BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [redacted]
[redacted] Michigan Ave. NE
Washington, DC 20002

Account No: [redacted]
Case No: 22-33958

Amount and Date in Dispute:
8/11/2022 – 9/13/2022 $714.69

Before Janet W. Blassingame, Hearing Officer
February 6, 2023 at 10:00 A.M.

The customer contested a water and sewer bill for the above noted period 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 February 6, 2023. Present for hearing were: [redacted]; Kimberly Arrington, DC Water; LaFatima Black, DC Water, on behalf of DC Water; and, Stephanie Robinson, DC Water, observing only.

The property involved is a townhouse rented to [redacted] and three (3) other tenants. The property is owned by [redacted] is the tenant is charge of the water and sewer account payment. The property has three and one-half (3 ½) bathrooms, a dishwasher, a washing machine, a kitchenette in the basement and one outside faucet. The same four (4) tenants have occupied the property for the past eighteen (18) months and their water and sewer bill as ranged between One Hundred Dollars ($100.00) and One Hundred Twenty-five Dollars ($125.00) per billing cycle.

Mr. [redacted] stated that he received the bill in dispute on September 15, 2022 and he was told that high water usage occurred between September 2 and September 5, 2022, as well as, on September 11, 2022 and that almost 5000 gallons of water had been used per day. [redacted] asserted that their normal water usage for a billing cycle is 3000 – 4000 gallons. He stated that he had not been aware of registration for HUNA alerts but that the property owner has now registered to receive such alerts. Mr. [redacted] stated that he called DC Water on September 15, 2022 upon receiving the bill and he was told to check for leaks. Mr. [redacted] testified that he and his tenant mates walked throughout the house and saw no faucets running or water stains and the outside spigot was not turned on. He stated that the regular handyman who works at the house was called and the handyman, upon inspecting the house, did not find anything amiss.

Mr. [redacted] pointed out that September 2nd to 5th was Labor Day weekend and he stated that only two (2) tenants were at home during the weekend. He stated that he was at home, as well as, the tenant occupying the basement bedroom. Mr. [redacted] stated that there is one bathroom in the basement, that the master bedroom has an ensuite and that two (2) tenants share the third bathroom located upstairs. He stated that the tenants who share a bathroom were the tenants away from the house over the Labor Day weekend.

Mr. [redacted] was unhappy regarding the response or lack thereof of DC Water regarding his bill dispute and he recited the dates of contact with the utility which started on September 19, 2022 which the customer's telephone contact with the utility to dispute the bill up to November 16, 2022 when DC Water informed the customer that it had concluded that the bill was accurate. Mr [redacted] was particularly concerned regarding time delays by the utility and that, even though he was told that the water and sewer account was placed on hold pending the outcome of the bill dispute, the utility took payment from his account, nevertheless. Mr. [redacted] testified that he was told by DC Water to deactivate auto-pay on the account on October 11, 2022 and he did deactivate auto-pay on October 16, 2022. He complained that, unbeknownst to him, a payment for the bill had been taken from his account on October 12, 2022. Mr. [redacted] stated that he attempted to reach DC Water on October 18, 2022 regarding the withdrawal from his account and he found no one available to talk to and then, on October 27th, a DC Water representative called and informed him that he could not get a refund.

Mr. [redacted] asserted that water usage at the property had been totally normal and that he has no reason to believe that they used the water as charged.

Ms. Black testified that the meter reads were actual and based upon the meter reads, there was a spike in water usage at the property from September 2nd to September 5th and, then water usage declined.

Ms. Black testified that DC Water tested the water meter on January 23, 2023 and the water meter was determined to have 100.09% accuracy. Ms. Black pointed out that DC Water follows the standards set by the American Water Works Association and that a water meter is considered functioning accurately if between 98.5% and 101.5%.

Ms. Black pointed out that the account had not been signed up to receive high-water usage alerts (HUNA alerts) but that Mr. [redacted] was added to the account as an authorized third party on September 6, 2022. Mr. [redacted] interjected that a previous tenant had been responsible for utility payments at the house and when the responsibility for the utility was passed over to him, he simply kept the account of the previous tenant without establishing himself on the water and sewer account. He explained that in using the account as established by the prior tenant, he was able to monitor the account using the other tenant's log-in. Mr. [redacted]

stated that he had functioned using the log-in of the prior tenant for approximately five (5) months. Mr. [redacted] stated that he did not see high water usage occurring on the account until after he received the water and sewer bill.

