

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Channing Street, NE
Washington, DC 20002

Account No: [REDACTED]

Amounts and Periods In Dispute:

1/14/2022 – 2/11/2022	\$ 91.12
8/12/2022 – 9/14/2022	\$ 86.94
9/15/2022 – 10/14/2022	\$ 91.29

Case No: 22-503462

Case No: 23-34769

Case No: 23-54903

Before Janet W. Blassingame, Hearing Officer
March 8, 2023 at 12:00 Noon

The customer contested water and sewer bills for the above noted periods of time. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 8, 2023. Present for hearing were: [REDACTED] the customer, represented by Steven Dudek, Esq., Office of People's Counsel (OPC); Valea Valentine, Customer Outreach Specialist, Water Services Division, OPC; LaFatima Black, DC Water; Kimberly Arrington, DC Water; and, Stephanie Robinson, DC Water, observing only.

Mr. Dudek opened by stating that his client has been dealing with this issue for over one year, having challenged his bill in January 2022. Mr. Dudek stated that the issue arose as a result of a neighborly conversation which led his client to believe that he was being overcharged for water and sewer service. Mr. Dudek stated that the first challenge took six (6) months.

The property involved is a home, having two (2) bathrooms, one kitchen, radiators, a washing machine and two (2) outside spigots. Mr. [REDACTED] stated that he has a dishwasher but the dishwasher is broken. He stated that he has lived in the house since March 2021 and that two (2) people reside in the house.

Mr. [REDACTED] testified that over the first six (6) month of his occupancy, his water and sewer bills were inconsistent. He stated that: his April 2021 bill was \$50.00; in July 2021, his bill was \$80.00; in August 2021, his bill was \$98.00; in September 2021, his bill was \$109.00; and, in October 2021, his bill was \$121.00. Mr. [REDACTED] stated that in year 2022, his water and sewer charges ranged between \$90.00 and \$95.00 per billing cycle.

Mr. [REDACTED] stated that during his first six (6) months in the home, he was asking around of neighbors to gauge what was normal. He stated that a neighbor told him that his bill was around the same range or lower but a neighbor around the corner told him that for his family of four (4), his bill was the same or lower than Mr. [REDACTED]'s charges.

Mr. [REDACTED] stated that after his February bill challenge, DC Water was quick and he called the utility in July and DC Water acknowledged his dispute.

Mr. [REDACTED] testified that he wanted to make sure that he had no unintended leaks, so he checked the water account when no one was home and he looked at the daily water usage chart on the DC Water website.

The customer stated that he conserves water by not leaving water running while brushing his teeth or showering. He stated that he takes no tub baths. He stated that all faucets have aerators and he uses simple shower heads. He added that as a preventive measure, he had a plumber change the shower heads.

Mr. [REDACTED] stated that he was not aware that DC Water changed his water meter. He added that he does not know the accuracy of the water meter. He stated that he works from home and did not know when a technician came to change the meter.

Mr. [REDACTED] stated that he received the BIR regarding his February bill dispute in August 2022 and he contested the later bills.

Mr. [REDACTED] stated that he saw no usage on the meter when he was not home.

The customer stated that the family of four (4) has a baby and a toddler, two and one-half bathrooms and they use their tub, whereas he does not.

Ms. Black stated that the meter reads are actual and from an automated water meter. She stated that DC Water pulled the customer's water meter and tested it on September 27, 2022. The meter was determined to have 100.64% accuracy. She explained that DC Water follows the standards of water meter accuracy established by the American Water Works Association and that a water meter is functioning accuracy if between 98.5% and 101.5%.

Ms. Black pointed out that the customer has disputed his bill since installation of the new water meter in September 2022. She pointed out that customer is disputing the bill period 9/25/2022 to 10/14/2022. Ms. Black testified that the water meter installed at the property in September 2022 was tested by DC Water in December 2022 and the water meter was determined to have 100/25% accuracy.

Ms. Black stated that DC Water received a plumber's report from the customer that reflected that two (2) toilet flappers were changed at the property on June 21, 2022.

Ms. Black testified that DC Water investigated the customer's bill disputed and no evidence of meter overread, meter malfunction or faulty computation was found.

Ms. Black stated that the customer's usage range is 3 – 4 CCF and couple of days higher in a month.

Ms. Black stated that it is the conclusion of the utility that the findings are inconclusive.

Ms. Black stated that the customer's current water usage is elevated as reflected in his January 2023 and she pointed out that from December 29, 2022 to February 13, 2023, the customer used 10.64 CCF of water.

Ms. Arrington stated that in September 2022 when the meter was changed, DC Water estimated the customer's water usage for two (2) days at .29CCF due to the change out. She stated that the utility reversed the bill to account for the new meter and that the bill for December reflects two (2) meters.

Mr. Dudek pointed out that a customer has twenty (20) days to challenge a bill but DC Water has no time limit to investigate. Ms. Arrington responded that the utility says that it will investigate within thirty (30) days and that customers are also told to pay on-going bills. She added that automated meter reads allow the utility to see everything that went on with the account. Mr. Dudek asked Ms. Arrington, whether DC Water should comply with its promise of a thirty (30) day investigation. Ms. Arrington responded that during the pendency of the investigation, the customer does not have to pay the disputed bill. Mr. [REDACTED] asked Ms. Arrington how will he know if the water meter is measuring correctly in his home environment. Ms. Arrington responded that if a water meter had malfunctioned, the meter does not self-correct. She stated that the utility does not send technicians to home to measure water usage and that utility determines if a meter is measuring correctly by testing the meter. Ms. Arrington added that the customer's water usage has been the same over years.

Mr. [REDACTED] stated that he wants to test the meter using the 5-gallon bucket test. Ms. Arrington responded that the dial of the water meter does not move at five (5) gallons.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a residence occupied by two (2) people. (Testimony of [REDACTED])
2. The periods in dispute are: 1/14/2022 – 2/11/2022; 8/12/2022; and 9/15/2022 – 10/14/2022. (Testimony of the parties)
3. The bill disputes were based upon conversations that the customer had with neighbors which lead him to believe that his water and sewer charges were too high. (Testimony of [REDACTED])
4. The customer monitored his water usage as displayed on his account on the DC Water website and he checked if water was registering on his meter when no one was at home. (Testimony of [REDACTED])
5. The customer submitted to DC Water a plumber's report which reflected that two (2) toilet flappers were changed at the property on June 21, 2022. (Testimony of LaFatima Black)
6. The customer's water bill has ranged between \$50.00 to \$121.00 since occupancy began in year 2021 and during the periods in dispute, the customer's water bills have ranged between \$86.94 to \$91.29. (Testimony of [REDACTED])

7. The customer takes steps to conserve water usage within the home. (Testimony of [REDACTED])
8. DC Water pulled and tested the water meter on September 27, 2022 and the meter was determined to have 100.64% accuracy. (Testimony of LaFatima Black)
9. DC Water pulled and tested the water meter which was placed at the property on September 27, 2022 and based on the test performed on January 26, 2023, the water meter was determined to have 100.25% accuracy. (Testimony of LaFatima Black)
10. DC Water investigated the customer's bill disputes and, in each instance, found no evidence of meter overread, faulty computation of the bills, or meter malfunction. (Testimony of LaFatima Black)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (g) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (h) Check the meter for malfunction;
 - (i) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (j) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

DECISION


The customer, in this case, failed to establish that the bills in dispute were wrong or for some other reason he should not be responsible for payment.

This matter arose because the customer developed the impression, based upon conversations with his neighbors, that his water and sewer charges were too high based upon his house composition of two (2) people and his water conservation efforts. The testimony and evidence reflected no spikes in water usage, no leaks, or other plumbing issues, except that the customer did have two (2) toilet flappers replaced in the home.

DC Water conducted investigations of the customer's disputes and as result of the investigations, the utility found no evidence of faulty computation of the customer's bills, meter malfunction or meter overread.


Interestingly, based upon testimony by the DC Water representative, the customer is currently using more water than he has during the periods in dispute and throughout his occupancy thru December 2022. The customer's historical water usage has ranged between 3 and 4 CCF of water per billing cycle, however, his January and February 2023 bills, which are not bill periods in dispute, the customer used 10.02 CCF and 10.64 CCF of water, which would be a spike in water usage and may reflect some plumbing issue occurring at the property. During the periods in dispute, however, there is no evidence of any plumbing issue at the property and there is no evidence of DC Water equipment malfunction or billing errors. Comparing one's billing to that of neighbors' bills in totally different households- different occupancy, different appliances, different water usage habits, etc. provides no basis for adjustment of a customer's bill(s).

Accordingly, the determination of DC Water that the bills in dispute are correct and no basis exists for adjustment of the customer's account, hereby, AFFIRMED.


Janet W. Blessingame, Hearing Officer

Date: May 18, 2023

Copy to:


Channing Street, NE
Washington, DC 20002

Steven Dudek, Esquire
Office of People's Counsel
1133 15th Street, NW, Suite 500
Washington, DC 20005-2710

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]

Embassy of Greece
2217 Massachusetts Avenue, NW
Washington, DC 20008

Service Address:
[REDACTED] Massachusetts Avenue, NW

Account No: [REDACTED]
Case No: 22-605641

Periods and Amounts in Dispute:

7/2/2022 – 8/1/2022	\$2,073.63
8/2/2022 – 8/30/2022	\$2,892.87

Before Janet W. Blassingame, Hearing Officer
March 1, 2023 at 10:00 A.M.

The customer contested water and sewer bills for the above noted periods of time. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 1, 2023. Present for hearing were: [REDACTED], Deputy, Chief of Mission, Embassy of Greece; [REDACTED], Member of Staff of the Embassy of Greece; [REDACTED], Finance Department, Embassy of Greece; Kimberly Arrington, DC Water; LaFatima Black, DC Water, and Stephanie Robinson, DC Water (observing only).

The property involved is a single-family home which is used as the residence of the Ambassador for the Country of Greece. The property has been rented by the Embassy of Greece for the Ambassador's residence since year 2016 and the current ambassador has resided in the home since year 2020. The property has nine (9) bathrooms, radiators, one kitchen, an additional sink in the sunroom and one outside faucet. Official embassy events/functions are held at the residence. There is a maid at the property once or twice a week. Historically, the water and sewer bill ranges between One Hundred Dollars (\$100.00) and Three Hundred Fifty Dollars (\$350.00) per billing cycle, however in December the bill was Five Hundred Sixty-three Dollars (\$563.00).

Mr. [REDACTED] testified that the Embassy has never had a problem regarding a water and sewer bill for decades. He stated that the bills at issue were received end of July and August 2022. He stated that upon receipt of the first bill, he immediately contacted the utility and he also went to the ambassador's residence to inspect for any water issue but he found nothing amiss. He stated that he contacted the leasing company for the property and a plumber came out on September 27, 2022. Ms. [REDACTED] interjected that she had been in Greece when the bill arrived at the Embassy and she returned to the United States on August 8, 2022. She stated that she was told by the utility that the high usage stopped on August 17, 2022.

Ms. [REDACTED] stated that traditionally the embassy staff go on holiday in mid-July to mid-August each year. She stated that she started her job in the Finance Office of the Embassy after holiday and that the prior staff member in the job left employment as of July 28, 2022.

The Hearing Officer interjected that she saw in the record that a HUNA alert was sent by DC Water to telephone number 949-xxx-xx92. Ms. [REDACTED] responded that the telephone number on record with the utility is that of the property owner and was attached to the account when the water and sewer account was originally established. She stated that the residence was once the Embassy of Costa Rico.

Mr. [REDACTED] continued stating that he found no evidence of water in the residence. He stated that the ambassador was away from the property from July 29, 2022 to September 6, 2022. He stated that a telephone call was received at the Embassy from the United States Secret Service on August 4, 2022 informing of an alarm transmitting at the residence. Mr. [REDACTED] stated that he, along with three (3) secret service officers, went to the ambassador's residence and they checked all floors including the basement and they saw no leak or standing water.

Mr. [REDACTED] testified that during the time of the bills in dispute, the residence was empty except for the housekeeper coming to check on the property.

Mr. [REDACTED] stated that the leasing company inspects the property maybe once per year although he was unsure when the inspection was done in year 2022. He stated that the leasing company representatives are inspecting/checking the smoke alarms.

Ms. [REDACTED] stated that the water and sewer bill for the residence in February 2023 was \$164.00 and that the January 2023 bill was \$563.00. She stated that several holiday events had taken place at the residence so the January bill did not arise any concern.

Ms. Black testified that the meter reads were actual based upon transmission taken from an automated water meter. She stated that there was a spike in water usage at the property from July 27, 2022 to August 8, 2022 and thereafter the water usage declined. Ms. Black testified that DC Water tested the water meter on January 26, 2023 and the meter was determined to have 100.20% accuracy. She stated that the utility follows the standard set by the American Water Works Association that water meter accuracy is from 98.5% to 101.5%.

Ms. Black testified that the utility's investigation of the disputed bills found no evidence of meter overread, faulty computation or faulty meter.

Ms. Black concluded that, based upon the utility's investigation, no reasonable explanation was found for the high usage and as such, there is inconclusive findings of the cause of the high usage. She concluded that, pursuant to DCMR 21-§408.1, the customer is not entitled to an adjustment of the bills. She added that the HUNA alert notification has now been changed to go to the Embassy's main number.

Mr. [REDACTED] interjected that they did not respond to the HUNA alert because they did not know of it but he was in the residence on August 4, 2022 and detected no leaks or standing water.

Ms. Black stated that a water meter does not auto correct. She, further, stated that the HUNA alert is an automated system and the alert is sent to the number on file in the customer's account. She stated that because the usage declined, the usage was controlled at the premises. She added that toilets was, mainly, the cause of such high-water usage and she suggested that maybe a toilet flapper did not fall into place properly. She qualified her statements however, stating that she is unable to say how water was used at the property.

Mr. [REDACTED] stated that the ambassador left the residence on July 29, 2022. He added that the average toilet loses 29,600 gallons per month if leaking but the water lose in this instance was far greater.

Mr. [REDACTED] stated that he, on behalf of the Embassy, has acted in good faith and that the Embassy of Greece has been a decades long customer of DC Water.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family home that is rented by the Embassy of Greece for the residence of the Ambassador of Greece. (Testimony of [REDACTED])
2. The periods in dispute are 7/2/2022 to 8/1/2022 and 8/2/2022 to 8/30/2022. (Testimony of the parties)
3. There was a turnover of staff in the Finance Office of the Embassy of Greece in July 2022 and the new staff member assuming the position started the job in mid-August after holiday in Greece. (Testimony of [REDACTED])
4. Traditionally, embassy staff go on holiday from mid-July until mid-August each year. (Testimony of [REDACTED])
5. The Ambassador of Greece for the United States was away from the ambassador's residence, for holiday, from July 29, 2022 until September 6, 2022. (Testimony of [REDACTED])
6. There was a spike in water usage at the residence from July 27, 2022 until August 8, 2022 and, then, water usage declined. (Testimony of LaFatima Black)
7. In the ambassador's absence from the residence, a maid had access to come in to check the house and a key was available to Embassy staff. Mr. [REDACTED] was in the residence on, at least, two occasions. Mr. [REDACTED] checked the house for water issues after receipt of water and sewer bill on August 16, 2022. He stated that he saw no evidence of leaks or water and contacted the leasing company who sent a plumber on September 27, 2022 to inspect the property. Mr. [REDACTED] was, also, in the residence on August 4, 2022 in response to notification by the U.S. Secret Service of an alarm at the residence. He stated that he went into the residence along with Secret Service agents and inspected all the

- rooms and did not see any standing water or leaks. (Testimony of [REDACTED] Letter by [REDACTED] to DC Water dated August 17, 2022)
8. DC Water sent HUNA alerts of high water usage occurring at the property on July 28, 2022, July 31, 2022, August 3, 2022, August 8, 2022 and August 9, 2022, however, the telephone number on file with the utility was not up-to-date, having been put on file for HUNA notifications when the account was initially established and not updated when the Embassy of Greece assumed possession/occupancy of the property. HUNA alerts went to a telephone number unconnected to the Embassy of Greece. (Testimony of [REDACTED] and LaFatima Black; DC Water Interaction Notes)
 9. The Thomas E. Clark Plumbing, Inc. sent a plumber to the residence for a service check on September 27, 2022 and no toilets were found to be running and all other plumbing fixtures and hose bibbs were determined to be operating in good condition. (Testimony of [REDACTED] Plumber's report by Thomas E. Clark Plumbing, Inc. dated September 27, 2022)
 10. DC Water tested the water meter and the water meter was determined to have 100.20% accuracy. (Testimony of LaFatima Black)
 11. DC Water investigated the customer's dispute and the investigation revealed to evidence of meter overread, faulty computation, or faulty water meter. (Testimony of LaFatima Black)
 12. Because the water usage declined, DC Water determined that an underground leak was not the cause of high water usage at the property with respect to either bill in dispute because such a leak requires repair before the usage will decline. (DC Water Investigation Reports dated September 26, 2022 and November 2, 2022)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408

which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

In this case, the customer established a prima facie case that more likely than not the bill in dispute was wrong, however, on rebuttal, DC Water provided testimony and evidence that overcame the customer's prima facie case and, ultimately, the weight of the evidence favored the utility.

The customer's representatives testified that the Ambassador was away from the property, on holiday, during the periods in dispute and that persons having access to the residence and were inside of the residence during the ambassador's absence did not observe any signs of water leak or standing water within the residence. Additionally, a plumber's report was submitted and the inspecting plumber indicated that there was no evidence of leaks or faulty plumbing at the residence.

DC Water conducted its investigation of the bills in dispute and found no evidence of faulty meter, meter overread or faulty computation of the bill. The utility ruled out the existence of an underground leak because the high usage declined without necessity of repair, leading the utility to declare that the usage was controlled within the residence. DC Water tested the water meter and the meter was determined to be registering usage within standard at 100.20% accuracy.

The utility had hourly meter reads from the property and it was able to pinpoint when the spike in water usage occurred and declined.

