



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

Board of Directors

Special DC Retail Water and Sewer Rates Committee

Tuesday, December 18, 2018

2:00p.m.

- 1. **Call to Order** **Rachna Bhatt, Chairperson**
- 2. **DC Legal Sufficiency Review EOPR CRIAC Relief Program (Attachment A)** **Matthew Brown**
- 3. **Action Item (Attachment B)** **Matthew Brown**
 - **Approval to Expand DC Water’s Customer Assistance Program (CAP) to Eligible Customers (Action Item 1)**
- 4. **Other Business** **Matthew Brown**
- 5. **Executive Session***
- 6. **Adjournment**

FOLLOW-UP-ITEMS – DC Retail Water and Sewer Rates Committee Meeting (December 6, 2018)

There were no follow-up items

* The DC Water Board of Directors may go into executive session at this meeting pursuant to the District of Columbia Open Meetings Act of 2010, if such action is approved by a majority vote of the Board members who constitute a quorum to discuss: matters prohibited from public disclosure pursuant to a court order or law under D.C. Official Code § 2-575(b)(1); contract negotiations under D.C. Official Code § 2-575(b)(1); legal, confidential or privileged matters under D.C. Official Code § 2-575(b)(4); collective bargaining negotiations under D.C. Official Code § 2-575(b)(5); facility security under D.C. Official Code § 2-575(b)(8); disciplinary matters under D.C. Official Code § 2-575(b)(9); personnel matters under D.C. Official Code § 2-575(b)(10); proprietary matters under D.C. Official Code § 2-575(b)(11); decision in an adjudication action under D.C. Official Code § 2-575(b)(13); civil or criminal matters where disclosure to the public may harm the investigation under D.C. Official Code § 2-575(b)(14), and other matters provided in the Act.

ATTACHMENT A

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



**ATTORNEY GENERAL
KARL A. RACINE**

Legal Counsel Division

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

MEMORANDUM

**TO: David Dickman
General Counsel
Department of Energy and Environment**

**FROM: Janet M. Robins 
Deputy Attorney General
Legal Counsel Division**

DATE: December 6, 2018

**SUBJECT: Legal Sufficiency Review – Emergency and Proposed Rules Establishing
Impervious Surface Area Fee Relief Programs
(AR-18-470)**

You asked us to review emergency and proposed rules establishing financial assistance programs to assist residents and nonprofit organizations with their impervious area charges. The revised draft rules, which reflect changes our office recommended and your office approved, are legally sufficient.

“Impervious surfaces such as rooftops, paved driveways, patios, and parking lots are major contributors to stormwater runoff entering the District’s combined sewer system.”¹ The District of Columbia Water and Sewer Authority (“DC Water”) therefore adds a Clean Rivers Impervious Area Charge, or CRIAC,² to the bills of residential, family, and non-residential customers. Subsequently, the Council adopted the District of Columbia Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018 (“Act”),³ which directed the Mayor to establish financial assistance programs to help residents and nonprofit organizations pay these

¹ Dist. of Columbia Water and Sewer Auth., “Impervious Area Charge,” <https://www.dewater.com/impervious-area-charge> (last visited Dec. 4, 2018).

² The Act, cited in footnote 3, calls this charge simply the “impervious area charge,” just as DC Water’s website does.

³ Effective October 30, 2018 (D.C. Law 22-168; 65 DCR 9487).

charges. We have reviewed and approved a draft Mayor's Order delegating much of this responsibility to the Department of Energy and Environment ("DOEE"), and the rules (which may be adopted after the Order is signed) outline how the required programs would operate.

Financial assistance for residents would operate under a three-tier relief program for residential customers. The first tier is the Capital Assistance Program, or CAP. This program, already operated by DC Water, would continue to provide water and sewer relief, as well as CRIAC relief. Consistent with the Act, however, DOEE would determine each applicant's eligibility for the CRIAC portion of the program.⁴ The second tier, designated CAP2, would involve both water and sewer relief and CRIAC relief. DOEE would operate the CRIAC portion of the program. The third tier, CAP3, would simply be a DOEE-run CRIAC-relief program. Together, these three tiers would comprise the residential assistance program the Act requires.

Nonprofits would receive CRIAC assistance under a single program run by DOEE. To qualify for the program, a nonprofit would need to show financial hardship, meaning that its CRIAC is at least 1% of its annual revenue less expenses.⁵ The nonprofit would need to take steps toward on-site or off-site stormwater mitigation. This could mean installing or maintaining an on-site stormwater mitigation program, or maintaining an on-site project that already exists. It could also, if an on-site project is not feasible, mean obtaining and retiring (or already having obtained and retired) Stormwater Retention Credits, which fund stormwater relief projects elsewhere in the District. Alternatively, the nonprofit could forgo some of the benefit to which it would otherwise be entitled, and the DOEE would use those benefit funds to support stormwater relief projects.

I have signed the accompanying transmittal form. If the DOEE chooses to convert these proposed rules into final rules after the public comment period ends, that Notice of Final Rulemaking should be submitted to the Office of Documents and Administrative Issuances without returning to this Office unless: (1) there are changes to the substance of the rulemaking reviewed by this Office that go beyond the agreed-upon revisions to these draft proposed rules; or (2) there are new comments that question the legality of the rulemaking.

If you have any questions about this memorandum, please contact either Josh Turner at 442-9834, or me at 724-5524.