Mr. [redacted] reiterated his complaint that initially he was told that a hold would be placed on the account but he was not told that he had to cancel auto-pay in order to avoid payment.

Ms. Black explained that because Mr. [redacted] was accessing the account by using another individual's access/log-in, when he called DC Water to discuss the account, he was not a authorized person and the service representative could not discuss the account with him until he was added by the property owner as an authorized person on the water and sewer account.

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

Ms. Black concluded that because of tests and checks were inconclusive of what caused the high usage at the property, 21 DCMR §408.1 applied in this matter and the customer was not entitled to adjustment of the account for the excessive water usage.

Mr. [redacted] stated that he would be fine paying the bill if he knew what caused the usage.

Ms. Black stated that when the utility places an account on hold, the hold does not stop auto-pay. What the hold does accomplish is that the customer is not charged late fees and dunning while the dispute is pending.

Mr. [redacted] asserted that the only plumbing performed at the house was regarding a shower distributor. He stated that the handyman comes 1 -2 times a month on a on-call basis. He noted that the half-bath toilet had a flapper replaced when the tenants moved into the house but in this instance regarding the bill in dispute, the handyman checked the toilets, faucets and did a visual walk-thru and found nothing wrong. Mr. [redacted] added that a month before the bill in dispute, the rear porch was powered washed. Mr. [redacted] asserted that after the power washing, the meter reads were no where near what was asserted as having registered during the alleged spike.

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 rented townhouse occupied by four (4) tenants, one of whom is [redacted]. (Testimony of [redacted])
2. The period in dispute is August 11, 2022 to September 13, 2022. (Testimony of the

parties)

3. There was a significant increase is water usage registered on the water meter starting September 2, 2022 to September 5, 2022, after which usage declined until September 11, 2022 for that day only and, then, usage declined and has remained normal. (Testimony of the parties)
4. Two (2) of the four (4) tenants were away from the house during the Labor Day weekend which was when the initial spike in usage occurred. (Testimony of [redacted])
5. The tenants were aware of any increased water usage occurring at the property until receipt of the water and sewer bill on or about September 15, 2022. (Testimony of [redacted])
6. After receipt of the water and sewer bill, the tenants and a handyman conducted walk-thru of the property and found no evidence of water stains, leaking faucets or defective toilets. (Testimony of [redacted])
7. The property owner had failed and/or neglected to register the property for HUNA alerts when high-water usage occurred at the property and no alerts were sent by the utility regarding the high usage occurring in September 2022. (Testimony of the parties)
8. DC Water tested the water meter and the meter was determined to have 100.09% accuracy. (Testimony of LaFatima Black)
9. DC Water conducted an investigation of the bill dispute and its investigation found no evidence of meter overread, faulty computation of the bill or meter malfunction. (Testimony of LaFatima Black)
10. The meter reads upon which the customer's bill was based were actual read transmitted from the property; such reads allowed the utility to pinpoint when and the amount of water used on an hourly basis. (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 douftful 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. 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 is this case failed to establish that more likely than not the bill in dispute was wrong or for some other reason, he should not be responsible for its payment.

High water usage registered on the customer's water meter over the Labor Day weekend of year 2022 and then during one additional day about one week after the initial increase in usage. Both times of increase usage declined without need for repairs by either DC Water or a plumber and water usage at the property has remained within normal range thereafter.

Even though through use of its electronic meter reads, the utility can pinpoint to the exact hour when high water usage was occurring at the property, the property's water and sewer account had not been registered by the property owner or any authorized third-party tenant to receive HUNA alerts (high-water usage notification alerts) of when high water usage was occurring. As such, the tenants were unaware when high usage was occurring. By the time that the tenant received the water and sewer bill which reflected high water usage occurring during the billing cycle, the water usage had returned to normal. Thus, when the tenants and handyman looked for a cause of high usage almost a week after the last occurrence, nothing was found amiss. As such, the inspections of the property for leaks and plumbing issues by the tenant and handyman have no relevance since high usage was not occurring when the inspections were performed.

On DC Water's part, the utility was able to present a meter test reflecting that that the water meter was functioning accurately. The utility conducted its investigation of the bill dispute and found no evidence of meter overread, faulty computation of the bill or meter malfunction. Moreover, the utility could pinpoint when the high usage occurred and when it declined by review of the meter reads from the property.

21 DCMR §408 dictates that when all tests and checks fail to disclose the cause of excessive water usage at a property, the customer's account is not adjusted for the excessive water consumption.

