COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:	
Briggsville Water District	File No.: ACO-WE-16-5D008 PWS ID# 1063003

ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Western Regional Office at 436 Dwight Street, Springfield, MA 01103.

2. The Briggsville Water District ("Respondent") is a duly constituted political subdivision of the Commonwealth of Massachusetts with a place of business at 47 Cross Road, Clarksburg, Massachusetts, 01247. Respondent's mailing address for purposes of this Consent Order is also47 Cross Road, Clarksburg, Massachusetts, 01247.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of:

M.G.L. c. 111, § 159 et seq., 42 U.S.C. §§300f – 300j (the Federal Safe Drinking Water Act), the Drinking Water Regulations at 310 CMR 22.00; the Cross Connections, Distribution System Protection Regulations at 310 CMR 22.22; and the Underground Injection Control Regulations at 310 CMR 27.00.

MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. Respondent is a Supplier of Water as defined in 310 CMR 22.02. Respondent owns and operates Community Public Water System.

5. The following facts and allegations have led MassDEP to issue this Consent Order:

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

August 17, 2016

Board of Water Commissioners
Briggsville Water District
47 Cross Road
Clarksburg, MA 01247

Re: Clarksburg
Briggsville Water District
PWS ID# 1063003
ACO-WE-16-5D008

Dear Board Members,

Enclosed is your fully executed Administrative Consent Order.

If you have any questions regarding this issue, please contact Douglas Paine at (413) 755-2281.

Respectfully,

Deirdre Doherty
Drinking Water / Municipal Services Chief
Water Resources

Cc: MassDEP-Boston
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Y:\DWP Archive\WERO\Clarksburg-1063003-Enforcement-2016-08-17

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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A. A water sample collected from Respondent on June 24, 2013 tested positive for both total coliform bacteria and *E. coli,* resulting in a Boil Water Order issued by MassDEP on July 12, 2013.The following violations associated with that contamination event occurred:

1) Respondent failed to provide MassDEP with appropriate 24-hour notification in violation of 310 CMR 22.05(5), 310 CMR 22.15(1) and 310 CMR 22.15(9).
2) Respondent failed to provide its customers with 24-hour notification of the detection of E. coli in violation of 310 CMR 22.26(3)(g).
3) Respondent failed to conduct triggered source water monitoring within 24-hours of notification of the E. coli sample result in violation of 310 CMR 22.26(3)(a)4.
4) Respondent disinfected the source of supply prior to conductingtriggered source water monitoring in violation of 310 CMR 22.26(3)(e).

B. In response to the June 24, 2013 detection of *E. coli,* Respondent activated a mechanical chlorine disinfection system. Although the disinfection equipment was existing, MassDEP had not previously approved it through its formal permitting process.

C. Within its September 16, 2013 letter terminating the requirement for Respondent's customers to boil water before use, MassDEP required that within 45-days, Respondent submit a permit application detailing its chlorine disinfection equipment. Respondent failed to submit a permit application.

D. On November 14, 2013, MassDEP conducted a sanitary survey inspection of Respondent's public water system, and included requirements based on that inspection within a January 31, 2014 inspection report. The following requirements from the sanitary survey report have not been complied with, in violation of 310 CMR 22.04(12):

1) Respondent did not have a working infrastructure inventory of the components that comprise its water system; a written list of the useful life expectancy of its assets; a long-term asset replacement plan (AMP) with a schedule for replacing its assets; a Capital Improvement Plan (CIP) for large equipment purchases or construction needed over the next 20 years; or an Annual Budget that considers funding for personnel, training, testing, operating, contract services, repairs, capital improvement reserves, emergencies, and debt services. MassDEP required that Respondent submit a schedule for the development of a Master Plan, AMP or CIP before August 31, 2014. A final plan was to be developed by no later than December 31, 2015. MassDEP has not received any of these Plans.

2) MassDEP noted that a floor drain in the disinfection building discharged to a feeder stream to the Hoosic River, and that Respondent's chemical day tank had no secondary containment. MassDEP regulations at 314 CMR 3.00

prohibit the discharge of floor drains (wastes) to waters of the Commonwealth without a valid permit. Respondentdidnot provide notice that it had installed secondary containment for its chemical feed tanks; however MassDEP verified that secondary containment was installed at the time of its April 21, 2016 sanitary survey inspection.

3) The report reminded Respondentthat it is required to submit a permit application detailing the operation of its chlorine disinfection system.MassDEP noted that a permit had not been submitted as of the date of the survey report.

