

PLACE: Dobbs Building, Raleigh, North Carolina

DATE: Wednesday, June 8, 2022

TIME: 10:00 a.m. - 11:45 a.m.

DOCKET NO.: W-1333, Sub 0 and W-1130, Sub 11

BEFORE: Chair Charlotte A. Mitchell, Presiding

Commissioner ToNola D. Brown-Bland

Commissioner Daniel G. Clodfelter

Commissioner Kimberly W. Duffley

Commissioner Jeffrey A. Hughes

Commissioner Floyd B. McKissick, Jr.

IN THE MATTER OF:

Application by Currituck Water and Sewer, LLC, 4700  
Homewood Court, Suite 108, Raleigh, North Carolina  
27609, and Sandler Utilities at Mill Run, LLC,  
448 Viking Drive, Suite 220, Virginia Beach, Virginia  
23452, for Authority to Transfer the Sandler  
Utilities at Mill Run Wastewater System and Public  
Utility Franchise in Currituck County, North Carolina,  
and for Approval of Rates

VOLUME: 3

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15

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20 4326 Mail Service Center

21 Raleigh, North Carolina 27699-4300

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IDENTIFIED/ADMITTED

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P R O C E E D I N G S

CHAIR MITCHELL: All right. Good morning. Let's come to order and go on the record, please. I'm Charlotte Mitchell, chair of the Utilities Commission, and with me this morning are Commissioners Brown-Bland, Clodfelter, Duffley, Hughes, and McKissick. Commissioner Kimerait is recused from this proceeding.

I now call for hearing Docket Numbers W-1333, Sub 0 and W-1130, Sub 11, which is In the Matter of Application by Currituck Water and Sewer, LLC and Sandler Utilities at Mill Run, LLC for Authority to Transfer the Sandler Utilities at Mill Run Wastewater System and Public Utility Franchise in Currituck County, North Carolina, and for approval of rates.

Before we proceed further, and as is required by the State Government Ethics Act, I remind members of the Commission of our duty to avoid conflicts of interest and inquire at this time as to whether any commissioner has any known conflict of interest with respect to matters coming before us in this docket.

(No response.)

1 CHAIR MITCHELL: The record will reflect  
2 that no conflicts have been identified, so we will  
3 proceed.

4 On May 20, 2021, Currituck Water and  
5 Sewer, LLC, to which I will refer as Currituck, and  
6 Sandler Utilities at Mill Run, LLC, which I will  
7 refer to as Sandler, filed with the Commission an  
8 application for transfer of public utility  
9 franchise and for approval of rates, seeking  
10 authority to transfer the wastewater utility system  
11 and public utility franchise serving the Eagle  
12 Creek subdivision, Eagle Creek Golf Club and Grill,  
13 and the Moyock Middle School in Currituck County,  
14 North Carolina, from Sandler to Currituck, and for  
15 the approval of rates.

16 On November 18, 2021, the Commission  
17 issued an order scheduling hearings, establishing  
18 discovery guidelines, and requiring customer public  
19 notice. The order scheduled a public witness  
20 hearing to be held remotely by way of Webex on  
21 February 2nd in two sessions, one in the afternoon  
22 and one in the evening, as well as an  
23 expert-witness hearing to begin on April 5, 2022.

24 On November 30, 2021, Sandler filed a

1 certificate of service stating that notice to  
2 customers was mailed or hand delivered to all  
3 affected customers by the date specified in the  
4 scheduling order on November 24, 2021.

5 The intervention and participation of  
6 the Public Staff in this proceeding is recognized  
7 pursuant to North Carolina General Statute Section  
8 62-15(d) and Commission Rule R1-19(e). No other  
9 parties have sought or been granted intervention in  
10 this proceeding.

11 Between October 12, 2021, and  
12 May 9, 2022, various statements of consumer  
13 position were filed in this docket. The public  
14 witness hearing was held as scheduled on  
15 February 2nd in two sessions at which eight  
16 customers testified.

17 On February 4, 2024 [sic], Currituck  
18 filed the direct testimony of witness Myers. Also  
19 on February 4th, Sandler filed the direct testimony  
20 of witness Willis.

21 On February 8, 2022, the Commission  
22 issued an order requiring additional information  
23 from the parties, in which it requested that the  
24 parties provide responses to specific questions as

1 well as to requests for documents that were set  
2 forth in the order.

3 On February 18, 2022, Sandler filed its  
4 response to the Commission's February 8th order.

5 On March 2, 2022, the Public Staff filed  
6 the direct testimony and exhibits of witnesses  
7 Tran, Franklin, Morgan, and the joint direct  
8 testimony of May and Tankard.

9 On March 4, 2022, both Sandler and  
10 Currituck filed their report on customer service  
11 and service quality complaints expressed during the  
12 public witness hearing.

13 On March 11, 2022, the Public Staff  
14 filed its verified response to the report of  
15 Sandler and its verified response to the report of  
16 Currituck.

17 On March 22, 2022, Sandler filed its  
18 supplement to the report on customer comments from  
19 the public hearing. Also on March 22nd, Sandler  
20 filed the rebuttal testimony of witness Willis.

21 On March 24, 2022, the Public Staff  
22 filed a motion requesting that the Commission delay  
23 the expert witness hearing to and until Tuesday,  
24 April 12th to allow the Public Staff, Currituck,

1 and Sandler to complete discovery and adequately  
2 prepare for the expert witness hearing in this  
3 proceeding.

4 On March 29th, Currituck filed a motion  
5 for an extension of the deadline by which it was to  
6 file rebuttal testimony.

7 On March 30th, the Commission issued an  
8 order continuing the expert witness hearing to  
9 May 9th.

10 On March 31, 2022, Currituck filed the  
11 rebuttal testimony of Witnesses Myers, Freed,  
12 Bissell, Basnight, Beaumont, Hanig, Lickfield, and  
13 Miller.

14 On May 3, 2022, Sandler filed a notice  
15 of withdrawal of counsel, Karen Kemerait, and  
16 substitution of counsel, David Drooz.

17 On May 4, 2022, Sandler filed the  
18 corrected rebuttal testimony of witness Willis.

19 On May 5, 2022, Currituck filed a motion  
20 for another continuance of the expert witness  
21 hearing.

22 On May 6, 2022, the Commission issued an  
23 order continuing the hearing to June 8th.

24 On June 3rd, the Public Staff filed a

1 motion to continue the evidentiary hearing to  
2 June 9th, which motion was denied by the Commission  
3 by order issued on June 6th.

4 On June 6th, the Public Staff filed the  
5 supplemental and settlement testimony of witness  
6 Franklin and the settlement testimony of witness  
7 Morgan.

8 Also on June 6th, the Public Staff filed  
9 a joint motion to excuse Currituck witnesses Freed,  
10 Bissell, Basnight, Beaumont, Hanig, Lickfield, and  
11 Miller; Sandler witness Willis; and Public Staff  
12 witnesses Morgan, Tran, May, and Tankard from  
13 appearing at the June 8th expert witness hearing.  
14 This motion was allowed by order of the Commission  
15 issued on June 7th.

16 On June 7th, Currituck filed the  
17 supplemental testimony of witness Myers. On  
18 June 7th, the Public Staff, Currituck, and Sandler  
19 filed a settlement agreement and stipulation. And  
20 on -- also on June 7th, the testimony of Mike Myers  
21 was filed by Sandler. Actually, I have that  
22 already. Currituck filed the supplemental  
23 testimony of Mike Myers.

24 That brings us to today. I will call on

1 counsel for the parties to announce their  
2 appearances, beginning with Sandler.

3 MR. DROOZ: Good morning, Commissioners.  
4 My name is David Drooz, appearing on behalf of  
5 Sandler Utilities at Mill Run.

6 CHAIR MITCHELL: Good morning,  
7 Mr. Drooz.

8 All right, Currituck?

9 MR. ALLEN: Good morning,  
10 Chair Mitchell, members of the Commission. My name  
11 is Brady Allen, and I'm with the Allen Office,  
12 LLPC, and beside me is my co-counsel,  
13 Britton Allen, and we are here today to represent  
14 the Currituck Water Services, LLC. Unfortunately,  
15 Mr. Finley was in an accident this weekend and was  
16 injured and is unable to appear today. He is still  
17 the counsel for Currituck Water Service, and we are  
18 just appearing in addition. Thank you.

19 CHAIR MITCHELL: All right. Thank you,  
20 Mr. Allen. Good morning to the Allen brothers.

21 All right, Public Staff?

22 MS. HOLT: Good morning. I'm Gina Holt  
23 with the Public Staff here on behalf of the using  
24 and consuming public, and with me at counsel table

1 is Public Staff attorney John Little.

2 CHAIR MITCHELL: Good morning Ms. Holt  
3 and Mr. Little.

4 All right. Preliminary matters before  
5 we begin?

6 MR. ALLEN: Yes, Chair Mitchell. I  
7 guess the first thing we would like to do is make  
8 sure that the application -- the Joint Application  
9 of Currituck Water Service and Sandler Utilities to  
10 Transfer System is moved into the record.

11 CHAIR MITCHELL: All right. Hearing no  
12 objection to the motion, it will be allowed.

13 (Joint Application of Currituck Water  
14 and Sewer and Sandler Utilities at Mill  
15 Run Joint Application of Currituck Water  
16 and Sewer and Sandler Utilities at Mill  
17 Run A was admitted into evidence.)

18 MR. ALLEN: Excellent. Next, my  
19 understanding is the joint motion to excuse  
20 witnesses has already admitted most of the  
21 testimony into the record. We do have Mike Myers  
22 here today, and his testimony needs to be admitted  
23 to the record, so we'll call him to the stand when  
24 it's the appropriate time, if that time is now.

1 CHAIR MITCHELL: Let's do this for  
2 purposes of clarity of the record. Let's go ahead,  
3 and I'll have you move to admit the testimony for  
4 those witnesses -- the testimony that's been  
5 prefiled for those witnesses whose appearance has  
6 been excused.

7 MR. ALLEN: Sure. We have the rebuttal  
8 testimony of Tracy Miller consisting of 29 pages,  
9 the rebuttal testimony of Mark Bissell consisting  
10 of 18 pages, the rebuttal testimony of  
11 William Freed consisting of 9 pages, the rebuttal  
12 testimony of Zach Basnight consisting of 8 pages,  
13 the rebuttal testimony of Paul Beaumont consisting  
14 of 5 pages, the rebuttal testimony of  
15 Representative Robert Hanig consisting of 8 pages,  
16 and the rebuttal testimony of Gary Lickfield  
17 consisting of 10 pages.

18 CHAIR MITCHELL: And did you mention  
19 Tracy Miller?

20 MR. ALLEN: Yes. Tracy Miller was too.

21 CHAIR MITCHELL: All right. Hearing no  
22 objection to that motion, it will be allowed. The  
23 testimony will be copied in the record as if  
24 delivered orally from the stand.

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MR. ALLEN: Thank you.  
  
(Whereupon, the prefiled rebuttal testimony of Tracy Miller, prefiled rebuttal testimony of Mark Bissell, prefiled rebuttal testimony of William Freed, prefiled rebuttal testimony of Zach Basnight, prefiled rebuttal testimony of Paul Beaumont, prefiled rebuttal testimony of Robert Hanig, and prefiled rebuttal testimony of Gary Lickfield, were copied into the record as if given orally from the stand.)

1 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

2

3 A. My name is Tracy Miller, and I am the Area Manager for the Outer Banks and Piedmont  
4 areas for Envirolink, Inc. My business address is 4700 Homewood Court, Suite 108,  
5 Raleigh, North Carolina 27609.

6

7 Q. PLEASE STATE YOUR PROFESSION AND EXPERIENCE WITH WATER AND SEWER SYSTEMS.

8

9 A. I am a licensed operator in the State(s) of North Carolina and South Carolina, holding the  
10 following licenses:

11 • North Carolina

12 ○ Grade 4 Biological Wastewater Operator Certification

13 ○ Grade 2 Wastewater Collection System Operator Certification

14 ○ Spray Irrigation Operator Certification

15 ○ Land Application Operator Certification

16 ○ C Well Operator Certification

17 ○ A Distribution Operator Certification

18 • South Carolina

19 ○ Wastewater A Certification

20

1 I have over 15 years working as a certified operator in State of North Carolina, having operated  
2 various technologies including gravity sewer, low pressure sewer, STEP sewer, in addition to the  
3 vacuum sewer serving Eagle Creek. I have also operated treatment technologies, including  
4 extended aeration, membrane biological reactors, Sequencing Batch Reactors, lagoons, trickling  
5 filters, Integrated Fixed Activated Sludge (IFAS), and other technologies.  
6

7 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?  
8

9 A. No.  
10

11 Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.  
12

13 A. I have a high school diploma from Central Carolina Community College and have  
14 attended a one year certification program at North Carolina State University for turf  
15 grass and ornamentals. In addition, I have attended numerous North Carolina operator  
16 certifications schools, the American Water Works Associations leadership course, as well  
17 as training on vacuum sewer operation and maintenance from Airvac, Flovac, and A3-  
18 USA.  
19

20 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 A. The purpose of my testimony is to provide additional information related to the joint  
2 application filed by CWS and Sandler Utility for the transfer of the Eagle Creek  
3 wastewater system in Currituck County, North Carolina.

4  
5 Q. CAN YOU DESCRIBE THE TRANSITION FROM ENVIROTECH TO ENVIROLINK STAFF?  
6

7 A. Yes. Envirolink agreed to acquire Envirotech in or around February/March 2020. It was  
8 agreed that Envirotech personnel would stay in place and continue operation of the  
9 facilities they were currently operating for two reasons. First, to allow for a smooth  
10 transition, and second, to permit Envirolink managers sufficient time to assess the  
11 capabilities of the Envirotech staff for potential employment with Envirolink. Between  
12 February/March 2020 and September 7, 2020, Envirotech employees continued the  
13 operation of Eagle Creek and other facilities, while Envirolink periodically shadowed the  
14 Envirotech staff, without offering suggestions or advice. In or around mid-August of  
15 2020, Envirolink began starting to influence operations with the Envirolink managers  
16 and staff assuming operational control on September 7.