JMR/jat

⁴ See Act § 6052(b) (65 DCR 9488).

⁵ Although the eligibility requirements for religious nonprofits and nonprofit cemeteries under the rules are the same as for charitable nonprofits, the filing requirements differ slightly. Charitable organizations must submit an IRS Form 990; religious nonprofits and nonprofit cemeteries may self-certify. The reason for this, you have advised, is that religious nonprofits and nonprofit cemeteries, unlike charitable nonprofits, are not required to file Form 990 with the IRS.

DATE AND TIME RECEIVED
Office of Documents use only

RULEMAKING TRANSMITTAL FORM

TYPE OF RULEMAKING ACTION: X EMERGENCY RULES

FINAL RULES X PROPOSED RULES COMBINED

AGENCY: Department of Energy and Environment

AGENCY REPRESENTATIVE: Marc Nielsen

ADDRESS: 1200 First Street, NE, 5th Floor, Washington, D.C. 20002

TELEPHONE: (202) 497-7700

TITLE AND DESCRIPTION OF RULES: The rulemaking establishes eligibility criteria for participation by additional DC Water Residential Customers in an expansions of the existing DC Water Customer Assistance Program (CAP), referred to herein as CAP2 and CAP3. The program provides eligible DC Water Residential Customers with credits towards their DC Water impervious are charge called the Clean Rivers Impervious Surface Area Charge (CRIAC), and credits towards other DC Water water and sewer service charges. The rulemaking also sets forth the process, criteria, and appeal procedures for the Department's determination of financial eligibility for CAP2 and CAP3. Last, the rulemaking also establishes a CRIAC Nonprofit Relief Program for certain nonprofit organizations located within the District of Columbia.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation), and Title 20 (Energy Assistance and Conservation Programs) of the District of Columbia Municipal Regulations (DCMR).

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR DATE:

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 et seq. (2013 Repl. & 2017 Supp.)); the District of Columbia Water and Sewer Authority Rate Increases Mitigation Amendment Act of 2018, -----; and Mayor's Order 2006-61, dated June 14, 2006.

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

FINAL CONDITIONAL

SIGNED: Janet M. Robins **PHONE:** 202-724-5524
NAME: Janet M. Robins **TITLE:** Deputy Legal Counsel
 Director

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote):

Tommy Wells

TITLE: Director of the Department of Energy and Environment

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules: District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 et seq. (2013 Repl. & 2017 Supp.)); the District of Columbia Water and Sewer Authority Rate Increases Mitigation Amendment Act of 2018, -----; and Mayor's Order 2006-61, dated June 14, 2006.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OR VOTE: _____	APPROVAL OR ATTEST: <u> Tommy Wells </u>
	TITLE: <u> Director </u> PHONE: <u> (202) 535-2600 </u>

Office of Documents use only:

THIS NOTICE PUBLISHED AT: VOL. _____ DCR _____ DATE: _____

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

Clean Rivers Impervious Surface Area Charge Relief Programs and Determinations of Eligibility for Residential Customer Assistance Programs

The Director of the Department of Energy and Environment (Department), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2013 Repl. & 2018 Supp.)); the District of Columbia Water and Sewer Authority Rate Increase Mitigation Amendment Act of 2018, effective October 30, 2018 (D.C. Law 22-168; D.C. Official § 34-201.16b (2018 Supp.)); section 203(15) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.03(15) (2012 Repl. and 2018 Supp.)); Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2018 - ----, dated November ---, 2018, hereby gives notice of the adoption of the following emergency rules to amend Title 20 (Energy Assistance and Conservation Programs), and Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation), of the District of Columbia Municipal Regulations (DCMR). The Director also hereby gives notice of his intent to take final rulemaking action in not less than thirty (30) days from publication of this notice in the *D.C. Register*.

The Clean River Impervious Surface Area Charge (CRIAC) fees charged to DC Water customers have increased significantly over the past few years to pay for the large-scale combined sewer system infrastructure expansion necessary to comply with federally mandated requirements and a judicial consent decree to reduce combined sewer overflows from the Anacostia and Potomac Rivers and their tributaries. The cost of this work has imposed a significant burden on low income residents, residents on fixed incomes, some moderate income residents, and on nonprofit organizations that serve District residents, especially churches and cemeteries.

The rulemaking establishes eligibility criteria related to two new assistance programs for DC Water residential customers, referred to as the Customer Assistance Program II (CAP2) and the Customer Assistance Program III (CAP3) for which the Department will be providing funding. The CAP2 Program provides eligible customers with Department-funded benefits towards their Clean River Impervious Surface Area Charge (CRIAC), while DC Water will fund benefits towards their water and sewer charges. The eligibility criteria will be the same for both the Department and the DC Water funded parts of the program. The CAP3 program provides eligible customers with Department-funded benefits towards their CRIAC. CAP2 households (with incomes between 60% State Median Income and 80% Area Median Income) receive a credit of 50% of their CRIAC and a portion of their water and sewer fees and CAP3 households (with incomes between 80% Area Median Income and 100% Area Median Income) receive a credit of 75% of their CRIAC. On average, CAP2 participants will receive an approximate monthly discount of 40% on their overall water bill and CAP3 participants will receive an approximate average discount of 15% percent on their overall bill.

DC Water also has a Customer Assistance Program (CAP) that provides DC Water-funded benefits to eligible residential customers to assist with both their water and sewer charges and their CRIAC. Under proposed regulations promulgated by DC Water, the eligibility criteria for the CRIAC portion of CAP will mirror the eligibility criteria for the water and sewer charge portion.

