On or before March 30, 2018, TWW shall complete the SCADA system upgrades, including verification, validation and testing, and submit a Certification of Final Completion to the Department.
  - i. On or before June 30, 2018, TWW shall train all appropriate operators and other staff on proper use of the SCADA system.
  - ii. On or before December 29, 2018, TWW shall test the SCADA system upgrades under a similar water demand season as anticipated during the Reservoir offline phase.
- C. On or before April 30, 2018, TWW shall evaluate the Delaware River Intake and complete preliminary designs for measures intended to minimize disruption of the treatment plant resulting from circumstances that compromise the functionality of the plant including the reduction of flow or quality of water at the intake resulting from fluctuating turbidity levels, or clogging from debris, aquatic vegetation, frazil ice, leaf litter or any other matter.
  - i. On or before February 28, 2019, TWW shall submit to the Department final designs for intake improvements described in "C" above.
  - ii. On or before January 31, 2020, TWW shall award a construction contract for the Delaware River Intake Improvement Project and obtain all final permits and approvals needed for the modifications.
  - iii. On or before February 26, 2021, TWW shall complete modifications to the Delaware River Intake described in "C" above.
  - iv. On or before April 30, 2021, TWW shall complete any SCADA modifications and training necessary for the new intake.
- D. On or before May 31, 2019, TWW shall complete the large diameter valve (valves that are eight (8) inches in diameter) exercising and evaluation project, which shall identify valves that need to be repaired or replaced and which will enable problem

areas to be isolated and allow higher pressure zones to help provide water for lower zones through the opening of division gate valves in the TWW transmission and distribution system.

- i. On or before September 30, 2019, TWW shall provide the Department with a list of the valves identified during the valve exercising and evaluation program. For any critical large diameter valves found to be inoperable or malfunctioning, a valve repair or replacement contract must immediately be awarded within 30 days of the finding and the full repair or replacement must be completed within 30 days of the award. For purposes of this ACO, "critical" is defined as essential to the operation of the distribution network for maintaining satisfactory water supply and water pressures under full demands and for which no suitable workaround is available.
- ii. On or before February 26, 2021, TWW shall complete the valve repair and replacement project.
- iii. On or before March 31, 2021, TWW shall complete all necessary staff training related to the new repaired/ replaced valves.

E. On or before June 29, 2018, TWW shall complete and submit a revised, DRAFT Emergency Action Plan (EAP) for Reservoir offline phases to the Department.

- i. On or before November 29, 2019, TWW shall conduct a stakeholder outreach event to establish relationships and communicate risk similar to the event that took place on November 2, 2016.
- ii. On or before May 29, 2020, TWW shall complete and submit a **second** DRAFT emergency action plan that addresses deficiencies identified by the Department as well as stakeholder comments for Reservoir offline phases to the Department.
- iii. On or before November 30, 2020, TWW shall conduct a **second** community based outreach event with stakeholders, in addition to completing a table-top functional exercise similar to that which took place on March 31, 2017.
- iv. On or before December 31, 2020, TWW will prepare a FINAL emergency action plan for Reservoir outages and submit to the Department.

F. On or before July 31, 2018, TWW shall complete the construction of the new disinfection system at the Water Treatment Plant and Reservoir Gatehouse.



- i. On or before December 31, 2018, TWW shall test the SCADA system upgrades with the new disinfection system under a similar water demand season as anticipated during the Reservoir offline phase. This will identify potential SCADA discrepancies with the new disinfection system.
  - F. On or before April 30, 2019, TWW shall complete the distribution system hydraulic modeling which, in part, can be used as a tool to identify valves that should be operated in response to potential outages, or support determinations on locations of temporary overland interconnections, in order to preserve pressures within the distribution system.
  - G. On or before January 31, 2020, TWW shall complete initial testing of the Temporary Storage Tanks to simulate water demand periods during the Reservoir offline periods.
    - i. TWW shall complete a second testing of the Temporary Storage Tanks under similar water demand periods during the Reservoir offline periods by January 31, 2021.
  - I. On or before January 29, 2021, TWW shall secure a fully executed interconnection agreement with New Jersey American Water for the duration of the Reservoir project and provide the Department with a copy of the executed agreement.
  - J. On or before May 31, 2021, TWW shall award a contract for the Reservoir inspection, cleaning and repair as well as obtain all final permit approvals for construction.
  - K. On or before January 14, 2022, TWW must complete the inspection, cleaning and repairs of the Reservoir interior in accordance to all applicable and effective Department permits.
    - i. On or before February 26, 2022, TWW must provide the Department with the findings of the Reservoir interior inspection, cleaning and repair offline period. These findings must also include the results of the sediment sampling, sediment classification as well as appropriate disposal methods of the sediment removed from the Reservoir.
  - L. On or before January 14, 2023, TWW must complete the installation of the Reservoir cover in accordance with their permit requirements.
  - M. On or before July 31, 2023, TWW must have the Pennington Reservoir cleaned, repaired, covered, commissioned and tested and the entire project completed. The Reservoir must be rendered fully operational and placed in service.
18. TWW shall include the following statement in their annual Consumer Confidence Reports (CCR), effective July 1, 2018, "Trenton Water Works has entered into an Administrative Consent Order (ACO) dated February 2018 with the New Jersey Department of