The utility was able to point out that the plumber who inspected the property and found no evidence of water issues, did so after the high usage had declined. The utility pointed out that the spike was from July 27, 2022 to August 8, 2022 and then usage declined, whereas, the plumber was not at the property until September 27, 2022.

The utility's HUNA alert system sent notification of high-water usage occurring at the property during the periods in dispute. The Hearing Officer notes that the Embassy staff was unaware of the alerts sent. The failure of notification, however, was not the fault of the utility but was the result of the customer or leasing company's failure to update the notification contact information with the utility. The utility had no indication that the contact information on file with it for HUNA alerts was out-of-date.

The customer's representatives asserted that the residence was vacant due to the Ambassador being on holiday, however, testimony was such that a maid had access to the property and Ms. Black of DC Water suggested that a toilet could have been the culprit. Moreover, nothing precludes that someone else could have used a toilet which, in turn, ran until

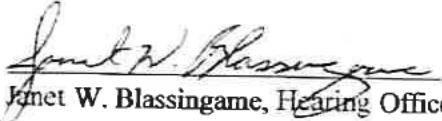
someone else came along to use the toilet again, thus, resulting in prolonged running of a toilet at the property because no one was residing in the house for an extended period.

Lastly, the testimony was such that the Embassy was in large part on holiday during the periods in dispute- mid-July to mid-August, and there was a staff change, as well, during the period causing no one to be aware of the Bill Statement dated August 4, 2022 and, only upon receipt of the Bill Statement dated September 8, 2022, after the staff's traditional holiday period, did someone become aware of the high usage and resulting high billings. By the time that Embassy staff became aware of the problem, the usage had declined.

Ms. Black was only capable of speculating that a toilet might have been the culprit, but, DC Water was able to establish that its equipment was functioning properly and that there was no underground leak causing high usage at the property.


21 DCMR 408 dictates that when all tests and checks are inconclusive, DC Water does not adjust a customer's account for the excessive water usage. In this case, one can only speculate as to the cause of the increased usage and 21 DCMR 408 is applicable dictating that no adjustment is appropriate.

Accordingly, the determination by DC Water that the bill is correct and no adjustment is warranted is hereby AFFIRMED.


Janet W. Blessingame, Hearing Officer

Date: May 18, 2023

Copy to


Embassy of Greece
2217 Massachusetts Avenue, NW
Washington, DC 20008

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Oakwood Street, SE
Washington, DC 20032

Account No: [REDACTED]
Case No: 23-90764

Amount In Dispute: \$1,876.71

Before Janet W. Blassingame, Hearing Officer
March 8, 2023 at 10:00 A.M.

The customer contested a water and sewer bill for the period 9/30/2022 to 10/28/2022. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 8, 2023. Present for hearing were: [REDACTED] the customer, by telephone; and, on-line were Arlene Anderson, Kimberly Arrington, Geneva Parker and Stephanie Robinson, all of DC Water.

The hearing was delayed due to a job emergency of the customer. The hearing started at 10:31 a.m.

The property involved is a duplex residence. The upstairs unit has two (2) bathrooms, a kitchen and a washing machine. The downstairs unit has two (2) bathrooms, a kitchen and a washing machine, as well. Four (4) people occupy the downstairs unit and one person occupies the upstairs unit. Historically, the water and sewer bill has been approximately Four Hundred Dollars (\$400.00) per billing cycle.

Mr. [REDACTED] testified that all the bathrooms in the property were re-done in either year 2021 or 2022.

Mr. [REDACTED] testified that upon receipt of the bill, he did a walk-thru of the property and detected no evidence of a water leak. He stated that Marcus Watson Plumbing did a curtesy walk-thru of the property after Mr. [REDACTED] received the DC Water Investigation Letter.

Mr. [REDACTED] stated that it was his practice to let the tenants notify him of anything wrong in their unit. He stated that the water and sewer bill was \$195.58 in December and that his 84-year-old tenant was hospitalized during the period in dispute. He stated that he received no high-water usage alerts from DC Water but, at the same time, he acknowledged that he was not registered to receive HUNA alerts from the utility. Ms. Andrews interjected that the customer would not have received an alert in this instance because the alerts are triggered by electronic reads and here, the reading was a field read.

Mr. [REDACTED] stated that he does not know where the water meter is located at the property; Ms. Andrews stated that the meter is outside. Mr. [REDACTED] then, asked how often is the water meter calibrated and the Hearing Officer informed the customer that he would have opportunity to question the utility's representative when she presents her case.

Ms. Andrews testified that the meter reads were actual based upon field reads taken by a technician at the property. She stated that the MTU at the property stopped transmitting meter reads in October 2021 and that the MTU was changed on January 30, 2023. She testified that DC Water sent a technician to the property every month to read the water meter. She explained that there are two (2) components- the water meter which registers water usage and the MTU which is an electronic device which transmits the meter read from the water meter to towers located throughout the City.

Ms. Andrews testified that DC Water removed and tested the water meter and the water meter was determined to have 100.66% accuracy. She explained that DC Water follows the standards for water meter accuracy established by the American Water Works Association and that a water meter is considered accurate if reading between 98.5% and 101.5%. She stated that a DC Water technician performed an equipment check at the property on January 30, 2023 and that the technician confirmed the meter reading at the time that the meter was pulled for testing.

Ms. Andrews testified that DC Water conducted an investigation of the customer's bill dispute and the utility found no evidence of meter overread, meter malfunction or faulty computation of the customer's bill. Ms. Andrews stated as a result of the investigation, it is the conclusion of the utility that the findings are inconclusive.

On re-direct, Mr. [REDACTED] questioned whether the meter tested within the American Water Works Association standards and he asked how can a water meter register over 100% accuracy. Ms. Andrews replied that the meter test is based upon three (3) tested water flows wherein the meter is bench tested by pouring five (5) gallons of water thru the meter for each flow. Ms. Andrews confirmed that the MTU was changed and the meter read confirmed on January 30, 2023.

Ms. Andrews explained that there are two (2) types of meter reads- automated and manual. She stated that in this case, the meter read was a manual read and that the read taken by the technician was in-line with the meter read registration on the water meter. She stated that DC Water had a technician read the water meter to confirm the field read. She stated that the meter dial number increases as water is used and if a water meter malfunctions, it would continue to malfunction because water meters are incapable of auto-correction.

Ms. Andrews stated that both the MTU and water meter have been replaced at the property.

Mr. [REDACTED] used the example of a car malfunctioning and pointed out that the car, when at the shop, may not be doing the same thing that manifested the problem. He, further, asserted that there was no opportunity to use the amount of water charged to the account. Ms. Andrews responded that she could not tell what was happening inside the property when the usage

occurred but a toilet may have been running and that is one way that the usage may have occurred. She stated that when toilets run, one may not see or hear water running and one will not see evidence of water within the property. Mr. [REDACTED] countered that the toilets are brand new within the property and that a plumber told him that such things as a running toilet happen at the end of life of a toilet. Ms. Andrews suggested that because the tenant was hospitalized during the period in dispute, maybe, a toilet was used and the flapper stuck, or, even, that each toilet in the upstairs unit may not be used regularly or used at all and a flapper may have stuck.

Ms. Andrews testified that a service technician was at the property for the purpose of taking manual service reads on September 29, 2022 and October 28, 2022. She stated that the bill dated 10/4/2022 reflected 7.7 CCF of water used and when the technician was out to the property on September 1, 2022, the meter read was 98921. She stated a service technician read the meter on 10/28/2022 the meter reflected that 108.51 CCF of water had been used and the meter read was 110530. She added that the water usage as of 11/30/2022 was 8.96 CCF and the meter read was 111426.

Ms. Andrews stated that the customer had no way of knowing that the MTU was not working because the technician was going to read the water meter each billing period and there was no issue with the meter reads. She stated that DC Water does not have a timeline for MTU replacement.

Mr. [REDACTED] complained that he had no way of knowing that high usage was on-going at the property because the MTU was not operating. He asserted that it was too late for him to do anything by the time that the bill was received notifying him that high usage was occurring at the property. He stated that the utility put him in a very compromising position when it did not give him notice of high usage occurring at the property. He complained that all DC Water was doing was to stick with the bill and say that its equipment is good.

Ms. Andrews stated that HUNA is a courtesy to customers.

Mr. [REDACTED] stated that he had no way to get a heads up regarding the usage occurring at the property until he received the bill.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a duplex residence with an upper and a lower-level unit. Both units are monitored by the same water meter. (Testimony of [REDACTED])
2. The period in dispute is 9/30/2022 to 10/28/2022. (Testimony of the parties)
3. The MTU stopped transmitting meter reads from the property as of October 2021. (Testimony of Arlene Andrews)
4. DC Water sent a service technician each month to obtain a meter read at the property. (Testimony of Arlene Andrews)

5. A DC Water technician conducted an equipment check and replaced the MTU and water meter at the property on January 30, 2023. (Testimony of Arlene Andrews)
6. For the billing period ending 9/29/2022, the customer used 7.7 CCF of water. (Testimony of Arlene Andrews)
7. For the billing period at issued the customer used 108.51 CCF of water. (Testimony of Arlene Andrews)
8. For the billing period ending 11/30/2022, the customer used 8.96 CCF of water. (Testimony of Arlene Andrews)
9. Because the MTU was not transmitting, neither the customer nor DC Water had information of high-water usage occurring at the property. The customer had no notice of high-water usage until receipt of the billing statement from the utility and the utility had no knowledge of the high usage until the meter was read by the technician. (Testimony of the parties)
10. The DC Water HUNA alert system is dependent upon electronic transmission of meter reads from a property and because the MTU was not transmitting from the property at issue, no HUNA alert of high-water usage was provided to the customer. (Testimony of Arlene Andrews)
11. During the period in dispute, the customer was not registered with the utility to receive HUNA alerts. (Testimony of [REDACTED])
12. DC Water's HUNA alert system is a curtesy provided to customers and a customer must sign-up for the service and provide to the utility the customer's contact information to receive alerts. (Testimony of Arlene Andrews)
13. The customer was unaware of high-water usage occurring at the property until he received the bill statement. (Testimony of [REDACTED])
14. Upon receipt of the bill statement, the customer did a self-walkthrough of the property and saw no evidence of leaks or standing water. (Testimony of [REDACTED])
15. The customer stated that he was given a curtesy inspection by Marcus Watson Plumbing & HVAC and no plumbing issues were detected; the customer does not have a plumber's statement. (Testimony of [REDACTED])
16. The customer does not have a maintenance schedule for the property but instead, relies upon notice of plumbing issues to be given to him by his tenants and he received no such notice during the period in dispute, however, one of his tenants, as elderly woman, was hospitalized during the period. (Testimony of [REDACTED])
17. DC Water tested the water meter and the meter was determined to have 100.66% accuracy. (Testimony of Arlene Andrews)
18. A water meter cannot self-repair and as such, if the meter were broken during the period in dispute, the meter would have been still broken at the time of testing. (Testimony of Arlene Andrews)
19. DC Water conducted an investigation of the bill dispute and found no evidence of meter overread, faulty computation of the bill or meter malfunction. (Testimony of Arlene Andrews)
20. Neither the utility nor the customer knows the cause of the high usage recorded on the water meter and the usage had declined by the next meter read/billing cycle. (Testimony of the parties)
21. DC Water ruled out the existence of an underground leak as a possible cause of the high-water usage because the usage declined without necessity of repair and an underground

- leak will not decline until repairs are made. (DC Water Bill Investigation Report dated 1/31/2023)
22. DC Water concluded that the usage was controlled at the premises. (Testimony of Arlene Andrews and the DC Water Bill Investigation Report)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See, 21 DCMR 403.

3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The customer in this case was unaware of high-water usage occurring at his property until he received his water and sewer bill for the period at issue. By the time that he received the bill, whatever was causing the high usage could not be detected and the next billing cycle and meter read reflected that water usage at the property was back to normal or had significantly declined.

Based upon the evidence and testimony, the MTU at the property had stopped transmitting meter reads more than a year prior to the period of usage in dispute and that the utility was sending a technician to do a field meter read for billing purposes each billing cycle. DC Water provides a curtesy program known as "HUNA" which is a high-water alert system.

The customer in this case did not receive a HUNA alert of high usage occurring at the property due to two (2) factors- he had not registered for the alert notification and the alert system is dependent upon electronic transmissions by the MTU and the MTU was not operational at the property. The purpose of providing an alert to customers is to give the opportunity to investigate and mitigate water loss in real time when high water usage is occurring at a property. In this case, neither the utility nor the customer had information or knowledge of the usage until after it subsided and the utility lacked the ability to give an alert both due to its equipment not transmitting and the customer's failure to sign-up for the alert program. As such, the absence of HUNA alerts in this matter is inconsequential as to whether the customer is entitled to relief from the disputed bill.

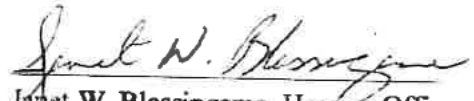
As noted, the customer was not aware any high usage occurring at the property until he received the water and sewer bill and upon receipt of the bill and his inspection for plumbing issues, no plumbing issues were detected. The testimony and evidence was that the high usage declined by the next billing cycle and, as such, by the time that the customer had notice of high-water usage occurring at the property, the high usage was no longer occurring. Thus, the fact that the customer was unable to find any plumbing issues when he investigated for leaks is explainable and expected.

DC Water investigated the bill dispute and, in doing so, tested the water meter and the meter was found in compliance with accuracy standards for a water meter. Also, the utility found no evidence on faulty computation of the bill or error in the meter read. The utility, further, ruled out the existence of an underground leak because the usage declined without need of repair.

Unfortunately, neither the customer nor the utility learned of the high-water usage until it had declined. Likewise, neither the customer nor the utility knows what caused the high usage. The utility was able to investigate and determine that its meter was functioning properly, the meter read was correct and there was no billing error. In instances such as this, DC Municipal Regulation Title 21- §408 dictates that when all tests and checks are inconclusive as to the cause of high-water consumption at a property, there will not be an adjustment of the customer's account for any portion of the excessive usage. DC Water clearly established that its equipment was functioning properly, that it had made no error in billing and that the utility did nothing to cause the high-water usage that occurred at the property. On the other hand, the Personal Representative was unaware of high-water occurring at the property and when he did become aware that high water usage had occurred at the property, the usage had already stopped and the cause could not be detected.



The Hearing Officer finds no fault on the part of the utility or its equipment and, as such, no basis exists to adjust the customer's account. Ultimately, the property owner is responsible for what occurs at his or her property when no fault can be found by the utility. Accordingly, the determination of DC Water that the charges are correct and proper and no basis exists to adjust

the account, is hereby AFFIRMED.


Janet W. Blessingame, Hearing Officer

Date: May 18, 2023

Copy to:


 Oakwood Street, SE
Washington, DC 20032

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: [REDACTED] & [REDACTED]
Kennedy Street, NW
Washington, DC 20011

Account No: [REDACTED]
Case No: 22-119825

Amount In Dispute: \$3,154.54

Before Janet W. Blassingame, Hearing Officer
March 22, 2023 at 12:00 Noon

The customers contested a water and sewer bill for the period 4/16/2021 to 5/17/2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 22, 2023. Present for hearing were: Arlene Anderson, Kimberly Arrington, LaFatima Black and Stephanie Robinson, all of DC Water. The customers, [REDACTED] and [REDACTED] failed to log-in for the hearing.

The hearing was delayed 30 minutes to allow the customer to log-in for hearing.

At the end of the grace period and the customer had failed to log-in for the hearing or to otherwise call the utility to express any reason for failure to attend the hearing as scheduled. Ms. Arrington, on behalf of DC Water, made an oral request that the dispute be dismissed. In support of the dismissal request, the Hearing Officer was informed that voice mail messages had been left for the customer reminding of the scheduled hearing by both LaFatima Black and Nakeysa Minor, of DC Water, and that the customer confirmed hearing attendance at 9:43 a.m. of the morning of the scheduled hearing.

The Notice of Hearing that was sent to the customer advised that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." 21 DCMR 415.3

Accordingly, based upon the customers' failure to appear or to request in advance that the hearing be postponed, the motion for dismissal is GRANTED and a default judgment is entered against the customers and the determination that the bill is valid is AFFIRMED.

By: Janet W. Blassingame
Janet W. Blassingame, Hearing Officer

Date: May 18, 2023

Copy to:

██████████ and ██████████
██████████ Kennedy Street, NW
Washington, DC 20011

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] Irving Street, SE
Washington, DC 20018

Service Address:
[REDACTED] Kearney Street, NE

Account No: [REDACTED]
Case No: 23-91179

Amounts and Dates In Dispute:
8/16/2022 – 9/16/2022 \$1,100.74
9/17/2022 – 10/18/2022 \$1,665.85

Before Janet W. Blassingame, Hearing Officer
March 24, 2023 at 10:00 A.M.

The customer contested a water and sewer bill for the above noted periods of time. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 24, 2023. Present for hearing were: [REDACTED], the customer; Kimberly Arrington and Arlene Andrews, on behalf of DC Water; and, Stephanie Robinson, DC Water, observing only.

When the customer had failed to log-on for the hearing by 10:15 a.m., Ms. Arrington telephoned the customer to ensure that he was not having difficulty logging into the hearing. Ms. Arrington successfully reached the customer by telephone and the customer logged into the hearing at 10:17 a.m.

The property involved is a single-family residence which was originally purchased by Mr. [REDACTED] Mother in year 1967. Mr. [REDACTED] stated that his mother died in July 2020 and he was the surviving joint tenant of the property. Mr. [REDACTED] stated that his mother operated both a daycare and a home for mentally challenged individuals, as well as, a home improvement business at the property location. Mr. [REDACTED] stated that the property is no longer used for business(es) and now, his brother, [REDACTED], his brother's son, the customer's daughter, and his grandson, reside in the residence. He stated that the property has three (3) bathrooms, one kitchen, radiators, a washing machine and one outside faucet.