In this case, if the customer had been registered for HUNA alerts, the water loss might have been mitigated because an inspection could have occurred while the high usage was

occurring. Unfortunately, by the time that customer became aware of the high usage, the usage had decline and no cause was apparent. What DC Water was able to prove, however, was that its equipment was functioning property and that high water usage did occur at the house on the dates/times reflected by the meter reads. The customer had nothing to refute the evidence of the utility and, as such, the determination by DC Water that the charge is correct and proper and no basis exists to adjust the account is hereby AFFIRMED.

Janet W. Blassingame, Hearing Officer

Date: March 23, 2023

Copy to:

Mr. [redacted]
[redacted] Michigan Avenue, NE
Washington, DC 20002

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [redacted]
Steven Smallwood, Personal Representative
1222 Pickering Circle
Upper Marlboro, MD 20774

Service Address:
[redacted] Minnesota Avenue, NE

Account No: [redacted]
Case No: 22-463165

Amount and Period in Dispute:
4/21/2022 – 5/19/2022 $543.84

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

The customer contested a water and sewer bill for the above noted period 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 January 10, 2023. Present for the hearing were: Steven Smallwood, Personal Representative of the Estate of [redacted], deceased; Arlene Andrews on behalf of DC Water; Kimberly Arrington, DC Water; and, Stephanie Robinson, DC Water, observing only,

The property involved is a single-family residence having one and one-half (1 ½) bathrooms, two (2) outside faucets and a kitchen. The property was owned by [redacted] who died December 7, 2021. Mr. Smallwood, the personal representative of the estate of Ms. [redacted], stated that the property was sold in June 2022. He stated that, before the sale of the property, there were bolt locks on the front and back entrances and he would regularly visit the property. Mr. Smallwood testified that he had the decedent's possessions hauled away and he cleaned of the property. He stated there was always someone watching the property because of the neighbor living next door. He stated that he checked the mail delivered to the house. He stated that there was no lock box placed on the property and that the property was place on the realty market in March 2022. Mr. Smallwood stated that he would meet prospective buyers at the house for their inspection and that they would walk around house and essentially only look at the shell of the house because they were investors intending to renovate the property.

Mr. Smallwood stated that the water and sewer bills between December 2021 and March 2022 were approximately Forty Dollars ($40.00) per billing period.

Mr. Smallwood stated that he could not understand why the water and sewer bill was so large and that it just did not make sense to him. He stated that he did not see any leaks and that he checked the property for water issues upon receipt of the high bill and detected no problems.

Mr. Smallwood acknowledged that he did not turn-off the water within the house between the death of the owner and the sale of the property.

Ms. Andrews testified that the meter reads from the property were actual and had been taken hourly and transmitted by electronic signal by a data collection box.

Ms. Andrews testified that DC Water pulled the water meter at the property for testing on October 31, 2022 and the meter was tested on November 2, 2022 and determined to have 100.46% accuracy. Ms. Andrews explained that DC Water abides by the water meter standards set by the American Water Works Association and that a water meter is considered to be functioning accurately if between 98.5% and 101.5%.

Ms. Andrews stated that the spike in water usage occurred at the property between April 4, 2022 and May 22, 2022. She stated that the increased usage would start for a few hours, stop and then, restart. She stated that water usage stopped on May 17, 2022 and then restarted and ran continuously from May 18, 2022 until May 22, 2022. She pointed out that by the time of the utility's investigation of disputed bill, there was little or no water usage at the property and because of the usage declining, it was the conclusion of the utility that whatever had caused the increased usage had been controlled at the property.

Ms. Andrews testified that based upon the investigation conducted by DC Water, no evidence of meter overread, faulty computation of the bill or meter malfunction was found.

Ms. Andrews concluded by stating that because that findings were inconclusive of the cause of the high-water consumption, 21 DCMR §408.1 was applicable and the customer was not entitled to any adjustment of the account.

On cross-examination by Mr. Smallwood, Ms. Andrews stated that the water meter at the property is located outside of the residence and that there are two (2) components regarding meter reads- the water meter and the transmitter unit (MTU). She stated that meter reads are transmitted hourly. Ms. Andrews testified that the utility sent a total of twenty (20) high water usage alerts (HUNA alerts) to the customer between May 7, 2022 and May 22, 2022.