17  
18 Q. PLEASE DESCRIBE THE CONDITION OF THE EAGLE CREEK WASTEWATER PLANT PRIOR TO  
19 AND AT THE TIME ENVIROLINK STAFF ASSUMED OPERATIONS.  
20

1 A. The treatment was high in solids, vegetation in the clarifiers and digester. The sand  
2 filters could not be operated; the mechanical equipment inside the filters would not  
3 operate; there was no electricity to the unit; the unit was full of solids; and the filters  
4 were being by passed. The ultraviolet lights had exposed wiring, wiring was not to code,  
5 and only two of four light banks were working. The generator would not operate. The  
6 staff gauge in the infiltration pond has been damaged and knocked over; there was  
7 debris in the pond with trees all the way around the pond, which had less than 1 foot of  
8 freeboard. It was apparent that solids had not been removed from the plant in many  
9 years, with the off-line aeration basin full of solids, the digester full of solids and the  
10 mixed liquor approaching 9,000 ppm. In addition, the aeration basin was experiencing  
11 significant foaming, and the basin had debris from the digester distributed throughout.  
12 The splitter box had deteriorated to the point that it had been corroded away to the  
13 point that significant holes were obvious to even the most casual observer. The grating  
14 on the plant in several places had corroded away with much of the grating missing  
15 sections. There were no records available, and Envirotech staff indicated that the  
16 facility did not maintain records. The building was in a state of uncleanliness and  
17 disrepair, with parts and debris scattered all over the building, office and grounds.  
18  
19 The vacuum station had oil stains, quick dry & liter all of the floor; the bottom pit was  
20 full of water, there were piping and parts scattered all over the bottom pit, vacuum  
21 pumps had exposed wiring;, the control panel did not meet code; pumps had not been

1 greased. There were approximately 10 rebuilt controllers, five rebuilt valves. There  
2 were approximately 20 controller that were out of service and awaiting to be rebuilt,  
3 and 10 valves were out of service and awaiting to be rebuilt.

4  
5 The ditch pump was operational, but it was exposed to the elements. There were no  
6 records available to indicate what maintenance activities had been performed.

7  
8 The irrigation system was being controlled, operated and maintained by golf course  
9 personnel, and Envirotech staff had no knowledge of its operation.

10  
11 Q. PLEASE DESCRIBE YOUR ANALYSIS OF PAST EFFLUENT DATA.

12  
13 A. With the solids in the filters, with one-half of the UV banks not functioning, with solids  
14 being held in the aeration digester, with poor condition of diffusers and based on the  
15 overall the condition of other facilities, it is my opinion that it is highly unlikely that the  
16 samples collected under Envirotech's operations accurately represented the readings  
17 reported for the Eagle Creek wastewater system.

18  
19 Q. PLEASE DESCRIBE THE COMPLIANCE ISSUES EXPERIENCED AT THE WASTEWATER  
20 TREATMENT PLANT DURING THE SPRING AND SUMMER OF 2021.

1 A. Those compliance issues were caused by the operator's lack of care and oversight.  
2 While the operator hired possessed a Grade IV Biological Operator license (the highest  
3 level in North Carolina), he lacked the basic skills necessary to be an operator in  
4 responsible charge. This operator has been removed as an operator, and we have  
5 worked with him to voluntarily turn in his license, such that he is no longer able to  
6 function as an operator in responsible charge.

7  
8 Q. DESCRIBE THE CONDITIONS OF THE PITS THEMSELVES WHEN YOU TOOK OVER THE  
9 OPERATION AND MANAGEMENT OF COLLECTION SYSTEM.

10  
11 A. When we took over, the condition of the vacuum station and pits were in a poor  
12 condition. It is very clear to everyone that has operated, inspected or reviewed the  
13 collection system that the pits are a significant source of inflow and infiltration. There  
14 was no standardization of how pits were assembled, and some pits had debris logged in  
15 them. Almost immediately upon taking over, a few customers contacted us concerned  
16 because their pit had subsided to the point they feared it was not functional.

17  
18 When we took over, the facility had an inventory that ranged from 25 to 35 controllers,  
19 and 15 valves. It was obvious that the controllers and valves had been rebuilt numerous  
20 times.

21 Q. PLEASE DESCRIBE THE CAUSE OF THE SERVICE OUTAGE IN SEPTEMBER 2020.

1  
2 A. The initial outage was caused by a pit valve failure. As technicians were locating and  
3 repairing the pit that had failed, a vacuum pump ceased. There were no spare pumps in  
4 inventory, so I contacted Airvac, who conveyed that the only spare pump in stock in the  
5 United States was a rebuilt vacuum pump and that there would be a 9 day delivery time.  
6 To expedite delivery, Envirolink sent an employee to Indiana to pick up the vacuum  
7 pump and deliver it to the site. However, before the pump could be delivered, the only  
8 other vacuum pump failed, leaving the system without any ability to generate vacuum.  
9  
10 Once the rebuilt Airvac pump was installed, technicians began working to restore  
11 vacuum to the collection lines. Progress was slow because pits and pipes were full of  
12 water and technicians could only progress a few feet at a time. Then, as vacuum was  
13 restored to sections, pits began to activate, and water logged controllers failed, causing  
14 technicians to retreat and repair previously restored lines.  
15  
16 As technicians worked to restore service, both sewage pumps ceased, causing a high  
17 level lock out of the vacuum pumps. A by-pass pump was installed that same day, and  
18 technicians continued restoration efforts. While the by-pass pump was installed, within  
19 hours, this caused technicians to have to start restorations efforts over from the  
20 beginning. While the by-pass functioned, we had to dedicate a technician to operate  
21 the by-pass pump 24 hours per day.

1  
2 In or around October 5, 2020, after I updated the Currituck County Commissioners,  
3 Flovac contacted me offering their assistance in locating an additional vacuum pumps  
4 and offered two technicians to help with restoration efforts.

5  
6 While technicians were working to restore service, Airvac's rebuilt vacuum pump failed,  
7 further hindering progress because one vacuum pump was unable to move water  
8 through the waterlogged lines. The Airvac pump failure was the result of Airvac's failing  
9 to install the oil recirculation line Airvac's pump rebuilding process.

10  
11 With Flovac's assistance, a new vacuum pump was delivered and installed the next day,  
12 allowing crews to continue with restoration efforts, but, once again, technicians had to  
13 start over.

14  
15 During this event, I was in daily communication with NC DEQ Washington Regional  
16 Office personnel, updating them on the situation and restoration efforts.

17  
18 Service was restored on October 11, allowing crews to initiate cleanup procedures.

19  
20 Q. PLEASE DESCRIBE THE CAUSE OF THE SERVICE OUTAGE IN OCTOBER 2020.

21

1 A. As described, the vacuum station has a hydro-pneumatic tank that is equipped with  
2 vacuum pumps that keep the air space above the water under a negative pressure. Under  
3 normal operation, the tank utilizes approximately 4% of the tank volume, with sewage  
4 pumps turning on when the tank volume reached 40% and shutting off is when the tank  
5 volume reaches 36%. The tank is equipped with a level sensor inside the tank that shuts  
6 down the vacuum pumps in the event the water level rises too high. The action of turning  
7 on and turning off sewage pumps is controlled by this level sensor. In addition, the level  
8 sensor sends an alarm to the monitoring system and alerts the operator to the emergency  
9 condition. This level sensor is located inside the tank, and, because of its location,  
10 technicians are not able to inspect it.

11  
12 With respect to the October 2020 service outage, the level sensor inside the tank broke  
13 off due to corrosion inside the tank, causing what we refer to as a high level lockout. This  
14 happens when the level in the tank reaches the appropriate level shuts down the vacuum  
15 pumps.

16  
17 In order to repair the sensor and restore the vacuum station to operation, we were  
18 required to take the vacuum tank off line, making the vacuum station inoperable. The  
19 repair was complete, and the vacuum station operation was restored, allowing  
20 technicians to begin restoring service to the lines. As was the case for the September  
21 2020 service issue, line restoration could only be completed in short segments because

1 of the amount of water inside the lines.

2  
3 During this event, I was in daily communication with the County staff, and, with the  
4 County's help, we coordinated the mobilization of showers and porta-poties for the  
5 community. In addition, we had our vacuum trucks as well as vacuum trucks from  
6 contractors vacuuming out pits within the community.

7  
8 In addition, I was in daily communication with NC DEQ Washington Regional Office  
9 officials updating them on the status.

10  
11 Q. HAVE YOU REVIEWED MR. MAY AND MR TANKARD'S TESTIMONY REGARDING  
12 REPORTING OF SANITARY SEWER OVERFLOWS, AND CAN YOU PROVIDE ANY ADDITIONAL  
13 INFORMATION?

14  
15 A. Yes. I have reviewed their testimony and agree that they Condition II. 11 requires  
16 permittees to report Sanitary Sewer Overflows, but Mr. May and Mr. Tankard's testimony  
17 did not include the additional guidance related to sanitary sewer overflows contained in  
18 the cover letter to the permit. The cover letter defines a "reportable" Sanitary Sewer  
19 Overflow as any Sanitary Sewer Overflow greater than 1,000 gallons to the ground or any  
20 amount that reaches surface waters. In addition, the cover letter directs permittees to

1 report the sanitary sewer overflows via phone to the regional office and specifically  
2 directs permittees not to submit notification via email, facsimile or voicemail.

3  
4 Q. PLEASE COMMENT ON MR. MAY AND MR. TANKARD'S TESTIMONY STATING THAT  
5 DURING THE SEPTEMBER 2020, OCTOBER 2020 AND NOVEMBER 2020 THAT SANDLER  
6 AND ENVIROLINK FAILED TO NOTIFY NC DEQ.

7  
8 A. As I testified earlier, I was in daily communication with NC DEQ regarding restoration  
9 efforts and conditions related to wastewater service at Eagle Creek. While I did not  
10 specifically identify each and every overflow, I generally notified NC DEQ during the  
11 updates that overflows were occurring. It was my opinion that this constituted a verbal  
12 notification.

13  
14 Further, because of the frustration experienced by residence from over 15 years of service  
15 outage issues, several residents report service issues directly to NC DEQ and NCUC Public  
16 Staff. In those cases, it was my opinion that since we became aware of the issue from NC  
17 DEQ staff, that they were aware and that issuing a notification was not required or  
18 necessary.

19  
20 In addition, it was my opinion that individually each overflow did not meet the  
21 requirement for a 5 day notification, so we did not prepare and file a 5 day report. At that

1 time, the verbal notification and 5 day written report were the only required reporting  
2 requirements.

3  
4 Subsequently, I believed that NC DEQ concurs with my opinion, because we attempted to  
5 file a written 5 day report to meet the notification requirement in the Injunctive Relief  
6 Petition filed by NC DEQ and the Attorney General and were informed not to use this  
7 report format.

8  
9 Q. WHAT INFORMATION DO YOU HAVE REGARDING COMMUNICATION BEFORE AND AFTER  
10 YOUR INVOLVEMENT AT EAGLE CREEK?

11  
12 A. While I prefer to meet customers as part of normal operations, I have had numerous  
13 interactions with individual customers, the HOA, NC DEQ and others involved with our  
14 efforts to help Eagle Creek residents. Based on my discussions with residents, the HOA  
15 and NC DEQ, prior to September 2020, the community did not receive any communication  
16 regarding the status of the collection system. It is my understanding that prior to  
17 September 2020, while sections of the collection system (typically along Greenview Road  
18 and Eagleton Circle), would be out of service, the remaining homeowners in the  
19 community were largely unaware that these customers were experiencing service  
20 outages because no communication was provided to the community.

21

1 Based on feedback I have received, prior to September 2020, customers only received  
2 information by talking directly to technicians working during service outages.

3  
4 Beginning in September, largely because of the nature of the service outages, we began  
5 issuing periodic updates to the community in an effort to keep them informed on  
6 restoration efforts. There is always a time lag inherent in getting field information to the  
7 office, preparing the message and then distributing the message to customers. During  
8 restoration efforts, conditions can change very rapidly, and individual customers may be  
9 experiencing conditions that do not represent the system condition.

10  
11 In my opinion, customer satisfaction as it related to wastewater service is based on an  
12 individual experience at one's residence, so the time lag combined with the fact that  
13 system conditions do not necessarily reflect conditions at an individual resident, caused  
14 residents to become frustrated with our communication efforts.

15  
16 To address this frustration, we met with the HOA to discuss communication protocols and  
17 efforts. During these meetings, we learned that the community was highly fractured with  
18 multiple Facebook pages for different groups within the community. We also learned  
19 that no one communication platform would reach all the residents, so we attempted to  
20 use two primary platforms: the HOA Facebook Page and Envirolink's reverse 411 email  
21 notification system.

1  
2 The communication efforts proved to be a burden to the HOA, so we eliminated that  
3 platform in favor of email notification, and beginning in December 2020, we have gone  
4 from periodic email notification to daily email notification. In addition, to notifying  
5 residents, these notifications are issued directly to NC DEQ, Sandler Utility, Currituck  
6 County, NCUC Public Staff and other stakeholders.

7  
8 Q. MR. MYERS, MR. TANKARD, AND MR. MAY HAVE TESTIFIED THAT IN OR AROUND  
9 AUGUST, ENVIROLINK STAFF TOOK OVER FOR ENVIROTECH EMPLOYEES, CAN YOU  
10 CLARIFY THIS DATE?

11  
12 A. At the time of the inspection in August, Envirotech staff was still operating and managing  
13 the Eagle Creek Wastewater facility; however, Envirolink had started evaluating the  
14 facility in anticipation of the switch to Envirolink personnel and management. The actual  
15 switch occurred on September 7, 2020. As such, at the time of the first vacuum station  
16 failure, Envirolink had been operating the facility for only 23 days.

17  
18 Q. DURING THE TRANSITION, PLEASE DESCRIBE THE ACTIVITIES YOU OR YOUR STAFF  
19 PERFORMED.

20  
21 A. During the transitional period, we shadowed the Envirotech staff in order to determine

1 their procedures for operating and maintaining each of the wastewater facilities they  
2 operated.

3  
4 For Eagle Creek, we reviewed approximately 12 months of data from the treatment  
5 facility, assessed the condition of the collection system, assessed the condition of the  
6 treatment plant, infiltration pond, and irrigation system. In addition, we evaluated their  
7 capabilities, procedures and skills as operators.

8  
9 Q. WHAT MAINTENANCE ACTIVITIES WERE CONDUCTED BETWEEN SEPTEMBER 7<sup>TH</sup> AND  
10 SEPTEMBER 27?

11  
12 A. As you can see from the photos attached to Mr. Myers' testimony, there was a  
13 tremendous amount of deferred maintenance, and our staff immediately began working  
14 to get things brought up to an acceptable standard. Specific tasks completed during the  
15 first 20 days include:

- 16 • Greased sewage pumps and vacuum pumps;
- 17 • Removed live trees and vegetation from the treatment plant;
- 18 • The treatment plant was cleaned;
- 19 • While the sand filter underdrain was not functional and the media had been  
20 removed, we pumped out the sand filter and repaired some of the mechanical

1 and electrical components so that the filter could be put into operation. While  
2 the filter was put into service, the underdrain system was not functional and  
3 the filter had no media. In addition, the unit did not have any electrical conduit  
4 or power to it, so we ran temporary electrical to the facility in order to get the  
5 filter in service;

- 6 • We repaired the two ultraviolet disinfection banks that were no working when  
7 we took over facility operations;
- 8 • We started removing debris from the aeration basin and digester;
- 9 • We cleaned weirs and UV bulbs;
- 10 • We started removing solids from the plant [according to the former operator  
11 – no solids had been removed from the plant for two years.]
- 12 • We cleaned blower filters;
- 13 • We began obtaining quotes for removing material from the infiltration pond,  
14 rehabilitation of the filters, replacement of influent bar screen and splitter  
15 box;
- 16 • We attended Airvac training sessions;
- 17 • We review Airvac maintenance recommendations;

18  
19 Q. WHAT MAINTENANCE ACTIVITIES HAVE YOU AND YOUR STAFF BEEN PERFORMING ON  
20 THE COLLECTION SYSTEM, SINCE SEPTEMBER 2020?