Mr. [REDACTED] explained that during the probate of his mother's estate, the Covid pandemic struck. He stated that he assumed that his brother was taking care of the house until he saw a cut-off notice from DC Water for disconnection of water service for non-payment. Mr. [REDACTED] stated that he paid the utility \$6,500.00 for restoration of water service on July 31, 2022. Mr. [REDACTED]

stated that the water service was off only for one day. Mr. [REDACTED] stated that the water service was on for three (3) months and, then, in October 2022 it was turned back off. Ms. Andrews interjected that the water service was disconnected on November 11, 2022 and re-connected on November 17, 2022. Mr. [REDACTED] stated that at the time of the second disconnection by the utility, the utility bill was being mailed to the service address. He stated that the outstanding amount due for water and sewer service was \$3,500.00 and he was told that 7 – 16 gallons of water were being used at the property per hour and that there had been continuous water usage occurring at the house since March 2022. Mr. [REDACTED] stated that there had been no HUNA alerts. Ms. Andrews stated that there had been collection calls by the utility regarding the outstanding bills. She stated that Mr. [REDACTED] called the utility on October 7, 2022 to discuss the high bill.

Mr. [REDACTED] stated his sister lives four (4) doors from the service address (his mother's house) and that his sister's water and sewer bill is \$80.00 per month. He stated that his mother's water and sewer bill was approximately \$200.00 per billing cycle.

Mr. [REDACTED] stated that Mike Jones, a plumber, was at the property on October 11, 2022.

Mr. [REDACTED] stated that the water and sewer charges at the property were high until January 2023 and then, started decreasing and that the charge has been going downward for three (3) consecutive billing periods. He stated that he has received bills in the amounts of \$200.00, \$180.00 and \$236.00.

Ms. Andrews stated that DC Water changed the water meter at the property on February 2, 2023.

Ms. Arrington stated that water usage started declining on October 22, 2022.

Mr. [REDACTED] stated that the occupants of the house have hybrid schedules. He stated that his daughter and brother are home all day and his brother works at night. He stated that school started back in year 2022. He stated that there is someone at the house all the time.

Mr. [REDACTED] stated that he checked under the sink, the tub valves, and the faucets. He added that the last renovation was done ten (10) years ago but that toilet flappers were changed 5 – 7 years ago. He stated that he changed the toilet flapper upstairs in October 2022 but he did not change the toilet flappers in the basement.

Ms. Andrews recited the most recent billings for water and sewer services as having been:

<u>Bill Date</u>	<u>Charge</u>	<u>Billing Period</u>
10/25/2022	\$1651.85	9/17/22 -10/18/22

11/22/2022	\$ 682.75	10/19/22 – 11/16/22
12/16/2022	\$ 180.31	11/17/22 – 12/13/22
1/18/2022	\$ 236.90	12/14/22 – 1/17/22

Ms. Andrews asserted that the water usage at the property declined as of October 25, 2022. She stated that the customer's most recent bill dated 3/10/23 was in the amount of \$231.59 for the period 2/10/2023 – 3/15/2023.

Ms. Andrews testified that the meter reads are actual and hourly and are transmitted electronically to the nearest tower.

She testified that DC Water tested the water meter and the meter was determined to have 97.23% accuracy which is below accepted standards for water meter accuracy. Ms. Andrews explained that DC Water follows the standards for water meter accuracy established by the American Water Works Association and that a water meter is operating within accepted standard if its accuracy is 98.5% to 101.5%. Ms. Andrews cited DCMR 21- §405.5 and stated that no adjustment is given when a meter is under registering water usage.

Ms. Andrews stated that DC Water had a service technician perform an underground inspection and no underground leaks were detected. The underground inspection was performed on January 30, 2023. She added that because usage declined at the property, such decline is indicative that no underground leak existed.

Ms. Andrews testified that DC Water conducted an investigation of the customer's bill dispute and the investigation disclosed no evidence of meter overread, faulty computation, or, meter malfunction.

Ms. Andrews concluded by asserting that the utility's findings of the cause of the usage were inconclusive. She cited DCMR 21-§408.1 and concluded that the findings did show that the usage was no fault of DC Water and because there was no reasonable explanation of the cause of the high usage, the usage was controlled at the premises and no adjustment of the bill is warranted.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer finds the following:

FINDINGS OF FACT

1. The property involved is a single-family residence. The matriarch of the customer's family occupied the property and operated several businesses at the property until her death in July 2020. Upon the death of his mother, ownership passed to [REDACTED] as

the surviving joint tenant. The property is occupied by four (4) family members of the decedent. Mr. [REDACTED] is the personal representative of his mother's estate. (Testimony of [REDACTED])

2. The periods in dispute are 8/16/2022 to 9/16/2022 and 9/17/2022 and 10/18/2022. (Testimony of the parties)
3. The Personal Representative does not live in the residence but the water and sewer bill continued to be mailed to the property and the Personal Representative assumed that his brother, who is a resident of the property, was overseeing the property and taking care of the bill(s). (Testimony of [REDACTED])
4. The water and sewer service to the residence was disconnected on two (2) occasions due to non-payment and the Personal Representative interceded and paid the outstanding balance owed to the utility. (Testimony of Bennie Nesbit)
5. DC Water did not have contact information on file for HUNA alert purposes regarding the property. (Testimony [REDACTED])
6. There was continuous water usage registering at the property from March 2022 until usage started declining as of October 2022. (Testimony of [REDACTED])
7. The customer had a plumber inspect the property for leaks on October 11, 2022 and the plumber reported no visible leaks found. (Invoice of Mike Jones Plumbing LLC dated 10/11/2022)
8. The customer acknowledged that toilet flappers were changed in the upstairs bathroom in October 2022. (Testimony of [REDACTED])
9. Since October 2022, water usage has declined. (Testimony of Arlene Andrews)
10. DC Water tested the water meter and the meter was determined to be under registering water usage at the property; the meter accuracy was determined to be 97.23%. (Testimony of Arlene Andrews)
11. DC Water investigated the customer's bill dispute and found no evidence of meter overread, faulty computation or meter malfunction. (Testimony of Arlene Andrews)
12. DC Water conducted an underground inspection and no underground leak was detected. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;

- (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.
- See, 21 DCMR 403.

3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The weight of the evidence and testimony is against the customer and in favor of the utility that the bills are correct and the customer is not entitled to an adjustment of the account.

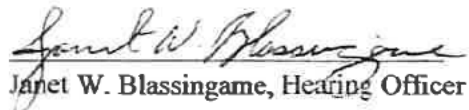
DC Water established, by testing the water meter, that its water meter was functioning below accepted perimeters of meter accuracy and, as such, was registering less water than was being used at the property. The utility, in its investigation of the dispute, found no evidence of faulty computation of the bills or meter overread. The utility ruled out the existence of an underground leak as a possible cause of the excessive water usage by conducting an underground inspection of leaks and finding none. The utility, also, pointed that water usage declined at the property and if an underground leak had been present usage would not have declined.

The evidence and testimony was that the Personal Representative was relying upon his brother, a resident of the property, to oversee the property and take care of the bills, however, on two (2) occasions, water service was disconnected at the property for non-payment. Also, it was established that high water usage had been occurring at the property since March 2022, yet no resident of the property informed the Personal Representative of any plumbing issue. The testimony established that the Personal Representative, apart from having to pay hefty bill arrearages to have water service returned to the property after disconnection, contacted DC Water on October 7, 2022 to discuss the high-water charges. The testimony, further, was that toilet flappers were changed at the property in October 2022, that a plumber inspected the property on October 11, 2022 and water usage at the property began to decline in October 2022. The DC Water representatives cited two (2) different dates of water decline- Ms. Andrews stated that the water declined on October 25, 2022; Ms. Arrington stated that the water started declining on October 22, 2022. Mr. [REDACTED] testified that the water bill started decreasing as of January 2023.

The Hearing Officer is convinced that something was done at the property in October 2022 to cause a decline in water usage. Mr. [REDACTED] testified that toilet flappers were changed in October 2022 but he failed to state a specific date that the plumbing work was performed and he did not identify who did the plumbing work. The plumber who inspected the property on October 11, 2022 wrote that no visible leaks were found and the Hearing Officer questions the wording of the report in that defective toilet flappers could be non-visual...Notwithstanding who corrected the plumbing issue causing the increased water usage, it was clear that something was corrected in October 2022 causing water usage to decline. It was further established that DC Water's equipment did not cause the increased usage and there was no underground leak as a possible cause of the increased usage.

DCMR 21-§408 dictates that when all tests and checks do not reveal a reasonable cause of excessive water usage (inconclusive findings), there will be no adjustment of the customer's account for any portion of the excessive water usage.

Accordingly, the determination of DC Water that the charges are correct and proper and no basis exists to adjust the account, is hereby AFFIRMED.


Janet W. Blessingame, Hearing Officer

Date: May 18, 2023

Copy to:

[REDACTED]
Irving Street, NE
Washington, DC 20018

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

IN RE: [REDACTED]
[REDACTED] 16th Street, NW
Washington, DC 20009

Service Address:
[REDACTED] Gresham Place, NW

Account No: [REDACTED]
Case No: 23-138357

Amount In Dispute: \$1,083.17

Before Janet W. Blassingame, Hearing Officer
March 24, 2023 at 12:00 Noon

The customer contested a water and sewer bill for the period of time 9/28/2022 to 10/27/2022. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 24, 2023. Present for hearing were: [REDACTED] the customer; Kimberly Arrington and Arlene Andrews, on behalf of DC Water; and, Stephanie Robinson, DC Water, observing only.

The property involved is a single-family residence which has been rented to tenants since year 1990. Ms. [REDACTED] stated that her tenants of the past four (4) years moved when given notice of the owner's intent to sell the property. She stated that four (4) individuals resided in the house and the last tenant vacated on August 1, 2022. Historically, the water and sewer bill was One Hundred Dollars (\$100.00) per billing cycle. Ms. [REDACTED] stated that she paid the first water and sewer bill after the tenants moved out of the house and that the September bill reflected 1.55 CCF of water and the charge was \$58.40. Ms. [REDACTED] stated that the next bill reflected a charge of \$1,083.17. She stated that upon receipt of the bill, she questioned if the charge was a mistake or whether someone was stealing water from the property.

Ms. [REDACTED] stated that she got in touch with a realtor to put the house on the market for sale on August 7, 2022. She stated that while the house was on the market for sale, the realtor inspected the property and a lock box was placed on the house to allow for showings. She stated that she received purchased offers for the property, however, she changed her mind and took the house off the market in November and decided to, again, rent the property. She stated that the property remains vacant.

Ms. [REDACTED] stated that she has another rental property and the water and sewer bill runs Three Hundred Dollars (\$300.00) per billing cycle.

Ms. [REDACTED] stated that she never submitted a plumber's report because she questioned if the disputed charge was for another property or if the charge was the result of something being wrong with the water meter. She stated that she has been informed that a new meter has been placed at the property. She stated that the December 2022 water and sewer charge was \$63.75 and that the November 2022 charge had been \$86.22. Ms. [REDACTED] stated that the water and sewer charge for the property kept changing even though no one was looking or in the house. She stated that the bill dated 1/27/2023 was \$65.17 and the February 2023 bill was \$56.44.

Ms. [REDACTED] stated that she was told about the new water meter when she called DC Water in February.

Ms. [REDACTED] stated she cannot explain the increase usage because no one was using water at the property. She added that she was out-of-country on the following dates- 11/13/2022 – 11/30/2022; 6/10/2022 – 7/14/2022; 8/14/2022 – 8/26/2022; and 10/1/2022 – 10/14/2022.

Ms. [REDACTED] stated that she saw the high usage alerts sent by DC Water. She stated that the realtor accepted no responsibility. She acknowledged that she did not hire a plumber and has not been inside of the house. She stated that she was getting normal bills. She stated that she does not have a car.

Ms. [REDACTED] stated that she did not think that she needed to investigate the water usage because to her the bill did not make sense and realty agents were in and out of the property. She stated that she communicated by email because she was in and out of the country. Ms. Andrews interjected that the customer contacted DC Water to dispute the bill on 11/9/2022 and that her email was received on 11/11/2022. Ms. Andrews noted that Ms. [REDACTED] was out of the country in October when the alerts were sent but she waited until the bill came in November to contact the utility. Ms. [REDACTED] stated that she asked the realty agent when she got the high usage alerts.

When asked by Ms. Andrews if she looked at the water and sewer bills for the property on a monthly basis and did, she notice that there has been usage even when there were no tenants? Ms. [REDACTED] responded that she felt that people were testing the water pressure in the house when they were in the house looking at the property for purchase.

Ms. Andrews corrected the customer that the August 24th bill was \$73.42 and that the customer had a credit causing the amount due to be \$56.70.

Ms. Andrews testified that the water meter reads from the property were actual and taken hourly. She stated that the meter reads were transmitted electronically to a signal tower and then to DC Water. She stated that DC Water tested the water meter at the property and the meter was determined to have 67.70% accuracy which is below accepted standard for water meter accuracy.

She explained that DC Water follows the water meter standards set by the American Water Works Association and that water meters are accurate if between 98.5% and 101.5%. She stated that the water meter in the case was determined to be under registering water used at the property.

Ms. Andrews pointed out that DCMR 21-§405.5 allows for adjustment of a customer's account when a meter overreads water usage, however, no adjustment is warranted when for under registration by a meter.

Ms. Andrews asserted that a water meter only registers water usage when water is being used. She stated that there are no mis-reads on automated water meters and a water meter does not auto-repair once defective.

Ms. Andrews testified that DC Water sent HUNA alerts of high-water usage occurring at the property on October 2nd, 5th, 8th and 11th and that there was a spike in water usage occurring from September 30, 2022 to October 8, 2022. She stated the fact that usage declined at the property verifies that there was no underground leak because underground leaks cannot repair themselves.

Ms. Andrews testified that DC Water investigated the customer's dispute and its investigation reveal no evidence on meter overread, faulty computation of the bill or meter malfunction.

Ms. Andrews stated that the utility concluded that the cause of the increased usage was inconclusive.

Ms. ██████ pointed out that DC Water made reference to the existence of a plumber's report and Ms. Andrews acknowledged that there was no plumber's report and the notation of existence of a plumber's report was error. Ms. ██████ asserted that if the utility made an error on one part, then, the bill is suspect and its calculation may be wrong.

Ms. Andrews stated that the utility investigation involved a billing review, usage review and that usage declined. Ms. Andrews stated that the customer was sent copy of the meter reads used to calculate the bill. To which, Ms. ██████ responded that if an error is made regarding one part of the investigation, the investigation is faulty and not 100% reliable due to reference to a plumber report which was non-existence. Ms. ██████ asserted that she believes that the utility's investigation was not a fair representation of her case if a mistake was made in the case evaluation. Ms. Andrews responded that the customer's bill is based on usage and that no billing error was found on review.

Ms. Andrews asserted that it is possible that a toilet was running until someone came into the house again and that water was wasted by a toilet. She proclaimed that there was no mistake on billing the customer.

In response to a question by the Hearing Officer, Ms. [REDACTED] stated that she relied upon the inspections done by DC Government in connection with her Business License and thereafter, upon tenant notifications. She stated that within the past two (2) years, the only plumbing work performed at the property was in relation to a sump pump and the work was done under a warranty contract which the customer used when the tenants advised of any problem. Ms. [REDACTED] stated that she does not recall any toilet problems which the tenants alerted her of. She stated that she did not use a management company regarding the property.

In response to question by Ms. Andrews, Ms. [REDACTED] stated that when she received high water usage alerts in the past, she would contact her tenant who, in turn, would inform her that everything was fine.

Ms. [REDACTED] stated that she would get high water usage alerts from DC Water almost every two (2) months but the tenant always said that everything was fine and the water and sewer bill was OK in that the bill was approximately \$150.00 per billing cycle. Ms. [REDACTED] added that the tenant was paying the water and sewer bill. The customer stated that she was assured by her tenant that nothing was wrong when prior high usage alerts were given by the utility. Ms. Andrews inserted that often people ignore alerts by the utility until they get a high bill which gets their attention.

Ms. [REDACTED] stated that she just thought that the tenant did a lot of clothes washing causing increased water usage but she did not believe that one can get such a high bill. She stated that she believed that one would have to get something fixed or that the problem or cause of the increased usage would remain until fixed. She asserted that it defies logic that she could have a big problem and that it would just go away.

Ms. [REDACTED] stated that she has incurred late charges during the pendency of the bill dispute. Ms. Andrews stated that she would look thru the account for any late charges and interest charges and she would remove any such charges assessed on the disputed bill.