E. On June 29, 2015,MassDEP received complaints, from Respondent's customers, of periodic water shortages which had been occurring since February 2015. During subsequent conversation, Respondent asserted that the ongoing water shortages were the result of a number of problems including frozen water lines, water leaks, customers filling swimming pools, and faulty equipment.

F. On November 24, 2015, MassDEP received complaints of intermittent water service within Respondent's public water system that had been occurring for three weeks. The complainants stated that Respondent had distributed a notice stating that water use could occur only during limited hours. MassDEP's investigation into the complaints revealed that a number of breaks within Respondent's public water system had occurred over the last four months, and that Respondent was actively conducting leak detection to resolve the problem.

G. Within aDecember 20, 2015 Emergency Report, Respondent detailed itstwo-week effort in locating and repairing a water main break on a service line to a business served by the water system.

H. On April 21, 2016, MassDEP conducted a sanitary survey inspection of Respondent's public water system, and identified the following additional deficiencies and violations:

1) MassDEP observed that Respondent had installed a booster pump to augment its cistern flow into the storage tank. This installation was instituted in response to a "blowout" of the spring diversion wall. At the time of the inspection, the exact cause was undetermined. Respondent installed the booster pump without prior notification to MassDEP and without a permit. Installation of an additional raw water pump is a substantial modification of a Public Water System and is a violation of the regulations at 310 CMR 22.04 (1) and 310 CMR 22.04(4). Further, Respondent failed to provide MassDEP with 24-hour notification of the failure of a water system component in violation of 310 CMR 22.15(9)(b)2.

2) Respondent's primary Certified Operator reported that he conducts daily duties seven (7) days a week, 365 days per year. Although the operator

indicated that he does not take time off, there is no one designated to take his place when he is unable or unwilling to continue his daily routine. Further, current Massachusetts Drinking Water Regulations, require that a disinfection treatment system be overseen by a primary treatment operator who holds at a minimum an operator-in-training (OIT) treatment license. Respondent's current primary operator does not have the required treatment license, in violation of 310 CMR 22.11B(5)(i)2.

3) During the sanitary survey, MassDEP observed free-ranging chickens grazing directly on top of the spring.

4) MassDEP observed the following deficiencies with Respondent's chlorine disinfection system:

   a. The hypochlorite feed pump was not interlocked with flow or concentration, and does not conform with the MassDEP Guidelines for Public Water Systems, including the critical chemical control guidelines.
   b. Daily chlorine residuals were being taken at the Town Hall which is at the end of the system. Because the testing location is some distance from the chemical-injection point, the results may not accurately reflect the chlorine concentration in the storage tank and the chlorine concentration in the water being delivered to nearby service connections.
   c. Respondent is not measuring the chlorine residual in the water discharging from the storage tank overflow through the roadside tap and into the brook.
   d. Respondent is using the storage-tank overflow as the raw-water tap for bacteria sample collection. Because that storage tank is subjected to chlorine treatment, MassDEP has determined that the storage-tank overflow is not a representative sampling location for raw water.
   e. Respondent is not collecting disinfection byproduct samples required for all community public water systems that use sodium hypochlorite.

5) Respondent does not have a master water meter, and is therefore not able to determine daily water use, as required by 310 CMR 22.04 (6). An April 2, 2010 Administrative Consent Order (ACO-WE-10-5D007) allowed Respondent to avoid the requirement to install a master water meter until Respondent reconfigured its water system associated with its spring. MassDEP has determined that the installation of a chlorine disinfection system and the installation of a pump within the spring is a sufficiently substantial modification to the water system to void Respondent's allowance to avoid the installation of a master water meter.

I. MassDEP has determined that Respondent has inadequate technical, managerial, and financial capacity based on its inability to maintain a reliable delivery of water and its failure to maintain compliance with MassDEP requirements as described in Sections 5A through 5G, in violation of Massachusetts State Drinking Water Regulation 310 CMR 22.04(1).

Regulations:

For purposes of reference, the regulations cited above are:

J. Regulation310 CMR 22.03(1), which states in part:

> It shall be a violation of 310 CMR 22.00 to failto comply with:...
> (c) any term or condition of a permit, written approval, registration, certification or orderissued by the Department pursuant to M.G.L. c. 111, § 160 or 310 CMR 22.00.

K. Regulation 310 CMR 22.04(1)(c), which states:

> New or Substantially Modified Public Water Systems. Any person proposing to construct a new public water system, operate a public water system or to substantially modify an existing public water system shall obtain the prior written approval of the Department and shall comply with the following requirements:...
> (c) the public water system has the technical, managerial and financial capacity to operate and maintain the system in compliance with 310 CMR 22.00 and each National Primary Drinking Water Regulation in effect at the time of the Department's determination of the system's capacity and in effect in the foreseeable future....

