

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS

DATED: October 6, 2011

COMMISSION  
CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of Josie Penton has been served by U.S. Mail this 6th day of October, 2011, to the following:

D. Bruce May / Gigi Rollini  
Holland & Knight LLP  
Post Office Drawer 810  
Tallahassee, FL 32302-0810

Kimberly A. Joyce,  
Aqua America Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010

Aqua Utilities Florida Inc.  
Post Office Box 2480  
Lady Lake, FL 32158-2480

Kenneth M. Curtin  
Adams and Reese LLP  
150 Second Avenue N. Suite 1700  
St. Petersburg, FL 33701

Kelly Sullivan  
570 Osprey Lakes Circle  
Chuluota, FL 32667-6652

Office of Public Counsel  
J. R. Kelly/ Patricia Christensen  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, Florida 32399-1400

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CERTIFICATE OF SERVICE  
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Cecilia Bradley / Pamela Jo Bondi  
Office of the Attorney General  
The Capitol PL01  
Tallahassee, FL 32399-1050

Pasco County Board of County  
Commissioner  
c/o Joseph D. Richards  
Pasco County Attorney's Office  
87321 Citizens Drive, Suite 340  
New Port Richey, FL 34654



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RALPH R. JAEGER  
SENIOR ATTORNEY

FLORIDA PUBLIC SERVICE COMMISSION  
Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Telephone: (850) 413-6199

**DOCKET NO. 100330-WS** - Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

**WITNESS:** Direct Testimony of Josie Penton  
Appearing on Behalf of the Staff of the Florida Public Service Commission.

**DATE FILED:** October 6, 2011

DOCUMENT NUMBER-DATE

07314 OCT-6 =

FPSC-COMMISSION CLERK

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DIRECT TESTIMONY OF JOSIE PENTON

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Q. Please state your name and business address.

A. Josie Penton, Florida Department of Environmental Protection, 2353 Jenks Avenue,  
Panama City, Florida 32405.

Q. Please provide a brief description of your educational background and experience.

A. I have a B.S. Degree in Chemistry. I have two years of analytical laboratory experience  
analyzing drinking water, wastewater and environmental samples.  
I have over 19 years of environmental regulatory experience working for the Florida  
Department of Environmental Protection.

Q. What are your general responsibilities at the Department of Environmental Protection?

A. My general responsibilities involve supervision of the Drinking Water and Wastewater  
(Domestic and Industrial) Programs. I also review domestic wastewater  
collection/transmission system permit applications. Our Panama City Office covers Bay,  
Calhoun, Gulf, Jackson and Washington Counties.

Q. Are you familiar with the AUF water system in Washington County?

A. Yes, the Sunny Hills water system.

Q. Is this system in compliance with all applicable construction permits?

A. Yes

Q. Has this AUF system been the subject of any FDEP compliance enforcement action  
within the past three years?

A. Yes. On December 2, 2010, Consent Order (OGC File No. 10-2288-67-PW) was  
executed aimed at addressing the following violations:

- a) Failure to provide a total useful finished-water storage capacity of at least 25 percent  
of the system's maximum-day water demand as required under Section 62-  
555.320(19)(a), F.A.C;

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1 b) Failure to provide satisfactory results of a 20 sample bacteriological well survey before  
2 placing Well 1 into permanent service after having been out of operation for more than  
3 six months, as required under Section 62-555.315(6)(b), F.A.C;

4 c) Failure to perform routine nitrate/nitrite monitoring and raw bacteriological monitoring  
5 of the water produced by Well 1 when it was producing water for public consumption  
6 in July 2007 and August 2007, as required under Section 62-550.500, 62-550.512, and  
7 62-550.518(2) F.A.C;

8 This Consent Order is still in force and is attached as Exhibit JP-1.

9 Q. Other than any violations discussed above, is AUF in compliance with all DEP  
10 requirements for their water system in Washington County?