Ms. [REDACTED] ended stating that she has never been late.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is a single-family rental property owned by Ms. [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is 9/28/2022 to 10/27/2022. (Testimony of the parties)
3. The customer decided to sell the property, gave notice to the tenants to move, and the last tenant vacated the property on August 1, 2022. (Testimony of Ms. [REDACTED])
4. It was the responsibility of the tenants to pay the water and sewer charges incurred during their tenancy and the property owner assumed responsibility for payment after the tenants vacated. (Testimony of Ms. [REDACTED])
5. The owner contacted a realtor on August 7, 2022 and the property was listed the property for sale. There was a lock box placed on the premises to allow access by realtors to show the property to prospective buyers.
6. There was increased water usage occurring at the property between September 30, 2022 and October 8, 2022. (Testimony of Arlene Andrews)
7. DC Water sent HUNA alerts of high-water usage occurring at the property to the customer on October 2nd, 5th, 8th and 11th. (Testimony of Arlene Andrews)
8. The property owner acknowledged receipt of the HUNA but because she was out of the country, she delayed contacting the utility regarding the alerts. After receipt of the bill reflecting high-water usage at the property, the property owner contacted DC Water November 11, 2022 to dispute the bill which was dated November 9, 2022. (Testimony of Ms. [REDACTED] and of Arlene Andrews)
9. There was a history of high-water usage alerts sent to the property owner, however the property owner would contact her tenant who assured her that there was nothing wrong occurring at the property. The property owner did not take any action to investigate water usage occurring at the property, dismissing the alerts based upon her tenants' assurances, the fact that the tenant was paying the water and sewer bill and the property owner's assumption that usage was high due to clothing being washed by the tenants. (Testimony of Ms. [REDACTED])
10. With respect to the billing period at issue and alerts received prior to the customer's receipt of the bill in dispute, the customer did not investigate the alerts, did not hire a plumber, and did not go to the property in response to the alerts sent by the utility but assumed that the billing was in error or that the water meter was defective. (Testimony of Ms. [REDACTED])
11. DC Water tested the water meter and determined that the meter had 67.70% accuracy which is below standard for water meter accuracy and means that the meter was not capturing/registering all water used at the property. (Testimony of Arlene Andrews)
12. The utility investigated the customer's bill dispute and its investigation revealed that the customer had been billed upon actual meter reads electronically transmitted from the property and that there was no evidence of meter overread or faulty computation of bill. (Testimony of Arlene Andrews)

13. The utility ruled out the existence of an underground leak as a possible cause of high usage occurring at the property because the usage declined and the nature of an underground leak is such that its usage would not decline absent repair. (Testimony of Arlene Andrews)
14. The property owner relied upon tenant notification of problems within the rental property and the inspection performed by City inspectors for her Business License. (Testimony of Ms. [REDACTED])

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (g) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.
3. If the investigation discloses meter overread or faulty computation, adjustment (s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations. (DCMR 21-§405.1)
4. If the meter test results confirms meter overread on a DC Water issued meter, the water and sewer service bill shall be adjusted to equal the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. (DCMR 21-§405.2)
5. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The customer in this case failed to establish that more likely than not the bill in dispute

was wrong or for some other reason, she should not be responsible for its payment.

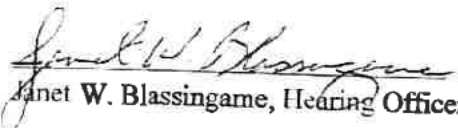
The testimony and evidence established that there was a water issue at the property spanning months prior to the period in dispute. The property owner testified that the utility sent high-water usage alerts about every two (2) months prior and she took no action to investigate based upon her tenant's assurance that there was nothing wrong occurring at the property. The property owner, further, stated that she assumed that the high usage was caused by tenants washing clothing. Based upon the property owner's statement regarding her assumption of clothing washing, the property owner knew, despite the tenant's assurances, that high water usage was occurring. Not until the property owner started paying the water and sewer bills and she receive an exceptionally high bill did she give attention to the issue and, even, then she delayed contacting the utility despite her receipt of HUNA alerts and she took no action to investigate the cause of the usage or to mitigate any water loss.

DC Water investigated the bill dispute and found no evidence of meter overread or faulty computation of the bill. The utility, further, ruled out the existence of an underground leak based upon the decline in water usage, in that, if an underground leak had been the cause of the usage, the usage would not have declined without repairs being performed. The investigation did reveal that the water meter was under registering usage at the property. Pursuant to the regulations, under registration is not a basis for adjustment of a customer's account. Had the water meter over registered usage, then, an account adjustment would have been accorded, however, when a meter under registers usage, the utility is not charging for full usage of water at the property and the customer is not entitled to an adjustment in the form of a reduction of the bill.

Lastly, the property owner in part based her dispute of the bill upon the tenants having vacated the property and the property owner asserted that the property was vacant. While it was true that the tenants had vacated the property and no one was living at the property, the property was listed for sale with a lock box on the door which allowed access to the property by realtors and prospective buyers. DC Water's representative speculated that the high-water usage may have been caused by a toilet. With people in and out of the house, it is plausible that someone may have used a toilet and the toilet flapper failed to closed as speculated. The utility's speculation is boosted by the property owner's acknowledgement that she had received previous alerts of high-water usage occurring at the property when tenants were occupying the house. Regular usage of a toilet with a defective toilet flapper mitigates water loss because the flapper may be dislodged from sticking with the flushing of the toilet. In the instance of the house being unoccupied and people only intermittently being in the house and maybe using the toilet with the defective flapper, the possibility of prolonged water loss due to a defective toilet is probable.



For the foregoing reasons, the Hearing Officer finds that the preponderance of the evidence is against the property owner's claim that the bill is wrong. The property owner did not assert any other reason why she should not be responsible for the bill and, as such, the determination by DC Water that the charges are correct and property and no basis exists for

adjustment of the customer's account is hereby AFFIRMED.


Janet W. Blassingame, Hearing Officer

Date: May 16, 2023

Copy to:

Ms. 
 16th Street, NW
Washington, DC 20009

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

IN RE: [REDACTED]
[REDACTED] V Street, NW
Washington, DC 20001

Account No: [REDACTED]

Amounts and Periods In Dispute:

5/12/2022 – 6/10/2022 \$ 327.57
7/14/2022 – 8/10/2022 \$ 227.08

Case No: 22-443318
Case No: 22-571641

Before Janet W. Blassingame, Hearing Officer
March 27, 2023 at 12:00 Noon

The customer contested water and sewer bills for the above noted periods of time. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on March 27, 2023. Present for hearing were: [REDACTED], the property owner; Arlene Andrews on behalf of DC Water, and, Stephanie Robinson and Geneva Parker, DC Water, observing only.

The property involved is a two (2) unit piggyback style townhouse. Each unit has two and one-half (2 ½) bathrooms, a dishwasher, a washing machine, one kitchen and a hot water heater. The property is monitored by a single water meter and there is one outside faucet. The property owners have formed a homeowners' association thru which they share and pay the water and sewer bills. Mr. [REDACTED] occupies one of the units along with his wife and two (2) children. Mr. [REDACTED] stated that he is unsure of the occupancy status of the second unit and that it may be vacant but it had been occupied by two (2) renters.

Mr. [REDACTED] stated that the other property owner told him that a contractor in the neighborhood inspected his unit and gave a verbal report; there is no written plumber's report.

Mr. [REDACTED] stated that the most recent water and sewer bill was less than \$100.00 but historically, the water and sewer bill has ranged between \$150.00 to \$200.00.

Mr. [REDACTED] testified that he and his family were out-of-town from July 21, 2022 to August 30, 2022 and that the water was shut-off at the valve. He stated that he believed that the other unit in the house was vacant but that the owner was in and out of the unit.

Mr. [REDACTED] stated that the June 2022 water and sewer bill reflected high water usage occurring for a few days but he felt no reason to call a plumber because he knew there were no leaks in the house.

Mr. [REDACTED] stated that he changed the toilet flapper over six (6) years ago.

Mr. [REDACTED] asserted that his dispute should be granted/awarded because DC Water failed to adhere to its hearing schedule and his dispute was pending for 173 days. He pointed out that he had been previously denied a hearing for failure to meet the dispute deadline. He stated that his experience with DC Water has been difficult and frustrating and that the burden of proof upon him is virtually impossible to meet.

Mr. [REDACTED] stated that on several days each year there has been high water usage at the property. He stated that there was continuous water usage up to 3 – 4 days with him in the house and he did not see or hear water usage/running.

Mr. [REDACTED] stated that a DC Water technician came out to the property five (5) days after a HUNA alert had been sent. He stated that the technician told him that his water meter was old and that the water usage was too high. Mr. [REDACTED] testified that he called the DC Water Emergency line and was told of continuous usage and that the MTU was not transmitting. He stated that three (3) times a DC Water service technician said that water usage was too high and that a small leak does not cause such high usage.

Mr. [REDACTED] stated that he conducted his own research and found that the average water leak is 200 gallons per day and one would have to have a busted pipe for usage in the amount he was charged.

Mr. [REDACTED] stated that last month he received a \$800.00 bill error and that caused him more frustration.

Mr. [REDACTED] asserted that changing a flapper is time consuming and that he is frustrated because DC Water is the only option for water.

The customer stated that he does not want to be taken advantage of by the utility.

On cross examination, Ms. Andrews asked whether the other property owner checks his unit when Mr. [REDACTED] receives HUNA alerts of high-water usage occurring at the property. Mr. [REDACTED] responded that he and the other owner go through the units together and they have not seen any visual evidence of water and they have not heard water running. He stated that the other unit owner lives in the neighborhood.

Ms. Andrews testified that the meter reads are actual, hourly, and transmitted by a MTU to a tower and then transmitted to DC Water. She stated that during the pendency of the dispute, DC Water has tested two (2) water meters taken from the property. She stated that the first water meter was pulled for testing on 6/3/2022 and the test performed on 6/9/2022. She stated that the water meter was determined to have 100.83% accuracy. She stated that the second water meter was pulled on 2/10/2023 and tested on 2/27/2023 and that meter was determined to have 100.43% accuracy. She explained that DC Water abides by the standards established by the American Water Works Association and that a water meter is registering accurately if its registration is 98.5% to 101.5%. Ms. Andrews asserted that both water meters pulled from the property were functioning within standard.

Ms. Andrews stated that a DC Water service technician checked the equipment at the property of June 3, 2022 and that the water meter at the property was brought in for testing.

Ms. Andrews testified that DC Water sent HUNA alerts to the customer on 4/4/2022, 4/25/2022, 5/21/2022, 5/24/2022, and 5/27/2022 that high water usage was occurring at the property. She, further, testified that there were spikes in water usage occurring at the property 5/25/2022 to 5/27/2022 and, again, 7/27/2022 to 7/30/2022.

Ms. Andrews stated that DC Water believes that the usage was controlled at the premises because it knows that there was no underground leak because the usage declined and underground leaks do not repair themselves.

Ms. Andrews stated that meter reads populate over 12 hours windows, so a customer may not have a current read from his property and most likely will see the meter read from the day before.

Ms. Andrews stated that upon review of the meter reads from the property, she did not see any period that the MTU was not transmitting. Mr. [REDACTED] interjected that he was told that the utility did not have meter reads for the July spike period and that maybe the absence of reads was due to a car parked over the water meter. Ms. Andrews countered that the meter read log shows continuous hourly meter reads from the property.

Ms. Andrews testified that DC Water's investigation of the customer's bill dispute did not find any evidence of meter overread, doubtful meter registration or faulty computation of the bill. She stated that the customer's water usage was sporadic and that the most common cause of such usage is a toilet flapper. She recommended that the customer change toilet flappers every two (2) years. She added that DC Water has not gone into customers' homes for inspections since the onset of the pandemic in early 2020 and that customers are suggested to hire a licensed plumber.

Mr. [REDACTED] stated that there is a difference between a leaking and running toilet.

On cross examination by the customer, when asked if the satellite system is tested, Ms. Andrews stated that the water meter and the MTU are two (2) separate parts. She stated that the service technician read the water meter on June 3rd when the property was visited for the service check and the meter read taken was in alignment with the transmitted meter reads by the MTU. She stated that the same alignment was found in February. She stated that she had no comment to the customer's stating that the service technician who visited the property said meters mess up all the time.

Ms. Andrews stated that she has concluded that the findings were inconclusive for the excess consumption that occurred at the property.

Mr. [REDACTED] ended acknowledging that there is no plumber's report and that he has not seen any report that the other owner may have.

Based upon the foregoing evidence and testimony adduced during the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The property involved is 2-unit duplex townhouse. (Testimony of [REDACTED])
2. The periods in dispute are 5/12/2022 to 6/10/2022 and 7/14/2022 to 8/10/2022.
3. The property is monitored by a single water meter and the two (2) owners of the units have found a homeowners' association thru which they paid, jointly, the water and sewer bills for service to both units. (Testimony of [REDACTED])
4. The customer who filed the bill dispute at issue was out-of-town with his family from 7/21/2022 to 8/30/2022; the customer was unsure of the occupancy of the second unit during the periods in dispute. (Testimony of [REDACTED])
5. DC Water sent HUNA alerts on 4/4/2022, 4/25/2022, 5/21/2022, 5/24/2022, and 5/27/2022. (Testimony of Arlene Andrews)
6. There was increased water usage occurring at the property 5/25/2022 – 5/27/2022 and 7/27/2022 – 7/30/2022. (Testimony of Arlene Andrews)
7. The customer felt no need to call a plumber regarding the increased water usage because he was unaware of any leaks in his house. The customer testified that he and the other unit owner did go thru each unit to inspect for leaks and plumbing issues in response to the HUNA alerts and neither saw evidence of water or heard water. (Testimony of [REDACTED])
8. The customer acknowledged that increased water usage occurred several days per year. (Testimony of [REDACTED])
9. The meter reads from the property are hourly and electronically transmitted by a MTU. (Testimony of Arlene Andrews)
10. The utility pulled and tested water meters from the property on two (2) occasions. The first water meter was pulled 6/3/022, tested, and determined to have 100.83% accuracy. The second water meter was pulled on 2/10/2023, tested, and determined to have 100.43% accuracy. (Testimony of Arlene Andrews)
11. DC Water investigated the customer's bill dispute and found no evidence of meter overread, faulty computation or meter malfunction. (Testimony of Arlene Andrews)
13. DC Water ruled out the existence of an underground leak as a possible cause of increase usage occurring at the property because the water usage declined and the nature of an underground leak requires repair before the usage will decline. (Testimony of Arlene Andrews)

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8)
2. DC Water is obligated to investigate a challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (h) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.See, 21 DCMR 403.
3. D.C. Municipal Regulations bar adjustment of a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The weight of the evidence and testimony is against the customer and in favor of the utility that the bills are correct and the customer is not entitled to an adjustment of the account.

DC Water established, by testing water meters present at the property, that the water meters were functioning properly. The utility, in its investigation of the dispute, found no evidence of faulty computation of the bills, meter malfunction or meter overread. The utility ruled out the existence of an underground leak as a possible cause of the excessive water usage because water usage declined at the property and if an underground leak had been present, the usage would not have declined without repairs to the underground leak having been performed.

The customer expressed frustration with the slowness of the dispute process and he expressed his concern that he was being taken advantaged of because DC Water was the sole supplier of water. On the flip side, the customer failed to hire a plumber in response to alerts sent by the utility and while he testified that he did go thru the units with his unit owner counterpart and saw no water and did not hear any water, the utility sent numerous alerts of high-water usage occurring at the property regarding the period at issue but also during earlier periods and the customer ignored the alerts and the customer failed to testify as to when the walk-thru took place

and whether the same occurred during the specified periods that high-usage was occurring at the property. Also, the customer lacked knowledge and information regarding the other unit at the property and whether it was occupied or vacant or if there were any plumbing issues experienced by the other owner and/or his tenants. So, while there may or may not have been plumbing issues in the unit occupied by the customer, there may have and could be a plumbing issue in the unit owned and controlled by the other unit owner since both units are monitored by a single water meter.

The fact that DC Water has sent repeated alerts of high-water usage occurring at the property combined with testing of the water meters over a span of time (2 separate water meter were tested) and the meter were operating properly, as well as, the usage declining and no underground leak being present, it convinces the Hearing Officer that there is merit in the utility's speculation that a toilet may be the cause of the sporadic and repeated spikes in water usage at the property. Notwithstanding the speculation of the cause, it remains that the cause of the high usage was not found and usage declined.

DCMR 21- § 408 dictates that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

Ultimately, the property owner is responsible for what occurs at his property and in this case, the property involved is duplex involving two (2) separate unit owners, as such even though the customer filing the dispute may not have seen, heard, or known of any water issue in his unit, there may be or have been a water issue in the other unit within the house. The reason that the utility provides alerts to its customers is to allow the customer to mitigate water loss by investigating and correcting the issue while the same is occurring. In this instance, the customer assumed because he did not see or hear water in his unit when alerts were received, that there was no cause to further investigate within his unit or within the other unit in the house. DC Water investigated the dispute and put forth evidence and testimony that its equipment was functioning properly and the utility has no responsibility in causing usage at the property. Accordingly, the determination of DC Water that the charges are correct and proper and no basis exists to adjust the account, is hereby AFFIRMED.


Janet W. Blassingame, Hearing Officer

Date: May 18, 2023

Copy to:



█ Street, NW

Washington, DC 20001

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

In re: The [REDACTED] Trust
c/o Sophia H. Willis, co-trustee
28 Charlotte Street
Charleston, SC 29403
and
Elena H. Allbritton, co-trustee
3124 Q Street, NW
Washington, DC 20007

Service Address:
[REDACTED] Foxhall Road, NW

Account No: [REDACTED]

And

In re: [REDACTED]
[REDACTED] Quebec Street, NW
Washington, DC

Account No: [REDACTED]

v.

District of Columbia Water and Sewer Authority

Joint Petitioners

ORDER

This matter comes before the Hearing Officer upon the District of Columbia Water & Sewer Authority's Motion For Correction Order, Joint Petitioner's Preliminary Response To District of Columbia Water & Sewer Authority's Motion For Correction Of Order, and the District of Columbia Water & Sewer Authority's Reply To Joint Petitioners' Preliminary Response To Motion For Correction Of Order. The Hearing Officer having had opportunity to review the motion, the joint petitioners' response and the utility's response to the petitioners' response, as well as, review of the Order in question- Order dated March 23, 2023, and it being apparent that the Order does contain typographical errors and citations errors unintended by the Hearing Officer, it is the conclusion of the Hearing Officer that a Corrected Order is necessary and appropriate and, as such, the Motion For Correction Order is hereby GRANTED.

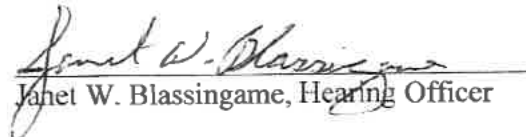
With respect to Petitioners' assertion that the Hearing Officer may have made statements in the Order that do not accurately reflect what was actually stated by counsel for the Joint Petitioners or that do not accurately summarize the oral arguments, the corrections are typographical and unintended in nature and the correction of the same, do not preclude any

further action by the parties if the Hearing Officer, in the Order, has made a substantive error of fact or error of the law.

Accordingly, it is this day of June 5th, 2023,

The Motion For Correction Of Order is GRANTED, and further,

That the Hearing Officer will construct an Errata Sheet and will issue a corrected Order, nunc pro tunc, relating to the Order dated March 23, 2023 regarding the Joint Petitioners' Motion for Summary Judgment.