L. Regulation 310 CMR 22.04(4), which states in part:

> (4) Prohibition on Construction or Substantial Modification of a Public Water System Without Prior Department Approval.
> (a) No Person shall commence construction or otherwise implement or operate a proposed new Public Water System or make Substantial Modifications to an existing Public Water System unless the Department has issued its prior written approval and any other applicable Department permits.

M. Regulation 310 CMR 22.04(6), which states: "By no later than December 31, 2001, all Public Water Systems shall install meter(s) at location(s) sufficient to record each system's total production of water from all sources, including water purchased from and/or water sold to other Public Water Systems."

N. Regulation 310 CMR 22.05(5) *Escherichia coli (E.coli)*, which states:

"(a) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if *E. coli* are present. If *E. coli* are present, the system must notify the Department by the end of the day that the system is notified of the test result..."

O. Regulation 310 CMR 22.05(12)(a), which states:

Sanitary Surveys. The Department or its agent may conduct sanitary surveys of public water systems to evaluate each system's source, facilities, equipment, operation, monitoring schedule, technical, managerial and financial capacity, and maintenance procedures at a frequency determined by the Department.

(a) If any violation or deficiency of 310 CMR 22.00, M.G.L. c. 111, § 160 or any otherstatute or regulation administered by the Department is identified during a sanitary survey,including without limitation any violations or deficiencies related to system capacity, thepublic water system shall be notified of the violation, the action necessary to comply withthe statute or regulations, and the time period within which compliance must be attained The public water system shall respond to any violations or deficiencies identified in the sanitary survey report within 30 days of receipt of such, unless the Department otherwise requires certain corrective action.

P. Regulation 310 CMR 22.15(1)(c), which states in part : "(c) Except where a different reporting period is specified in 310 CMR 22.00, for each acute contaminant specified in 310 CMR 22.16: *Table 3*, or where a single sample result is greater than four times the MCL, each Supplier of Water shall report to the Department an MCL exceedance on the same business day that the Supplier of Water becomes aware of the test results...."

Q. Regulation 310 CMR 22.15(9)(b), which states, in part:

Emergency reporting is required after the occurrence of any of the following incidents or emergencies that result in the consumers of the system receiving water that does not meet required or routine quantity or quality conditions: Emergencies or incidents requiring notification within 24 hours:...

g. Chemical or microbiological contamination of the water supply, not specified in 310 CMR 22.15(9)(b)1.c...

h. Any other failure or potential failure of part or all of the water supply system not listed in 310 CMR 22.15(9)(b)2. that may lead to an Emergency as defined in
310 CMR 22.02.

R. Regulation 310 CMR 22.26(3)(a) 4., which states:

Additional Requirements. If the Department does not require corrective action under 310 CMR 22.26(4)(a)2. for a fecal indicator-positive source water sample collected under 310 CMR 22.26(3)(a)2. that is not invalidated under 310 CMR

22.26(3)(d), the system must collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

S. Regulation 310 CMR 22.26(3)(e)1., Sampling Location, which states:"Any ground water source sample required under 310 CMR 22.26(3)(a) must be collected at a location prior to any treatment of the ground water source. All systems are required to maintain a raw water source water sample tap in accordance with 310 CMR22.05(1)(a)1."

T. Regulation 310 CMR 22.26(3)(g), Public Notification, which states: "A ground water system with a ground water source sample collected under 310 CMR 22.26(3)(a) or (b) that is fecal indicator-positive and that is not invalidated under 310 CMR 22.26(3)(d), including consecutive systems served by the ground water source, must conduct public notification under 310 CMR 22.16."

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

8. Respondent shall perform the following actions:

A. Within thirty (30)days of the effective date of this Consent Order, Respondent shall begin measuring the chlorine concentration at its storage tank and the storage tank overflow (whenever flowing) on a daily basis, in addition to measuring daily chlorine concentration at the Town Hall. Respondent shall record the results of all three tests on a form approved by MassDEP and submit that reporting form to MassDEPon a monthly basis.

B. Within 150days of the effective date of this Consent Order,Respondent shall submit to MassDEPa substantially complete BRP WS34 permit application detailing its disinfection system, and compliance with the treatment requirements of the Massachusetts Guidelines and Policies for Public Water Systems, and shall provide written notice that the disinfection system has been installed in accordance with the conditions of MassDEP permit application approval. The permit application shall also

"(a) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if *E. coli* are present. If *E. coli* are present, the system must notify the Department by the end of the day that the system is notified of the test result..."