Accordingly, pursuant to DC Water regulations and Mayor's Order 2018- , the Department will determine whether residents meet the eligibility criteria for receiving CRIAC benefits under CAP, CAP2, and CAP3, and will advise DC Water as to whether residents meet the eligibility criteria for receiving water and sewer benefits under CAP and CAP2. These regulations establish a process for DC Water residential customers to apply for benefits under the CAP, CAP2 and CAP3 programs, and for the Department to make a determination of eligibility.

Finally, the rulemaking establishes a Clean Rivers Impervious Surface Area Charge (CRIAC) nonprofit relief program for certain nonprofit organizations located within the District of Columbia. Under this program, nonprofit organizations that meet specified eligibility requirements, including financial hardship and implementation of stormwater mitigation activities, will be eligible to receive credits of up to 90% of their CRIAC charge.

This rulemaking is being promulgated as an emergency to allow eligible DC Water Residential Customers and nonprofit organizations to immediately have access to the described benefits. The CRIAC fees have increased significantly over the past few years to pay for the large-scale combined sewer system infrastructure expansion necessary to comply with federally mandated requirements and a judicial consent decree to address combined sewer overflows into the Anacostia and Potomac Rivers and their tributaries. The cost of this work has imposed a significant burden on low income residents, residents on fixed incomes, some moderate income residents, and on nonprofit organizations that serve District residents, especially churches and cemeteries. Notwithstanding the environmental benefits of the Clean Rivers Program, it is necessary to adopt this rule immediately to preserve and promote the public welfare, which is being adversely and significantly impacted by the CRIAC fees increases.

These emergency rules will remain in effect for up to one hundred twenty (120) days from the date of adoption or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 20, ENVIRONMENT, of the DCMR is amended by adding a new Chapter 37 as follows:

CHAPTER 37 CUSTOMER ASSISTANCE PROGRAMS ELIGIBILITY DETERMINATIONS

3700	CUSTOMER ASSISTANCE PROGRAMS
3701	APPLICATION PROCESS
3702	ELIGIBILITY
3703	BENEFITS

3703 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS
3704 ADMINISTRATIVE APPEALS
3799 DEFINITIONS

3700 CUSTOMER ASSISTANCE PROGRAMS

3700.1 This chapter sets forth the process and appeal procedures for the Department's determination of income eligibility for the CRIAC portion of DC Water's Customer Assistance Program (CAP) and Customer Assistance Program II (CAP2), and for the Department's Customer Assistance Program III (CAP3).

3700.2 This chapter also sets forth the Department's eligibility criteria for the CRIAC benefits under the CAP2 and CAP3 programs.

3701 APPLICATION PROCESS

3701.1 In order for the Department to determine the financial eligibility of an applicant to receive CAP, CAP2, or CAP3 benefits, a person shall file an application with the Department.

3701.2 The Department shall prescribe the form of the application to be filed, and provide either a paper or electronic application, which shall be signed by the applicant. The application shall state that the making of a false statement in the application, or the signing of the application with knowledge that facts stated in the application are not true, carries criminal penalties in accordance with section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

3701.3 An authorized representative may apply on behalf of an applicant if the applicant provides:

- (a) A written and signed statement stating why the applicant cannot complete an application without a representative; and
- (b) The name and address of the person authorized to act on the applicant's behalf.

3701.4 If requested by an applicant with a disability, or the representative of a person with a disability authorized pursuant to § 3701.3, the Department may assist the applicant or representative with the aspects of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.

3701.5 The Department may also assist an applicant in the application process who is unable to apply for the benefit in person for a reason other than disability, including making a visit to an applicant's home, if:

- (a) The applicant is sixty-five (65) or older, infirm, or unable to travel; or
- (b) The applicant's residence is located in a building or complex of buildings that house many other likely applicants.

3702 ELIGIBILITY

3702.1 In order to be eligible for a benefit, the applicant household shall:

- (a) Be financially eligible, by meeting the following annual income eligibility requirements:
 - (1) For participation in the CRIAC portion of CAP, the income requirements established at 21 DCMR § 4102.1 (a)(2), which are that the applicant's annual household income is below sixty percent (60%) of the State Median Income (SMI) for the District of Columbia;
 - (2) For participation in the CRIAC portion of CAP2, the income requirements established at 21 DCMR § 4102.2 (a)(2) for water and sewer bill benefits, which are that the applicant's annual household income is at or above sixty percent (60%) of the SMI for the District of Columbia and at or below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia not capped by the United States median low income limit (USLIL); and
 - (3) For participation in CAP3, the applicant's annual household income is above eighty percent (80%) of the AMI for the District of Columbia not capped by the USLIL and at or below one-hundred percent (100%) of the AMI for the District of Columbia; and
- (b) Be responsible for payment of DC Water's water and sewer services bill or the CRIAC; and
- (c) Reside in the District of Columbia.

3702.2 The applicant must be at least eighteen (18) years old or emancipated.

3702.3 A determination of financial eligibility shall be based on the adjusted gross income of the household, unless the applicant can provide sufficient evidence that the adjusted gross income is not an accurate representation of current income.