Mr. Smallwood stated that the bill history was:

2/18/2022 - $38.78
3/2022 - $43.93
4/2022- $55.65
5/2022-$319.41 (the disputed bill of $543.84 against which a credit of 224.49 was applied)

Mr. Smallwood stated that there is enormous construction occurring in the area near the property. Ms. Andrews responded that any water used on the public side would not go thru the customer's water meter and that only water used at the property would register on the customer's water meter. She stated that wasted water goes back in the sewer and that water, in this case, was controlled at the premise. Ms. Andrews stated that the HUNA alerts were sent to 202-398-5xxx which Mr. Smallwood acknowledged is a defunct phone line.

Mr. Smallwood concluded by asserting that the property was secure and there were no running toilets.

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 residence whose owner died in December 2021. (Testimony of Steven Smallwood)
2. The period in dispute is April 21, 2022 to May 19, 2022. (Testimony of the parties)
3. After the death of the property owner, a personal representative was appointed and the Personal Representative of the Estate cleaned out the property and hauled the decedent's possessions hauled away. Bolt locks were on the front and back entrances and the property was monitored by a next-door neighbor and the Personal Representative would regularly come to the property. (Testimony of Steven Smallwood)
4. The Personal Representative was unaware of any water issues within the residence and he inspected for leaks upon receipt of the bill in dispute and detected no leaks. (Testimony of Steven Smallwood)
5. There was a significant increase in water usage at the property between April 4, 2022 and May 22, 2022. Water usage stopped on May 17, 2022 but restarted and ran continuously between May 18, 2022 until May 22, 2022 when usage decreased. (Testimony of Arlene Andrews)
6. DC Water sent high water usage alerts starting May 7, 2022 for a total number of HUNA alerts of 20 having been sent in an effort to notify of high-water usage occurring at the property. (Testimony of Arlene Andrews)
7. During the hearing, the personal representative of the Estate advised that the telephone number on file with the utility for notifications of high usage was a defunct telephone number. (Testimony of Steven Smallwood)
8. The utility tested that water meter and the meter was determined to have 100.46% accuracy. (Testimony of Arlene Andrews)
9. The utility's investigation of the bill dispute disclosed no evidence of meter overread, faulty computation of the bill or meter malfunction. (Testimony of Arlene Andrews)
10. Water usage declined significantly on May 22, 2022 and remained little or no usage until the sale of the property. (Testimony of the parties)
11. The utility concluded that the usage had been controlled within the property because water usage declined without necessity of repairs being made. (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 douftful 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 Personal Representative of the Estate of [redacted], deceased, failed to establish by a preponderance of the evidence that more likely than not the water charge by the utility was wrong or for some other reason the Estate should not be responsible for payment.

The evidence and testimony established that the water meter was functioning accurately and there was no evidence of faulty calculation of the bill. The utility, also, established its efforts to notify the customer of high-water usage occurring at the property and testimony was that 20 HUNA alerts had been sent by the utility during a span a little over two (2) weeks between May 7, 2022 and May 22, 2022. The utility, also, was able to pinpoint when the high usage started and ended and the Personal Representative had to acknowledge several facts. First, it was acknowledged that the water was not turned off at the property following the owner's death and the property was vacant. Second, that individuals were inside of the property both during the cleaning and removal of the decedent's possessions and when the property was listed for sale and

prospective buyers toured the property. Third, , the Personal Representative does not know the cause of the usage and performed only a visual inspection after receiving the bill in dispute and, by that time, the high usage had declined. Fourth, despite efforts by the utility to notify of high usage occurring at the property, the telephone number on file with the utility was not a working number and, as such, the Personal Representative was unaware of the NUNA alerts.

The utility's representative acknowledged that she does not know the cause of the high-water usage that occurred at the property but she cited 21 DCMR §408 which 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 due to the defunct telephone line 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 and, as such, the water and sewer bill is a debt of the estate. 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

Janet W. Blassingame, Hearing Officer

Date: Mar. 23, 2023

Copy to:

Steven Smallwood, P.R.
Estate of [redacted], dec.
1222 Pickering Circle
Upper Marlboro, MD 20774

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: [redacted]
[redacted] Upton Street, NW
Washington, DC 20008-1151

Service Address: [redacted] Irving Street, NW

Account No: [redacted]
Case No: 22-462939

Amounts and Periods in Dispute:

3/26/2022 – 4/26/2022	$463.71
4/27/2022 – 5/25/2022	$203.22
5/26/2022 – 6/27/2022	$239.50
6/28/2022 – 7/11/2022	$ 19.12

Before Janet W. Blassingame, Hearing Officer
January 17, 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 January 17, 2023. Present for the hearing were: [redacted] and [redacted], co-owners of the property; Arlene Andrews on behalf of DC Water; Kimberly Arrington, DC Water; and, Stephanie Robinson, DC Water, observing only.

