

Middletown Water Joint Venture LLC

Donald Correll, President
Middletown Water Joint Venture
c/o Water Capital Partners LLC
110 Chestnut Ridge Road, Suite 251
Montvale, NJ 07645

April 30th, 2024

Borough of Middletown, Dauphin County Pennsylvania
60 West Emaus Street
Middletown, PA 17057
Attention: Kenneth Klinepeter, Borough Manager
KKlinepeter@middletownborough.com

Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101
Attention: Michael Winfield, Borough Counsel
mwinfield@postschell.com

Dear Ken and Michael,

This letter shall serve as a Notice of a **Change of Law** as defined under the Municipal Water and Wastewater Utility System Concession and Lease Agreement ("Concession Agreement") dated September 30, 2014.

As defined in the Concession Agreement "Change of Law" means either (A) the enactment, adoption, promulgation, modification or repeal after the Bid Date of any federal, state or local Law, or the change in interpretation (as evidenced by a final official action of a Governmental Authority having jurisdiction or a decision in court with jurisdiction over the subject matter and with respect to which no appeal is pending or may be taken) after the Bid Date of any federal, state or local Law Authorization or approval by any Governmental Authority, or (b) the imposition, after the Bid Date, of any material condition in the issuance, modification or renewal of any Authorization or approval necessary for the operation and maintenance of the System. Notwithstanding all of the foregoing, in no event will the imposition of a Tax of General Application or a change in a Tax of General Application be considered a Change of Law.

Please note further under Article 7, Section 7.1, paragraph (g) of the Concession Agreement: Change of Law *The Schedule of Service Charges shall be subject to prospective annual adjustment, upward or downward, on account of any Change of Law in order to reflect any changed cost or expense related to the System and incurred by the Concessionaire as a result thereof, all as may be reasonably agreed to by the Authority and the Concessionaire. If the Authority and Concessionaire are unable to so agree, the adjustment of the Schedule of Service Charges shall be resolved pursuant to Article 19.*

Accordingly, the Concessionaire is herewith providing notice of two recent developments which comprise a Change of Law as defined in the Concession Agreement AND are likely to warrant an adjustment of the Schedule of Service Charges as further described in I. Inventory - Lead Service Lines and II. PFAS Mitigation here below:

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I. Inventory - Lead Service Lines

- EPA published the Lead and Copper Rule Revisions (LCRR) in January 2021, which requires all community and nontransient noncommunity water systems to submit a service line inventory to PADEP by **October 16, 2024**.
- The purpose of the service line inventory is to track a systems progress to full lead service line replacement. The service line inventory will provide the basis for communicating to the public, customers, residents, and other persons served by the water system which of the four categories of service line is delivering the water they consume. The final purpose of the inventory is a way for the Department to verify whether monitoring samples are being collected from homes with service lines that are lead unless the system does not have any. Having a complete and accurate service line inventory is the first step to compliance with the LCRR/LCRI. All activities required by the regulation builds from this initial service line inventory. The focus is on finding the lead service lines and galvanized service lines that require replacement throughout the distribution system, so that replacement and sampling activities target these most vulnerable areas of the system.
- Failure to complete the SLI and submit it to the Department by October 16, 2024 is in **violation** of 40 CFR §141.80(a)(3), and 40 CFR § 141.84(a). Completion of the inventory is essential to all other portions of the regulation, such as completion of a lead service line replacement plan and a lead and copper sampling plan. Due to the importance of this requirement, EPA has determined that failure to complete SLI is a health-based, treatment technique **violation which will require Tier 2 PN**

As an initial phase the Concessionaire proposes the scope of services further detailed in Appendix A to address the Lead Service Line Inventory requirements described above.