1 A. We are currently maintaining a 24 hour, 365 day presence at Eagle Creek. We categorize  
2 maintenance task into daily, weekly, monthly, quarterly, semi-annual and annual tasks.  
3 While a complete list would be very exhaustive, some of the specific tasks recommended  
4 by Airvac and Flovac include:

- 5 • Vacuum Pumps
  - 6 ○ Oil checked daily
  - 7 ○ Oil changed every three months
  - 8 ○ Greased monthly
- 9 • Sewage pumps
- 10 • Generator tested weekly
- 11 • Ditch pump inspected and tested weekly
- 12 • Alarm system tested weekly
- 13 • Collection System
  - 14 ○ Controllers are timed monthly
  - 15 ○ Pits are inspected monthly
  - 16 ○ Valve operation tested weekly
  - 17 ○ Lines are aired out weekly

18  
19 Q. ARE YOU AWARE OF THE CUSTOMER SURVEY CONDUCTED WITHIN COMMUNITY AND  
20 SUBMITTED DURING THE PUBLIC HEARING?

1 A. Yes. I am.

2

3 **Q. PLEASE DESCRIBE THE FEEDBACK YOU HAVE RECEIVED FORM THE HOMEOWNERS WITH**  
4 **WHOM YOU HAVE DISCUSSED THE SURVEY.**

5

6 A. I have had the opportunity to discuss the survey with approximately 12 – 15 homeowners;  
7 however, each homeowner I have spoken to about the survey did not have any  
8 knowledge of the survey but did express interest in learning more about gravity, low  
9 pressure and STEP technology.

10

11 **Q. WERE YOU AWARE OF THE CONSTRUCTION OF THE FORCE MAIN, AND DID YOU HAVE**  
12 **ANY INVOLVEMENT IN THE DISUPTIONS DURING CONSTRUCTION?**

13

14 **A.** Yes. My involvement was primarily after the line hits occurred. I inspected the line hits  
15 and facilitated restoration efforts. After the second electrical line hit, I required a meeting  
16 with the locator, contractor, and engineer. During this meeting, the Dominion Power  
17 locator accepted responsibility for not marking electrical lines properly.

18

19 I also was involved in the irrigation line hit. While the contractor was in the trench  
20 repairing the irrigation line, the irrigation pumps were engaged. I contacted the golf  
21 course owner and requested that he shut the irrigation pumps off, but he refused, stating

1 that they had just seeded and that they needed to irrigate. I explained the repair would  
2 only take approximately 30 minutes to repair, but he refused, stating it was our  
3 contractor's problem and they could repair it with the irrigation pumps running.

4 I utilized the authority granted under our easement agreement to enter the pump house  
5 and disengage the pumps, but after I left, the golf course owner re-engaged the irrigation  
6 pumps. It was at this time, we instructed the contractor to leave the trench open to give  
7 us time to contact the sheriff, so we could solicit the Sheriff's assistance in enforcing our  
8 easement.

9  
10 Q. PLEASE DESCRIBE THE RELIABILITY OF THE WASTEWATER TREATMENT AND COLLECTION  
11 SYSTEM SERVING EAGLE CREEK WHEN ENVIROLINK TRANSITIONED OPERATIONS.

12  
13 A. Envirolink requires operators to contingency plan in the event of the failure of various  
14 components of a wastewater system. At the time of the first failure, we were still in the  
15 process of evaluating the facility, but our initial assessment of the Eagle Creek wastewater  
16 system was that, with the exception of controllers and valves, there was no redundancy.  
17 There were no spare UV bulbs, no spare mixers, no spare vacuum pumps, no spare  
18 sewage pumps, etc.

19  
20 In addition, while the design had a second aeration basin, the basin could not be operated  
21 because it was full of solids.

1 Q. ARE YOU RESPONSIBLE FOR HIRING AND STAFFING?

2

3 A. Yes. It is my responsibility to hire staff and ensure they are qualified and trained.

4

5 Q. DESCRIBE ANY CHALLENGES YOU HAVE EXPERIENCED IN HIRING QUALIFIED STAFF.

6

7 A. Our challenges on hiring qualified and certified staff are the same as other utilities, the  
8 pool of certified operators is declining, and we have found that a certification does not  
9 mean the individual is qualified to be an operator in responsible charge.

10

11 As described in Mr. May's and Mr. Tankard's testimony, only about 4.2% of the permitted  
12 collection systems in the State of North Carolina are vacuum systems. If this analysis is  
13 expanded to include permitted and deemed permitted collection system, this figure drops  
14 to below 3.6% of the collection systems that the DEQ's Washington Regional Office  
15 oversees. Given that all of the permitted vacuum systems that are regulated in the State  
16 of North Carolina, the percentage of vacuum systems in the State of North Carolina, it is  
17 reasonable to expect that percent to drop well below 1%.

18

19 This is important when recruiting talent because the pool of experienced and qualified  
20 vacuum system operators is extremely limited. In fact, this limitation extends beyond just  
21 operators or technicians, the pool of designers and vendors is also extremely limited. As

1 such, Envirolink has had to train each new hire that supports the Eagle Creek wastewater  
2 facility.

3  
4 Q. CAN YOU COMMENT ON MR FRANKLIN'S TESTIMONY REGARDING THE OAK ISLAND  
5 VACUUM SYSTEM.

6  
7 A. Yes. Using one vacuum system as the basis for a comparison is not a valid analysis. Mr.  
8 Franklin has indicated that he did not conduct an inspection. He describe his visit as a "site  
9 visit". Conversely, Envirolink has contacted the contacted the Florida Department of  
10 Environmental Quality, solicited the services of a former Airvac engineer, participated in  
11 a review of Eagle Creek vacuum system by a NC DEQ approved engineer, conducted an  
12 extensive review of literature, had frequent and numerous communication with four  
13 different vacuum technology providers, solicited advice and counsel of William Freed  
14 (former Envirotech owner) and consulted with vacuum system operators from Virginia  
15 Beach and Cape Charles, Virginia. Based on information we have obtained from these  
16 various sources, we have a wealth of information regarding the reliability of controllers,  
17 pits, older Airvac designs, monitoring systems, etc. While we respect that Mr. Franklin  
18 conducted a site visit and concur that the information obtained is valuable, we caution  
19 that it must be taken in proper context. Key points of Mr. Franklins testimony and  
20 information obtained from discovery responses include:

- 1           • the Oak Island is 15 years old but Mr. Franklin did not provide the comparative  
2           information to the Commission that the Eagle Creek system is 25 years old;
- 3           • Mr. Franklin did not provide a comparison of maintenance history of Oak Island  
4           to Eagle Creek (information to Envirolink’s maintenance protocols is provided in  
5           my testimony);
- 6           • Mr. Franklin relied on Ms. Willis’ testimony as the basis for evaluating spare parts  
7           inventory at Eagle Creek, but Mr. Franklin did not offer sufficient information for  
8           the Commission to understand that spare parts inventory referenced in Ms.  
9           Willis’s testimony was after the service failures experienced in 2020 and were  
10          based on the recommendations of Envirolink, Flovac and required by NC DEQ;
- 11          • the spare parts inventory of 2 – 3 for each major component at Oak Island, but  
12          Mr. Franklin admitted he does not know or refused to provide the level of  
13          inventory provided at Eagle Creek prior to September 2020;
- 14          • the Oak Island facility reportedly experiences “continuous maintenance” but Mr.  
15          Franklin does not offer or refuses to provide any narrative or opinion on the  
16          maintenance at Eagle Creek prior to September 2020;
- 17          • “overflows are rare but occasionally occur due to controller or sensor failures in  
18          the pit.”, but Mr. Franklin also states that the Oak Island system experiences  
19          controller failures of “approximately five times per month.” but does not compare  
20          that to gravity and offers no opinion on whether five failures per month is

1 acceptable.

- 2 • Oak Island purchased 12 pits at cost of \$9,833 per pit (installed cost) but Mr.  
3 Franklin does not offer the year these pits were purchased and installed or that  
4 extrapolating that data to Eagle Creek would result in over \$2 million in pit  
5 replacements;
- 6 • Oak Island employs five technicians but Mr. Franklin did not provide the  
7 Commission with sufficient information to understand why five technicians are  
8 required to maintain 4,025 pits.

9 Mr. Franklin's testimony did not provide the Commission with sufficient information to  
10 understand that a vacuum system, including the Oak Island vacuum system:

- 11 • a vacuum system will have outages and service failures, even under ideal  
12 conditions;
- 13 • that a vacuum system relies heavily on technician response times;
- 14 • that CWS does not find five service failures per month acceptable for the  
15 residents of Eagle Creek;
- 16 • that the reason Airvac and Flovac developed monitoring systems is the  
17 importance of response times on vacuum system performance;
- 18 • that numerous other Airvac systems located around the world have been  
19 replaced by competitor technology;
- 20 • that the reason the Florida DEQ has such stringent design criteria is to address

1 service outages experienced from vacuum systems;

- 2 ● that the storage volume in the pits is woefully inadequate;

3  
4 Q. CAN YOU OFFER AN OPINION ON WHETHER THE SYSTEM SHOULD BE REPLACED,  
5 INCLUDING THE PITS?

6  
7 A. Yes. Based on my review of three different independent reports, Envirolink's own  
8 research and information obtained from Flovac and Quavac, it is my opinion that the  
9 system needs to be replaced. Saying that a pipe has remaining life is like saying someone's  
10 veins have remaining life but the heart and cells are dead. I cannot understand why both  
11 DEQ and NCUC Public Staff refuse to listen to the experts that have repeatedly told them  
12 that the system needs to be replaced. Rather they listen to non-experts and vendors to  
13 form their opinion. It just does not make logical sense to me.

14  
15 Q. DO YOU HAVE ANY OPINION ON WHY DEQ AND NCUC PUBLIC STAFF HAVE TAKEN THE  
16 POSITION THEY HAVE REGARDING THE SUCCESSORS TO SANDLER UTILITY?

17  
18 A. Yes. While it is understandable that the residents of Eagle Creek are frustrated given the  
19 length of time they have lived with service failures and the severity of the outages, neither  
20 DEQ nor NCUC Public Staff have acknowledged their role in allowing the system to

1 degrade to its current condition.

2  
3 Based on my personal knowledge obtained from various sources, NC DEQ and specifically  
4 the Washington Regional Office has a habit of allowing systems to degrade to point that  
5 they are not functional and then deflect blame, relying on ambiguous permit language  
6 and then reacting only after conditions have degraded to the point that major investment  
7 is required. Examples include Kinnakeet Shores in 2021, the Town of Robersonville in  
8 2012 and other facilities of which I have personal knowledge.

9  
10 It is obvious from the documentation provided, that over the past 25 years, NC DEQ failed  
11 in providing proper oversight of the Eagle Creek wastewater system and Sandler Utility.  
12 As NC DEQ's approved third party engineer stated, the Eagle Creek wastewater system  
13 was a ticking time bomb. Unfortunately for me and Envirolink, we just happened to be  
14 here when the bomb went off.

15 NC DEQ, the Attorney General and NCUC Public Staff's position are based on public  
16 perception and the past failures of the agencies, so they are trying to deflect attention  
17 away from the root cause because of their participation in how the system got into such  
18 poor condition.

19  
20 I also offer that it is clear to me based on my review of the requirements contained in the  
21 Injunctive Relief Petition, that they are rudimentary and incomplete requirements. My

1 view is that NCDEQ's motive is not to solve the problem but to give the perception that  
2 NCDEQ is trying to do something. If they truly wanted to solve the issues, they would  
3 realize that sometimes the right thing to do is not the easy thing to do. They would listen  
4 to the experts and help solution providers implement solutions rather than install barriers  
5 to solutions.

6

7

8 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

9

10 A. Yes.

11

1 Q. PLEASE STATE YOUR NAME, POSITION WITH CURRITUCK WATER & SEWER, LLC, AND  
2 BUSINESS ADDRESS.

3  
4 A. My name is Mark Bissell, and I am the President, of Bissell Professional Group. My  
5 business address is 3512 N. Croatan Highway, Kitty Hawk, NC 27949

6  
7 Q. PLEASE STATE YOUR PROFESSION AND EXPERIENCE WITH WATER AND SEWER SYSTEMS.

8  
9 A. I am a licensed engineer in the North Carolina and other states. Bissell Professional  
10 Group works throughout the Eastern North Carolina coastal areas providing professional  
11 civil engineering and surveying services in support of public and private land  
12 development. Our knowledge of constraints inherent in coastal area development and  
13 our ability to work within those constraints provide value to our clients as they develop  
14 land. We are known for our ability to develop creative and intelligent solutions based  
15 upon a thorough investigation of a project's needs and the available alternatives.

16  
17 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

18  
19 A. No.

20  
21 Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.

1 A. I have a bachelor's degree in Civil Engineering from Duke University. I have been active  
2 in professional and technical societies, and I have over thirty-five years of experience in  
3 the design, permitting, and construction of infrastructure to support land development,  
4 including water and sewer utility infrastructure.

5  
6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7  
8 A. The purpose of my testimony is to provide additional information related to the  
9 application filed by CWS for the transfer of the Eagle Creek wastewater system in  
10 Currituck County, North Carolina from Sandler Utility to CWS.

11  
12 Q. THERE HAS BEEN PREVIOUS TESTIMONY DESCRIBING THE EAGLE CREEK WASTEWATER  
13 SYSTEM. CAN YOU PROVIDE ADDITIONAL INFORMATION ON HOW THE WASTEWATER  
14 COLLECTION SYSTEM AND TREATMENT SYSTEM FUNCTION TOGETHER?

15  
16 A. Yes. At a high level, the Eagle Creek wastewater system has three major functions, each  
17 utilizing an engineered system to accomplish these functions. The three major functions  
18 are:

- 19           1. Transmit wastewater from the homes, institutions and businesses to a  
20           treatment facility  
21           2. Clean the water using a treatment plant.

1                   3. Dispose or reintroduce the treated water back into the environment.