- 3702.4 As a condition of eligibility, each applicant shall sign a release, or provide electronic acknowledgement, authorizing the Department to obtain or verify information necessary to process the application or for reporting purposes.
- 3702.5 Each applicant shall cooperate fully in establishing his or her eligibility, the nature of the need, and the extent of the need, each of which shall include providing documentation or other proof of:
- (a) Household composition;
 - (b) Income; and
 - (c) Any additional information that the Department may require.
- 3702.6 The Department may obtain the information used in determining eligibility from:
- (a) A document;
 - (b) A telephone conversation or interview for which notes are taken;
 - (c) Data from another government agency or utility provider;
 - (d) Internet data; and
 - (e) Other relevant sources.
- 3702.7 The eligibility and benefit determination will be completed within thirty (30) days after the Department receives a completed application, or, in the event of an unexpected or extenuating circumstance that affects the Department, such as a natural disaster, as promptly thereafter as possible, except that the following shall toll the timeline:
- (a) An applicant's failure to supply information to document facts stated in an application;
 - (b) An inability to contact an applicant after three (3) attempts;
 - (c) Evidence of misrepresentation in an application;
 - (d) A failure to respond by a third party from whom the Department has requested information and over whom the Department has no control; or
 - (e) A delay in receipt of necessary information over which the Department has no control.

3703 BENEFITS

- 3703.1 Benefits for CAP and CAP2 will be provided in accordance with the provisions of 21 DCMR § 4102.
- 3703.2 Households eligible for CAP3 shall receive seventy-five percent (75%) off of the monthly billed CRIAC, subject to the availability of funds.
- 3703.3 CAP3 benefits will be applied through a credit on the DC assessed water and sewer bill after the Department transfers funds to DC Water for this purpose.
- 3703.4 The benefits shall be applied for the entire fiscal year (October 1 – September 30) in which the application was submitted, based on the availability of funds.
- 3703.5 Nothing in this chapter shall be interpreted to mean that a CAP2 or CAP3 benefit provided to eligible households by the Department is an entitlement, continuing or otherwise.
- 3703.6 If the Department determines that remaining available funds may be insufficient to provide relief during a fiscal year, the Department may:
 - (1) Suspend the process of taking applications;
 - (2) Suspend the process of awarding benefits; or
 - (3) Revise the level of benefits established by § 3703.2 to provide lower amounts.

3704 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS

- 3704.1 If an applicant is determined ineligible for the CAP, CAP2, or CAP3 program, the Department will provide to the applicant notice of ineligibility, to include:
 - (a) A statement of the determination of ineligibility and an explanation of that determination;
 - (b) A statement of the action that the applicant must take, if any, to be found eligible; and
 - (c) Notice of the applicant’s right to appeal the determination, as provided in § 3705.
- 3704.2 If the Department determines that a prior eligibility decision for the CAP, CAP2, or CAP3 program was based on material error, falsity, misrepresentation, concealment, omission, or fraud, the Department will:

- (a) Reopen the application;
- (b) Inform the applicant of the Department's final action or intended action;
- (c) Provide the applicant with a reasonable opportunity to respond; and
- (d) Revise or revoke the determination of eligibility.

3704.3 The applicant shall not have a right to appeal a reduction, suspension, or revocation of the benefit based on a lack of available funding.

3705 ADMINISTRATIVE APPEALS

With respect to a matter governed by §§ 3701 to 3704 of this chapter, an applicant adversely affected or aggrieved by an action of the Department may file a written appeal to the Director of the Department, or the Director's designee, stating the basis of the appeal, and providing any information or material that would support a change to the Department's action. The appeal must be filed within thirty (30) calendar days after receipt of the notice of the action.

3799 DEFINITIONS

3799.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

CAP – DC Water's Customer Assistance Program that provides eligible single-family and individually-metered residential customers exemptions from their billed water and sewer service charges, Payment-in-Lieu of Taxes and Right-of-Way fees, and credits towards their billed CRIAC charges for applicants that the Department determines to be eligible in accordance with 21 DCMR § 4102.1.

CAP2 – DC Water's and DOEE's expanded Customer Assistance Program that provides eligible single family and individually-metered residential customers exemptions from their billed water and sewer service charges and credits towards their billed CRIAC charges for applicants that the Department determines to be eligible in accordance with 21 DCMR § 4102.2.

CAP3 – The Department's expanded Customer Assistance Program that provides eligible single-family and individually metered DC Water residential customers credits towards their billed water and sewer services and CRIAC charges that the Department determines to be eligible in accordance with § 3702 of this chapter.

DC Water - the District of Columbia Water and Sewer Authority.

Department – the District of Columbia Department of Energy and Environment.

Chapter 5, WATER QUALITY AND POLLUTION, of Title 21 DCMR, WATER AND SANITATION, is amended by adding new sections 564 – 570, and amending section 599 Definitions, as follows:

564 CLEAN RIVERS IMPERVIOUS SURFACE AREA CHARGE RELIEF PROGRAM FOR NONPROFIT ORGANIZATIONS

564.1 The provisions in this section and sections 565 through 570 provide the eligibility criteria, payment guidance, and appeal procedures for the Clean Rivers Impervious Surface Area Charge (CRIAC) Relief Program for Nonprofit Organizations (CRIAC Nonprofit Relief Program).

564.2 The purpose of the CRIAC Nonprofit Relief Program is to assist certain nonprofit organizations in the District with payment of the DC Water CRIAC.