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II. PFAS Mitigation

The EPA released new PFAS regulations on April 10th, 2024 as shown below:

Compound	Final MCLG	Final MCL (enforceable levels)
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

Q1 2024 sample results for the Borough's system are shown in the table below along with the PA DEP MCLs that have now been superseded by the new EPA requirements:

	Well 1	Well 2	Well 3	Well 4	Well 5	Well 6
Quarter 1						
PFOS	7.6	8.8		6.2	11	6.9
PFOA	2.8	4.4		5.8	5.6	5
Date	2/14/24	2/14/24		3/19/24	2/14/24	2/14/24
Quarter 2						
PFOS						
PFOA						
Date						
Quarter 3						
PFOS						
PFOA						
Date						
Quarter 4						
PFOS						
PFOA						
Date						
PFOS Avg	7.6	8.8	#DIV/0!	6.2	11	6.9
PFOA Avg	2.8	4.4	#DIV/0!	5.8	5.6	5

PA DEP Regulation (ppt)
 PFOS 18
 PFOA 14

EPA Regulation (ppt)
 PFOS 4.0
 PFOA 4.0
 PFHxS 10
 PFNA 10
 HFPO-DA (Gen 10

With an MCL of 4 for PFOA and PFOS established by the new EPA regulations, the Borough's system will be out of compliance.

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Accordingly, the Concessionaire will need to install treatment at all the wells that are currently online (likely all 6 wells once well 3 is returned to service) so as to be in compliance with the new EPA MCLs. According to the EPA, water systems that detect PFAS above the new MCL standards will have **5 years** to implement solutions that reduce PFAS in the drinking water and will be required to notify the public if PFAS levels exceed the new standard. The treatment technologies outlined by the EPA are granular activated carbon, reverse osmosis, and ion exchange. It is likely that all approaches will require some degree of pilot study before the PADEP is prepared to approve the permit for construction of a permanent structure.

As an initial phase the Concessionaire proposes the preliminary scope of services further detailed in Appendix B to address the requirements for PFAS Mitigation described above.

Please do not hesitate to contact me with any questions.

Sincerely,



Donald Correll, President
Middletown Water Joint Venture

CC: Kenneth Bonn
Bradley Pensyl

Dan Sugarman
John Joyner

Jason Kiernan
Ryan Hagain

Kodi Webb

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APPENDIX A Phase 1 Inventory – Lead Service Lines Scope of Services

a) LSL Database:

Develop and maintain a required LSL Inventory database to include all the PADEP required inventory components.

b) Records Review

c) Meter Replacement and Water Line Replacement Review

d) Communications with PADEP, EPA, and Water Service Community

e) Recommendations for Modeling/Statistical Analysis

f) Recommendations for System Sampling

g) Recommendations for Mechanical Excavation or System Televising for Field Verification

EXCEPTIONS (*Work not included in Phase 1*)

- Work associated with the Modeling/Statistical Analysis, System sampling and Mechanical
- Excavation (test pits) or System Televising for Field Verification and lead service line replacements are **not** included in Phase 1.

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APPENDIX B PFAS Mitigation Preliminary Scope of Services

1. **Site Assessment:**
 - Conduct a comprehensive assessment of the site(s) where the water treatment system(s) will be implemented. This includes analyzing the source of contamination, the volume of water to be treated, and any existing infrastructure that may impact system design.
2. **Water Sampling and Analysis:**
 - Collect additional water samples from the contaminated source(s) and conduct thorough analysis to determine the concentration and types of PFAS present. This information is crucial for designing an effective treatment system.
3. **Treatment Technology Selection:**
 - Research and evaluate various treatment technologies suitable for PFAS removal from water. Common methods include activated carbon adsorption, ion exchange, membrane filtration. Select the most appropriate technology based on factors such as efficiency, cost, scalability, and site-specific conditions.
4. **Pilot Testing:**
 - Conduct pilot-scale testing of selected treatment technologies to assess their performance under real-world conditions. This step helps validate the effectiveness of the chosen technology and allows for adjustments before full-scale implementation.
5. **System Design and Engineering:**
 - Develop detailed engineering plans for the water treatment system based on the results of pilot testing and site-specific requirements. This includes designing the treatment process, selecting equipment and materials, determining system layout, and estimating construction and operation costs.
6. **Regulatory Compliance:**
 - Ensure that the proposed water treatment system complies with all applicable regulations and permits governing PFAS removal and water discharge.
7. **Implementation and Monitoring:**
 - Construct and install the water treatment system according to the engineering plans. Implement a monitoring program to regularly assess the system's performance and verify that PFAS levels in treated water meet regulatory requirements.
8. **Ongoing Optimization and Maintenance:**
 - Continuously optimize the operation of the treatment system to maximize efficiency and PFAS removal. Develop a maintenance schedule to ensure proper functioning of equipment and address any issues that may arise over time.