Janet W. Blassingame, Hearing Officer

Date: June 5, 2023

Copies to:

Stephen K. Gardner, Esq.
Kalbien Hagerty, L.L.P.
888 17th Street, NW
Suite 1200
Washington, DC 20006

Emil Hirsch, Esq.
Carlton Fields, P.A.
1025 Thomas Jefferson Street, NW
Suite 400 West
Washington, DC 20007

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES

In re: The [REDACTED] Trust
c/o Sophia H. Willis, co-trustee
28 Charlotte Street
Charleston, SC 29403
and
Elena H. Allbritton, co-trustee
3124 Q Street, NW
Washington, DC 20007

Service Address:
[REDACTED] Foxhall Road, NW

Account No: [REDACTED]

And

In re: [REDACTED]
[REDACTED] Quebec Street, NW
Washington, DC

Account No: [REDACTED]

v.

District of Columbia Water and Sewer Authority

Joint Petitioners

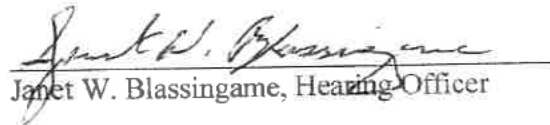
ERRATA SHEET

Regarding the Order dated March 23, 2023, the Hearing Officer issues the foregoing typographic corrections, to include citation corrections, as follows:

1. Page 3 at ¶ 3 “William Gardner” is changed to “Stephen Gardner”
2. Page 4 at ¶ 2, line 2, delete “been” so the sentence reads as “[REDACTED] property on Foxhall Rd was sold in year 2021...”
3. Page 6 at ¶ 3 reference to DC Code § 34-2202 is changed to DC Code § 34-2202.16
4. Page 6 at ¶ 5 reference to DC Code § 34-4101 is changed to 21 DCMR § 4101
5. Page 6 at ¶ 8 reference to DC Code § 22-2108 is changed to DC Code § 34-2108
6. Page 6 at ¶ 9 reference to DC Code § 22-2107 is changed to DC Code § 34-2107
7. Page 7 at ¶ 1 reference to DC Code § 21-2108 is changed to DC Code § 34-2108
8. Page 7 at ¶ 1 reference to DC Code § 21-4107 is changed to DC Code § 34-2107
9. Page 7 at ¶ 2 reference to DC Code § 34-2107 (4c) is changed to DC Code § 34-2107(c)
10. Page 8 at ¶ 3 reference to 470 A. 787 is changed to 470 A. 2d 751
11. Page 8 at ¶ 3 reference to 516 US 478 is changed to 516 U.S. 473
12. Page 8 at ¶ 4 reference to DC Code § 34-2017 is changed to DC Code § 34-2107

13. Page 12 at #4 reference to DC Code § 34-2201 is changed to DC Code § 34-2101
14. Page 13 at #7 reference to DCMR § 4101.5 is changed to DCMR § 21- 4101.5
15. Page 20: citation for Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth. No. 2000-CV-182 (D.D.C. Mar. 23, 2005) is changed to Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth. No. 2000-CV-183 (D.D.C. Mar. 23, 2005)
16. Page 20: citation for Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth. No. 2000-CV-183 (D.D.C. May 19, 2015) is changed to Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth. No. 2005-CV-183 (D.D.C.)
17. Page 22 (middle of page); reference to DC Code § 4103 is changed to DCMR §21-4101.3
18. Page 22 (middle of page): reference to DC Code § 32-2202.16(a) and (b) is changed to DC Code § 34-2202.16(a) and (b)
19. Page 26 (bottom of page): "CRAIC" is changed to "CRIAC"
20. Page 27 (middle of page); citation for J.C. & Associates v. D.C. Bd of Appeals & Rev. 779 A. 2d 296, 302 (D.C. 2001) is changed to J.C. & Associates v. D.C. Bd of Appeals & Rev., 778 A. 2d 296, 302 (D.C. 2001)

Foregoing changes are hereby incorporated by reference, nunc pro tunc, into the Order dated March 23, 2023 and a Corrected Order is attached.


Janet W. Blessingame, Hearing Officer

Date: June 9, 2023

Copies to:

Stephen K. Gardner, Esq.
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Suite 1200
Washington, DC 20006

Emil Hirsch, Esq.
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Suite 400 West
Washington, DC 20007

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICES**

In re: The [REDACTED] Trust
c/o Sophia H. Willis, co-trustee
28 Charlotte Street
Charleston, SC 29403
and
Elena H. Allbritton, co-trustee
3124 Q Street, NW
Washington, DC 20007

Service Address:
[REDACTED] Foxhall Road, NW

Account No: [REDACTED]

And

In re: [REDACTED]
[REDACTED] Quebec Street, NW
Washington, DC

Account No: [REDACTED]

v.

District of Columbia Water and Sewer Authority

Joint Petitioners

CORRECTED ORDER

This matter came before the Hearing Officer on January 26, 2023 for oral argument upon Motion of Petitioners [REDACTED] and [REDACTED] For Summary Judgment, the District of Columbia Water & Sewer Authority's Memorandum of Points and Authorities In Opposition To Petitioners' Motion For Summary Judgment, and Joint Petitioners' Reply to DC WASA's Memorandum of Points and Authorities In Opposition To Petitioners' Motion For Summary Judgment.

Present for the hearing were: Stephen Gardner, Esquire, on behalf of petitioners the [REDACTED] Trust, [REDACTED] and [REDACTED]; Emil Hirsch, Esquire and Emily Green, Esquire, on behalf of the District of Columbia Water and Sewer Authority (DC Water) with Douglas Evans, Paralegal, CARLTON FIELDS, P.A.; Kimberly Arrington, DC Water; Cherie Green Lyons, Impervious Area Division, DC Water; and Barbara Mitchell, Esquire, DC Water.

BACKGROUND:

On November 7, 2016, a DC Water administrative hearing was held in the Matter of [REDACTED] Account No: [REDACTED] Ms. [REDACTED] was contesting charges relating to the Clean Rivers Impervious Area Charge (IAC). The Petitioner contended that she was being improperly billed by DC Water for IAC because her property was not connected to the DC Sewer System. Ms. [REDACTED] testified that her property was one of the few remaining properties in the District of Columbia which was not connected to the sewer system, that she had a septic tank, and she did not pay for sewer services. The record reflects that Ms. [REDACTED] was seeking exemption from the Clean Rivers IAC because she allegedly contributed no stormwater runoff to the D.C. sewer system, uses a septic tank and has her drains flow into the green areas on her property. After the hearing, a DC Water hearing officer (R. Bradley Runyan) issued an Order on November 29, 2016 and concluded that the legislature supplied DC Water with the authority to impose the Clean Rivers IAC on all District property owners, regardless of whether a property contributes any stormwater runoff. The Hearing Officer found that the customer failed to carry the burden of proof and that the preponderance of the evidence showed that the water bills were valid and appropriate as to the impervious surface charge. Ms. [REDACTED] appealed to the D.C. Court of Appeals and her case was decided on August 23, 2018.

The D.C. Court of Appeals vacated the hearing officer's decision and remanded the case for further proceedings. The Court determined that the hearing officer failed to provide any statutory analysis or reasoning supporting his legal conclusions. The Court pointed out that the hearing officer, in the decision, referenced D.C. Code § 11-111.216 (d-1) and that was error. The Court rejected DC Water's assertion that it was a scrivener's error and should have read as D.C. Law 11.111. The Court noted that it was unable to locate any subsection 216 (d-1). The Court, further, pointed out that DC Water's representative, in closing argument, directed the hearing officer to D.C. Code § 34-2202.16 (d-2) as justification for its non-discriminatory application of the Clean Rivers IAC but that D.C. Code § 34-2202.16 (d-2) relates to the stormwater fee statute, rather than the Clean River IAC statute and that the hearing officer provided no analysis as to how the cited provisions related to the Clean River IAC nor did the hearing officer provide any consideration of other possible relevant statutes such as D.C. Code § 34-2107, which deals specifically with "methods of determination of sanitary sewer service charges." In a footnote, the Court noted that Section 216 does contain provisions dealing only in a general way with the authority of WASA to impose charges and fees, which now appear in D.C. Code § 32-2202.16 (a), (b). The Court directed that the hearing officer conduct further proceedings not inconsistent with the Court's Memorandum Opinion and on remand, that the hearing officer conduct an evidentiary hearing to resolve any remaining disputed factual questions. (*See* 193 A.3d 751 (2018), *Chandra Hardy v. DC Water & Sewer Authority*, 16-AA-933, District of Columbia Court of Appeals, August 23, 2018. DECISION)

[REDACTED] and [REDACTED] (hereafter referred to as [REDACTED]) initiated a dispute of their bill in challenge to the imposition of the Clean River IAC and Stormwater User fee and they filed a Petition for Administrative Hearing when they disagreed with the explanation given by DC Water in a letter dated August 14, 2019 in which the utility stated that all residential and non residential structures within the District of Columbia are assessed the Clean River IAC fee based on the amount of impervious surface associated within

the lot. In the letter, DC Water asserted that impervious surface areas are major contributors to rainwater runoff entering the District's sewer system and pollution entering area waterways. The utility stated that the charge is necessary to recover the \$2.7 billion cost to control combined sewer overflows (CSOs) in the Anacostia and Potomac rivers and Rock Creek, which was federally mandated by the EPA. In the letter, the utility asserted that in qualifying how much runoff can happen, the average rainfall of about an inch can contribute over 600 gallons of runoff for a 1,000 square foot structure and that while some water may end up in other areas, a portion will still make its way into the sewer system. (See Letter signed by Tarsha Anderson, GIS Billing Supervisor, DC Water to Mr. Gardner dated August 14, 2019.)

██████████ contend that they do not utilize the services and facilities of DC Water and that they have constructed a storm water collection and drainage system utilizing self-contained collection wells. The customers assert that their property has a self-contained septic system and that they are not obligated to pay any sanitary sewer charges. Through counsel, the customers, further, asserted that stormwater from their property is not physically capable of reaching a DC Stormwater sewer which counsel asserted he understood is not remotely near the ██████████ property.

With respect to the ██████████ property, only the issue regarding the Clean River IAC is before the hearing officer and no administrative hearing has been held regarding their Petition.

██████████ died in year 2021 and her property was conveyed to the ██████████ Trust with Stephen Gardner, Esquire retained as continuing counsel in the matter pending before DC Water. On information from Mr. Gardner, the property has, subsequently, been sold by the Trust and the new property owner has demolished the residence. Prior to the death of Ms. ██████████, a Corrected Order dated September 11, 2021 was issued containing memorialization of the attorneys' affirmation that there is no dispute as to the ██████████ property not being hooked to the DC Water sewer system and that Petitioner has a septic system; that the parties agreed that the Petitioner is only billed for water service, meter fee, DOE stormwater fee and the IAC Clean River fee; that the Stormwater fee is not at issue and that counsel for DC Water stated his position that there is still some contribution to stormwater from the Petitioner's property contributing to the DC sewer system.

Mr. Gardner on behalf of ██████████ and ██████████ filed A Joint Motion of Petitioners ██████████ and ██████████ to (1) Prioritize the Hardy Case as the Lead Case; (2) Revise the Briefing Schedule In the ██████████ Case; and (3) Hold the ██████████ Case in Abeyance Until a Final Decision Has Been Made by the Hearing Officer in the ██████████ Case. Mr. Gardner repeatedly represented that the facts in the ██████████ Case and the ██████████ Case are identical in that both properties are on septic systems and therefore neither property is connected to the DC sewer system. Mr. Gardner, further, represented that the Hearing Officer and the Parties have acknowledged that there are no facts in dispute, no evidentiary hearing is required in either case, and the cases can be resolved as a matter of law by the Hearing Officer based upon the interpretation of relevant statutes and regulations, etc. DC Water, in its Oppositions, asserted that factual disputes continue to exist in both the ██████████ and ██████████ cases. Counsel for DC Water argued "that other than being hooked up to the septic tank, the locations, other surface

characteristics and the directional path of the storm water from these two separate and non-adjointing properties are different.” (See DC Water Opposition at pg. 5-6) The Hearing Officer noted it remains to be determined, if, in fact, [REDACTED] is entitled to summary judgment and, at no point, thus far, had the Hearing Officer determined that there are no facts in dispute or that no evidentiary hearing is required. Mr. Gardner stated his intent to file a Motion for Summary Judgment in the [REDACTED] case and the parties agreed that the general question is “Whether Ms. [REDACTED] is subject to the imposition and collection of the Clean Rivers charges.” Mr. Gardner also indicated his like intent to file a pre-hearing motion for summary judgement in the [REDACTED] case.

Noting that at no time has counsel for [REDACTED] and [REDACTED] moved to consolidate the administrative hearing case commenced by either petitioner with the other, the hearing officer noted that while [REDACTED] raised the issue of applicability of the Stormwater fee to their property, their counsel and counsel for DC Water agreed that the issue is not before the hearing officer and that the [REDACTED] case does not involve an issue of the Stormwater fee. Subsequently, by Order dated March 9, 2022, the hearing officer recognized that the [REDACTED] case and the [REDACTED] case have differences, however, on the issue of “whether a customer who has a septic tank and is not hooked to the DC Water sewer system is subject to the imposition and collection of the Clean Rivers charges”, the parties are similarly situated and it would be judicially efficient to hear/consider the parties on that issue, alone, at the same time. As such, the Hearing Officer joined the [REDACTED] case and the [REDACTED] case for the propose of submission by counsel of a Motion for Summary Judgment on the issue of whether the petitioners are subject to the imposition and collection of the Clean Rivers charges.

MOTION FOR SUMMARY JUDGMENT HEARING ARGUMENTS:

Mr. Gardner, on behalf of the petitioners, began by informing the hearing officer that the Hardy property on Foxhall Rd was been sold in year 2021- almost 18 months ago. He stated that the residence has been demolished and the issue of Clean Water IAC going forward is now moot. He asserted that DC Water stopped billing the customer for Clean Water IAC approximately five (5) years ago and that the charges should be considered waived and the utility estopped since it has not billed the customer for so long.

Mr. Gardner pointed out that the DC Court of Appeals found that the hearing officer in the first administrative hearing committed error in citing an inapplicable statute. Mr. Gardner asserted that DC Code § 34-2107 was the applicable and correct statute regarding the case and not what the hearing officer cited. He continued that the case was remanded on August 23, 2018 for statutory interpretation. He asserted that the facts are simple and undisputed- that there is a septic system, the customer is not connected to the sewer system and the customer has not been billed for sewer service by DC Water. Mr. Gardner stated that [REDACTED] and [REDACTED] are two (2) unique customers because the properties are not connected to the DC Water sanitary sewer system.

Mr. Gardner argued that there exists a plainly written exemption for property not connected to the sanitary sewer. He asserted that 99.99% of all DC Water customers are connected to the sewer system and that his clients are two (2) of over 250,000 overall customers

and by his calculation his clients represent .0015358% of DC Water's customer base. Mr. Gardner stated that it is important to point out the billing of his clients for Clean Water IAC has/would have little impact on DC Water.

Mr. Gardner stated that four (4) statutes are applicable in this matter. He stated that there are two (2) companion statutes- DC Code § 34-2107 and DC Code § 34-2108. He stated that § 34-2107 establishes methods of determination of sanitary sewer service charges and that Clean Water IAC is a sanitary sewer charge which includes impervious area charges. He stated that the statute was amended in year 1954 and that the Committee report stated the intent to broaden the basis for sanitary sewer charges. Mr. Gardner stated that § 34-2108 is a short and concise statute and reads, in part, that "(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter." Mr. Gardner asserted that the law has been settled for 69 years and that the statute language has been the same since year 1954. He asserted that § 34-2107 establishes the basis for charges.

Mr. Gardner asserted that DC Code § 34-2108 establishes who is obligated to pay and he argued that those customers connected to the sewer system are obligated to pay and, conversely, those customers not connected are not obligated to pay. Mr. Gardner asserted that § 34-2108's heading is – "Persons obligated to pay sanitary sewer service charge". He stated that there was no change made to the statute when Clean Rivers IAC was added, whereas with respect to the Stormwater Act, language was added that it was applicable to all properties. Mr. Gardner argued that there is no such language in the statutes that Clean Rivers IAC is applicable to all properties. He asserted that Clean Rivers is a sanitary sewer charge and § 34-2108 says that a customer is only obligated to pay a sanitary sewer charge if the property is connected to the sanitary sewer system. Mr. Gardner stated that the word "obligation" is an important word and that the opposite of obligation is no responsibility/non-payment exempt.

Mr. Gardner asserted that DC Water in its Brief attempted to explain words, however, to adopt DC Water's interpretation would render the statute/code meaningless. Mr. Gardner stated that DC Water was attempting to render ambiguity in the statute. On the contrary, Mr. Gardner asserted that the statute states that only one category of customer must pay sanitary sewer charges. He, also, asserted that DC Water ignored the fact that it does not bill the customer for sewer charges. He argued that how can the utility bill for impervious surface and not sewer charges. He asserted that impervious surface charges were added with no distinction between sanitary sewer charges. He concluded that DC Water does not bill for sewer charges because the customers are not connected to the sewer system. He added that § 34-2108 has applied to both properties for decades.

Mr. Gardner asserted that DC Water is ignoring the plain meaning of the statute and that the utility argues that it can promulgate regulations as they see fit. Mr. Gardner stated that a regulation cannot conflict, however, with a statute. Citing Johnson v Gooseman, a 1921 case, he asserted that the case dictates that Chevron deference is not applicable because when a statute is clear, no deference to the agency interpretation is made.

Mr. Gardner asserted that there is a scheme to the applicable statutes. The first statute provides the charge and the second statute provides who pays the charge.

Mr. Gardner asserted that the DC City Council and DC Water were unaware of the petitioners' properties because only two (2) properties exist with septic systems in the District of Columbia. He asserted that if the legislature had known of the properties, it could have inserted language in the applicable statute as was done in the Stormwater statute.