2  
3                   The Eagle Creek wastewater system uses four types of technology to accomplish these  
4                   three functions. The first step is to transmit the water from the homes to the treatment  
5                   plant. Eagle Creek is currently utilizing vacuum sewer technology.

6  
7                   The second step is to treat the water using a treatment plant. At Eagle Creek, the  
8                   treatment plant utilizes a combination of mechanical treatment (bar screen, filtration,  
9                   and UV disinfection) and biological technology (extended aeration). The bar screen  
10                  separates larger particles from the water, and those are sent to a landfill for disposal.  
11                  After the bar screen, the water is further treated using a biological process known as  
12                  extended aeration. Extended aeration utilizes microorganisms to remove smaller  
13                  compounds that are present in the water, then the microorganisms are separated from  
14                  the water in devices called clarifiers. After the extended aeration, the water is further  
15                  treated utilizing a mechanical sand filter to remove any suspended particles not  
16                  removed in the clarifiers. The final step is disinfecting the water to remove any  
17                  microorganisms not removed by clarification and filtration. The Eagle Creek wastewater  
18                  system uses Ultra-violet disinfection to kill any microorganisms not already removed.

19  
20                  The third and final step is to reintroduce the water back into the environment. The  
21                  Eagle Creek wastewater system uses two different types of technology. The first is a

1 spray irrigation system. This system includes a storage pond, pump house and spray  
2 irrigation system. The spray irrigation system at Eagle Creek is used to irrigate the Eagle  
3 Creek Golf Course.

4  
5 In addition to the spray irrigation system, water at Eagle Creek can be reintroduced back  
6 into the environment using an infiltration pond. An infiltration pond allows water to  
7 infiltrate into the ground and ultimately be reintroduced into ground water aquifers or  
8 evaporates.

9  
10 Q. CAN YOU DESCRIBE YOUR INVOLVEMENT WITH THE DEVELOPMENT OF THE EAGLE  
11 CREEK COMMUNITY AND THE ORIGINAL DESIGN OF THE COLLECTION SYSTEM SERVING  
12 THE EAGLE CREEK WASTEWATER SYSTEM?

13  
14 A. Yes. My firm was engaged to plan, design, and permit the development, including the  
15 wastewater system that serves the Eagle Creek community.

16  
17 Q. CAN YOU DESCRIBE THE WHAT SEWER COLLECTION TECHNOLOGY ALTERNATIVES WERE  
18 EVALUATED FOR EAGLE CREEK DURING THE ORIGINAL PLANNING FOR THE  
19 COMMUNITY?

20

1 A. Yes. Initially, vacuum sewer was not considered. We initially evaluated low pressure  
2 and gravity and designed a gravity sewer system to serve the community. After the  
3 gravity sewer had been designed, we were introduced to vacuum sewer and were  
4 directed by the developer to change the design from gravity to vacuum.  
5

6 Q. ARE YOU AWARE OF WHETHER THE EAGLE CREEK WASTEWATER SYSTEM HAS  
7 EXPERIENCED OUTAGES AND OVERFLOWS?  
8

9 A. Yes. I became aware of service issues with the Eagle Creek wastewater system in or  
10 around 2010. The Eagle Creek vacuum system has a long history of service outages that  
11 become magnified during rainfall events. As seen in Exhibit 2 – Miller Testimony, many  
12 of the pits are located in areas where groundwater or rainwater can easily enter system  
13 components that are commonly referred to as a “pit”. Water can enter the pit directly  
14 from the home, through defects in the service line between the home and pit, through  
15 the top of the pit, through defects in the pit, or through a seam located about half the  
16 way down the pit. At the time the system was designed, this seam was a standard  
17 design for Airvac.  
18

19 Q. CAN YOU DESCRIBE THE CENTRAL VACUUM STATION’S DESIGN?  
20

21 A. Yes. Airvac directed the design for the Eagle Creek vacuum system according to its then-

1 current standards. The design included two vacuum pumps, two sewage pumps, a  
2 vacuum tank and instrumentation available to monitor the vacuum station. As noted in  
3 Myers' Rebuttal Testimony Exhibit 4 and Public Staff response to Currituck Water &  
4 Sewer's request for information, the Eagle Creek vacuum system was one of the first  
5 vacuum systems in the State of North Carolina, so many of the more modern design  
6 practices were not part of the design for the Eagle Creek vacuum system.

7  
8 Q. CAN YOU DESCRIBE THE MAINTENANCE HISTORY FOR THE EAGLE CREEK WASTEWATER  
9 SYSTEM?

10  
11 A. Over the years, the Eagle Creek wastewater system has struggled with proper  
12 maintenance. Prior to September 2020, there have been six inspections, as noted below  
13 from the inspection reports provided by DEQ to CWS during discovery. Operational  
14 records and poor maintenance were consistently noted by inspectors.

- 15 • 2012, September – Non-Compliant [Inspector: Tankard]
- 16 • 2013, November – Compliant [Inspector: Tankard]
- 17 • 2015, April – Non-Compliant [Inspector: Vincent]
- 18 • 2018, January – Non-Compliant [Inspector: Vincent]
- 19 • 2018, April – Non-Compliant [Inspector: Vincent]
- 20 • 2020, August – Non-Compliant [Inspector: Mays]

- 1 • 2020, October – Compliant [Inspector Mays]
- 2 • 2021, October – Compliance status not indicated [Inspector: Mays]
- 3 • 2021, November – Compliance status not indicated [Inspector: Mays]
- 4 • 2021, December – Compliance status not indicated [Inspector: Mays]
- 5

6 Q. ARE YOU AWARE OF WHETHER CURRITUCK COUNTY HAS EVER BEEN APPROACHED TO  
7 TAKE OVER THE EAGLE CREEK WASTEWATER SYSTEM AND YOUR KNOWLEDGE OF THAT  
8 ARRANGEMENT?

9

10 A. Yes. I understand that Currituck County did present a proposal to acquire the Eagle Creek  
11 wastewater system, but that the County conditioned its willingness to acquire the system  
12 on conversion of the collection system from vacuum to gravity. The County was aware  
13 that the Eagle Creek wastewater system experienced significant service outages and that  
14 the condition of the vacuum system and treatment plant had deteriorated. Ultimately,  
15 the County did not acquire the wastewater system, because the community would not  
16 agree to the County's requirement to change the system to gravity.

17

18 Q. CAN YOU DESCRIBE FORCE MAIN PROJECT TO SERVE THE FOST COMMUNITY?

19

20 A. Yes. A lift station and force main have been constructed to serve the Fost and Flora

1 developments. In addition, the force main was constructed to permit the planned  
2 expansion of the school and additional customers to connect to the force main. The force  
3 main was constructed to convey the water directly to the treatment plant without any  
4 connection to the existing collection system serving the Eagle Creek community.

5  
6 Additionally, the force main was sized to accommodate flow from portions of the Eagle  
7 Creek community, with the understanding that replacing the vacuum system with gravity  
8 sewer was one of the potential solutions to replacing the existing Eagle Creek collection  
9 system.

10  
11 Q. PLEASE DESCRIBE THE DISRUPTIONS DURING CONSTRUCTION.

12  
13 A. Basnight Construction was the selected as the contractor for the installation of the force  
14 main. Prior to the start of construction, we held meetings with the contractor and the  
15 golf course owner, and requested locates for the underground utilities. The golf course  
16 owner provided maps of the irrigation system, and the utility facilities were located prior  
17 to construction.

18  
19 Construction started at the wastewater plant, and shortly after construction started, the  
20 contractor hit a mismarked electrical line. Dominion Power was immediately notified and  
21 responded to repair the line. As construction proceeded, another mismarked electrical

1 line to the golf course parking lot was hit. Dominion Power was again contacted to repair  
2 the electrical line. Dominion Power did not consider this a priority repair, because the  
3 impact of the disruption was limited to the lighting of the golf course parking lot, so  
4 Dominion's repair took several days to complete.

5  
6 In addition to these two disruptions, there was one additional electrical line hit, and an  
7 irrigation line was hit during construction.

8  
9 As a result of the second electrical line hit, a meeting was held to address the disruption,  
10 and I understand that Dominion Power's locator accepted responsibility for mismarking  
11 the power lines.

12  
13 The irrigation line hit was the result of inaccurate mapping. According to the maps  
14 provided by the golf course owner (which were consistent with the maps provided by the  
15 original developer of the golf course), the closest line was approximately 65 feet away  
16 from where the line was hit. The contractor had repair parts on hand and immediately  
17 initiated the repair. However, restoration efforts were inhibited because the golf course  
18 owner engaged the irrigation pumps and refused to turn the irrigation pumps off to  
19 permit the contractor to timely finish the repair.

20  
21 Efforts were made to turn the irrigation pumps off, but the golf course owner objected

1 and turned the irrigation pumps on, delaying efforts to repair the line until the next day.

2  
3 While CWS was very concerned about the disruptions and conducted investigations into  
4 each one, ultimately neither the contractor nor CWS was at fault.

5  
6 Q. CAN YOU DESCRIBE THE SUITABILITY OF THE EAGLE CREEK COMMUNITY FOR  
7 INSTALLATION OF GRAVITY SEWER?

8  
9 A. As with any construction project there are challenges that need to be addressed in the  
10 design stage. These challenges are heightened in a developed community such as Eagle  
11 Creek because of the proximity to residential homes. We conducted Townhall style  
12 meetings in order to educate the community on the different options and to gather  
13 information about concerns in order to address those concerns during design. As a result  
14 of community feedback, we identified four primary concerns: disruption during  
15 construction (work from home residents), impacts of dewatering, unstable soils  
16 (specifically peat), and impact of construction cost on user rates. My testimony is not  
17 intended to address user rates as that will be part of future proceedings, but we have  
18 made provisions for each of the other concerns in the design.

19  
20 Specifically, regarding disruptions. At the direction of CWS, we have explored  
21 implementation of contingencies in the event of a conflict. Some specific measures that

1 will be included in the design are:

- 2 • CWS to provide hotspots during construction for any residents that work from
- 3 home;
- 4 • Electrical standby crew in the case of electrical disruption;
- 5 • Equip the contractor with repair parts to permit repair of water lines and vacuum
- 6 sewer lines in case of a disruption;
- 7 • Minimize construction in existing roadways;
- 8 • Minimize construction on individuals' personal property;
- 9 • Utilize horizontal directional drilling construction methods in sensitive areas (e.g.
- 10 across home owner property and roads);
- 11 • Widen and stabilize trenches for piping in unstable soils using different trench
- 12 design standards;
- 13 • Utilize temporary dewatering in areas where construction activities are on-going;
- 14 •

15 Q. BASED ON YOUR ANALYSIS IS GRAVITY SEWER TECHNICALLY FEASIBLE AS AN  
16 ALTERNATIVE FOR REPLACEMENT OF THE EAGLE CREEK VACUUM SYSTEM?

17  
18 A. Yes. There are going to be design and construction challenges regardless of the option  
19 selected. Gravity sewer, while offering significant operational benefits, is not immune to  
20 design and construction challenges. However, based on our evaluation, the challenges

1 presented by Eagle Creek can be addressed with a combination of design standards and  
2 construction methods. Ultimately, there will be disruptions, so implementation of the  
3 contingencies noted above are also prudent.

4  
5 Q. HAVE YOU REVIEWED THE REPORT BY CENTURY ENGINEERING AND CAN YOU COMMENT  
6 ON THE CONCLUSIONS?

7  
8 A. Yes. I reviewed Century Engineering's recommendations and have categorized them as  
9 applying to the building, the vacuum station, the vacuum lines or vacuum pits. While I  
10 may not fully understand how each recommendation impacts the service and reliability  
11 of the Eagle Creek Wastewater system, I agree with the main conclusions, which is that  
12 the Eagle Creek Wastewater Collection needs to be replaced.

13 It appeared to me that Century Engineering may not be aware that a sale is pending and  
14 that the purchaser's capital plan addresses virtually all of the reviewer's  
15 recommendations. For convenience, I have provided information on Currituck Water &  
16 Sewer's capital plan and how it addresses each recommendation [bolded text is how CWS  
17 or Envirolink intends to address the recommendation].

- 18 • Vacuum Station [General note: **While: Currituck Water & Sewer prefers replacement to**  
19 **alternative technology; Currituck Water & Sewer has included replacement of the**  
20 **vacuum station in its cost estimates if the system remains a vacuum system]**

- 1           ○ Purchase or lease a portable vacuum pump.
- 2           ○ Clean and repair the vacuum tank.
- 3           ○ Upgrade vacuum tank controls.
- 4           ○ Upgrade and replace the vacuum station electrical controls.
- 5           ○ Purchase a spare vacuum pump.
- 6           ○ Two new vacuum stations (LT).
- 7           ○ Replace vacuum tank (LT).
- 8           ● Vacuum Lines [ General note: **Currituck Water & Sewer maintains that the system should**
- 9           **be converted to a different technology and included conversion as part of its capital**
- 10           **plan]**
- 11           ○ Inspect the vacuum collection lines.
- 12           ○ Install shut-off valves on the main collection lines at strategic points and install
- 13           valve riser pipes.
- 14           ○ Convert to grinder pump/low pressure system (LT)
- 15           ● Vacuum Pits [General note **While: Currituck Water & Sewer prefers replacement to**
- 16           **alternative technology, CWS also recommended replacement of all pits if system**
- 17           **remained vacuum]**
- 18           ○ If system remains a vacuum system, replace all pits to eliminate SSOs (LT)
- 19           ● Building [Note: **Currituck Water & Sewer included major upgrades to the building that**
- 20           **included each of these recommendations]**

- 1           ○ Make the building OSHA compliant.
- 2           ○ Secure and label chemicals.
- 3           ○ Provide sound enclosures around blowers.
- 4           ○ Install building heating and ventilation.
- 5           ○ Install security fence and gate with locks.
- 6           ○ Repair gravel road.
- 7           ○ Fix the toilet.
- 8           ○ Clean and repair cabinets.
- 9           ○ Discard broken and unused parts and supplies.
- 10          • Other
- 11           ○ Start a daily log book
- 12                    ▪ **In checking with the operator, Century did not contact the operator. The**
- 13                    **operator and Envirolink maintain both a daily log and electronic CMMS**
- 14                    **system.**
- 15           ○ Provide fall and eye protection around UV system.
- 16                    ▪ **In checking with the operator, each technician is provided eye**
- 17                    **protection, and fall protection is located at their office, if needed.**
- 18           ○ Obtain new manuals and plans
- 19                    ▪ **Agree that if the system remains a vacuum system that updated plans**
- 20                    **and manuals are prudent.**

- 1           ○ Housekeeping
- 2                   ▪ **Agree that the housekeeping at the plant could be improved.**
- 3           ○ Convert Eagle Creek to PUD (LT)
- 4                   ▪ **This comment seemed out of place and outside the scope of the report.**
- 5                           **I am not sure why this recommendation was included. My only**
- 6                           **conclusion is that this was included because of a personal bias but not**
- 7                           **science or fact.**
- 8           ○ Perform detailed hydraulic analysis (LT) [**Agree that a hydraulic model is required**
- 9                           **regardless of the solution]**
- 10           ○

11 Q.       CAN YOU COMMENT ON THE PROBABLE COST OF THE UPGRADES RECOMMENDED?

12

13 A.       Based on the recommendations, it appears that if vacuum technology is to remain,

14 Century is recommending the following:

- 15           1. Replacement of pits
- 16                   a. Century is recommending replacement of the pits – While providing a cost
- 17                           estimate was outside the scope of Century, based on Mike Franklin's
- 18                           testimony, a minimum budget in excess of \$2MM would be required to
- 19                           replace the pits with a like unit.
- 20           2. Upgrading the building – See CWS's budget filed with the application.
- 21           3. Replacing the vacuum station

- 1 a. Century is recommending installing two vacuum stations one for each line  
2 -- CWS has indicated that installation of two vacuum stations would likely  
3 be greater than \$1.2 MM

4 In my opinion, these cost compare favorably to conversion to gravity, but does not offer  
5 the same level of reliability as gravity. In addition, continued research on STEP has  
6 resulted in a significant reduction in cost estimates since the first analysis, making  
7 replacement with STEP more economically feasible than initial estimates indicated.