Environmental Protection to cover the finished water Reservoir. Under the ACO the construction of the cover is scheduled to be completed by July 31, 2023. The ACO also addresses additional requirements for TWW's system operations, emergency response plan and system staffing." This statement shall remain in the TWW's CCRs until compliance with the requirements of 40 CFR 141.714 and N.J.A.C. 7:10-5.1 have been attained. TWW shall also ensure this notification is relayed to its bulk purchasers and emergency purchasers.

19. In the event of an emergency that has the potential to impact the water quality, the delivery of water to the consumer, water pressure and/ or impact human health, safety, welfare and the environment during either one of the two Reservoir offline periods for the activities outlined in paragraph 17, TWW must implement the following:
  - a. TWW's FINAL Emergency Action Plan according to paragraph 17.
  - b. The executed Interconnection Agreement with NJAW according to paragraph 17.
  - c. Operation of valves assessed, repaired and replaced in paragraph 17 based on the hydraulic model of the distribution per paragraph 17 of this ACO.
20. TWW is responsible for taking whatever additional actions are necessary in order to comply with all applicable Federal, State and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein. Furthermore, should TWW fail to comply with the requirements of the Enforcement Compliance Schedule included in this ACO, for reasons other than a valid Force Majeure defense, TWW must then comply with the public notification requirements for a Tier 2 violation. Guidance on providing the proper public notice and use of the required language will be provided to TWW by the Department.

#### B. PROGRESS REPORTS

21. TWW shall submit **MONTHLY** progress reports to the Department at the address listed in paragraph 36 below until all remaining ACO provision are satisfied. Each progress report shall be submitted no later than the last day of the month, except when such day falls on a holiday or a weekend, in which case the progress report shall be submitted on the next available business day. Each progress report shall explain the status of TWW's compliance with this ACO and shall include, but not be limited to, the following:
  - A. identification of site and reference to this ACO;
  - B. status of permitting and planning approvals and any work at the site and progress to date;
  - C. difficulties or problems encountered during reporting period and actions taken to rectify;
  - D. activities planned for the next reporting period;
  - E. required and actual completion date for each item required by this ACO;
  - F. an explanation of any non-compliance with the compliance schedule; and
  - G. evaluation of all corrective measures implemented to date.



C. STIPULATED PENALTIES

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

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

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
1 <sup>st</sup> -7 <sup>th</sup> calendar days of failure to comply with the schedule	\$100 per calendar day
8 <sup>th</sup> -14 <sup>th</sup> calendar days of failure to comply with the schedule	\$200 per calendar day
15 <sup>th</sup> plus calendar days of failure to comply with the schedule	\$500 per calendar day

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

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

23. Within sixty (60) calendar days after TWW receipt of a written demand from the Department for stipulated penalties, TWW shall submit payment by suitable financial instrument, made payable to "Treasurer, State of New Jersey" in the amount of the stipulated penalties demanded by the Department pursuant to paragraph 22 above. Payment shall be mailed with the bottom portion of the Penalty Invoice Form supplied with the written demand. Payment shall be made to the following address:

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

24. If TWW fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to Rules Governing the Courts under R. 4:67 and R. 4:70, or assess civil administrative penalties for violations of this ACO.



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

D. FORCE MAJEURE

26. If any event occurs which is beyond the control of TWW and which TWW believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, TWW shall notify the Department in writing within seven (7) calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, TWW shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. TWW shall take all necessary action to prevent or minimize any such delay.
27. The Department may adjust the deadlines in the Enforcement Compliance Schedule of this ACO for a period no longer than the delay if the Department finds that:
- A. TWW has complied with the notice requirements of the preceding paragraph;
  - B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of TWW; and
  - C. TWW has taken all necessary actions to prevent or minimize the delay.
28. If the Department denies TWW's force majeure request, TWW may be subject to stipulated penalties and other civil and/or administrative enforcement actions. The burden of proving that any delay is caused by circumstances beyond the control of TWW and the length of any such delay attributable to those circumstances shall rest with TWW. Increases in the cost or expenses incurred by TWW in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure. No force majeure adjustments will be granted for failure to timely submit progress reports.