564.3 Benefits granted to a nonprofit organization by the CRIAC Nonprofit Relief Program may not exceed the amount of the CRIAC on the nonprofit organization’s water and sewer bill when combined with any DC Water Clean Rivers Impervious Surface Area Charge Incentive Discount.

564.4 Benefits granted through the CRIAC Nonprofit Relief Program shall be applied as a credit on the water and sewer bill, provided that:

- (a) Nothing in this chapter shall be interpreted to mean that a benefit provided to a nonprofit organization through the CRIAC Nonprofit Relief Program is an entitlement, continuing or otherwise;
- (b) Benefits provided by the Department under the CRIAC Nonprofit Relief Program are subject to the availability of funds; and
- (c) If the Department determines that remaining available funds may be insufficient to provide further benefits during a fiscal year, the Department may:
 - (1) Suspend the process of taking applications;
 - (2) Suspend the process of awarding benefits; or
 - (3) Lower the level of benefit established by section 568.3 as necessary based on the available funds.

565 ELIGIBILITY CRITERIA FOR NONPROFIT ORGANIZATIONS

565.1 To be eligible for the CRIAC Nonprofit Relief Program, an organization shall have:

- (a) An active account with DC Water and responsibility for paying DC Water's CRIAC;
- (b) Successfully obtained the status of a nonprofit organization with the District's Department of Consumer and Regulatory Affairs; and
- (c) Applied for and obtained from the District's Office of Tax and Revenue (OTR) a real property tax exemption pursuant to:
 - (1) D.C. Official Code § 47-1002(12) (certain cemeteries);
 - (2) D.C. Official Code § 47-1002(13), (14), (15), or (16) (certain property of religious institutions); or
 - (3) D.C. Official Code § 47-1002(8) (certain charitable institutions).

565.2 To qualify for the CRIAC Nonprofit Relief Program, an eligible nonprofit organization shall:

- (a) Show significant financial hardship in paying its CRIAC in accordance with § 565.3;
- (b) At the Department's request, allow the Department, or an organization approved by the Department, to visit the site of the nonprofit organization and recommend potential stormwater mitigation project(s) on the site; and
- (c) Submit for the Department's approval, a written proposal to mitigate stormwater runoff through one of the following:
 - (1) Install and maintain on the site of the nonprofit organization a stormwater runoff mitigation project that meets the requirements of § 565.4;
 - (2) If a stormwater runoff mitigation project on the site of the nonprofit organization is infeasible, implement or have implemented an alternative, off-site stormwater runoff mitigation measure or activity in the District that meets the requirements of § 565.5;
 - (3) Maintain on the site of the nonprofit organization an existing stormwater mitigation project that meets the requirements of § 565.4; or

- (4) For a major regulated project, as defined in § 599, maintain compliance with the Stormwater Management Performance Requirements in §§ 520 and 522.
 - (d) For any project under paragraphs (c)(1) and (c)(2) of this subsection, the nonprofit organization must complete, implement, or have implemented the stormwater mitigation project within one (1) year after receiving the Department's approval of the written proposal.
- 565.3 Significant financial hardship, as referred to in § 565.2(a), shall be established as follows:
 - (a) For an organization that has obtained a real property tax exemption under D.C. Official Code § 47-1002(12) (certain cemeteries) or D.C. Official Code § 47-1002(13), (14), (15), or (16) (certain property of religious institutions), submitting a signed declaration, as prescribed by the Department, that self-certifies the organization's annual CRIAC is at least one percent (1%) of the organization's annual revenue less expenses. The Department will apply best practices, such as testing a subset of signed declarations, to help ensure that the self-certification process is valid.
 - (b) For an organization that has obtained a real property tax exemption under D.C. Official Code § 47-1002(8) (certain charitable organizations), submit a copy of the most recent tax year's U.S. Department of the Treasury, Internal Revenue Service (IRS), Form 990 documenting that the annual CRIAC is at least one percent (1%) of the organization's annual revenue less expenses, as reported on Part I, Line 19 of the IRS Form 990.
- 565.4 For an on-site stormwater mitigation project to qualify under § 565.2(c)(1) or (c)(3), the organization must:
 - (a) Plant, or have planted after May 1, 2009, one tree per equivalent residential unit (ERU) of the property of the nonprofit organization for which the CRIAC benefit is sought; or
 - (b) Manage ten percent (10%) of the total impervious area through the installation of BMPs that are eligible for a Stormwater Fee Discount as described in § 558.
- 565.5 For an off-site stormwater mitigation project to qualify under § 565.2(c)(2), the organization must:
 - (a) Obtain and retire ten (10) Stormwater Retention Credits (SRCs) per ERU, which may be SRCs obtained prior to the commencements of the CRIAC nonprofit relief program; or

- (b) Elect to use a portion of their approved benefit, equal to the current market value of ten (10) SRCs per ERU, to fund stormwater mitigation efforts elsewhere in the District. The Department shall use this funding through a Department program to provide stormwater mitigation on behalf of the organization.

565.6 A non-profit organization may implement a combination of the above stormwater mitigation options, including on-site and off-site, to receive benefits.

565.7 As a requirement of continued eligibility in the CRIAC Nonprofit Relief Program:

- (b) A nonprofit organization that met the requirements of § 565.2(c) in whole or in part through on-site stormwater mitigation must both meet the requirements of § 565.4 and:

- (1) Properly maintain the tree(s) or qualifying BMP(s) so that they continue to function as designed and approved; and
- (2) Allow the Department access to the property to inspect the tree or BMP; or,

- (c) A nonprofit organization that met the requirements of § 565.2(c) in whole or in part through off-site stormwater mitigation must, as applicable:

- (1) Retire ten (10) SRCs per ERU annually; or
- (2) Elect to use a portion of their approved benefit, equal to the current market value of ten (10) SRCs per ERU, to fund stormwater mitigation efforts elsewhere in the District through a Department-approved program.