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Sanitary Surveys. The Department or its agent may conduct sanitary surveys of public water systems to evaluate each system's source, facilities, equipment, operation, monitoring schedule, technical, managerial and financial capacity, and maintenance procedures at a frequency determined by the Department.

(a) If any violation or deficiency of 310 CMR 22.00, M.G.L. c. 111, § 160 or any otherstatute or regulation administered by the Department is identified during a sanitary survey,including without limitation any violations or deficiencies related to system capacity, thepublic water system shall be notified of the violation, the action necessary to comply withthe statute or regulations, and the time period within which compliance must be attained The public water system shall respond to any violations or deficiencies identified in the sanitary survey report within 30 days of receipt of such, unless the Department otherwise requires certain corrective action.

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Q. Regulation 310 CMR 22.15(9)(b), which states, in part:

Emergency reporting is required after the occurrence of any of the following incidents or emergencies that result in the consumers of the system receiving water that does not meet required or routine quantity or quality conditions: Emergencies or incidents requiring notification within 24 hours:...

g. Chemical or microbiological contamination of the water supply, not specified in 310 CMR 22.15(9)(b)1.c...

h. Any other failure or potential failure of part or all of the water supply system not listed in 310 CMR 22.15(9)(b)2. that may lead to an Emergency as defined in
310 CMR 22.02.

R. Regulation 310 CMR 22.26(3)(a) 4., which states:

Additional Requirements. If the Department does not require corrective action under 310 CMR 22.26(4)(a)2. for a fecal indicator-positive source water sample collected under 310 CMR 22.26(3)(a)2. that is not invalidated under 310 CMR

include a proposal to install a source meter on its storage tank discharge which will meter the water used within its distribution system.

C. Within 150days of the effective date of this Consent Order, Respondent shall either (a) provide written notice that it has removed the booster pump from its cistern, or (b)apply for and obtain a permit for the pump's installation.

D. Within sixty (60)days of the effective date of this Consent Order, Respondent shall providewritten notice that it intends to complete a Master Plan in accordance with MassDEP's January 31, 2014 sanitary-survey-inspection report.The Master Plan shall include an alternatives analysis regarding the use of alternative sources of supply, including an interconnection to the North Adams municipal water system, or the installation and permitting of a replacement source. A copy of Respondent's Master Plan shall be submitted to MassDEP within twelve (12)months of the effective date of this Consent Order. A formal Operation and Maintenance Plan shall be included within the Master Plan.

E. Within sixty (60)days of the effective date of this Consent Order, Respondent shall submit formats for clear and legible logs for documenting complaints and response time, repairs, and maintenance activities, and shall begin use of them to document PWS activities.

F. Within sixty (60)days of the effective date of this Consent Order, Respondent shall provide a written description of its management structure, including the names of current Board Members, a copy of its bylaws and ordinances (if any), and a description of its administrative practices.

G. Within ninety (90)days of the effective date of this Consent Order, Respondent shall submit to MassDEP a *System Staffing Plan,* which shall include a list of Respondent's certified water operators, and the proposed number of hours of daily operation for both distribution and treatment, and shall demonstrate that Respondent's distribution and treatment systems will be operated in accordance with the minimum staffing levels identified within 310 CMR 22.11B. Respondent must include a designated secondary operator with up-to-date contract operator notices if needed.

H. Respondent shall provide notification to MassDEP in accordance with the time-lines established within 310 CMR 22.15(9)in the event of water losses or other water-related emergencies. During off-business hours, Respondent shall make such notifications by calling (888)304-1133, MassDEP's emergency phone number.

9. Unless submitted via eDEP or except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Douglas Paine
MassDEP

436 Dwight Street
Springfield, MA 01103

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

10. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that any deadlines set forth in this Consent Order constitute reasonable periods of time for Respondent to take the actions described.

12. Respondent is Permittee, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance assurance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B.

13. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

14. This Consent Order may be modified only by written agreement of the parties hereto.

15. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

16. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

17. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

18. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

19. In addition to the penalty set forth in this Consent Order, if any (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of $100 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

20. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

21. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Briggsville Water District for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

22. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

23. All applicable transmittal fees shall accompany any submissions(s) required by this Consent Order.

24. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

25. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
BOARD OF WATER COMMISSIONERS
BRIGGSVILLE WATER DISTRICT

Debbie W. Scott
Chair

Date: 8/15/16

Member

Date:

Member

Date:

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:
Michael Gorski
Regional Director
MassDEP
436 Dwight Street
Springfield, Massachusetts 01103

Date: 8/19/16