8 **Q.** DOES THIS CONCLUDE YOUR TESTIMONY?

9

10 **A.** Yes.

11

1 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

2

3 A. My name is William Freed, and I the owner of Envirotech Unlimited Construction  
4 Services LLC. and Envirotech of North Carolina Inc.. My business address is 300 East  
5 Driftwood Street , Nags Head, North Carolina.

6

7 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

8

9 A. Yes.

10

11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12

13 A. The purpose of my testimony is to provide the Commission with additional information  
14 related to service issues at Eagle Creek, the condition of the wastewater system prior to  
15 September 2020, Sandler Utility's willingness to fund ongoing operation and  
16 maintenance activities during my involvement and offer an opinion on the best option  
17 for replacement of the vacuum system.

18

19 Q. ARE YOU AWARE OF CUSTOMER CONCERNS RELATED TO WASTEWATER SERVICE IN THE  
20 EAGLE CREEK COMMUNITY?

21

1 A. Yes. I am aware of customer concerns regarding wastewater service outages at Eagle  
2 Creek.

3  
4 Q. ARE YOU AWARE OF THE REQUIREMENTS REFERENCED IN MR FRANKLIN'S TESTIMONY  
5 REGARDING THE IMPROVEMENTS REQUIRED AS PART OF THE RATE INCREASE  
6 PROCEEDINGS?

7  
8 A. Yes. I am aware of that in part the rate increase granted in the last rate case, was for  
9 upgrades to the Eagle Creek wastewater system.

10  
11 Q. WHEN DID ENVIROTECH BEGIN OPERATION OF THE EAGLE CREEK WASTEWATER  
12 SYSTEM?

13  
14 A. Enviro-Tech was employed as a subcontractor to assist final stages of plant construction  
15 as well as some collection system work. We transitioned from construction  
16 subcontractor to operator in the late 90s

17  
18 Q. CAN YOU DESCRIBE REQUESTS FOR FUNDING FROM SANDLER AND WHETHER SANDLER  
19 WAS WILLING TO FUND IMPROVEMENTS TO THE WASTEWATER SYSTEM IN ORDER TO  
20 ADDRESS ONGOING OPERATION AND MAINTENANCE REQUIREMENTS?

1 A. Sandler was no more or less willing to invest in their sewer system than my experiences  
2 with other utility owners, including many towns and counties who underfund operation  
3 and maintenance. They were typically willing to paying for what was the least expensive  
4 option; they always questioned expenditures to make sure no other options were  
5 available. It was never easy to get them to invest in the utility, but with persistent  
6 pestering I could typically get them to spend money kicking and screaming.

7  
8 Q. CAN YOU DESCRIBE WHETHER SANDLER AGREED TO FUND THE REQUIREMENTS  
9 STIPULATED AS PART OF THE RATE INCREASES GRANTED BY THE NCUC?

10  
11 A. They did. Just because an outside observer of an issue has the authority to dictate their  
12 opinion as a mandated solution to a problem, this does not make that person of authority  
13 competent.

14  
15 If you say "raise those 50 valve pits" it sounds like a simple solution. First of all, raising  
16 those pits would have required raising the sewer lines for the individual houses, and in  
17 most cases the line would have to have been brought above grade at the house to have  
18 enough fall to drain to the pit. Secondly, the controller failures were not limited only to  
19 rain events. While rain events did exacerbate the problem of valve failures, controller and  
20 valve failures happened on a regular basis. Anyone who is familiar with a valve pit would

1 know if a pit were extended a foot taller, it would be very difficult to access the valve, too  
2 deep to reach anything from the top and too small to climb into.

3  
4 Airvac, shortly after the order for the rate increase, released a water resistant controller.  
5 We tested that controller and during our testing it did work while flooded or underwater.  
6 The new controller appeared to be the answer. We asked Sandler to purchase either 50  
7 or 100 of the controllers (they did), and we installed them, and they worked reducing  
8 controller failures until my departure.

9  
10 Q. DURING YOUR INVOLVMENT WITH THE EAGLE CREEK WASTEWATER SYSTEM, DID THE  
11 COLLECTION SYSTEM EXPERIENCE SERVICE OUTAGES AND APPROXIMATELY WHEN DID  
12 THEY BEGIN?

13  
14 A. We learned early on that every minor problem was the first step to major failure. In other  
15 words, even the most minor problem would not "wait til tomorrow". While there are two  
16 vacuum pumps and two sewage pumps, there was no redundancy of the 240 pits in the  
17 community. One valve failure out of 240 would compromise the entire system and would  
18 begin a self-perpetuating system failure, which was a probability every minute of every  
19 day. Any time a small problem could not be resolved in less than a couple of hours, we  
20 would flood Eagle Creek with people to "find the sucking sound" or the pit that had failed.  
21 At times we would have as many as 8 people on site for as long as it took to find and fix

1 every leaking valve. For one incident following a hurricane, we were there for over 36  
2 hours, and no one left until the system was working properly.

3  
4 Q. DURING YOUR INVOLVEMENT WITH THE EAGLE CREEK WASTEWATER SYSTEM, WHAT  
5 REQUEST FOR UPGRADES WERE REQUESTED AND WERE THEY APPROVED BY SANDLER?  
6

7 A. As stated before, Sandler was never eager to spend money. They would ask to delay  
8 spending money, but they typically would agree if I continued to badger them.  
9

10 Q. IT HAS BEEN CLAIMED THAT THE ONLY TIME CUSTOMERS EXPERIENCED SERVICE  
11 OUTAGES WAS DURING MAJOR RAINFALL EVENTS. ARE YOU AWARE OF WHETHER  
12 CUSTOMER PITS REQUIRED REPAIR DURING OTHER PERIODS OF TIME?  
13

14 A. Outages and pit failures are not the same thing. Pit failures happen often, certainly on at  
15 least a weekly basis and, if not addressed quickly, can lead to a system outage. Multiple  
16 pit failures or a term pit failure lasting more than a few minutes cause a service outage,  
17 which are most prevalent during any rain event.  
18

19 Q. PRIOR TO 2020, DESCRIBE THE CONDITION OF THE EAGLE CREEK WASTEWATER SYSTEM?

1 A. Not great, Sandler was aware of the plant problems via several reports over the years.  
2 The collection system was functional, although it was aging and required constant  
3 attention.

4  
5 Q. BASED ON YOUR KNOWLEDGE DO YOU BELIEVE THE VACUUM SYSTEM SHOULD BE  
6 REPLACED AND CAN YOU OFFER AN OPINION ON WHAT OPTION WOULD PROVIDE THE  
7 GREATEST BENEFIT TO THE RESIDENTS?

8  
9 A. The vacuum system was a foolish mistake from the start. I stated that at the initial  
10 meeting with the developer, and time has only confirmed my opinion. When you must  
11 provide a critical service every minute of every day and provide that service on the budget  
12 a sewer bill affords, simplicity and basic physics need to be what you rely on, not complex  
13 theories of air/liquid balance and vacuum balance ratios to control 240 individual valves  
14 over a multi-mile network of pipes under vacuum, connected to a complex control system  
15 of two vacuum pumps, two sewage pumps and a steel tank. If any **one** of the components  
16 on that list fails or is compromised, the whole system is jeopardized.

17  
18 The idea that gravity sewer couldn't be installed in Moyock was a marketing ploy that  
19 Airvac sold the system owner on. That idea was a false lie perpetuated by slick marketing  
20 and great sales people. If a gravity system were installed in Eagle Creek, there would never  
21 be the problems that the community faces now. If you want to dispute my prior

1 statement, go looking for similar news stories and cases of failures for the 100s of  
2 thousands of other homes nearby on gravity sewer, not many out there.

3

4 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

5

6 A. Yes.

7

1 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

2

3 A. My name is Zach Basnight, and I am a Project Manager for the Basnight Construction  
4 My business address is 317. Agona St., Manteo, North Carolina 27954.

5

6 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

7

8 A. No.

9

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11

12 A. The purpose of my testimony is to provide as rebuttal additional information related to  
13 construction of the force main connecting the Fost development to the Eagle Creek  
14 wastewater treatment facility.

15

16 Q. CAN YOU DESCRIBE THE FOST FORCE MAIN PROJECT?

17

18 A. Yes. We were hired by Currituck Water & Sewer to construct a sewer force main from  
19 the Fost Development to the Eagle Creek Wastewater Treatment facility. The force  
20 main project started at the property line to the Fost Development and was constructed  
21 along Survey Road, and Eagle Creek Rd. to a point just past the St. Andrews Rd. At that

1 point, the force main goes behind the houses and along the golf course, crossing under  
2 Green View Rd. and is connected into the headworks of the wastewater treatment  
3 plant.

4  
5 Q. DOES THE FORCEMAIN CONNECT INTO THE EXISTING EAGLE CREEK COLLECTION  
6 SYSTEM?

7  
8 A. No. The force main does not connect to the vacuum system serving Eagle Creek  
9 residents at any point.

10  
11 Q. CAN YOU PROVIDE INFORMATION ON NC LAW REGARDING CONSTRUCTION OF  
12 UNDERGROUND UTILITIES AND LOCATION REQUIREMENTS?

13  
14 A. Yes. In North Carolina utilities are required to locate underground utilities upon  
15 request. When marking underground utilities, utility locators are required to locate  
16 underground utilities under their responsibility to within 18 inches. In the event of  
17 damage to underground utilities from construction activities, fault is determined based  
18 on the accuracy of these locates.

19  
20 Q. DESCRIBE THE DAMAGE EXPERIENCE TO THE ELECTRICAL LINES DURING  
21 CONSTRUCTION?

1 A. Construction of the force main started at the wastewater treatment plant site and  
2 shortly after construction started, the crew hit a underground electrical line. The  
3 damage impacted the golf clubhouse, Eagle Creek wastewater treatment plant and  
4 significant portions of the Eagle Creek community. Dominion Power was notified, and  
5 they mobilized their crew for repair of electrical line within 4 hours.

6  
7 A second electrical line was hit as the crew constructed the force main that damaged  
8 the line providing power to the golf club parking lot but did not impact power to golf  
9 club building or the Eagle Creek community. Dominion Power was notified but  
10 determined that this was a non-critical repair, so they scheduled the repair for  
11 completion with 10-14 days.

12  
13 Our crew hit the electrical line again near the front entrance to the community.  
14 Dominion Power crews were located near the site and were able to restore power  
15 within a short period of time.

16  
17 Q. PLEASE DESCRIBE THE DAMAGE EXPERIENCED TO THE IRRIGATION LINES DURING  
18 CONSTRUCTION?

19  
20 A. During construction of the force main across the golf course, our crew damaged an  
21 unmarked or located irrigation line. Our crew had the repair parts on hand and

1 immediately began repairing the line. During our repair, the irrigation pumps were  
2 turned on causing the trench we were working in to fill with water. We attempted to  
3 get the irrigation pumps shut down by informing the golf course owner we only needed  
4 15 minutes to complete the repair, but the golf course owner refused to shut the pumps  
5 down.

6  
7 We contacted CWS who sent someone to the irrigation pump house and shut the  
8 pumps down, but shortly after the pumps were shut down, the pumps were turned back  
9 on by the golf course owner. At this point, CWS instructed us to cease work for the day  
10 until they could resolve the issue with the golf course owner.

11  
12 Q. WHERE THERE OTHER LINE HITS?

13  
14 A. No.

15  
16 Q. DESCRIBE THE CAUSE OF THE ELECTRICAL LINE HITS.

17  
18 A. After hitting the electrical line a second time, CWS, the engineer, Dominion Power, and I  
19 attended a meeting to discuss the cause for the damage and address measures to prevent  
20 further instances. During the meeting, the locator for Dominion Power immediately took  
21 responsibility for the electrical lines hits, stating that he had not accurately located the

1 electrical lines.

2

3 Construction crews rely heavily on accurate locating of underground utilities, in order to  
4 avoid these types of issues, and when they are not marked properly (which happens when  
5 records are not accurate), the potential for damage occurs.

6

7 Q. PLEASE DESCRIBE THE CAUSE OF THE IRRIGATION LINE HITS.

8

9 A. Prior to construction, a meeting was held with the golf course owner to discuss the  
10 routing, irrigation line locations and seeding requirements after construction. At this  
11 meeting, we requested that the golf course locate their underground irrigation lines.

12

13 The golf course owner provided us with a map of the irrigation lines, stating that the map  
14 accurately identified the location of the underground irrigation lines. During construction  
15 our crew hit an irrigation line that was not identified as being in the area where crews  
16 were working. The map showed the irrigation line in question approximately 65 feet away  
17 from there the line was actually located.

18

19 Based on the map inaccuracies, it was incumbent on the golf course to inform us that the  
20 map was not accurate and that the irrigation was located in this area.

21

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

4

1 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

2

3 A. My name is Paul Beaumont, and I am Vice Chairman of the Currituck County Board of  
4 Commissioners. My address is 153 Courthouse Rd. Suite 206, Currituck, NC. 27929.

5

6 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

7 A. No.

8

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10

11 A. The purpose of my testimony is to provide the Commission with additional information  
12 related to the history of complaints from the Eagle Creek community and general  
13 information about Currituck County's attempt to acquire the Eagle Creek wastewater  
14 facility.