Mr. Gardner stated that § 34-2107 and § 34-2108 are in harmony with each other and that DC Water lacks statutory authority to establish rates and collect charges from properties for service it does not provide pursuant to DC Code § 34-2202.16.

Mr. Gardner reiterated that the Clean Rivers IAC is a sanitary sewer charge. He asserted that pursuant to DC Code § 34-2101, the term "sewer" is a pipe carrying sewage.

Mr. Gardner asserted that it is uncontested that 99.99% of DC Water customers are connected to the sewer system and DC Water can establish rates, but, regarding these customers, they have their own sewer systems. He cited DC 21 DCMR 4101 which relates to all utility services are to be just and reasonable.

Mr. Gardner referred to DCMR § 21-4101 which allows DC Water to establish rates and charges for sewer services and he asserted that DC Water recognizes that it can charge for sewer services. Mr. Gardner, however, emphasized, in conclusion, that DC Water does not have the power to charge for services that it does not provide.

Mr. Hirsch started by saying that one should not lose sight that the petitioners are the ones bringing a motion for summary judgment, so they have certain obligations. He stated that any doubt must be resolved against the petitioners. They must establish that there is no genuine dispute. They must show that they are entitled to judgment as a matter of law. Mr. Hirsch asks that the Hearing Officer refer to DC Water's Brief for a point-by-point rebuttal of the petitioners' motion.

Mr. Hirsch stated that DC Water is emphatic that it is correct. He asserted that two (2) aspects of the petitioners' argument lack credibility and that the petitioners are attempting a sleight of hand. Referring to page 2 of the memorandum- the issue is-"Can petitioners be charged IAC, even if not charged sewer." Mr. Hirsch asserted that he (Mr. Gardner) asserts that DC Code § 34-2108 is an exemption, however, when the City Council grants an exemption, it knows how to write an exemption- DC Code § 44-951.12 is an example of an exemption statute.

Mr. Hirsch asserts, that irrespective of Chevron or the deference doctrine, one can look at the statute, its history and the totality of statutes passed in year 2008 and enacted in year 2009. He, further, asserts that DC Code § 34-2107 provides legislative authority to charge for sewer and for IAC. He argues that the statute authorizes charges for sanitary sewer and IAC. He pointed out that the DC Water Board of Directors decided by resolution to unbundle. Mr. Hirsch referred to visual exhibit 5- §34-2107 and stated that on March 18, 2009, a meeting was held in which it was voted to unbundle retail sewer rate and add the new impervious surface charge. The

hearing officer asked Mr. Hirsch, if in substance, the Board created two (2) sewer charges and he affirmed that to be the case. He cited Resolution #09 -56.

Mr. Hirsch argued that the petitioners have not shown how pre-existing authority has become non-existent. He asserted that DC Water had pre-existing authority to unbundle. He argued that deference and Chevron law applies because the City Council has not spoken with clarity regarding DC Code § 34-2108 and as such, Chevron and deference kick in regarding the interpretation of the statute – DC Code § 34-2107. Mr. Hirsch referred the hearing officer to the testimony before the DC City Council of the former Board Chairman on October 10, 2008, and, of the declaration of Olu Adebo, Chief Financial Officer of DCWASA, found in the DC Water Memorandum.

Mr. Hirsch argued that if interpretation is not aided by Chevron, then one can look at the statute. He asserted that DC Code § 34-2107 does not say who the IAC is attached to. He cites subsection c- Right to Appeal and that the subsection regarding the IAC gives the right of an appeal under DC Code §34-2305 to customers.

Mr. Hirsch asserted that the DC City Council did not intend the IAC to be part of sanitary sewer. Mr. Hirsch pointed out that the Council passed §34-2202.16 on March 25, 2016 which included subsection d-3 which authorized the development and implementation of MS4 stormwater user fee with DC WASA's impervious area surface charge. He argues that the language of the statute demonstrates that the IAC is an untethered and independent charge. Mr. Hirsch explained that DC Water collected stormwater fee (DOE charge) as of March 25, 2008. He stated that one should look at §34-2202-16 (d-2) wherein the stormwater fee is applicable to all properties. He asserted that one should not look at § 34-2107 and 2108 as the only relevant statutes. He argued that the statutes work together- stormwater and IAC having consistent methodologies. He added that one should look at footnote 8 of the DC Water Memorandum- DOE and IAC are applicable to the same customers.

Mr. Hirsch declared that petitioners' view is too restrictive. He asserted that §34-2108 does not say what the petitioners say it says. He stated that the petitioners' argument rests on two (2) legs- sections 2107 and 2108. He asserts that the petitioners struck in the word "only", but the statute does not say only sewer customers must pay. He pointed out that neither statute mentions IAC for good reason, in that, §34-2108 was enacted in 1954 when the IAC was unanticipated. Mr. Hirsch argued that §34-2108 has no application to the IAC since IAC did not exist until 60 years after the enactment of §34-2108. Mr. Hirsch asserts that the statute cannot exempt what did not exist. He asserted that the IAC was not intended to be part of the sanitary sewer charge.

Mr. Hirsch argues that common methodology is the solution to this riddle. He stated that there is authority to charge IAC to even someone not connected to sanitary sewer and that §34-2108 does not speak to the issue of IAC, at all. He asserted that §34-2107 is methodology that does not address who can be charged and §34-2108 is inapplicable to IAC.

Mr. Hirsch asserted that the City Council intended to give DC Water authority to

unbundle. He stated that §34-2107 does not prohibit unbundling and the DC City Council intended to give DC Water authority to unbundle.

Mr. Hirsch contended that the hearing officer look only at the statute and inquiry can stop there. He asserted that the petitioners failed to carry their burden of showing what happen to DC Water's authority. He, further, asserted that deference is completely different from the Chevron doctrine and that deference is to be given to the agency's interpretation. Mr. Hirsch cited Genstar v. DC Dept. Employment Service, 777 A. 2nd 270 which he states relies on King v. DC DOES, 742 A. 2nd 460, 466 (DC 1999) Mr. Hirsch asserted that a Court will not interpret a statute until an agency has done so and that the hearing officer should defer to the agency's interpretation of the statute.

Mr. Hirsch asserted that Chevron also applies in this matter. For Chevron application, he stated that there is a 2-step process- determine if the legislature has spoken clearly or if there is ambiguity. He asserted that §34-2107 is silent with respect to IAC and who can be charged and that §34-2108 does not mention IAC.

Mr. Hirsch argued that that the approach to Chevron and deference apply in this matter. He cited Peoples Drug v. DC Government, 470 A.2d 751. He asserted that ambiguity exists in the text of §34-2107 and 2108 requiring one to look in the legislative purpose of the IAC. He, also, cited King v. Burwell, 516 US 473, stating that one should focus on the context of the words in their place in the overall statutory scheme when a statute's text is ambiguous.

In conclusion, Mr. Hirsch argued that §34-2107 and 2108 do not say what the petitioners want them to say and as such, the motion for summary judgment must fail because the petitioners fail to show entitlement to judgment.

Mr. Gardner stated that every single issue is refuted in their Brief. He asserted that DC Water cannot get around the IAC being a sanitary sewer charge. He stated that DC Water has advanced "smoke and mirrors" and that there is no doubt that IAC was inserted as a sanitary service charge. He argues that DC Water is ignoring the statutory scheme and that there is no ambiguity is reading the provisions. Mr. Gardner asserts that everyone admits that IAC is a sanitary sewer charge. He, further, stated that he takes umbrage toward DC Water saying that petitioners are taking a "sleight of hand." He asserted that §34-2107 determines sanitary sewer charge and the fact of unbundling charges is irrelevant.

Mr. Gardner showed a power point presentation which he sent to DC Water the night before this hearing. He asserted that there is nothing ambiguous regarding §34-2107 and that DC Water cannot create ambiguity where there is none. He added that the notion that IAC is not a sanitary sewer charge is ridiculous.

Mr. Gardner asserted that DC Water never addressed if it has authority to charge for services it does not provide and, in these instances, DC Water does not provide sanitary sewer service.

Mr. Gardner asserts that DC Water seems to have relied on the stormwater user fee but this case is not about stormwater user fees. He asserted that the utility wanted to ensure some methodology was used but that has nothing to do with whether it can charge IAC. He reemphasized that his clients are not on the sewer system.

Mr. Gardner asserted that there is no other rational or reasonable way to read the statute.

He pointed out that he addresses the Peoples Drug v. DC Gov't case in the Brief on page 25 of the petitioner's Surreply Response. He added that Martin's testimony was not mentioned in the report.

Mr. Gardner asserted that a regulation cannot conflict with a statute. He referred to Ty v. US and Camden Citizen (citations not provided).

Mr. Gardner stated that DC Water is arguing ambiguity to get to deference. He directed that the hearing officer look at pg. 25 of the Reply Brief. He argued that DC Water's interpretation cannot render a statute meaningless.

The parties agreed that Mr. Gardner can use his power point as oral argument but not as evidence.

Mr. Hirsch pointed out that Mr. Gardner said that DC Water did not rebut if there is no authority to charge IAC when sewer service is not charged. He referred to pg. 5 of DC Water's Opposition to Motion for Summary Judgment. Mr. Hirsch points out that the petitioners' position has been rejected in Colorado and Alabama. He referred to the "indirect benefit doctrine" wherein a customer even if not connected to the sewer system, as a citizen benefits indirectly by water treatment. Mr. Hirsch challenged that Petitioner Hardy has changed her position from that espoused in 2018 and that the petitioner did not argue §34-2107 and 2108.

Lastly, Mr. Hirsch stated that there are three (3) other properties in the District of Columbia with septic tanks and those customers pay IAC.

Mr. Gardner stated that, when before the DC Court of Appeals, DC Water argued that the stormwater statute applied and that was a mistake and the Court pointed out in its Opinion that §34-2107 applied. Mr. Gardner asserted that it is highly irrelevant whether there are two (2) or five (5) properties with septic systems, for that number is still minuscule.

At the conclusion of the oral argument hearing, both parties agreed that there is no need for an evidentiary hearing.

APPLICABLE LAW AND LEGISLATIVE HISTORY:

1. Rule 56- Summary Judgment - (a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows

that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

2. DC Code § 34-2107

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the following:

(1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions. For purposes of this paragraph, the term "surface" shall include rooftops, footprints or patios, driveways, private streets, other paved areas, athletic courts and swimming pools, and any path or walkway that is covered by impervious material.

(2) Repealed

(3) (A) For any unimproved real property under construction that discharges groundwater into a District-owned sanitary sewer, or combined sewer, or for any real property using water, part of which is from a source or sources other than the District water supply system, the real property owner shall pay a sanitary sewer service charge separate from and in addition to any sanitary sewer charge levied in paragraphs (1) or (2) of this subsection. For any improved real property that discharges groundwater into a District-owned sanitary or combined sewer, the real property owner shall not be subject to payment of a separate and additional charge for discharges of groundwater, but shall pay for discharges of cooling water into a District-owned sanitary or combined sewer that are derived from a source or sources other than the District water supply system.

(B)(i) For unimproved real property under construction...

(ii) For improved real property, the separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the cooling water and is discharged into the District sanitary or combined sewer system.

(iii) For real property using water from a source or sources other than the District water supply system...

(C) Unless the Mayor determines that it is not practicable, the owner of real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater, cooling water, or water from other than the District water supply system that is discharged into the District's sanitary sewers.

(D) For purposes of this section, the determination made by the Mayor pursuant to Chapter 8 of Title 47 as to whether property is improved or unimproved shall apply.

(4) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Mayor, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be the amount which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property; provided, that all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Mayor, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Mayor shall determine periodically, in such manner and by such methods as the Mayor may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Mayor and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Mayor as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

(b) Notwithstanding the provisions of subsection (a), the Council of the District of Columbia is authorized, in its discretion, from time to time to establish 1 or more sanitary service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement.

(c) Any owner or occupant of a property that is assessed an impervious surface fee has a right to appeal under §34-2305.

3. D.C. Law 14-190 rewrote subsec. (a)(3) of DC Code § 34-2107 which had read as follows:

“(a)(3) For any real property that discharges waste water into a District-owned sanitary sewer that derives from groundwater or cooling water, the real property owner shall pay a sanitary sewer service charge separate from any sanitary sewer charge levied in paragraph (1) and (2) of this subsection. The separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater or cooling water and is discharged into the District sanitary or combined sewer system. Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater or cooling water discharged into the District’s sanitary sewage works. The amount of sanitary sewer service charge shall be set at the same rate as the rate paid by the owner of a metered building that receives water from the District water supply system.”

4. DC Code § 34-2101. Definitions.

- (1) The term “sanitary sewage” means:
 - (A) Domestic sewage with storm and surface water limited;
 - (B) Sewage discharging from sanitary conveniences;
 - (C) Commercial or industrial wastes; and
 - (D) Water supply after it has been used.
- (2) The term “stormwater sewage” mean liquid flowing in sewers resulting directly from precipitation.
- (3) The term “combined sewage” means sewage containing both sanitary sewage and stormwater sewage.
- (4) The term “sewer” means a pipe or conduit carrying sewage.
- (5) The term “sanitary sewer” means a sewer which carries sanitary sewage.
- (6) The term “stormwater sewer” mean a sewer which carries stormwater sewage.
- (7) The term “combined sewer” means a sewer which carries both sanitary sewage and stormwater sewage.
- (8) The term “sanitary sewage works” means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.
- (9) The term “stormwater sewer system” means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.
- (10) The term “combined sewer system” means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.

5. DC Code §34-2202.16

- (a) The Authority shall collect and abate charges, fees, assessments, and levies for services, facilities, or commodities furnished or supplied by it.
- (b) (1) The Authority shall, following notice, public comment period, and public hearing, establish and adjust retail water and sewer rates. The District members of the Board

shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget. The water and sewer rates levied by the Authority shall only be a source of revenue for the maintenance of the District's supply of water and sewage systems, and shall constitute a fund exclusively to defray any cost of the Authority.

- (c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with § 1-204.87(b).
- (d) The Authority may impose additional charges and penalties for late payment of bills.
 - (d-1) The Authority shall collect a stormwater user fee established by the Director of the District Department of Environment ("Director"), which charge the Director shall establish by rule and may from time to time amend.
 - (d-2) The fee shall be collected from each property in the District of Columbia, and shall be based on an impervious area assessment of the property.
 - (d-3) The Mayor shall coordinate the development and implementation of the MS-4 stormwater user fee with DC WASA's impervious area charge, to ensure that both fee systems employ consistent methodologies.
 - (d-4) The Mayor shall offer financial assistance programs to mitigate the impact of any increase in stormwater user fees on low-income residents of the District,...
 - (d-5) A landlord shall not pass a stormwater user fee charge to a tenant which is more than the stormwater user fee charge prescribed by the Director.
 - (d-6)

- 6. DCMR §21-4101.4 The CRIAC shall be based upon the Equivalent Residential Unit (ERU). An ERU is defined as one thousand square feet (1,000 sq. ft.) of impervious surface area, taking account of a statistical median of residential properties.
- 7. DCMR §21-4101.5 All residential customers shall be assessed a CRIAC based on the following Six-Tier Residential Rate Structure for the CRIAC:

Tier	Size of Impervious Area (Square Feet)	Equivalent Residential Unit (ERU)
Tier 1	100 - 600	0.6
Tier 2	700 - 2000	1.0
Tier 3	2,100 - 3,000	2.4
Tier 4	3,100 - 7,000	3.8
Tier 5	7,100 - 11000	8.6
Tier 6	11,100 and more	13.5

- 8. DCMR § 21-4101.7 Impervious Only Properties are defined and subject to the following requirements:

- (a) Impervious Only Properties are properties that do not currently have metered water/sewer service (for example, parking lots) and may require the creation of new accounts; and
- (b) Effective October 1, 2012, Impervious Only Properties shall be billed as follows:
 - a. Impervious Only Properties with three (3) or more ERU's shall be billed monthly.

Authority for DCMR § 21-4101- Rates for Sewer Service is found at : Final Rulemaking published at 44 DCR 1993, 1994 (April 4, 1997); as amended by Final Rulemaking published at 47 DCR 320 (January 21, 2000); as amended by Final Rulemaking published at 49 DCR 5977 (June 28, 2002); as amended by Final Rulemaking published at 50 DCR 6452 (August 8, 2003); as amended by Final Rulemaking published at 51 DCR 8849 (September 10, 2004); as amended by Final Rulemaking published at 52 DCR 8528 (September 16, 2005); as amended by Final Rulemaking published at 53 DCR 7655 (September 22, 2006); as amended by Final Rulemaking published at 54 DCR 9178 (September 21, 2007); as amended by Final Rulemaking published at 55 DCR 9845 (September 19, 2008); as amended by Final Rulemaking published at 56 DCR 2728 (April 10, 2009); as amended by Final Rulemaking published at 56 DCR 2739 (April 10, 2009); as amended by Final Rulemaking published at 56 DCR 75§(September 18, 2009); as amended by Final Rulemaking published at 57 DCR 8419, 8420 (September 17, 2010); as amended by Final Rulemaking published at 58 DCR 6941, 6942 (August 12, 2011); as amended by Final Rulemaking published at 59 DCR 8820, 8821 (July 27, 2012); as amended by Final Rulemaking published at 60 DCR 11239 (August 2, 2013); as amended by Final Rulemaking published at 61 DCR 9613 (September 19, 2014); as amended by Final Rulemaking published at 62 DCR 9798 (July 17, 2015); as amended by Final Rulemaking published at 63 DCR 9696 (July 22, 2016)); as amended by Final Rulemaking published at 65 DCR 7569 (July 20, 2018); as amended by Final Rulemaking published at 66 DCR 8770 (July 26, 2019 – Part 1); as amended by Final Rulemaking published at 66 DCR 12432 (September 20, 2019); as amended by Final Rulemaking published at 67 DCR 11100 (September 18, 2020); as amended by Final Rulemaking published at 68 DCR 013639 (December 17, 2021); as amended by Final Rulemaking published 69 DCR 009035 (July 22, 2022).