566 INITIAL APPLICATION

566.1 In order to obtain CRIAC benefits, a nonprofit organization must submit an application to the Department.

566.2 The application shall be submitted on such forms, in hard copy or electronically, as the Department may designate.

566.3 The Department shall notify the applicant whether the funding request has been approved, denied, or if additional information is needed to make a determination. Incomplete applications shall be returned to the applicant.

567 RENEWAL APPLICATION

- 567.1 Renewal applications must be received by the Department at least thirty (30) days, and no more than sixty (60) days, before the expiration of the benefit period described in § 568.1 and stated in the initial award.
- 567.2 Upon receipt of a renewal application, the Department may perform an inspection to verify that the BMP or stormwater mitigation project remains eligible for the discount.
- 567.3 For a renewal applicant who had proposed a stormwater mitigation project, the applicant shall submit proof that the organization made a reasonable and good faith effort, as determined by the Department, to fulfill its proposal.

568 APPROVAL; AMOUNT AND DURATION OF BENEFITS

- 568.1 If the Department approves a CRIAC Nonprofit Relief Program application, the benefits shall be available for the entire fiscal year (October 1 – September 30) in which the application was submitted, based on the availability of funds.
- 568.2 A nonprofit organization that is approved by the Department to obtain benefits, or continue to obtain benefits, under the CRIAC Nonprofit Relief Program shall obtain a benefit equal to 90% of its CRIAC bill, subject to the limits in §§ 564.3, 564.4 and the requirements of §§ 565.5 and 565.7.
- 568.3 The Department may calculate a retroactive benefit to account for the period from the start of the fiscal year in which the application or renewal application was received through the date of approval, which would be provided as a one-time credit on the nonprofit's water and sewer bill.

569 DENIAL, REDUCTION, OR REVOCATION OF BENEFITS

- 569.1 The Department may:
 - (a) Deny an application for a benefit period based on an applicant's failure to meet the eligibility requirements of the CRIAC Nonprofit Relief Program, or deny an application in whole or in part based on lack of available funding;
 - (b) Reduce or revoke a benefit for:
 - (1) A tree that the Department determines is unhealthy or dying;
 - (2) The failure of the BMP to retain the stormwater runoff volume for which the discount was approved, or

- (3) The organization's failure to obtain SRCs; and
 - (c) Require reimbursement of any portion of the benefits, based on the organization's failure to make a good faith effort to fulfill the stormwater mitigation project proposal that generated the CRIAC benefit.
- 569.2 The Department shall provide notice of a decision to the non-profit organization, stating the basis for the decision and the organization's right to appeal the Department's decision, as provided in § 570.
- 569.3 If denial, reduction, or revocation is based on failure to maintain or fulfill the terms of a project as proposed, notice shall also include a statement of:
 - (a) Each deficiency;
 - (b) Corrective action necessary;
 - (c) Deadline for completion of the corrective action, if any; and
 - (d) The requirement, if any, for an inspection or re-inspection by the Department.
- 569.4 The Department may extend the period for corrective action for good cause shown.
- 569.5 The nonprofit organization shall not have a right to appeal a reduction, suspension, or revocation of CRIAC benefit that is based on a lack of available funding.

570 ADMINISTRATIVE APPEALS

With respect to a matter governed by Sections 564 through 569 of this chapter, an organization adversely affected or aggrieved by an action of the Department may file a written appeal to the Director of the Department, or the Director's designee, stating the basis of the appeal, and providing any information or material that would support a change to the Department's action. The appeal must be filed within fifteen (15) calendar days after receipt of the notice of the action.

599 DEFINITIONS

Section 599.1 is amended by adding the following terms:

CRIAC - DC Water's Clean Rivers Impervious Surface Area Charge or Clean Rivers Impervious Area Charge.

Equivalent Residential Unit (ERU) –A measure of impervious area based on one thousand (1,000) square feet of impervious surface area, taking account of a statistical median of residential properties. The number of ERUs is determined based on the amount of impervious area and the customer’s classification as residential, multi-family, or non-residential.

All persons desiring to comment on the proposed regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. All comments should be labeled “Clean Rivers Impervious Surface Area Charge Relief Programs” and filed with the Department of Energy and Environment, Regulatory Review Division, 1200 First Street, N.E., 5th Floor, Washington D.C. 20002, Attention: Impervious Area Charge Relief Programs Comments, or by e-mail to Matt.Johnson2@dc.gov. All comments will be treated as public documents and will be made available for public viewing on the Department’s website at www.doe.dc.gov. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the e-mail address will automatically be captured and included as part of the comment that is placed in the public record and made available on the Department’s website.

The Department will receive comments on this proposed rulemaking at a public hearing, which is scheduled at _____ at the Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002. A Notice of Public Hearing and the agenda for the hearing will be published in the _____ edition of the D.C. Register.