15

16 Q. ARE YOU AWARE OF CUSTOMER CONCERNS RELATED TO WASTEWATER SERVICE IN THE  
17 EAGLE CREEK COMMUNITY?

18

19 A. Yes. The County has been aware of customer concerns regarding wastewater service  
20 outages for over 12 years.

21

1           Additionally, as a County Commissioner, I have received numerous complaints over the  
2           years regarding the condition of the wastewater system, including complaints regarding  
3           the system failures in 2020, and have attended a meeting where Envirolink updated  
4           County Commissioners with a report as crews worked to restore service. In addition, I  
5           am aware that County staff worked with Envirolink to provide temporary showers and  
6           facilities during that emergency situation.

7  
8           Q.    ARE YOU AWARE IF THE COUNTY WAS EVER INTERESTED IN ACQUIRING THE EAGLE  
9           CREEK WASTEWATER SYSTEM?

10  
11          A.    Yes. I am aware that the County was concerned about the repeated complaints from  
12          Eagle Creek residents regarding service outage issues and explored the possibility of the  
13          County acquiring the Eagle Creek wastewater system.

14  
15          Upon inspection of the facility, I am aware that the County had significant concerns over  
16          the condition of the wastewater system and specifically the vacuum collection system. I  
17          am aware that the County proposed significant maintenance and upgrades to the  
18          existing system and that the cost would be borne by the Eagle Creek users prior to the  
19          County's purchase of the system.

20

1 Q. CAN YOU PROVIDE INFORMATION ON WHY CURRITUCK COUNTY DID NOT ACQUIRE THE  
2 EAGLE CREEK WASTEWATER SYSTEM?

3  
4 A. Yes. As a Currituck County Commissioner, I am aware that the County's proposal was  
5 presented to Eagle Creek Community representatives, and that the Community  
6 representatives did not display continued interest by the County. The County was not  
7 willing to move forward with acquiring the Eagle Creek wastewater system given its  
8 deteriorated state without significant upgrades and conversion to gravity.

9  
10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11  
12 A. Yes.

13

1 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

2

3 A. My name is Robert Hanig, and I am a North Carolina State Representative representing  
4 the Northeastern District including Currituck County and former Currituck County  
5 Commissioner Chairman. My address is 300 N. Salisbury St., Rm.638, Raleigh, NC  
6 27603-5925

7

8 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION

9 A. No.

10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11

12 A. The purpose of my testimony is to provide the Commission with additional information  
13 related to the history of complaints from the Eagle Creek community and general  
14 information about Currituck County's attempt to acquire the Eagle Creek wastewater  
15 facility.

16

17 Q. ARE YOU AWARE OF CUSTOMER CONCERNS RELATED TO WASTEWATER SERVICE IN THE  
18 EAGLE CREEK COMMUNITY?

19

20 A. Yes. The County has been aware of customer concerns regarding wastewater service  
21 outages for over 12 years.

1  
2 Additionally, in my current role, I have had several residents contact my office with  
3 concerns regarding sewer service at Eagle Creek. In response to these complaints, I  
4 attempted to contact Sandler Utility, the owner of the Eagle Creek wastewater system,  
5 and Envirolink. Envirolink has kept me informed of progress and investigated each issue  
6 that has come to my attention.

7

8 Q. DESCRIBE THE MEETING HELD IN RALEIGH DURING THE SUMMER OF 2020.

9

10 A. Senator Steinburg and I contacted Envirolink regarding the situation at Eagle Creek and  
11 how we could help the residents of Eagle Creek obtain reliable uninterrupted sewer  
12 service. Envirolink provided us with information that CWS had filed an application for  
13 transfer with the NCUC and that it was their opinion that the most prudent solution was  
14 replacement of the vacuum system with gravity. They also indicated that they were  
15 prepared start replacement of the vacuum system as soon as the necessary approvals  
16 were issued, but that the Public Staff were largely non-responsive and that NC DEQ was  
17 levying onerous conditions on it to obtain the necessary permits.

18

19 Recognizing the critical nature of the situation for Eagle Creek residents, Senator  
20 Steinburg and I requested an all hands meeting in Raleigh to make sure that state  
21 agencies were being solution minded versus being part of the problem. During the

1 meeting, the Public Staff representatives stated that they were mainly concerned about  
2 some inconsistencies with construction cost estimates but committed to engage in  
3 processing the application as expeditiously as possible, so CWS could be replacing the  
4 system.

5 NC DEQ provided information regarding concerns related to a setback waiver for a pond  
6 that had been in operation for over 20 years, stating that while the facility met current  
7 setback requirements, it did not meet the setback requirements when the permit was  
8 originally issued.

9  
10 Upon leaving that meeting, it was my understanding that all parties (HOA, NC DEQ,  
11 Public Staff, Currituck County, CWS, Sandler Utility and the Developer of the Fost  
12 Development) were all in agreement that the most prudent course of action was to  
13 transfer the Eagle Creek wastewater system to CWS, conditioned upon CWS making the  
14 upgrades Sandler had failed to perform during their 24 years of ownership.

15  
16 Q. ARE YOU AWARE IF THE COUNTY EVER TRIED TO ACQUIRE THE EAGLE CREEK  
17 WASTEWATER SYSTEM?

18  
19 A. Yes. As Chairman of the Currituck County Commissioners, I was aware that the Eagle  
20 Creek community reached out to the County to discuss whether the County would  
21 acquire the Eagle Creek wastewater system. At that time, I was Chairman of the

1 Currituck County Commissioners, and the County had preliminary discussions regarding  
2 the County's willingness to acquire the wastewater system due to our concern over  
3 repeated complaints from Eagle Creek residence regarding service outage issues.

4  
5 Upon inspection of the facility, the County had significant concerns over the condition of  
6 the wastewater system and specifically the vacuum collection system. The County  
7 proposed significant upgrades to the wastewater system including conversion of the  
8 vacuum system to gravity sewer collection. After the County made that proposal to the  
9 Eagle Creek HOA, the County did not hear from the Eagle Creek HOA ever again.

10  
11 Q. CAN YOU PROVIDE INFORMATION ON WHY CURRITUCK COUNTY DID NOT ACQUIRE THE  
12 EAGLE CREEK WASTEWATER SYSTEM?

13  
14 A. Yes. As the Chairman of the Currituck County Commissioners, I am aware that the  
15 County's proposal to convert the vacuum system to gravity was presented to Eagle  
16 Creek community representatives. After presenting the County's proposal to the Eagle  
17 Creek representatives, the County did not hear from the community representatives  
18 ever again and discussions were terminated. The County was not willing to move  
19 forward with acquiring the Eagle Creek wastewater system given its deteriorated state  
20 without significant upgrades and conversion to gravity.

21

1 Q. DO YOU HAVE AN OPINION ON WHAT ACTION THE COMMISSION SHOULD TAKE  
2 REGARDING CWS'S APPLICATION FOR TRANSFER OF THE EAGLE CREEK WASTEWATER  
3 SYSTEM?

4  
5 A. Yes. I have been openly critical of Envirolink's communication with the residents of  
6 Eagle Creek and have worked closely with Envirolink to improve communication within  
7 the community. Based on my experience with CWS and Envirolink, they have performed  
8 every commitment made to my office and have been responsive to every request from  
9 my office.

10 Sandler Utility has had 24 years of mismanagement and has largely been unresponsive  
11 to the issues.

12 My opinion is that developer owned utilities frequently result in under capitalization,  
13 and underfunding of operation and maintenance.

14  
15 The residence of Eagle Creek have demanded and deserve better. While Envirolink has  
16 been accused of not investing in the Eagle Creek wastewater system and has  
17 experienced communications difficulties, Envirolink is the only one that has consistently  
18 been willing to engage the residents and provide them with a level of transparency and  
19 forthrightness that neither Sandler, NC DEQ or Public Staff have offered to date.

20

1           The have a solution and plan to improve the Eagle Creek wastewater system, and it is  
2           my opinion that the state agencies need to facilitate implementation of this solution  
3           unless they find that the proposed solution would not provide a meaningful benefit to  
4           the residents of Eagle Creek. However, based on my knowledge, CWS's plan is a robust  
5           plan that will result in reliable worry free service to the residents of Eagle Creek, so I  
6           would urge the state agencies to show leadership and work to facilitate this solution as  
7           fast as possible.

8

9    Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

10

11   A.    Yes.

12

1 Q. PLEASE STATE YOUR NAME, POSITION, AND ADDRESS.

2

3 A. My name is Gary Lickfield, and I am a resident of Eagle Creek. My address is 2XX Green  
4 View Rd, Moyock-, North Carolina.

5

6 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

7

8 A. Yes. I testified at the customer hearing held in support of this transfer proceeding and  
9 have presented comments to rate proceedings in the past. Subsequent to March 2, 2022,  
10 I have reviewed the testimony filed by the Public Staff witnesses that was not available  
11 then, and I have first-hand factual knowledge and information that I maintain is necessary  
12 to rebut positions those witnesses provide and to place their testimony in appropriate  
13 context.

14

15 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

16

17 A. The purpose of my testimony is to provide the Commission information provided in NC  
18 DEQ and Public Staff's testimony that seems to insinuate that the Eagle Creek  
19 wastewater system was good shape prior to September 2020, to provide further clarity  
20 regarding communications prior to September 2020 and to provide the Commission

1 with my experience regarding the customer survey submitted as part of the  
2 proceedings.

3  
4 Q. ARE YOU AWARE OF WHEN ENVIROLINK PERSONNEL TOOK OVER OPERATION OF THE  
5 EAGLE CREEK WASTEWATER SYSTEM?

6 A. Yes. As I have come to learn from discussions with field staff and information presented  
7 during these proceedings, the former Envirotech staff continued operation after  
8 Envirolink took over until some time in late August or early September 2020..

9  
10 Q. AS A CUSTOMER OF EAGLE CREEK CAN YOU PROVIDE ANY INSIGHT INTO THE  
11 RELIABILITY OF THE EAGLE CREEK WASTEWATER SYSTEM BEFORE AND AFTER  
12 SEPTEMBER 2020?

13  
14 A. Yes. I think it is important to understand a little bit about the system and community in  
15 order to understand how one part of the community could experience frequent service  
16 issues while other parts of the community may not be experiencing service issues. As  
17 many of the speakers mentioned during the customer hearings, few of them  
18 experienced service issues, while others like me have experience frequent service  
19 issues.

20

1 I have been a resident of the Eagle Creek community since 19\_\_ and have experienced  
2 numerous service issues both prior to and since September 2020. I live in the area of  
3 the community most prone to flooding, and this area is usually the part of the system  
4 that experiences services issues before anyone else in the community. This area is  
5 commonly known as the part of the system located on the inch line around Eagleton  
6 Circle.

7  
8 It is absolutely true that service issues are most prevalent during rainfall events, but it  
9 would not be accurate to state that service related issues were only isolated to rainfall  
10 events. There were frequent service issues even during "dry" times, but the number  
11 and frequency of events were significantly fewer than during rain events. The stress  
12 placed on the system and technicians during rainfall events is such that many in the  
13 community were unaware of service issues because their part of the system rarely was  
14 impacted. It is my opinion that both statements can be true, the system does  
15 experience service issues during "dry" times, but many customers are not aware of the  
16 service issues. It is also true that many customers only experienced service issues  
17 during rainfall events because of the significant impact rain events has on the  
18 performance of the sewer system.

19  
20 As you can see from my previous testimony, I am very passionate about this issue and  
21 have been very critical of NC DEQ's and the Public Staff's handling of this issue over the

1 years. From their own report in 2015, DEQ stated that the system was “sub-par at  
2 best”, but now they want to point fingers, deflect and cause delays. I don’t understand  
3 why this has been taking so long. Anyone stating that service issues did not occur prior  
4 to September 2020 is not reviewing available data. The information is right there for  
5 anyone to see from past DEQ reports, to past rate proceedings, to customer testimony,  
6 to third party reports, etc. that contradict any statements that the system only started  
7 having service issues in September 2020.

8  
9 As someone living through this day in and day out, I have to ask why is this taking so  
10 long. We should be talking about the when construction will be completed and not  
11 about what solution is most appropriate.

12  
13 Regarding service issues since September 2020, It is true that the frequency of issues  
14 does seem to have increased since 2020. There are many factors that could be  
15 impacting this observation, but I would remind everyone that the outage in the Fall of  
16 2020, while it started as a service pit issue, was prolonged because of a massive  
17 cascading failure of the central vacuum station, a lack of spare parts and a lack of  
18 available replacement parts.

19  
20 It started with the vacuum pumps failures and then transitioned to sewage pump  
21 failures, and then tank failures. Technicians faced significant challenges because there

1 were no vacuum pumps available locally and their search for replacement pumps  
2 proved fruitless.

3  
4 The Fall 2020 failures put a tremendous strain on the vacuum system, so I think it is  
5 reasonable to assume that given the age and condition of the collection system, it  
6 would continue to experience service issues.

7  
8 Additionally, through my conversations with the many third party entities that have  
9 reviewed this system, I have come to learn that even brand new controllers have a  
10 pretty high failure rate in many vacuum systems and that the more infiltration a system  
11 experiences the worse a vacuum system performs because the frequency of the  
12 open/closing action is increased. This increases the probability of controller and/or  
13 valve failure.

14  
15 Q. ARE YOU AWARE OF THE CUSTOMER SURVEY CONDUCTED WITHIN THE COMMUNITY?

16  
17 A. Yes, I have become aware of the survey.

18  
19 Q. WHAT IS YOUR PERSPECTIVE REGARDING THE RESULTS OF THE SURVEY?

20

1 A. While I do not think the survey was handled or administered properly, I do not think you  
2 can ignore the results altogether. I think the survey results reflect a fear in the  
3 community related to two issues, disruption during construction and the impact on  
4 rates. I think some in the community have used the service failures as a tool to promote  
5 an agenda to keep things the same because they fear disruption during construction and  
6 impact that the replacement would have on sewer rates..

7  
8 Q. DO YOU HAVE AN OPINION ON CUSTOMER CONCERNS REGARDING DISRUPTION  
9 DURING CONSTRUCTION AND FUTURE SEWER RATES?

10  
11 A. Yes. I think CWS, Envirolink, the engineers, etc. have all been very clear that there will  
12 be disruptions during construction but that the plan is to keep the vacuum system in  
13 operation until each home is connected to the new system.

14  
15 Based on what I heard during the informational sessions, virtually every decision that is  
16 being made regarding the design and construction techniques is based on minimizing  
17 disruptions during construction. Further, it is my understand that the actual time each  
18 home will be without sewer service during the switch over will be only about 3-4 hours.  
19 This seems to me like the temporary inconvenience is well worth the outcome of having  
20 a more tried and true sewer system.

21

1 Regarding rates, CWS has stated on numerous occasions that they are not requesting a  
2 rate increase at this time and are willing to agree to a stay out on rates until after  
3 construction is complete and the performance of the sewer system can be evaluated.  
4 Plus, they have stated they are willing to cap the rate increase associated with the  
5 improvements.