E. GENERAL PROVISIONS

29. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
30. This ACO settles and resolves only the issues related to this ACO, and is not a settlement of any other action rising from those violations. Nothing in this ACO shall resolve or preclude prosecution of criminal actions against TWW, if any.

31. This ACO shall be binding on TWW, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Additionally, this ACO shall be binding on any TWW officials, employees, principals, directors, and officers to the extent that any such individual is a responsible corporate official within the meaning of N.J.S.A. 58:10A-31.
32. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
33. TWW agrees not to contest the terms or conditions of this ACO except that TWW may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
34. This ACO shall not relieve TWW from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
35. No modification or waiver of this ACO shall be valid except by written amendment duly executed by TWW and the Department or by the Departments written modification pursuant to the force majeure provisions herein.
36. Unless otherwise specifically provided herein, TWW shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Departments signature to:

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

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

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

Director, Department of Public Works\*  
319 East State St  
Trenton, NJ 08608

\*unless otherwise delegated through the acquisition of a



project manager/firm for the Reservoir Covering Project

38. TWW shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving TWW of its obligations under its permit(s), this ACO, the New Jersey Safe Drinking Water regulations, and/or the New Jersey Safe Drinking Water Act.
39. In addition to the Department's statutory and regulatory rights to enter and inspect, TWW shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
40. Nothing in this ACO shall preclude the Department from taking enforcement action against TWW for matters not set forth in the findings of this ACO.
41. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
42. TWW shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of TWW's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that TWW enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
43. The Department reserves all statutory and common law rights to require TWW to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
44. Performance of the terms of this ACO by TWW is not conditioned in any way on the receipt by TWW of any federal or state funds.
45. TWW shall perform all work required by this ACO in accordance with prevailing professional standards.
46. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
47. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the



remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.

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

City of Trenton

DATED:

February 5, 2018

BY:



NAME: Eric E. Jackson

TITLE: Mayor

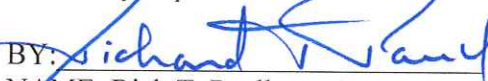
By this signature, I certify that I have full authority to execute this document on behalf of TWW.

DATED:

2/5/18

New Jersey Department of Environmental Protection

BY:



NAME: Rich T. Paull

TITLE: Director, Water and Land Use Enforcement

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.

## APPENDIX A

The Department received a revision to TWW's ERP on August 2, 2017. The Department has determined it to be deficient as it does not fully meet the requirements set forth in N.J.A.C. 7:19-11.2. TWW must address the regulatory deficiencies identified below, as required pursuant to paragraph 14 of this ACO:

### Regulatory Deficiencies:

1. The ERP shall contain a robust Communications Plan that enables swift and thorough communication with all partners (e.g. other systems, authorities, bulk sale customers, governmental entities, contractors, vendors) and customers (e.g. general population, sensitive or critical users, large users, etc.) and in multiple languages, as necessary. The Department expects TWW to have prepared templates for water advisories (e.g. boil water, do not drink, do not use, and water conservation) and up-to-date contact lists that include relevant agencies, employees, all customers, including those deemed sensitive and/or priority, as well as vendors and contractors.
2. The ERP shall identify procedures for protecting water system facilities and equipment and securing them from unauthorized access.
3. The ERP shall describe interim water restrictions, conservation measures and prioritization, including citations for local ordinances that support implementation and enforcement of conservation measures throughout TWW's service area. Include bulk sale customers in prioritization.
4. The ERP shall include an inventory of all available auxiliary power (e.g. generators).
5. The ERP shall include an Emergency Action Plan (EAP) in the event of a harmful algal bloom (cyanotoxin) event.
6. All EAPS shall include an assessment of the situation, specific actions to be taken, communication plans, notifications to be made, and any follow-up tasks.
7. The Sabotage/Vandalism EAP shall be revised to describe when and how law enforcement authorities such as local police, FBI or other authorities will be notified.
8. A formalized evaluation process to assess the effectiveness of the ERP and identification of improvements for incorporation into the plan as a part of revisions following an incident and/or periodic updates have not been addressed. In addition, the ERP does not contain any reference to its periodic revision.
9. The ERP shall contain an accurate description of the capacity of all available interconnections. TWW shall submit contractual agreements for interconnections.