Attachment B

DC Retail Water and Sewer Rates Committee

Action Item 1

1. Approval to Expand DC Water's Customer Assistance Program (CAP) to Eligible Customers

ACTION ITEM 1

Customer Assistance Program Expansion Summary

1. Adopt regulations to expand DC Water's Customer Assistance Program (CAP), effective January 1, 2019, as summarized below and provided in Attachment A:

CAP2 (Residential Customers)

- Eligible single-family or individually metered Residential customers shall receive a discount of 3 Ccf on their billed water and sewer service charges and 50% on their billed Clean Rivers Impervious Area Charge (CRIAC).
 - CAP2 program expenditures will not exceed \$6 million authorized by Board; \$5.5 million in benefits to customers and \$0.5 million for administrative costs.
 - Should the District provide additional funds for the CAP2 program, DC Water shall apply such funds to the program.
 - If DC Water determines that budgeted funds are not sufficient, DC Water will suspend accepting new CAP2 applicants, or suspend providing CAP2 benefits.
 - DOEE will determine the CAP2 applicant's financial eligibility based on household-income limits equal to or above 60% of the state medium income and below 80% of the area medium income, not capped by the U.S. median low-income limit.
 - CAP2 applicants that submit a complete CAP2 application to DOEE before March 1, 2019 shall receive CAP2 benefits retroactive for Fiscal Year 2019 from October 1, 2018 and terminate on September 30, 2019. CAP2 applicants that submit a complete CAP2 application to DOEE on or after March 1, 2019 shall receive CAP2 benefits from the date of submittal and terminate on September 30, 2018.
2. Adopt regulations to implement the District Department of Energy and Environment (DOEE) CAP3 and CRIAC Non-Profit Relief Programs:
 - a. Proposal to establish procedures to provide credits to certain single-family or individually-metered Residential Customers authorized by DOEE to receive the DOEE's Customer Assistance Program Expansion (CAP3) credits:

CAP3 (Residential Customers)

- Eligible single-family or individually-metered Residential customers shall receive CAP3 benefits as defined by DOEE, subject to the availability of District funds.

- CAP3 credits will be applied to eligible Residential customers' accounts provided DOEE notifies DC Water of the customers' eligibility, and DC Water receives funds from DOEE to apply the credits.
- CAP3 credits will be provided from the date DOEE approves the CAP3 applicant's financial eligibility for the CAP3 benefit period, subject to the availability of District funds.
- b. Proposal to establish procedures to provide credits to certain nonprofit customers authorized by DOEE to receive the District's CRIAC Nonprofit Relief Program credits:

CRIAC Nonprofit Relief Program (Non-Residential Customers)

- Eligible non-residential customers shall receive CRIAC Nonprofit Relief Program benefits as defined by DOEE, subject to the availability of District funds.
- CRIAC Nonprofit Relief Program benefits will be applied to non-residential customers' accounts provided DOEE notifies DC Water of the customers' eligibility, and DC Water receives funds from DOEE to apply the credits.
- CRIAC Nonprofit Relief Program benefit period will be the entire Fiscal Year 2019, beginning October 1st and ending September 30th, subject to the availability of funds.
- CRIAC Nonprofit Relief Program customers are required to reapply for the benefits at least 30-days, and no more than 60-days before the end of the benefit period.

Attachment A

DC Water's CAP Expansion - Final Rulemaking
Effective January 1, 2019

Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 4102, CUSTOMER ASSISTANCE PROGRAMS, is amended to read as follows:

4102 CUSTOMER ASSISTANCE PROGRAMS

4102.1 CUSTOMER ASSISTANCE PROGRAM

- (a) Participation in the Customer Assistance Program (CAP) shall be limited to a single-family or individually-metered Residential Customer that meets the following eligibility requirements:
 - (1) The applicant is responsible for paying for water and sewer services and/or the Clean Rivers Impervious Surface Area Charge (CRIAC); and
 - (2) The Department of Energy & Environment (DOEE) has determined that the CAP applicant's annual household income meets the household income-eligibility requirements for the District's Low Income Home Energy Assistance Program (LIHEAP), below sixty percent (60%) of the State Median Income (SMI) for the District of Columbia.
- (b) An approved CAP customer shall receive the following benefits:
 - (1) Exemption from water service charges, sewer service charges, Payment-in-Lieu of Taxes (PILOT) fees and Right-of-Way (ROW) fees for the first Four Hundred Cubic Feet (4 Ccf) per month of water used. If the customer uses less than Four Hundred Cubic Feet (4 Ccf) of water in any month, the exemption will apply based on the amount of that month's billed water usage;
 - (2) Credit of one hundred percent (100%) off of the monthly billed Water System Replacement Fee; and
 - (3) Credit of fifty percent (50%) off of the monthly billed CRIAC.
- (c) Upon DC Water's receipt of notice from DOEE that the CAP applicant meets the financial eligibility requirements, DC Water shall provide the CAP discounts to the CAP customer's account from the date that

DOEE accepts a completed CAP application to the end of the fiscal year in which the application was submitted.

- (d) To continue receiving CAP benefits without interruptions, the CAP customer must submit a renewal CAP application to DOEE in accordance with the Utility Discount Program renewal deadline. A CAP customer that submits their renewal CAP application after this period, and is subsequently approved by DOEE, will receive CAP benefits as of the date of the application.