6  
7 I think a lot of the confusion regarding rates came about because of the customer notice  
8 issued by the Public Staff, where they stated that the potential rate impacts associated  
9 with the project. The problem with that analysis was that it did not account for several  
10 factors, most notably the impact that the Fost and Flora communities will have on the  
11 capital required to replace the Eagle Creek collection system.

12  
13 Q. SEVERAL CUSTOMERS HAVE BEEN CRITICAL OF ENVIROLINK'S COMMUNICATION,  
14 INCLUDING REPRESENTATIVE HANIG. ENVIROLINK HAS IN ESSENCE ADMITTED THAT  
15 THEY HAVE HAD TO ADJUST THEIR COMMUNICATION PROCEDURES. WHAT  
16 INFORMATION CAN YOU PROVIDE TO GIVE SOME CONTEXT AROUND THIS ISSUE?

17  
18 A. Well first and foremost remember that communication started during some of the most  
19 challenging conditions possible. I would also offer that prior to September 2020,  
20 residents were not receiving any communication regarding service issues or system  
21 status.

1 I think this is part of the problem. Because many in the community have not  
2 experienced service issues they have been unaware of the past service issues  
3 experienced by others in the community. It seem logical to me that many in the  
4 community that were previously unaware of service issues now have full visibility of the  
5 service issues experience by others.

6  
7 I would add that prior to Envirolink's taking over customer service and operation, not  
8 only were we not receiving any communication, I personally had the previous  
9 Envirotech office personnel hang up on me and could never reach Sandler in order to  
10 questions addressed.

11  
12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

13  
14 A. Yes.

15

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MR. DROOZ: And if appropriate, we can move for the testimony of Brittney Willis be admitted into the record as well.

CHAIR MITCHELL: All right, Mr. Drooz, you've got the direct testimony, you've got the rebuttal testimony, and then you've got a correction to that rebuttal testimony; is that correct?

MR. DROOZ: That is correct.

CHAIR MITCHELL: Okay. So hearing no objection to your motion, the direct testimony, the rebuttal testimony, and the corrected rebuttal testimony will be copied into the record as if delivered orally from the stand.

(Whereupon, the prefilled direct testimony, prefilled rebuttal testimony, and prefilled corrected rebuttal testimony of Brittney Willis were copied into the record as if given orally from the stand.)

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Brittney Willis. I am employed by L.M. Sandler & Sons as a Senior  
3 Project Manager, and my business address is 448 Viking Drive, Suite 220, Virginia  
4 Beach, Virginia 23452. I have a Bachelor of Science degree in Civil Engineering  
5 from the University of Virginia, and I am licensed as a Professional Engineer in  
6 North Carolina, Virginia, South Carolina, Kansas, Missouri, and Washington. I am  
7 also licensed as a dual-combined administrator in Stormwater Management and  
8 Erosion and Sedimentation Control by the Virginia Department of Environmental  
9 Quality. I have nearly fifteen years of technical and project management experience  
10 in site design and stormwater management. My experience has been applied to  
11 federal, commercial, residential, and utility infrastructure applications and projects.

12  
13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
14 **CAROLINA UTILITIES COMMISSION?**

15 A. No.

16  
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. The purpose of my testimony is to describe the Eagle Creek wastewater utility  
19 system (“Eagle Creek Wastewater System” or “Wastewater System”), to explain  
20 the recent problems with the Eagle Creek Vacuum Collection System, a component  
21 of the Eagle Creek Wastewater System, and to describe Sandler Utilities at Mill

1 Run, LLC's ("Sandler Utilities" or "Sandler") efforts and investment to address  
2 the Vacuum Collection System's problems by repairing and upgrading the system.  
3

4 **Q. PLEASE DESCRIBE SANDLER UTILITIES.**

5 A. Sandler Utilities is the owner of the Eagle Creek Wastewater System, which serves  
6 the Eagle Creek Subdivision, the Mill Run Golf and Country Club, and the  
7 Moyock Middle School in Moyock, Currituck County, North Carolina. The Eagle  
8 Creek Subdivision is a residential development that includes approximately 420  
9 single-family homes, and is generally situated between Roland Creek Canal to the  
10 north and Guinea Mill Run Canal to the south. Sandler Utilities currently provides  
11 wastewater service to approximately 420 residential and two non-residential  
12 customers in the Eagle Creek service area. Sandler Utilities does not provide water  
13 utility service to the Eagle Creek service area. The Eagle Creek Wastewater System  
14 is the only wastewater system or water system owned by Sandler Utilities.  
15

16 **Q. PLEASE DESCRIBE THE EAGLE CREEK WASTEWATER SYSTEM.**

17 A. The Eagle Creek Wastewater System consists of a 350,000 gallons per day ("gpd")  
18 extended aeration wastewater treatment plant that is currently limited to 175,000  
19 gpd of flow until certain improvements are made to the wastewater treatment plant;  
20 a Vacuum Collection System; a reuse spray irrigation system for spray irrigation  
21 on the golf course owned by the Mill Run Golf and Country Club; an infiltration  
22 storage pond; and an irrigation pond. It is the responsibility of the Mill Run Golf

1 and Country Club to operate and maintain the golf course irrigation system,  
2 including the effluent disposal operations, at its cost, as required by the Contract  
3 Addendum and Agreement dated June 20, 1997, between Tate Terrace Realty  
4 Investors, Inc. and Mill Run Golf and Country Club, as assigned by Tate Terrace  
5 Realty Investors, Inc. to Sandler Utilities, pursuant to an Assignment dated  
6 November 7, 1997.

7

8 On March 5, 1999, the Department of Environmental Quality, Division of Water  
9 Resources (“DWR”) issued permit number WQ0014306 to Sandler Utilities for  
10 the construction and operation of a 350,000 gpd wastewater treatment plant.

11 On May 2, 2013, DWR issued a non-discharge permit (permit number  
12 WQCS00290) (“Collection System Permit”) to Sandler Utilities for operation of  
13 the Vacuum Collection System. The Collection System Permit allows for spray  
14 irrigation of 175,000 gpd of treated effluent onto the Mill Run Golf and Country  
15 Club golf course and disposal of 90,000 gpd of treated effluent into the infiltration  
16 pond.

17

18 **Q. PLEASE DESCRIBE THE EAGLE CREEK VACUUM COLLECTION**  
19 **SYSTEM.**

20 A. The Eagle Creek Vacuum Collection System consists of 4.8 miles of vacuum sewer,  
21 and it utilizes vacuum pumps to maintain a constant negative pressure within the  
22 sewer pipes. The wastewater from the individual homes in the Eagle Creek

1 Subdivision that are connected to the Wastewater System collects in containment  
2 vessels, commonly referred to as the “pits,” with each pit located near the property  
3 lines and serving two homes. When the level of wastewater within the pit reaches  
4 a determined level, pneumatic pressure triggers the opening of a valve to the piping  
5 connected to the sewer line. The vacuum then withdraws wastewater from the pit  
6 into the sewer line. When the wastewater level within the pit drops, the valve  
7 connecting the pit to the sewer line is closed, which allows the wastewater to again  
8 collect within the pit and maintain the vacuum in the sewer line.

9

10 **Q. IN ADDITION TO THE EAGLE CREEK VACUUM COLLECTION**  
11 **SYSTEM, ARE YOU AWARE OF OTHER VACUUM COLLECTION**  
12 **SYSTEMS IN NORTH CAROLINA OR VIRGINIA?**

13 A. The Eagle Creek Vacuum Collection System was the first vacuum collection  
14 system to be regulated by the North Carolina Utilities Commission  
15 (“Commission”). In addition to the Eagle Creek Vacuum Collection System, it is  
16 Sandler Utilities’ understanding that the City of New Bern, North Carolina installed  
17 a vacuum collection system from the same vacuum collection system vendor  
18 (AirVac) that installed Sandler Utilities’ Vacuum Collection System, and that the  
19 City of Virginia Beach, Virginia and the City of Suffolk, Virginia utilize vacuum  
20 collection systems. It is also Sandler Utilities’ understanding that the Town of Oak  
21 Island in Brunswick County, North Carolina utilizes a vacuum collection system.

22

1 **Q. WHEN DID SANDLER UTILITIES RECEIVE A CERTIFICATE OF**  
2 **PUBLIC CONVENIENCE AND NECESSITY FROM THE COMMISSION?**

3 A. On September 7, 1999, in Docket No. W-1130, Sub 0, the Commission issued a  
4 Certificate of Public Convenience and Necessity to Sandler Utilities that became  
5 final on September 14, 1999.

6  
7 **Q. IN ADDITION TO BEING THE OWNER OF THE EAGLE CREEK**  
8 **WASTEWATER SYSTEM, IS SANDLER UTILITIES THE OPERATOR**  
9 **OF THE SYSTEM?**

10 A. No. Sandler Utilities has never operated the Eagle Creek Wastewater System.  
11 Instead, Sandler Utilities hires contract operators to operate the system. Since the  
12 beginning of operations of the Wastewater System, there have been only two  
13 contract operators: William G. Freed, Inc. dba/ Enviro-Tech (“Enviro-Tech”) and  
14 EnviroLink, Inc. (“EnviroLink”). The contract operators operate both the wastewater  
15 treatment plant and the Vacuum Collection System. (However, as discussed below,  
16 Flovac, another vacuum collection system vendor, recently began monitoring the  
17 Vacuum Collection System and providing reports to Sandler Utilities on  
18 observations and recommendations for the Vacuum Collection System.)

19  
20 **Q. PLEASE DESCRIBE THE PREVIOUS OPERATOR OF THE EAGLE**  
21 **CREEK WASTEWATER SYSTEM AND THE CURRENT OPERATOR**  
22 **OF THE WASTEWATER SYSTEM.**

1 A. Enviro-Tech had been the certified operator for the Eagle Creek Wastewater  
2 System from the beginning of operations of the system until February, 2020. On  
3 February 6, 2020, William Freed formally notified Sandler Utilities that his  
4 wastewater operations company had been acquired by Envirolink, a water and  
5 wastewater management company, and that Envirolink would be the company that  
6 would operate the Eagle Creek Wastewater System. William Freed stated that he  
7 would assist in the transition of services to Envirolink, but that he would otherwise  
8 not be involved in the continued operation of the Wastewater System.

9

10 Michael J. Myers is the President of Envirolink, and he is also an officer of  
11 Currituck Water and Sewer, LLC (“Currituck Water & Sewer”). Sandler Utilities  
12 and Envirolink entered into a Utility Management Service Agreement dated  
13 January 6, 2021 for Envirolink to operate the Eagle Creek Wastewater System,  
14 including the Vacuum Collection System, for an initial term of five years with five-  
15 year renewal terms.

16

17 **Q. HAS THE EAGLE CREEK WASTEWATER SYSTEM EXPERIENCED**  
18 **OUTAGES AND SANITARY SEWER OVERFLOWS?**

19 A. Yes. Sandler Utilities sincerely regrets that the Eagle Creek Wastewater System has  
20 experienced a number of outages and sanitary sewer overflows, the vast majority  
21 of which occurred beginning in September of 2020. Sandler Utilities has made  
22 substantial investment in repairs and capital improvements in the Wastewater

1 System—in particular in the Vacuum Collection System—to remedy the Vacuum  
2 Collection System’s problems and to ensure that the Wastewater System will  
3 function properly and reliably and in compliance with all regulatory and  
4 environmental regulations.

5

6 **Q. PLEASE DESCRIBE THE COMPLIANCE ISSUES AND SANITARY**  
7 **SEWER OVERFLOWS THAT OCCURRED WHEN ENVIRO-TECH**  
8 **OPERATED THE SYSTEM.**

9 A. There were isolated compliance and environmental issues with the Eagle Creek  
10 Wastewater System when Enviro-Tech operated the system (prior to February  
11 2020). The isolated problems occurred when pits that are part of the Vacuum  
12 Collection System filled with rainwater during extremely heavy rain events, like  
13 hurricanes, which resulted in a loss of vacuum of the Vacuum Collection System.  
14 For example, during an extreme rain event in 2015, sewage backed up in homes  
15 when the sewage was not able to drain into the system. The Vacuum Collection  
16 System also malfunctioned during Hurricane Matthew in October of 2016. Another  
17 compliance issue occurred in 2015 when the second bank of UV disinfection for  
18 the wastewater treatment plant was not operational.

19

20 On December 11, 2015 in Docket No. W-1130, Sub 8, the Commission issued a  
21 Recommended Order Granting Rate Increase, Requiring Refund, and Customer

1 Notice (“December 11, 2015 Order”) that directed Sandler Utilities to address the  
2 compliance issues. In Ordering Paragraphs 4 and 5, the Commission stated:

3 4. That Sandler shall: (a) within 60 days of the effective date of this order,  
4 physically inspect every Air Vac valve pit package as to whether the pit  
5 package is subject to rain water intrusion during heaving rains; (b) within  
6 150 days of the effective date of this order, complete renovations to  
7 reduce the rain water intrusion, including but not limited to raising and  
8 sealing pit packages subject to rain water intrusion; (c) within 180 days  
9 of the effective date of this order, file a written report with the  
10 Commission describing the completed renovations for each of the pit  
11 packages where renovations were necessary.

12 5. That Sandler shall within 180 days of the effective date of this order,  
13 complete renovations to the second bank of UV lights at the wastewater  
14 treatment plant to bring the UV system in compliance with North  
15 Carolina Department of Environmental Quality, Division of Water  
16 Resources regulations.

17  
18 Enviro-Tech filed the required report in the docket on May 9, 2016. In the report,  
19 Enviro-Tech stated that all of the valve pit packages had been inspected, and  
20 Enviro-Tech confirmed that the repairs and renovations to the UV system of the  
21 wastewater treatment plant were completed in February, 2016 and that the  
22 Wastewater System had been functioning properly since that time. As part of the

1 overall inspection of the Vacuum Collection System, Enviro-Tech ranked the pits  
2 on a scale of 1 to 5 (with ranking 5 being the most problematic due to risk of  
3 flooding). In particular, pits with level 4 rankings were pits with lids below grade  
4 with a high chance of flooding, and pits with level 5 rankings were pits with lids  
5 below grade that are close to a ditch and have been underwater in the past. Enviro-  
6 Tech performed remedial work on the most problematic pits by extending the tops  
7 of the pits to elevations in order to reduce the risk of flooding.