11 A. This system is currently in compliance. However, a bacteriological maximum  
12 contaminant level violation occurred in August 2010. A letter was sent to the facility in  
13 September 2010, followed by a Non-Compliance Letter in October 2010. A non-compliance  
14 letter was used as the violation was minor and the Department did not intend to pursue further  
15 action if the violation is corrected. This matter was resolved without the need for additional  
16 enforcement. In 2009 Well No. 4 had 0.388 mg/l iron which exceeded the maximum  
17 contaminant level of 0.3 mg/l for iron. Iron is a secondary contaminant and no complaints  
18 were received. No enforcement action was taken on the iron violation.

19 Q. Is the overall operation and maintenance of this water treatment plant and distribution  
20 facility satisfactory?

21 A. Yes. This facility has had five boil water notices since 2009. Attached is a list of  
22 Sunny Hills PBWNs since 2009. See Exhibit JP-2. It appears that the customers were  
23 notified in a timely manner.

24 Q. Are you familiar with the AUF wastewater system in Washington County?

25 A. Yes, the Sunny Hills wastewater system.

1 Q. Is this system in compliance with all applicable construction and operating permits?  
2 A. Yes, the system is in compliance with their operating permit. There is no construction  
3 associated with the current permit.  
4 Q. Has this AUF system been the subject of any FDEP compliance enforcement action  
5 within the past three years?  
6 A. No  
7 Q. Other than any violations discussed above, is AUF in compliance with all DEP  
8 requirements for their wastewater systems in Washington County?  
9 A. Yes  
10 Q. Is the overall operation and maintenance of this wastewater treatment plants and  
11 collection facility satisfactory?  
12 A. Yes  
13 Q. Do you have anything further to add?  
14 A. No, I do not.  
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# Florida Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32502-5794

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Mimi A. Drew  
Secretary

December 2, 2010

**BY ELECTRONIC MAIL**  
PRWilliams@aquaamerica.com

Ms. Patricia Williams,  
Utility Engineer  
Aqua Utilities Florida, Inc.  
P.O. Box 2480  
Lady Lake, Florida 32158-2480

Dear Ms. Williams:

Enclosed, please find a copy of the executed Consent Order (OGC File No. 10-2288-67-PW) aimed at addressing a storage capacity shortage and other violations noted for the Sunny Hills Utilities public water system (PWS ID No. 1670647) in Washington County.

Please note the timelines for corrective actions contained within the document. Also, please forward your payment for penalties and Department costs within 30 days as directed in the Order.

Thank you for your assistance in this matter. For questions, please contact David Hines, Potable Water Enforcement, at (850) 595-0593, or by email at david.hines@dep.state.fl.us.

Sincerely,

A handwritten signature in black ink that reads "David P. Moneypen".

Kenneth W. Prest, Jr.  
District Director

KWP/dh  
Enclosure

c: Harry Householder, Area Manager, Aqua Utilities Florida (hhouseholder@aquaamerica.com)  
Paul Thompson, Aqua Utilities Florida (PDThompson@aquaamerica.com)  
FDEP NW District Panama City Office  
Lea Crandall, FDEP Office of General Counsel (lea.crandall@dep.state.fl.us)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	NORTHWEST DISTRICT
	)	
vs.	)	OGC FILE NO. 10-2288-67-PW
	)	
Aqua Utilities Florida, Inc.	)	
(Respondent)	)	
_____	)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Aqua Utilities Florida, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.852(5), F.S.
3. Respondent is the owner and operator of a community water system, Sunny Hills Utilities (PWS ID No. 1670647), located at 3810 Gables Boulevard, Sunny Hills, Washington County, Florida ("System"). The System is comprised mainly of two groundwater wells (Well 1 and Well 4), which discharge to separate treatment, but which supply a common distribution system ("Well 1/Well 4 System"). Another well (Well 5) and treatment plant also supply a distant portion of the Sunny Hills community via an entirely separate distribution system ("Well 5 System"). The Well 5 System is regulated by the Department under the same PWS ID number as the Well 1/Well 4 System, but is separate from it and is not the subject of this Order.
4. The Department finds that the following violations occurred:

a) Failure to provide a total useful finished-water storage capacity of at least 25 percent of the system's maximum-day water demand as required under Section 62-555.320(19)(a), F.A.C. Contributing to the violation are two factors: 1) insufficient total storage tank volume, and 2) the inability of Well 4 to fill tanks located at Well 1 due to current system configuration;

b) Failure to provide satisfactory results of a 20 sample bacteriological well survey before placing Well 1 into permanent service after having been out of operation for more than six months, as required under Section 62-555.315(6)(b), F.A.C.;

c) Failure to perform routine and nitrate/nitrite monitoring and raw bacteriological monitoring of the water produced by Well 1 when it was producing water for public consumption in July 2007 and August 2007, as required under Rules 62-550.500, 62-550.512, and 62-550.518(2), F.A.C..

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

**ORDERED:**

5. Respondent shall comply with the following corrective actions within the stated time periods:

a) By October 1, 2010, Respondent shall retain the services of a professional engineer, registered in the State of Florida, to evaluate the System and make recommendations that would correct the system configuration in order to allow Well 4 to fill any tanks within the Well 1/Well 4 System, and shall submit an application, along with any required application fees, to the Department for a permit for construction needed to implement the recommendations of the engineer.

b) By February 15, 2011, Respondent shall retain the services of a professional engineer, registered in the State of Florida, to evaluate the System and make recommendations for modifications to the system that would address the storage capacity violation by increasing total Well 1/Well 4 storage capacity to a level which at a minimum

complies with the requirements noted in Rule 62-555.320(19)(a) and (b), F.A.C., and shall submit an application, along with any required application fees, to the Department for a permit for construction needed to implement the recommendations of the engineer.

c) If the Department requires additional information, modifications, or specifications to process the permit applications described in subparagraphs (5)(a) and (5)(b), above, the Department will issue a written request for information ("RFI") to Respondent. Respondent shall submit the requested information in writing to the Department within 15 days of receipt of the request. Respondent shall provide all information requested in any additional RFIs issued by the Department within 15 days of receipt of each request. Within 60 days of the Department's receipt of the applications described in subparagraphs (5)(a) and (5)(b), above, Respondent shall provide all information necessary to complete the application.

d) Within 120 days of issuance of any required permits described in subparagraphs (5)(a) and (5)(b), above, Respondent shall complete the permitted modifications and submit a Certification of Completion for each permit, prepared and sealed by a professional engineer registered in the State of Florida, along with all supporting documentation. Respondent shall not place the system modifications into service until Respondent receives written Department clearance.

6. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$2,095.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$1,595.00 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalties are apportioned as follows: \$500.00 for violation of Rule 62-555.315(6)(b), F.A.C.; \$500.00 for violation of Rules 62-550.500, 62-550.512, and 62-550.518(2), F.A.C.; and \$95.00 for the value of the economic benefit of non-compliance for missed sampling.

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 of this Order. The Department may demand stipulated penalties

at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraphs 8 and 9, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 6 of this Order.

8. Respondent shall make all payments required by this Order by cashier's check or money order. Payment instruments shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Ecosystem Management and Restoration Trust Fund."

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Department of Environmental Protection, Northwest District Office, 160 Governmental Center, Pensacola, Florida 32502-5794.

10. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

11. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

12. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent

and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

13. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

14. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this

Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

15. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

16. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

17. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

18. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

19. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

20. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

21. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that

the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

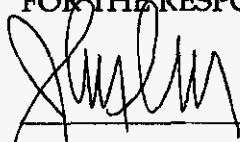
The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 160 Governmental Center, Pensacola, Florida 32502-5794. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an

FDEP vs. Aqua Utilities Florida, Inc.  
Consent Order, OGC File No. 10-2288-67-PW  
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alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

22. Rules referenced in this Order are available at  
<http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THE RESPONDENT:



11-19-2010  
Date

JOAN M. LIHVARCIC  
Print Name

PRESIDENT  
Print Title

DONE AND ORDERED this 2<sup>nd</sup> day of DECEMBER, 2010, in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Kenneth W. Prest, Jr.  
District Director  
Northwest District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,  
receipt of which is hereby acknowledged.