9. DC Code § 34-2108- Persons obligated to pay sanitary sewer service charge.

- (a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.

(b) If the sanitary sewer service charge imposed by this subchapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

(c) In computing the charge for sanitary sewer service, if such charge is for a period beginning prior to a change in the established sanitary sewer service charge and ending thereafter, the charge shall be based on the rate in effect at the time the charge is rendered.

10. DC Code 34-2109 - (d) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises to inspect, install, replace, read, or repair any sanitary meter required to be installed pursuant to the Public Works Act, or to investigate whether water derived from groundwater or cooling water is being discharged from the real property into a sanitary or combined sewer system. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner refuses to permit entry to the property and the Mayor may impose a penalty of \$100 and shut off the water supply to the real property. Upon the payment of the penalty of issuance of a final decision where the owner files a request for administrative review, the Mayor may restore the water supply.

11. It is a firmly established rule in this jurisdiction that “an agency’s interpretation of its own regulations or the statute which it administers is generally entitled to great deference from this court. King v. DC DOES, 742 A.2nd 460, 466 (DC 1999) (citation omitted)

12. In King v. Burwell, 576 U.S. 473 (2015) finding that text was ambiguous, the Court looked at the broader structure of the Act and concluded that the plaintiffs’ interpretation would destabilize the individual insurance market in any state with a federal exchange. The Court concluded that in that case it was implausible that Congress meant the Act to operate in the manner interpreted by the plaintiffs.

13. Beginning in 2009, WASA has collected two separate and distinct charges that address the problem of so-called stormwater. One is the District of Columbia Government Stormwater Fee (“D.C. Govt. Stormwater Fee”); the other is the Clean Rivers LAC. Each fee is codified at different sections of the D.C. code. *See* D.C. code § 34-2107 (2012 Repl.) (referencing the Clean Rivers LAC as the sanitary sewage charge and conferring authority to WASA to assess a “sanitary sewer charge”); D.C. Code § 34-2202.16 (d-2) (2012 Repl.) (requiring WASA to collect the D.C. Govt. Stormwater Fee); *See also* D.C. Code § 34-2202.16 (a) granting WASA general authority to impose charges. Each fee is dedicated to resolving a separate issue relating to the District’s stormwater. The stormwater fee is assessed “to support the implementation of the District’s Municipal Separate Storm Sewer System (MS4) permit” *Stormwater Fee Background*, Department of Energy & Environment, <https://doee.dc.gov/service/stormwater-fee-background> (last visited July 16, 2018). The amount of the fee is established by the Director of the D.C.

Department of the Environment, not by WASA. WASA determines the amount of the Clean Rivers IAC and retains the money so collected to “fund its Clean Rivers Project to reduce combined sewer overflows” as mandated by a Consent Decree between the EPA, the Anacostia Watershed Society, and WASA. See Chandra Hardy v. DC WASA, 193 A.3d 751 (2018) Unpublished.

14. DC Code § 34-2107 (a)(4) refers to industrial or commercial purpose property which uses water from the water supply system of the District in such manner that the water is not discharged into the sanitary sewage works of the District, and states that the water not discharged may be excluded in determining the sanitary sewer service charge on such property if requested in writing by the property owner or occupant and requires that the quantity of water not discharged into the sanitary sewage works of the District be measured without cost to the District provided the all water from the water supply system used by the property be paid for at established rates whether discharge or not into the sanitary sewage works of the District. The statute further states that excluding some portion of the water used from the District water supply system from the charges for sanitary sewer system is a privilege and if the owner does not provide or fails to maintain an approved measuring device, the Mayor has final decision-making in estimating quantity of water or the owner pays full amount of the water used from the District water supply system.

15. 21 DCMR § 4101.7 = Impervious Only Properties are defined and subject to the follow requirements”

(a) Impervious Only Properties that do not currently have metered water/sewer service (for example, parking lots and may require the creation of new accounts.

16. DC Water is implementing the Clean Rivers Project to control combined sewer overflows (CSOs) to District waters in accordance with a federally mandated consent decree. The project is funded by the Impervious Area Charge (IAC) to recover costs associated with constructing the project. The Owner of the property at 2620 Quebec Street NW challenged application of the impervious area charge (IAC) to their property. This document has been prepared to provide information to attorneys representing DC

17. The Committee on Public Works and the Environment, to which the above legislation was referred, reports BI 7-0935, the "Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" November 21, 2008

BI 7- 0935, the "Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" will allow DCWASA to broaden the bases for determining sanitary sewer service charges to include the estimated impervious surface area on customer's property and amends the current DCWASA appeal process to ensure DCWASA customers their right to challenge the estimated impervious surface area determined by the GIS.

The Committee agrees charging customers for the amount of impervious surface area on their properties is fair and equitable. DCWASA must be able to raise the necessary revenue to be in compliance with the US District Court mandated Long Term Control Plan and reduce stormwater

runoff and the subsequent pollution of the District's waterways.

18. In testimony before the DC City Council, Robin B. Martin, Chairman of DC WASA, testified that the utility was proposing a plan to recover the cost of the federally mandated \$2.2 billion Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) and that the legislation would grant the Board authority to modify the existing rate structure... The Chairman testified that:

The DC WASA Board Proposes a Plan to Recover LTCP Costs Fairly- The Board of DC WASA has an obligation to make sure our rate structure is as fair as it can make it, so that no group of customers shoulders the burden of other rate payers. As you know, the existing rate structure uses the volume of water billed to a customer to determine the sewer charges. Today, the costs of the LTCP are recovered under this volumetric sewer charge, but we know that the stormwater that causes combined sewer overflows has nothing to do with the volume of sanitary wastewater that comes from a property. In fact, there are many examples of property owners who produce very little or even no sanitary wastewater, but who contribute a great deal to the runoff that causes CSOs. The essence of the Board's proposed new rate structure is to separate the traditional volumetric sewer charges from the cost of dealing with the wet weather runoff that produces CSOs. Our aim is to avoid basing the fees used to pay for the LTCP on the volume of wastewater that we collect and treat at Blue Plains. Rather, we plan to use a fee structure that charges property owners for their contribution to the problem. By accurately estimating the amount of wet weather runoff a property produces, we can more equitably charge a monthly fee based on "impervious surface area" in order to recover the cost of implementing the \$2 billion Long Term Control Plan. This fee is called an "Impervious Area Charge" or IAC. The charge applies to all parcels and private streets in the District, and there are no exemptions for the IAC based on who owns the property, but public streets and rights-of-way are currently excluded.

Why Do We Need Legislation? DC WASA-like most every utility- has legal standing to collect on billing charges that go unpaid. The DC Code provides for DC WASA to place a lien against property for enforcement of billing charges for water and sewer services. However, the DC Code (Section 34-2107. Methods of determination of sewer service charges) requires that sewer charges must be based on volumetric usage, and the IAC is not based on volumetric usage. A change in the statute is required in order to apply liens to compel compliance if necessary.

Testimony of Robin B. Martin, Chairman of the Board District of Columbia Water and Sewer Authority- Before the Committee on Public Works and the Environment- Jim Graham, Chairman, Committee on Public Works and the Environment-"Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" Friday, October 10, 2008

19. DC Bd of Appeals & Rev., 778 A.2d 296, 302 (DC 2001)- we have recognized explicitly that "law" and "statute" are not synonymous, and that "law" is not limited to legislative enactments of the Council or Congress. See Newspapers, Inc. v. Metropolitan Police Dep't, 546 A.2d 990, 1000 (D.C. 1988). In particular, a validly promulgated administrative rule or regulation "has the force and effect of law, much like a statute." Hutchinson v. District of Columbia, 710 A.2d 227, 234 (D.C. 1998). Accord, Teachey v. Carver, 736 A.2d 998, 1005 (D.C.1999) ("regulations having been duly promulgated, they are the law"); Dankman v. District of Columbia Bd. of Elections & Ethics, 443 A.2d 507, 513 (D.C.1981) (en banc) ("Rules and regulations promulgated by Governmental establishments pursuant to statutory authority have the force and effect of law, and concededly are subject to the same tests as statutes.").

20. DCMR §21-4101.- **RATES AND CHARGES FOR SEWER SERVICE**

4101.1 (a) The retail rates for sanitary sewer service for each one hundred cubic feet (1 Ccf) of water use shall be as follows:

Customer	Effective October 1, 2022		Effective October 1, 2023	
	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
Residential	\$11.26	\$15.05	\$11.70	\$15.64
Multi-Family	\$11.26	\$15.05	\$11.70	\$15.64
Non-Residential	\$11.26	\$15.05	\$11.70	\$15.64

4101.2 The retail rates for sanitary sewer service for the discharge of groundwater, cooling water, and non-potable water sources shall be as follows:

(a) The retail groundwater sewer charge for an unimproved real property, property under construction or under groundwater remediation shall be:

Customer	Effective October 1, 2022		Effective October 1, 2023	
	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
All Customers	\$3.42	\$4.57	\$3.50	\$4.68

(b) The retail cooling water sewer charge shall be the retail sanitary sewer service rate as provided in section 4101.1(a) for cooling water discharged into the District's wastewater sewer system.

- (c) The retail non-potable water source sewer charge shall be the retail sanitary sewer service rate as provided in section 4101.1(a) for non-potable water discharged into the District's wastewater sewer system.

4101.3 The annual Clean Rivers Impervious Area Charge (CRIAC) per Equivalent Residential Unit (ERU) shall be as follows:

Customer	Effective October 1, 2022		Effective October 1, 2023	
	Annual CRIAC per ERU	Monthly CRIAC per ERU	Annual CRIAC per ERU	Monthly CRIAC per ERU
Residential	\$217.68	\$18.14	\$262.32	\$21.86
Multi-Family	\$217.68	\$18.14	\$262.32	\$21.86
Non-Residential	\$217.68	\$18.14	\$262.32	\$21.86

4101.4 The CRIAC shall be based upon the Equivalent Residential Unit (ERU). An ERU is defined as one thousand square feet (1,000 sq. ft.) of impervious surface area, taking account of a statistical median of residential properties.

4101.5 All residential customers shall be assessed a CRIAC based on the following Six-Tier Residential Rate Structure for the CRIAC:

Tier	Size of Impervious Area (Square Feet)	Equivalent Residential Unit (ERU)
Tier 1	100 - 600	0.6
Tier 2	700 - 2000	1.0
Tier 3	2,100 - 3,000	2.4
Tier 4	3,100 - 7,000	3.8
Tier 5	7,100 - 11000	8.6
Tier 6	11,100 and more	13.5

4101.6 All non-residential and multi-family customers shall be assessed ERU(s) based upon the total amount of impervious surface area on each lot. This total amount of impervious surface shall be converted into ERU(s), truncated to the nearest one-hundred (100) square feet.

4101.7 Impervious Only Properties are defined and subject to the follow requirements:

- (a) Impervious Only Properties are properties that do not currently have metered water/sewer service (for example, parking lots) and may require the creation of new accounts; and

- (b) Effective October 1, 2012, Impervious Only Properties shall be billed as follows:
- (1) Impervious Only Properties with three (3) or more ERU's shall be billed monthly.
 - (2) Impervious Only Properties with less than three (3) ERU's shall be billed every six (6) months.
 - (3) Customers who are billed for more than one (1) property and who participate in District of Columbia Water and Sewer Authority's group billing program shall be billed monthly for all properties.

DECISION:

The Hearing Officer is tasked with two (2) duties in this matter. First, the DC Court of Appeals has remanded the ██████ case for analysis and clarification of DC Water's authority to charge IAC; and, Second, to determine if the petitioners, who have septic systems and are not connected to DC Water's sanitary sewer system, are subject to IAC because Petitioners contend that DC Code 34-2108 exempts them from IAC because they are not connected to a sewer pipe system provided by DC Water.

1. Statutory Authority for IAC, also referred to as CRIAC.

DC Water has general statutory authority to impose charges and fees based upon DC Code § 32-2202.16 (a) and (b).

The IAC arose in response to a Consent Decree entered by the United States District Court for the District of Columbia resolving a Clean Water Act lawsuit against DC Water and the District of Columbia associated with the combined sewer overflows. (Consent Decree, Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth., No. 2000-CV-183 (D.D.C. Mar. 23, 2005) The Consent Decree required DC Water and the District to implement a Long-Term Control Plan to reduce combined sewer overflows by constructing a system of underground storage tunnels to hold the combined flow during rain events and later convey it to Blue Plains for treatment. The Consent Decree was amended in year 2015 to incorporate changes to the Long-term Control Plan. Anacostia Watershed Soc'y v. D.C. Water & Sewer Auth., No. 20005 CV-183 (D.D.C. May 19, 2015) The Long-Term Control Plan requires DC Water to control Combined Sewer Overflow (CSO) discharges to the Anacostia River, The Potomac River and Rock Creek. IAC funds are used to defray the costs of operating the sewer system.

In testimony before the DC City Council, Robin B. Martin, Chairman of DC WASA testified that the utility was proposing a plan to recover the cost of the federally mandated \$2.2 billion Combined Sewer Overflow (CSO) Long Term Control Plan (LTCP) and that the legislation would grant the Board authority to modify the existing rate structure... The Chairman testified that:

The DC WASA Board Proposes a Plan to Recover LTCP Costs Fairly- The Board of DC WASA has an obligation to make sure our rate structure is as fair as it can make it, so that no group of customers shoulders the burden of other rate payers. As you know, the existing rate structure uses the volume of water billed to a customer to determine the sewer charges. Today, the costs of the LTCP are recovered under this volumetric sewer charge, but we know that the stormwater that causes combined sewer overflows has nothing to do with the volume of sanitary wastewater that comes from a property. In fact, there are many examples of property owners who produce very little or even no sanitary wastewater, but who contribute a great deal to the runoff that causes CSOs. The essence of the Board's proposed new rate structure is to separate the traditional volumetric sewer charges from the cost of dealing with the wet weather runoff that produces CSOs. Our aim is to avoid basing the fees used to pay for the LTCP on the volume of wastewater that we collect and treat at Blue Plains. Rather, we plan to use a fee structure that charges property owners for their contribution to the problem. By accurately estimating the amount of wet weather runoff a property produces, we can more equitably charge a monthly fee based on "impervious surface area" in order to recover the cost of implementing the \$2 billion Long Term Control Plan. This fee is called an "Impervious Area Charge" or IAC. The charge applies to all parcels and private streets in the District, and there are no exemptions for the IAC based on who owns the property, but public streets and rights-of-way are currently excluded".

Why Do We Need Legislation? DC WASA-like most every utility- has legal standing to collect on billing charges that go unpaid. The DC Code provides for DC WASA to place a lien against property for enforcement of billing charges for water and sewer services. However, the DC Code (Section 34-2107. Methods of determination of sewer service charges) requires that sewer charges must be based on volumetric usage, and the IAC is not based on volumetric usage. A change in the statute is required in order to apply liens to compel compliance if necessary.

Testimony of Robin B. Martin, Chairman of the Board District of Columbia Water and Sewer Authority- Before the Committee on Public Works and the Environment- Jim Graham, Chairman, Committee on Public Works and the Environment- "Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" Friday, October 10, 2008

In order to cover the costs of the Long-Term Control Plan, the Council Authorized DC Water to bill customers based in part on the amount of impervious area on their properties. *See* DC Code § 34-2107(a) (2012); DC Council, Report on Bill 17-935 at 6 (Nov. 21, 2008). DC Water determined and the Council agreed, that billing based upon impervious area was more equitable than billing based on sanitary sewer use because runoff from impervious surfaces contribute significantly to the problem of combined sewer overflows. (*See* DC Council, Report on Bill 17-935 at 4, 6.) The impervious area billing, known as the Clean Rivers Impervious Area Charge or IAC, is used to cover the costs of maintaining and operating the sewer system, including implementing the Long-Term Control Plan. The Council authorized DC Water to

establish a billing methodology which is found at DC Code § 34-2107. Water and Sewer Authority Equitable Ratemaking Act of 2008 allows for a billing methodology that takes into account both the water consumption of and water service to property and the amount of impervious surface on the property. *See* Resolution adopted by the Council of the District of Columbia on December 12, 2008, signed by Mayor Adrian Fenty on January 23, 2009 and subsequently transmitted to the United States Congress for the legislative review period; the final rulemaking became effective May 1, 2009.

DC Water Board of Directors, by unanimous vote, enacted an amendment of Title 21 of DCMR Chapter 41, Retail Water and Sewer Rates, and Chapter 4, Contested Water and Sewer Bills, to unbundle the retail sewer rate in order to reduce the volumetric rate and add a new Impervious Surface Area Charge.

In addition to DC Code § 34-2107, IAC reference is found in the following law and regulations of DC Water:

1. DC WASA's impervious area charge is mentioned in DC Code § 34-2202.16 d-3) where it is stated that the Mayor shall coordinate the development and implementation of the MS4 stormwater user fee with DC WASA's impervious area charge to ensure that both fees systems employ consistent methodologies.
2. DCMR §21-4101.- RATES AND CHARGES FOR SEWER SERVICE at DCMR §21-4103 refers to an annual CRIAC charge; §4101.5 states that all residential customers shall be assessed a CRIAC based on a Six-Tier Residential Rate Structure for the CRIAC: § 4101.7, states that impervious area only properties will be billed; §21-4101.4 states that CRIAC shall be based upon the Equivalent Residential Unit (ERU) and defines an ERU as one thousand square feet (1,000 sq. ft.) of impervious surface area, taking account of a statistical median of residential properties.

As such, IAC is authorized pursuant to the general authority of DC Water at DC Code § 34-2202.16 (a) and (b) and IAC is specifically authorized by DC Code § 34-2107 and implemented by DCMR 21-4101 which establishes the rate and charges for IAC, as well as, who is to be charged.