4102.2

CUSTOMER ASSISTANCE PROGRAM II (CAP2)

- (a) Participation in the CAP2 Program shall be limited to a single-family or individually-metered Residential Customer that meets the following eligibility requirements:
 - (1) The applicant maintains an active DC Water account and is responsible for paying for water and sewer services and/or the CRIAC; and
 - (2) DOEE has determined that the CAP2 applicant's annual household income is equal to or above the household income-eligibility limits for the District's LIHEAP, sixty percent (60%) of the SMI for the District of Columbia and below eighty percent (80%) of the Area Median Income (AMI) for the District of Columbia, not capped by the United States median low-income limit.
- (b) An approved CAP2 customer shall receive the following benefits, subject to the availability of funds:
 - (1) Exemption from water service charges and sewer service charges for the first three Hundred Cubic Feet (3 Ccf) per month of water used. If the customer uses less than three Hundred Cubic Feet (3 Ccf) of water in any month, the exemption will apply based on the amount of that month's billed water usage; and
 - (2) Credit of fifty percent (50%) off of the monthly billed CRIAC.
- (c) Upon DC Water's receipt of notice from DOEE that the CAP2 customer meets the financial eligibility requirements, DC Water shall provide the CAP2 benefits for not more than the entire Fiscal Year 2019, beginning October 1, 2018 and terminating on September 30, 2019, subject to the availability of budgeted funds.

- (1) CAP2 customers that submit a complete application to DOEE before March 1, 2019, shall receive CAP2 benefits retroactive to October 1, 2018 and terminating on September 30, 2018.
 - (2) CAP2 customer that submit a complete application on or after March 1, 2019, shall receive CAP2 benefits as of the date of submittal and terminating on September 30, 2018.
 - (d) If DC Water determines that the remaining budgeted funds are insufficient to provide CAP2 benefits, DC Water may:
 - (1) Suspend the process for accepting CAP2 applicants; or
 - (2) Suspend or adjust providing CAP2 benefits to CAP2 recipients.
 - (e) The CAP2 Program shall terminate on September 30, 2019.
- 4102.3 Eligibility for the CAP and CAP2 Programs shall be determined by DOEE based on the income eligibility criteria provided in § 4102.1(a)(2) and § 4102.2(a)(2).
- 4102.4 DOEE CUSTOMER ASSISTANCE PROGRAM III FOR SINGLE-FAMILY AND INDIVIDUALLY METERED HOUSEHOLDS
- (a) DC Water shall apply DOEE Customer Assistance Program III (CAP3) benefits to an eligible single-family or individually-metered Residential Customer's account in accordance with the following:
 - (1) The applicant maintains an active DC Water account and is responsible for paying for water and sewer services and/or the CRIAC;
 - (2) DOEE has notified DC Water that the customer has met the requirements of 20 DCMR Chapter 37 and is eligible to receive the CAP3 benefits;
 - (3) DOEE has notified DC Water of the amount of the CAP3 benefits to be applied to the CAP3 customer's account; and
 - (4) DOEE has transferred funds to DC Water for the benefits applied to the customer's account.
 - (b) DC Water shall stop applying CAP3 benefits to a CAP3 customer's account upon receipt of notice from DOEE that the customer is no longer eligible for the CAP3 benefits, or receipt of notice from DOEE regarding the unavailability of funds.

- (c) If DC Water determines that the remaining budgeted funds are insufficient to provide CAP3 benefits, DC Water may:
 - (1) Suspend the process for accepting CAP3 applicants; or
 - (2) Suspend providing CAP3 benefits to CAP3 recipients.

4102.5 DOEE CLEAN RIVERS IMPERVIOUS SURFACE AREA CHARGE RELIEF PROGRAM FOR NONPROFIT ORGANIZATIONS

- (a) DC Water shall apply DOEE CRIAC Relief Program for Nonprofit Organizations (CRIAC Nonprofit Relief Program) benefits to an eligible non-profit organization's account in accordance with the following:
 - (1) The applicant maintains an active DC Water account and is responsible for paying for the CRIAC charges;
 - (2) DOEE has notified DC Water that the customer has met the requirements provided in 21 DCMR § 565 and is eligible to receive CRIAC Nonprofit Relief Program benefits;
 - (3) DOEE has notified DC Water of the amount of the benefits to be applied to the nonprofit organization's account each billing period; and
 - (4) DOEE has transferred funds to DC Water for the CRIAC Nonprofit Relief Program benefits applied to the customer's account.
- (b) DC Water shall stop applying CRIAC Nonprofit Relief Program benefits to a customer's account upon notice from DOEE that the customer is no longer eligible for the CRIAC Nonprofit Relief Program benefits.
- (c) If DC Water determines that the remaining budgeted funds are insufficient to provide CRIAC Nonprofit Relief Program benefits, DC Water may:
 - (1) Suspend the process for accepting CRIAC Nonprofit Relief Program applicants; or
 - (2) Suspend or adjust providing CRIAC Nonprofit Relief Program benefits to CRIAC Nonprofit Relief Program recipients.

4102.6 Nothing in this section shall be interpreted to mean that the benefits provided through DC Water's CAP or CAP2 Programs or DOEE's CAP3 or

CRIAC Nonprofit Relief Programs are an entitlement, continuing or otherwise.

4102.7 For the purposes of this section, the term “SMI” means the state median income as determined on an annual basis by the U.S. Department of Health and Human Services (HHS).

4102.8 For the purposes of this section, the term “AMI” means the Area Median Income (AMI), alternately referred to as the HUD Area Median Family Income (HAMFI), determined on an annual basis by the U.S. Department of Housing and Urban Development (HUD).