The property involved is a row house owned by Mr. [redacted] and Mr. [redacted] for the past seventeen (17) years. The property has four (4) bathrooms, a kitchen, a washing machine, a dishwasher, radiators, and one faucet in the garage. The property had been rented to tenants for five (5) years who vacated on March 31, 2022. The owners started to clean out the property on April 1, 2022 and with their contractor conducted an inspection of the house. Thru April 2022, cleaning and repairs of the property were performed and approximately four (4) people would be at the property during the cleaning/repair phrase. Mr. [redacted] stated that when the tenants occupied the premises, the water and sewer bill was approximately $100.00 per billing period. He stated that there were five (5) tenants occupying the house,

Mr. [redacted] stated that he has no idea of any cause for high usage at the house. He testified that, in reviewing the usage history, he can see spikes on particular days. He, also, stated that a plumber inspected the property and the only thing that the plumber did was snake and replace a shower head on June 16, 2022.

Mr. [redacted] stated that the prospective buyers of the house inspected the property and

cited no issues. The property was sold on July 11, 2022.

On cross-examination, Mr. [redacted] stated that he was unaware that the utility had sent high-water usage alerts (HUNA alerts) to a 703-area code number on file with the utility regarding the property account. He stated that he learned of the alerts during communication with Arlene Andrews of DC Water on June 29, 2022.

Ms. Andrews testified that the meter reads from the property were actual reads which are transmitted by electronic signal to the nearest tower.

Ms. Andrews stated that the utility pulled the water meter for testing on December 21, 2022 and the meter was tested on January 26, 2023 and determined to have 99.84% accuracy. Ms. Andrews explained that DC Water follows the standards established by the American Water Works Association and that water meter are considered to be functioning accurately if between 98.5% and 101.5%. Ms. Andrews added that a water meter only turns registering water usage when water goes thru the meter. She further stated that there are no misreads on automated meters because of the electronic transmission and that a water meter cannot auto-repair.

Ms. Andrews testified that DC Water sent the customers a total of six (6) HUNA alerts to the telephone number on file with the utility. She stated that the high usage alerts were sent on 4/10/2022, 4/13/2022, 4/26/2022, 5/14/2022. 6/1/2022 and 6/10/2022, and all alerts were shown to have been successfully sent and delivered.

Mr. [redacted] acknowledged that he had utilized a management company for the past 4 – 5 years up to the sale of the property and the telephone number on file with the utility might be related to the management company. He asserted, however, that the owners were not informed of the alerts sent by the utility.

Ms. Andrews acknowledged that the owners sent a plumber's report to the DC Water and contractor's proposal to the utility. Ms. Andrews forwarded these documents to the Hearing Officer on January 17, 2023. [The plumber's report reflected that snaking had been performed on the sewer. The contractor's proposal outlined work repairs to the property]

Ms. Andrews testified that water usage at the house declined on June 9, 2022. She stated that the spike in usage started on April 9, 2022 and that water ran continuously with usage going up and down. She asserted that based upon the evidence relating to the spike, it was concluded by the utility that the usage was controlled at the premises. Ms. Andrews testified that based upon DC Water's investigation of the bill dispute, no evidence of meter overread, faulty computation or meter malfunction was found.

Ms. Andrews concluded stating that because all tests and checks resulted in inconclusive findings of any cause of the high-water usage, 21 DCMR § 408.1 applied in this matter and, as such, the customers were not entitled to any adjustment of the account.

Based upon the foregoing evidence and testimony adduced during the hearing, the

Hearing Officer makes the following:

FINDINGS OF FACT

1. The property was a row house owned by [redacted] and [redacted] which they had rented to tenants for five (5) years prior to the bill dispute; the property was sold on July 11, 2022. (Testimony of [redacted]; record in this matter)
2. The tenants vacated the property on March 31, 2022 and the co-owners assumed possession and began cleaning and repair of the property, using a contractor which had up to four (4) employees working at the property at various times. The repair/cleaning at the property continued thru out the month of April 2022. (Testimony of [redacted])
3. The period in dispute is March 26, 2022 to June 27, 2022. (Testimony of the parties)
4. High-water usage occurred at the property starting April 8, 2022 and continued until it deceased on June 9, 2022. (Testimony of Arlene Andrews)
5. DC Water sent HUNA alerts of high-water usage occurring at the property on 4/10/2022, 4/13/2022, 4/26/2022, 5/14/2022, 6/1/2022 and 6/10/2022. (Testimony of Arlene Andrews)
6. The property owners utilized the service of a management company and were unaware of the alerts sent by the utility advising of high-water usage occurring at their property. (Testimony of [redacted])
7. The utility tested the water meter and the meter was determined to have 99.84% accuracy. (Testimony of Arlene Andrews)
8. The utility investigated the bill dispute and based upon its investigation found no evidence of meter overread, faulty computation of the bills or meter malfunction. (Testimony of Arlene Andrews)
9. The property owners were unaware of any plumbing or water issues at the property. (Testimony of [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 douftful 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 customers and in favor of the utility that the bills are correct and the customers are not entitled to an adjustment of their account and, in this case, a refund of money paid for water and sewer service.

The customers in this matter were unaware of high-water usage occurring it their rental property because they did not see any water or plumbing defects and a contractor did not make them aware of any plumbing issues in the house. At the same time, however, DC Water was sending multiple high-water usage alerts regarding high-water usage occurring at the property to a telephone number on file with the utility for the purpose of usage notification. During the hearing, one of the owners acknowledged that they used a management company regarding the property and that the telephone number on file with the utility may have been related to the company. The owner asserted that the company did not notify them of receiving any high-water usage alerts relating to their property. There was also testimony that the owners and up to four (4) workers were in the house doing cleaning and repairs thru-out the month of April 2022 and, further, that the property was sold in July 2022. The Hearing Officer surmises that prospective buyers and realtors were also in the house pending its sale. An owner, also, testified that the buyer inspected the house. As such, the Hearing Officer concludes that there was a change in occupancy, numerous people in the house working, viewing or inspecting the property over the course of the period in dispute, all occurring during the period that the utility was sending alerts of high-water usage occurring at the property.

DC Water established, by testing the water meter, that its water meter was functioning within accepted perimeters of meter accuracy. The utility, in its investigation of the dispute, found no evidence of faulty computation of the bills, meter overread or meter malfunction. The utility established that its alert system sent numerous alerts of high-water usage occurring at the property during the period in dispute. And the utility was able to pin-point based upon meter reads transmitted from the property by electronic transmission exactly when the high usage started and when it declined.

Based on the foregoing, the Hearing Officer can find no fault of DC Water to cause the

increased water usage at the customers' property but, at the same time, the Hearing Officer sees opportunity for increased water usage at the property due to a change in occupancy, the work being performed at the premises and the traffic going in and out of the property pending not only its preparation for sale but during the selling process, all of which was occurring during the period in dispute.

21 DCMR §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.

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: March 23, 2023

Copy to:

Mr. [redacted]
[redacted] Upton Street, NW
Washington, DC 20008-1151

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

DEPARTMENT OF CUSTOMER SERVICES

IN RE: The Dorren G. Miller Trust
c/o [redacted]
[redacted] Warren St. NW
Washington, DC 20016

Account No: [redacted]
Case No: 22-583422

Amount and Date in Dispute:
7/13/2022 – 8/9/2022 $798.21

Before Janet W. Blassingame, Hearing Officer
February 6, 2023 at 12:00 Noon

The customer contested a water and sewer bill for the above noted period 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 February 6, 2023. Present for hearing were: [redacted], Arlene Andrews on behalf of DC Water; Kimberly Arrington, DC Water; and, Stephanie Robinson, DC Water, observing only.

The property involved is a single-family residence having one kitchen, 5 ½ bathrooms, an irrigation system, dishwasher, two (2) washing machines 3 – 4 outside faucets, and two (2) utility sinks. Three (3) individuals reside in the home and the water and sewer bill has, historically, ranged between $240.00 and $300.00 per billing cycle.

Mr. [redacted] testified that he and his wife were out-of-town from August 1, 2022 to August 13, 2022 and, that his daughter left the house and was out-of-town from August 6, 2022 to August 13, 2022. He stated that he was told by DC Water that a spike in water usage occurred at the property from August 4, 2022 to August 9, 2022 and, again, for one day on August 12, 2022. He stated that a housekeeper was present in the home for a half day on August 10, 2022 and that the housekeeper did not notice any problem. Mr. [redacted] stated that he never received a high-water usage alert from DC Water. He added that when he returned home on August 13, 2022, there was no evidence of any water problem or of a leak within the home.