Ashley Livingston  
Clerk

November 02, 2010  
Date

Copies furnished to:

Lea Crandall, Agency Clerk  
Mail Station 35

These are the notices that were sent out by DEP

Precautionary Boil Water Notice	
<b>Water System:</b>	Sunny Hills Utilities
<b>PWS #:</b>	1670647
<b>Date Issued:</b>	07/21/09
<b>Location:</b>	Dora Ct. & Owen Ct.
<b>Cause:</b>	Flush out point at the end of Dora Ct. blew out
<b>Connections Affected:</b>	3 Residential
<b>Public &amp; DOH Notified:</b>	Yes - Customers given door to door notification last night, Washington Co. DOH is being notified today
<b>Action Taken:</b>	Water main disinfection and flushing, followed by bacteriological sampling.
<b>Est. Rescission Date:</b>	If sample results are satisfactory, the PBWN will be rescinded on 07/23/09.
Precautionary Boil Water Notice	
<b>Water System:</b>	Sunny Hills Utilities
<b>PWS #:</b>	1670647
<b>Date Issued:</b>	08/07/10
<b>Location:</b>	Shenedoah Blvd. at Merrick Dr.
<b>Cause:</b>	Lightning Strike caused a Main Break
<b>Connections Affected:</b>	15 - Residential
<b>Public &amp; DOH Notified:</b>	Yes - Door Hangers
<b>Action Taken:</b>	Water main disinfection and flushing, followed by bacteriological sampling.
<b>Est. Rescission Date:</b>	If sample results are satisfactory, the PBWN will be rescinded on 08/09/10.
Precautionary Boil Water Notice	
<b>Water System:</b>	Sunny Hills
<b>PWS #:</b>	1670647
<b>Date Issued:</b>	11-29-2010
<b>Location:</b>	Malone Place, Diane Place and Apollo Drive
<b>Cause:</b>	Planned Outage 12-1-2010 on 6" main break
<b>Connections Affected:</b>	2- Residential
<b>Public &amp; DOH Notified:</b>	Yes - Door Hangers
<b>Action Taken:</b>	Water main disinfection and flushing, followed by bacteriological sampling.
<b>Est. Rescission Date:</b>	If sample results are satisfactory, the PBWN will be rescinded on 12/03/2010.
Precautionary Boil Water Notice	
<b>Water System:</b>	Sunny Hills
<b>PWS #:</b>	1670647
<b>Date Issued:</b>	6-2-2011
<b>Location:</b>	Dora Court
<b>Cause:</b>	4" Main Break
<b>Connections Affected:</b>	3-Residential
<b>Public &amp; DOH Notified:</b>	Yes - Door Hangers
<b>Action Taken:</b>	Water main disinfection and flushing, followed by bacteriological sampling.
<b>Est. Rescission Date:</b>	If sample results are satisfactory, the PBWN will be rescinded on 06/04/11.
Precautionary Boil Water Notice	
<b>Water System:</b>	Sunny Hills (Aqua Utilities)
<b>PWS #:</b>	1670647
<b>Date Issued:</b>	7-13-2011
<b>Location:</b>	Dora Court near Owens Court
<b>Cause:</b>	4" Main Break
<b>Connections Affected:</b>	3- Residential
<b>Public &amp; DOH Notified:</b>	Yes - Door Hangers
<b>Action Taken:</b>	Water main disinfection and flushing, followed by bacteriological sampling.
<b>Est. Rescission Date:</b>	If sample results are satisfactory, the PBWN will be rescinded on 07/15/11.