2. Petitioners' Motion for Summary Judgment

Petitioners assert that they are exempt from payment of IAC because they have septic systems and do not use the DC Water sanitary sewer system. They, further, assert that IAC is a sanitary sewer charge and DC Code § 34-2108 defines persons obligated to pay sanitary sewer service charge and petitioners do not fall within the category of such persons because they are not connected to a sewer pipe. Petitioners assert that DC Code § 34-2108 sets forth the sole statutory criteria for those obligated to pay sanitary sewer services charges. They contend that to be obligated to pay IAC, the building must be connected (joined) to a pipe or conduit and that pipe conduit must be conducting sanitary sewage. (*See* Petitioners; Motion for Summary

Judgment- pg. 17)

For purposes of this summary judgment motion, the hearing officer consolidated the petitioners, [REDACTED] and [REDACTED] and The [REDACTED] Trust.

It is undisputed that the petitioners, at their respective properties, utilize a septic system and are not billed by DC Water for sewer based upon water consumption. Both water accounts are billed by DC Water for stormwater user fee and IAC, although the utility has suspended IAC pending the outcome of these proceedings. As noted above, [REDACTED] is now deceased and her property at issue which was located at [REDACTED] Foxhall Road NW has been sold by the [REDACTED] Trust. An evidentiary hearing was held in the [REDACTED] case and as noted, the matter was remanded by the DC Court of Appeals. With respect to [REDACTED], they have not been afforded an evidentiary hearing on their dispute and they contest billing by DC Water for both stormwater fee and IAC, whereas Ms. [REDACTED] did not dispute the stormwater fee. The validity of applying the stormwater user fee in the [REDACTED] case is not at issue regarding this motion.

Petitioners assert that, as forth in DC Code § 34-2108, if you are not connected by pipe to the DC sanitary sewer, you are not subject to any sanitary sewer charges authorized under Chapter 21, Sanitary Sewage Works, Subchapter 1. District Sanitary Sewage Works, the applicable subchapters for DC Code § 34-2107 and DC Code §34-2108. Petitioners argue that the Clean Rivers IAC is referenced as a “sanitary sewer charge and pursuant to DC Code § 34-2108, you are only obligated to pay IAC if you are connected to a DC sewer conducting sanitary sewage.

Petitioners assert that the hearing officer should analyze DC Code § 34-2107 and 2108 using the Plain Meaning Rule and argue that the language of the statutes are plain and unambiguous and there is no need to resort to the legislative history underlying the statutes.

Reading DC Code § 34-2107 and § 34-2108 together, as the petitioners assert is accorded, it appears that the petitioners do not have to pay IAC. However, such a reading creates an absurd result when read in context to other statutes and regulations relating to IAC and the legislative history of the impervious area charge. *See Peoples Drug Store, Inc. v. D.C.*, 470 A. 2d 751, 754 (D.C. 1983) (en banc)

Petitioners reference, in their brief, a recent case decided by the United States Court of Federal Claims- District of Columbia Sewer and Water Authority v. United and States, September 10, 2021, No. 18-1586C. The case was originally filed in the United States District Court for the District of Columbia and was subsequently transferred to the US Court of Claims. The case involved a federal entity and a 1938 agreement for sewer services; however, it provides a roadmap and extensive analysis of how to interpret statutes and an analysis of IAC and DC Code § 34-2107 and § 34-2108. In the case, the Court talks about and cites a distinction between sanitary sewage and stormwater sewage. The Court notes that the District of Columbia Public

Works Act of 1954 provides the following definitions in section 201, codified at D.C. Code § 34-2101, and that the definition section has not been amended since the 1954 Act's initial enactment:

For the purposes of this subchapter:

- (1) The term "sanitary sewage" means:
 - (A) Domestic sewage with storm and surface water limited;
 - (B) Sewage discharging from sanitary conveniences;
 - (C) Commercial or industrial wastes; and
 - (D) Water supply after it has been used.
 - (2) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.
 - (3) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.
 - (4) The term "sewer" means a pipe or conduit carrying sewage.
 - (5) The term "sanitary sewer" means a sewer which carries sanitary sewage.
 - (6) The term "stormwater sewer" means a sewer which carries stormwater sewage.
 - (7) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.
 - (8) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.
 - (9) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.
 - (10) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.
- 1954 Act § 201; *see* also D.C. Code § 34-2101 (emphasis in original).

The Court further noted that in 2008, the D.C. Council amended D.C. Code § 34-2107, which tracks section 207 of the 1954 Act, to include the impervious area of a property as an additional basis upon which the District could determine the sanitary sewer service charges for a property. *See* Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008, 2008 D.C. Sess. L. Serv. 17-370 (Act 17-705) ("AN ACT to amend the District of Columbia Public Works Act of 1954 to broaden the bases for the determination of sanitary sewer service charges to include impervious surface area and to provide for an appeal process for the assessment of an impervious surface area fee." (capitalization in original)). The provisions at D.C. Code § 34-2107 now provide for the "[m]ethods of determination of sanitary sewer services charges," as follows:

D.C. Code § 34-2107(a)(1). Therefore, for building owners in the District, the impervious surface area of a property is included as part of the methodology for determining the cost of sanitary sewer services, and is in addition to the consideration of "the water consumption of, and water service to," the property.

The Court states "As indicated above, section 201 of the 1954 Act and the section 34-2101 of the DC Code define the term "sanitary sewer" as "a sewer which carries sanitary

sewage”. 1954 Act § 201; *see also* DC Code § 34-2101. The term “sanitary sewage” is defined in section 201 of the 1954 Act of the Code as:

- (A) Domestic sewage with storm and surface water limited,
- (B) Sewage discharging from sanitary conveniences,
- (C) Commercial or industrial wastes, and
- (D) Water supply after it has been used.

1954 Act § 201; *see also* DC Code § 34-2101. Although is not entirely clear what the words in section 201 of the 1954 Act and section 34-2101 of the DC Code, “with storm and surface water limited” mean, or if the words are meant as a limitation of storm and surface water as it relates to the “Domestic sewage”. Notably, section 201 of the 1954 Act provides separate definitions for “sanitary sewage” and “stormwater sewage” as well as “sanitary sewer” and “stormwater sewer” (*See* DC Code § 34-2101. The 1954 Act does not explain why storm and surface water are limited. *See id.* Given, however, the distinct definitions in section 201 of the 1954 Act of sanitary sewage/sewer and stormwater sewage/sewer and given section 212’s multiple uses of the term “sanitary” to qualify the term “sewer”, without reference to “stormwater”,.... *See id.*

The Court further noted that “Although section 201 of the 1954 Act and the section 34-2101 of the D.C. Code provide specific definitions for multiple different terms related to sewer and sanitary sewer, the 1954 Act and the D.C. Code do not provide a specific definition for “sanitary sewer service charges,” *id.*

Based upon the analysis of the Court in DCWASA v. United States, the Hearing Officer concludes that the terms “sanitary sewage” and “sanitary sewer” are used in multiple ways and their meaning are, in fact, ambiguous and that there is a gap in definition as to sanitary sewer service charges. Moreover, DC Code § 34-2108 does not mention impervious area, thus, rendering its meaning unclear as to whether impervious surface areas are included in the definition of sanitary sewer per the amendment of DC Code § 34-2107 as the same relates to DC Code § 34-2108 or if § 34-2108 relates to impervious surface areas in any manner. To add to the confusion, the Court in DCWASA v. United States, *id.* noted that

“the District’s impervious surface area charges relate to stormwater sewage, not sanitary sewage. *See* DCMR § 556.1, 3. 5 (Stormwater Fees); 21 DCMR § 4101.3.”

Yet., D.C.Code §34-2107 embeds stormwater sewage charges within a Code section identified as relating to sanitary sewer sewage charges, whereas IAC does not involve sanitary waste but stormwater runoff from impervious surfaces causing overflow.

Moreover, DC Code § 34-2108 does not mention IAC and refers to the sanitary sewer service charge in the singular, whereas DC Code § 34-2107 broaden the types of sanitary sewer charges, referring to the same in plural, adding impervious surface on a property in addition to water consumption and water service to a property. It is noteworthy that DC Code § 34-2107 became effective in year 2009 whereas DC Code § 34-2108 goes back to year 1954, before IAC

was enacted. It is also noteworthy that D.C. Law 14-190 rewrote subsec. (a)(3) of DC Code § 34-2107 which had read as follows:

(a)(3) For any real property that discharges waste water into a District-owned sanitary sewer that derives from groundwater or cooling water, the real property owner shall pay a sanitary sewer service charge separate from any sanitary sewer charge levied in paragraph (1) and (2) of this subsection. The separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater or cooling water and is discharged into the District sanitary or combined sewer system. Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater or cooling water discharged into the District's sanitary sewage works. The amount of sanitary sewer service charge shall be set at the same rate as the rate paid by the owner of a metered building that receives water from the District water supply system.

As such, the §34-2107 before amendment refers to waste water from groundwater, a separate and additional sanitary sewer service charge and a requirement for the customer to provide a meter or device to measure the quantity of groundwater discharges into the District's sanitary sewer works.

As previously discussed above, in testimony before the City Council, then, DC Water Chairman, Robin Martin, stated that the purpose of amending § 34-2107 was to change the basis of charging customers from volumetric to impervious area which eliminates the need for a meter to measure the quantity of groundwater going into the sewer system.

The Court in DC WASA v. United States, also, noted how DC Water defines IAC and to whom the utility applies the fee- stating that "the DCWA website provides the following explanation of its impervious area charge:

Impervious surface such as rooftops, paved driveways, patios, and parking lots are major contributors to stormwater runoff entering the District's combined sewer system. This adds significantly to pollution in the Anacostia and Potomac Rivers and Rock Creek.

The Clean Rivers Impervious Area Charge (CRIAC) is a fair way to distribute the cost of maintaining storm sewers and protecting area waterways because it is based on a property's contribution of rainwater to the District's sewer system. Because charges are based on the amount of impervious area on a property, owners of large office buildings, shopping centers and parking lots will be charged more than owners of modest residential dwellings.

All residential, multi-family and non-residential customers are billed a CRIAC.

The charge is based on an Equivalent Residential Unit (ERU). An ERU is a statistical median of the amount of impervious surface area in a single-family residential property, measured in square feet.

Available at <https://www.dewater.com/impervious-area-charge>

Based upon the legislative history noted above and Municipal Regulations, IAC was not intended to only apply to customers on a sanitary sewer connection.

A duly promulgated District of Columbia Municipal Regulation has the force and effect of law. *See e.g. J.C. & Associates v. D.C. Bd of Appeals & Rev.*, 778 A.2d 296, 302 (D.C. 2001) (“A validly promulgated administrative rule or regulation has the force and effect of law, much like a statute” (quoting *Hutchinson v. D.C.*, 710 A.2d 277, 234 (D.C. 1998); *Teachey v. Carver*, 736 A.2d 998, 1005 (D.C. 1999) (“regulations having been duly promulgated, they are the law, and the Board must follow them unless and until they have been rescinded or amended in the manner prescribed by law”); *Dankman v. D.C. Bd of Elections & Ethics*, 443 A.2d 507, 513 (D.C. 1981)(en banc) (“Rules and regulations promulgated by Government establishments pursuant to statutory authority have the force and effect of law, and concededly are subject to the same tests as statutes”) (DCWASA Memorandum of Points and Authorities in Opposition To Petitioners; Motion for Summary Judgment at pg. 9).

In discussing how to interpret a statute, particularly an ambiguous statute or one having a gap, the Court in *DC WASA v. United States*, instructed that the cardinal principle of statutory construction is “the rule that every clause and word of a statute must be given effect if possible” *See Boeing Co. v. Sec'y of the Air Force*, 983 F.3d 1321, 1327 (Fed. Cir. 2020) (quoting *Shea v. United States*, 976 F.3d 1292, 1300 (Fed. Cir. 2020) (“[i]t is a cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute.” (quoting *Williams v. Taylor*, 529 U.S. at 364))); *Sharp v. United States*, 580 F.3d 1234, 1238 (Fed. Cir. 2009). Similarly, the court must avoid an interpretation of a clause or word which renders other provisions of the statute inconsistent, meaningless, or superfluous. *See Duncan v. Walker*, 533 U.S. at 174 (noting that courts should not treat statutory terms as “surplusage”). “[W]hen two statutes are capable of co-existence, it is the duty of the courts. . . to regard each as effective.” *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976); *see also Xianli Zhang v. United States*, 640 F.3d 1358, 1368 (Fed. Cir.) (citing *Cathedral Candle Co. v. U.S. Int'l Trade Comm'n*, 400 F.3d 1352, 1365 (Fed. Cir. 2005)), reh'g and reh'g en banc denied (Fed. Cir. 2011), cert. denied, 566 U.S. 986 (2012); *Hanlin v. United States*, 214 F.3d 1319, 1321 (Fed. Cir.) reh'g denied (Fed. Cir. 2000). The Court, further, noted that “Beyond the statute's text, the traditional tools of statutory construction include the statute's structure, canons of statutory construction, and legislative history.” *Bartels Trust for the Benefit of Cornell Univ. ex rel. Bartels v. United States*, 617 F.3d 1357, 1361 (Fed. Cir.) (quoting *Bull v. United States*, 479 F.3d 1365, 1376 (Fed. Cir. 2007)), reh'g en banc denied (Fed. Cir. 2010); *see also Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. at 412 (“[W]e consider each question [of statutory interpretation] in the context of the entire statute.” (citing *Robinson v. Shell Oil Co.*, 519 U.S. at 341)); *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012); *Bush v. United States*, 655 F.3d 1323, 1329 (Fed. Cir. 2011), cert. denied, 566 U.S. 1021 (2012).

In addition to legislative history, there are several instances in the DC Municipal Regulations that instruct that IAC is not limited to customers connected to a sanitary sewer pipe. Such regulations are found at DCMR § 21- 4101 as follows:

- 4101.5 All residential customers shall be assessed a CRIAC based on the following Six-Tier Residential Rate Structure for the CRIAC:
- 4101.6 All non-residential and multi-family customers shall be assessed ERU(s) based upon the total amount of impervious surface area on each lot. This total amount of impervious surface shall be converted into ERU(s), truncated to the nearest one-hundred (100) square feet.
- 4101.7 Impervious Only Properties are defined and subject to the follow requirements:
- Impervious Only Properties are properties that do not currently have metered water/sewer service (for example, parking lots) and may require the creation of new accounts;

Clearly, based upon definition, IAC is stormwater sewage, yet, the City Council embedded IAC in a statute referencing sanitary sewage- § 34-2107, broadening the bases for charging customers and adding impervious area in addition to water consumption and water service to a property. DC Code § 34-2108 refers solely to sanitary sewage which by definition is water service to a property using pipe, and, as such, the Hearing Officer concludes that § 34-2108 has nothing to do with IAC and does not exclude IAC charges applying to customers not connected to a sanitary sewer. The Hearing Officer concludes that § 34-2108 merely states one type of customer who has to pay what is loosely referred to as sanitary sewer service.

As such, based upon legislative history, Municipal Regulations and DC Water's stated interpretation of IAC and to whom it is applicable, the petitioners have not prevailed in showing that they are not subject to IAC because they have septic systems and are not connected by a pipe to the DC Water sewer system.

Both counsels have declared that there is no need for an evidentiary hearing.


With respect to [REDACTED], they have never had a hearing on their Administrative Hearing Petition and they have a right to hearing. The petitioners did not limit their argument to § 34-2108 excluding them from the class of customers obligated to pay IAC. They assert that stormwater from their property is not physically capable of reaching a DC Stormwater sewer and such fact is unproven. Thus, there is an issue in dispute regarding IAC and stormwater fee, which the petitioners also dispute applicability to their account. Going forward, they must prove that their property contribute no stormwater runoff to the DC sewer system. As such, the Motion for Summary Judgment as the same relates to [REDACTED] is Denied but there dispute continues for resolution of the issues remaining.

With respect to [REDACTED], the petitioner has had an administrative hearing but, moreover, the petitioner is now deceased and the property has been sold. The petitioner's entire claim against

IAC rested upon § 34-2108 and her contention that the statute excluded her from liability for payment of IAC because she had a septic system and was not connected by pipe to the DC Water sewer system. As noted above, it is the finding of the Hearing Officer that § 34-2108 does not apply to IAC and, thus, does not protect the customer from IAC charges. As such, the finding of the prior hearing officer was correct, despite the deficiencies of his written decision regarding statutes and DC Water authority. Because the property is sold, the customer's estate/trust has no liability going forward regarding IAC but does owe IAC up to the sale of the property. With respect to genuine issues in dispute, there are none regarding [REDACTED]. The customer, however, cannot prevail based upon the law because the premise of her complaint is not supported by the law. Accordingly, DC Water is entitled to judgment against [REDACTED] and that portion of the Motion for Summary Judgment relating to [REDACTED] is Denied. Hardy is responsible for IAC. Counsel for Hardy asserts that DC Water should be estopped from collecting IAC from [REDACTED] or her estate/trust due to the time lapse since the utility has charged for IAC. The Hearing Officer views DC Water having stopped imposing IAC upon the customer as analogous to the action dictated pursuant to DCMR § 21-403 whereby when a customer initiates a challenge to a bill, the customer may not pay the charge pending the investigation of the challenged bill. DCMR § 21-403.1 states the "Upon receipt of a challenge to a water and sewer bill, the Utility shall suspend the obligation of the owner and occupant to pay the contested charges contained in the bill pending investigation." DC Water determined that the IAC charges were valid and the customer went to administrative hearing which outcome was decided against the customer who then appealed to the DC Court of Appeals. This matter has been pending for a lengthy period, however, the Hearing Officer finds no fault on the part of the Utility in causing delay or harm to the customer and, as such, no basis exists to relieve the customer from liability for payment of IAC.

Accordingly, Petitioners' Motion for Summary Judgment is DENIED.

DC Water is GRANTED judgment against [REDACTED] Trust and the [REDACTED] Petition is hereby dismissed based upon the Hearing Officer determining that there are no genuine facts and questions of law at issue regarding the [REDACTED] Petition after resolution of the petitioners' motion for summary judgment. DCMR §21-416.2(d).


Janet W. Blessingame, Hearing Officer

Date: March 23, 2023

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