Mr. [redacted] testified that he had the irrigation system tested in response to the high bill and no problem was found regarding the irrigation system. He stated that he did not hire a plumber because he did not believe such was necessary. He pointed out that in August 2022, DC Water had no meter reads from his property for nine (9) days, whereas, in prior months, the utility had daily meter reads.

Mr. [redacted] proposed that DC Water adjust his bill based upon customary water usage. He added that he was frustrated trying to probe a negative and he asserted that nothing has changed at the property since they moved in. He stated that the property was part of a development in the late 1980's and that his house was built in 1990. He acknowledged that there was some increased water usage in September 2022 but he asserted that water usage is now back to normal. He added that he wanted to dispute his September 2022 bill for the period August 10, 2022 to September 12, 2022 in the amount of $390.00 but he failed to challenge the bill in time.

Mr. [redacted] asserted that there were no past spikes in usage at the property until the bill at issue and there have been no further spikes in water usage at the property.

Ms. Andrews asserted that the meter reads are actual and were based upon field reads. She stated that DC Water billed the customer based upon a field read of the water meter taken on August 9, 2022. Ms. Andrews stated that she does not know why a technician was sent to the property to read the water meter but that the field reading was in-line with transmitted reads from the property. She acknowledged that from August 8, 2022 at 8:00 pm to August 12, 2022 at 2:00 p.m., there were no transmitted meter reads from the property. Ms. Andrews, however, asserted that the lack of transmitted meter reads is not relevant because the water meter registers the water going thru the meter and the meter continues to register usage even if the transmitter fails to send a reading. She asserted that the failure to transmit the meter read has no effect upon water usage registering on the water meter.

Ms. Arrington interjected to explain that the transmitter failed to send meter reads five (5) days before it was time to bill the account and as such, the lack of transmitted reads from the property triggered a technician being sent with a handheld meter reader to obtain a field read on the 9th of August, 2022.

Ms. Andrews testified that DC Water tested the water meter and the meter was determined by 00.72% accuracy. She explained that DC Water abides by the standard for water meter accuracy established by the American Water Works Association and that a water meter is considered to be functioning accuracy if its accuracy range is between 98.5% and 101.5%. She stated that a water meter only advances when water is being used. She added that there are no misreads due to automatic transmission of the meter reads and she explained that the customer failed to receive an alert of high water usage occurring at the property because the account threshold for a HUNA alert in this case was 6 times normal usage and the threshold for an alert was not met during the spike that occurred at the property.

Ms. Andrews stated that a technician was sent to the property on October 28, 2022 to check the water meter and at that time, the technician took a picture of the read on the water meter.

Ms. Andrews concluded that water was controlled internally at the property and she asserted that based upon the utility's investigation of the dispute, no evidence was found of meter

overread, faulty computation of the bill or meter malfunction and as such, the tests and checks were inconclusive of findings the cause of the increased usage. She asserted that 21 DCMR 408 regarding inconclusive findings was applicable in this matter and the customer was not entitled to an adjustment of the account.

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 residence occupied by [redacted] and his wife and daughter. (Testimony of [redacted])
2. The period in dispute is July 13, 2022 to August 9, 2022. (Testimony of the parties)
3. There was a significant spike in water usage at the property from August 4, 2022 to August 9, 2022 and again on August 12, 2022. (Testimony of the parties)
4. The September 2022 billing statement reflected higher than normal water usage during its billing period and the customer expressed that he wanted to dispute that bill as well but he failed to make a timely challenge of the bill which covered the period August 10, 2022 to September 12, 2022. (Testimony of [redacted])
5. Mr. and Mrs. [redacted] were out-of-town from August 1, 2022 to August 13, 2022. (Testimony of [redacted])
6. The [redacted]'s daughter was away from the house from August 6, 2022 until August 13, 2022. (Testimony of [redacted])
7. A housekeeper had access to residence and was at the residence for a half-day on August 10, 2022. (Testimony of [redacted])
8. Upon return to the property on August 13, 2022, Mr. [redacted] was unaware of any water problem or leaks at the property. (Testimony of [redacted])
9. The housekeeper did not report any leaks or water problem when she was at the property in the absence of the [redacted] Family. (Testimony of [redacted])
10. There is an irrigation system at the property and in response to receipt of the high bill, Mr. [redacted] had the irrigation system checked and no problem was found. (Testimony of [redacted])
11. Mr. [redacted] has not been aware of any water or plumber issue at the property both past and present. (Testimony of [redacted])
12. There was a period from August 2, 2022 to August 4, 2022 during which the meter read transmitter failed to transmit meter readings from the property and this transmission failure triggered the utility sending a technician to read the customer's water meter for billing purposes. (Testimony of Kimberly Arrington)
13. The customer was billed by DC Water based upon a field read by a technician for the period in dispute. (Testimony of Arlene Andrews)
14. The field read upon which the customer was billed was in-line with transmitted meter reads from the property. (Testimony of Arlene Andrews)

15. The water meter was tested by the utility and the meter was determined to have 99.72% accuracy. (Testimony of Arlene Andrews)
16. During the utility's investigation of the customer's bill dispute, no evidence was found of meter overread, faulty computation of the bill or meter malfunction. (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 douftful 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.

4. 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 testified that he and his wife were out-of-town during the period that a spike in water usage occurred. He, further, testified that he was unaware of any leaks or plumbing issues at the residence and that his water usage has been within normal range both prior to and after the spike periods. He testified that the irrigation system at the property was not

the cause of any spike in water usage because he had the system checked. He, also, testified that he did not hire a plumber and no plumbing work has been performed.

The problems in the customer's presentation were with respect to the presence of his daughter and housekeeper during the spike period. The customer's daughter was presence in the home when the increased water usage began on August 4, 2022, even though her parents were gone from the residence as of August 1, 2022. The customer's daughter left the residence on August 6, 2022 and the water usage continued through August 9, 2022. The customer stated that the housekeeper was at the residence on August 10, 2022; August 10, 2022 was the day that water usage returned to normal.

On DC Water's part, the utility presented evidence that the water meter was functioning within accepted range of accuracy at 99.72%. The utility, also, presented its investigation findings of no evidence of meter overread, faulty computation of the bill or meter malfunction.

It was also significant that the day that the residents returned home coincided with the end of the spike. Testimony was that there was a spike on August 12th. The residents returned home on August 13, 2022 and thereafter, water usage was normal.

DC Water asserted that water usage causing the spike was controlled within the residence. The tests and checks by both sides revealed no cause for the increased usage that occurred at the property, the tests and checks found no fault or error on the part of DC Water and its equipment that could have caused the increased usage. The Hearing Officer finds it significant that the spike in usage occurred when the residents were away from home, stopped when the housekeeper was present in home and, then, the one day spike stopped when the residents returned home. Oftentimes when people leave for a holiday, the last thing one does is use the bathroom. If the toilet flapper sticks, the water will run until someone returns and uses the toilet again. In this case, when the housekeeper flushed the toilet, the toilet flapper may have unstruck, causing the spike to stop. What caused the usage on the 12th cannot be speculated but the return of the parties to the residence and their use of a bathroom, may have caused the usage to stopped. Again, the scenario put forth above is purely speculative, however, it is plausible based upon the facts in this matter as basis for the utility's assertion that the usage was controlled at the premises and, as such, the liability of the property owner/resident.

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. Blassingame, Hearing Officer

Date: March 23, 2013

Copy to:

Mr. [redacted]
[redacted] Warren Street, NW
Washington, DC 20016

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 — Account No: [redacted]
Washington, DC

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 [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.)

[redacted]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 [redacted] property.

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

[redacted] died in year 2021 and her property was conveyed to the [redacted] 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. [redacted], a Corrected Order dated September 11, 2021 was issued containing memorialization of the attorneys' affirmation that there is no dispute as to the [redacted] 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 [redacted] and [redacted] filed A Joint Motion of Petitioners [redacted] and [redacted] to (1) Prioritize the Hardy Case as the Lead Case; (2) Revise the Briefing Schedule In the [redacted] Case; and (3) Hold the [redacted] Case in Abeyance Until a Final Decision Has Been Made by the Hearing Officer in the [redacted] Case. Mr. Gardner repeatedly represented that the facts in the [redacted] Case and the [redacted] 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 [redacted] and [redacted] 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-adjoining 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 sharge for discharges of groundwater, but shall pay for discharges of cooling water into a District-owned sanitary of 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 that 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 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:

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 IAC 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 Bl 7-0935, the "Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" November 21, 2008

Bl 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 CS0s. 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 L TCP 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:

	Effective October 1, 2022		**Effective October 1, 2023**	
Customer	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:

	Effective October 1, 2022		**Effective October 1, 2023**	
Customer	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:

	Effective October 1, 2022		**Effective October 1, 2023**	
Customer	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 [redacted] *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 CS0s. 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 L TCP 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 base 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.dcwater.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. Blassingame, Hearing Officer

Date: March 23, 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