8

9 In its report, Enviro-Tech provided the following explanation as to the reasons for  
10 the problems with the Vacuum Collection System:

11 There are various reasons for valves sticking open, but the real problem was  
12 that when a valve stuck open in this area the operator could only isolate  
13 down to about 50 possible pits. As shown on the attached map, two new  
14 isolation valves were added in late December 2015, one at each end of  
15 Eagleton Circle. The addition of these two isolation valves has enabled the  
16 operators to isolate down to about 25 possible pits. Understand that a valve  
17 can stick open for various reasons, some caused by users, some by valve  
18 failures and some by flooding. One will never eliminate the causes of valve  
19 failures, however the additional isolation valves have enabled us to find the  
20 failed valve and correct it much quicker avoiding the cascading failure  
21 caused by low vacuum for extended periods of time. The ability to find and  
22 correct an open valve is truly the corrective action needed to make this

1 system more reliable. While Enviro-Tech and Sandler Utilities at Mill Run  
2 will continue to improve the system to the benefit of the customers, I do  
3 believe there are some other factors that should be considered. The Utility  
4 or its operator is going to reach out to Currituck County along with the Eagle  
5 Creek HOA to inquire about storm water issues and resolution of drainage  
6 issues. It should not go without saying that while the Airvac System may be  
7 less than perfect, a contributing factor to the struggles is storm water  
8 management and or rainfall pattern changes. The ditches and streets flood  
9 much more often than in prior years and stay full for a longer period of time.  
10 There is a ditch pump on one end of the development that functions properly  
11 and provides the desired result, however on the Eagleton Circle end of the  
12 community, the storm water flow is by gravity to drainage ditches offsite. I  
13 am not sure if the apparent change in drainage is due to recent rainfall  
14 variations or if there is an impediment to drainage that has not existed in  
15 years prior.

16  
17 Within a 24-month period after receipt of the Commission's December 11, 2015  
18 Order, Sandler Utilities performed the following upgrades to the Vacuum  
19 Collection System to address the compliance issues: 99 upgraded controllers were  
20 installed throughout the Eagle Creek Subdivision; 6 upgraded valves were installed;  
21 6 valve and controller combinations were installed; 1 new controller and surge  
22 suppressor was installed; and 4 new valve pits were installed.

1

2 **Q. PLEASE DESCRIBE THE COMPLIANCE ISSUES AND SANITARY**  
3 **SEWER BACKUPS THAT HAVE OCCURRED SINCE ENVIROLINK**  
4 **BEGAN OPERATING THE SYSTEM.**

5 A. Envirolink began operating the Wastewater System in February of 2020 after it  
6 purchased Enviro-Tech from William Freed. There have been significant problems  
7 with the Vacuum Collection System beginning in September of 2020 that caused  
8 outages and sanitary sewer overflows into residents' homes and yards on multiple  
9 occasions. The first outage of the Vacuum Collection System was protracted and it  
10 occurred from September 27, 2020 until October 11, 2020. The outage was due to  
11 the failure of one of the two vacuum pumps, which resulted in sanitary sewer  
12 overflows that drained into stormwater swales in front of and between homes.  
13 Additional outages and sanitary sewer overflows occurred in the remainder of 2020  
14 and in 2021.

15

16 As part of its initial response to the unprecedented outages in the fall of 2020,  
17 Sandler Utilities arranged for Flovac to come to Eagle Creek on November 20, 2020  
18 to provide training to Envirolink's technicians and operators about remedial  
19 measures, such as how to remove water from the valves before installing new  
20 controllers. In addition, and pursuant to the Operator Training Plan in place with  
21 DWR, Sandler Utilities arranged for Flovac to provide a 3-day training course of  
22 Envirolink's technicians and operators in September of 2021 and a second 3-day

1 training course to Envirolink from October 5 through 8, 2021. Flovac's training of  
2 Envirolink's employees was focused on best practices in locating leaks in the  
3 Vacuum Collection System and how to properly operate, maintain, and repair the  
4 system. Sandler Utilities obtained recommendations from Flovac about necessary  
5 repairs and upgrades to the Vacuum Collection System to ensure that the system  
6 would operate properly and reliably, and made upgrades to the system based upon  
7 Flovac's recommendations.

8

9 Sandler Utilities has substantially invested in upgrades to the Vacuum Collection  
10 System—in the amount of about \$673,834 since 2020—again to ensure that the  
11 system would operate properly and reliably.

12

13 **Q. IN RESPONSE TO THE OUTAGES AND SANITARY SEWER**  
14 **OVERFLOWS THAT HAVE OCCURRED SINCE SEPTEMBER OF 2020,**  
15 **HAS THE STATE OF NORTH CAROLINA TAKEN ACTION AGAINST**  
16 **SANDLER UTILITIES?**

17 A. Yes. Sandler Utilities has been subject to various enforcement actions by DWR  
18 related to the outages and sanitary sewer overflows since September of 2020. DWR  
19 has issued Notices of Violation and Notices of Intent to Enforce and has assessed  
20 civil penalties against Sandler Utilities. On March 10, 2021, the State of North  
21 Carolina, *ex rel.*, the North Carolina Department of Environmental Quality served  
22 Sander Utilities with a Complaint related to the outages and sanitary system

1 overflows that had occurred beginning in September of 2020. The Complaint was  
2 filed in Currituck County Superior Court (Superior Court Division 21 CVS 78).

3  
4 Sandler Utilities and the State entered into a Consent Judgment filed on July 1,  
5 2021, to resolve the matters in controversy between them in the lawsuit. Among  
6 others, the Consent Judgment required Sandler Utilities to submit an engineering  
7 evaluation of the Vacuum Collection System and, with DWR's review, comment,  
8 and approval, implement an Operator Training Plan for Envirolink's operators, an  
9 Interim Service and Restoration Plan, and a System Upgrade Plan. Each of these  
10 plans was timely submitted, commented upon by DWR, and ultimately approved  
11 with required revisions. These submissions, meetings with DWR, and approvals  
12 were complete by mid-October of 2021 and the implementation of the Consent  
13 Judgment plans began right away. These efforts included, among others, providing  
14 on-site training for the system operator's employees, investment in physically  
15 relocating controllers outside of pits to improve performance, replacement of  
16 unreliable equipment, stocking of replacement parts, and detailed maintenance  
17 schedules.

18  
19 Notwithstanding Sandler Utilities' significant financial investment and concerted  
20 efforts to comply with the Consent Judgment's requirements, the Eagle Creek  
21 Vacuum Collection System again experienced outages and service issues in  
22 October and November of 2021. As a consequence, the State filed a Motion to

1 Show Cause why Sandler Utilities Should Not be Held in Contempt in the lawsuit  
2 related to those outages and service issues. Sandler Utilities was subject to a Show  
3 Cause proceeding on December 6, 2021. The Court did not find contempt, but  
4 directed the State and Sandler Utilities to revisit their Consent Judgment to attempt  
5 to fashion a better framework for improved performance of the Eagle Creek  
6 Vacuum Collection System.

7  
8 On December 28, 2021, an Amended Consent Judgment was filed with the Court.  
9 This revised version incorporated the prior requirements from the Consent  
10 Judgment and added requirements for: mandatory responses to resident complaints  
11 and communication with residents concerning operational status, including  
12 timeframes and a log to show compliance; a new independent engineering  
13 evaluation to be performed by a DWR-approved engineer; a new System Upgrade  
14 Plan in accordance with the new engineering report; and appointment of a DWR-  
15 approved independent specialist to perform a minimum 30-day on-site consultation  
16 regarding the operation of the Vacuum Collection System (and to provide a report  
17 thereafter with recommendations and observations).

18  
19 As required by the Amended Consent Judgment, Sandler Utilities submitted David  
20 Rigby, P.E., as the engineer to perform the new evaluation of the Vacuum  
21 Collection System, which has been approved by DWR, and Flovac to act as the  
22 independent specialist to monitor operation of the system. As of the date of this

1 testimony, Mr. Rigby is in process of performing the new engineering evaluation,  
2 and Flovac is on-site at the Eagle Creek Subdivision to perform the required  
3 consultation on operations. Sandler Utilities is in full compliance with the terms of  
4 the Amended Consent Judgment as of the date of this testimony, and is hopeful that  
5 the improved operational reliability over the last month is the start of a new trend  
6 where the benefits of the substantial investments made at Eagle Creek to upgrade  
7 the physical infrastructure since September 2020 will become apparent.

8

9 **Q. HAS SANDLER UTILITIES MADE REPAIRS AND CAPITAL**  
10 **INVESTMENT IN THE WASTEWATER SYSTEM IN COMPLIANCE**  
11 **WITH THE CONSENT JUDGMENT?**

12 A. Yes. Sandler Utilities has made substantial investment in repairs and upgrades to  
13 the Wastewater System, and especially to the troubled Vacuum Collection System.  
14 Sandler Utilities has made the investment in the Vacuum Collection System both  
15 before the consent judgements were entered into and in compliance with the  
16 consent judgments. Sandler Utilities has made the following tremendous  
17 investment in the Wastewater System in 2020 and 2021: Sandler Utilities invested  
18 \$241,794.42 in the Vacuum Collection System in 2020 and \$432,039.08 in 2021  
19 and 2022. Sandler Utilities' total investment in the Eagle Creek Wastewater System  
20 in 2020, 2021, and 2022 is about \$673,834. Sandler Utilities is continuing to invest  
21 in the Wastewater System to ensure that the system will be safe and reliable and be  
22 in full compliance with the Amended Consent Judgment's mandate to undertake to

1 address “necessary upgrades to the design and physical infrastructure of the  
2 [Vacuum] Collection System.”

3

4 **Q. PLEASE DESCRIBE THE REPAIRS AND UPGRADES TO THE**  
5 **WASTEWATER SYSTEM THAT HAVE BEEN MADE IN 2020, 2021, AND**  
6 **2022.**

7 A. The following are some of the repairs and upgrades that Sandler Utilities made to  
8 the Vacuum Collection System beginning in 2020:

9 • Sandler replaced the pump in the wastewater treatment plant in December  
10 of 2020.

11 • For the period of August of 2020 through January 24, 2022, Sandler  
12 Utilities had Envirolink rebuild or replace 2,163 valves and 3,081  
13 controllers. (The new controllers are capable of processing small amounts  
14 of water and can be submerged in water up to 5 feet with no impact to  
15 performance.) This work equates to rebuilding or replacing 4 valves per  
16 day and 5.7 controllers per day.

17 • For the period from October 1, 2021 through January 24, 2022, Sandler  
18 Utilities had Envirolink rebuild or replace 118 pedestal-mounted  
19 controllers and 21 valves. This work equates to repairing or replacing 0.2  
20 valves per day and 1 controller per day.

21 • As of January 24, 2022, Sandler Utilities had Envirolink install 110  
22 elevated (pedestal-mounted) controllers. Sandler Utilities is continuing to

1 install elevated controllers throughout the Eagle Creek Subdivision. The  
2 purpose of the pedestal mounts is to elevate them in order to reduce  
3 rainwater intrusion of the controllers and thus minimize any flooding of the  
4 valve pits.

- 5 • Sandler Utilities installed alarms at the vacuum station and the valve pits.
- 6 • On November 30, 2021, Flovac installed a remote monitoring system that  
7 was placed in service on December 1, 2021 for the cost of \$28,874.50. The  
8 monitoring system was installed on the vacuum station, six pits on dead-  
9 end lines, and one additional pit located on St. Andrews Road. The  
10 monitoring system provides the following input and output information for  
11 the vacuum station and six pits located on dead end lines and one pit located  
12 on St. Andrews, respectively:
  - 13 ○ Vacuum Station Inputs and Outputs: tank vacuum; tank level;  
14 sewage pump run-times and start and stop times; vacuum pump  
15 run-times and start and stop times; rainfall monitor; and alarm  
16 status.
  - 17 ○ Vacuum station alarms: tank vacuum; vacuum pump run-time  
18 alarm; high level alarm; and communication.
  - 19 ○ Pit Inputs and Outputs at Dead Ends: vacuum; level activations;  
20 activation duration; and alarm status.
  - 21 ○ Pit Alarms at Dead Ends: level vacuum and communication.

- 1                   ○ Pit Inputs and Outputs at St. Andrews Road: level vacuum;  
2                    activations; activation duration; and alarm status.
- 3                   ○ Pit Alarms at St. Andrews Road: level vacuum and  
4                    communications.
- 5                   • After installation of the remote monitoring system, Flovac conducted  
6                    training for Envirolink personnel to demonstrate the features of the system  
7                    and explain how to interpret the information displayed on the graphs  
8                    created by the monitoring system.
- 9                   • On January 31, 2022, Flovac began installing a remote monitoring system  
10                  on the valve pits (each pit on the 8-inch main and additional sensors on the  
11                  10-inch main), along with two additional monitors on the collection lines.  
12                  The remote monitoring system with the additional monitors will ensure  
13                  that the Vacuum Collection System is reliable. The monitoring system  
14                  allows multiple people to remotely monitor the vacuum flow status of the  
15                  lines so that any possible leaks that might occur on the lines will be  
16                  identified quickly. This expedient identification of any possible leaks on  
17                  the collection lines will ensure that the contract operators may address the  
18                  leaks quickly and before any homeowners might be affected. The cost of  
19                  the remote monitoring system is \$195,297.69. Installation of the remote  
20                  monitoring system on the valve pits began on February 2, 2022 and will be  
21                  completed on March 10, 2022. As part of this monitoring effort, and again  
22                  in conjunction with compliance with the Amended Consent Judgment,

1 Flovac is monitoring the Vacuum Collection System and is providing  
2 reports to Sandler Utilities on observations and recommendations for the  
3 system.

- 4 • Sandler Utilities is planning to install a control panel replacement in the  
5 amount of \$70,000.
- 6 • In addition to the capital improvements to the Wastewater System, Sandler  
7 Utilities has directed Envirolink to provide necessary maintenance and  
8 preventative maintenance to the system.

9

10 **Q. IN LIGHT OF THE UPGRADES THAT SANDLER UTILITIES HAS MADE**  
11 **TO THE VACUUM COLLECTION SYSTEM, IS THE EAGLE CREEK**  
12 **WASTEWATER SYSTEM OPERATING SAFELY AND RELIABLY?**

13 A. Sandler Utilities has invested substantial funds since 2020 to upgrade the Vacuum  
14 Collection System. While Sandler Utilities has additional work to do to fully  
15 comply with the Consent Judgment, Sandler Utilities believes that its current  
16 investment in the Vacuum Collection System once the monitoring system has been  
17 fully installed has already transformed the system into a safe and reliable system.  
18 The additional improvements to the Vacuum Collection System required by the  
19 Consent Judgment will provide more assurance of the safe and reliable operation  
20 of the Wastewater System to the Eagle Creek Subdivision. The residents of the  
21 Eagle Creek Subdivision deserve a safe and properly operated Wastewater System.

22

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes, at this time.

3

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Brittney Willis. I am employed by L.M. Sandler & Sons as a Senior  
3 Project Manager, and my business address is 448 Viking Drive, Suite 220, Virginia  
4 Beach, Virginia 23452.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
6 **CAROLINA UTILITIES COMMISSION?**

7 A. Yes. I filed direct testimony on February 4, 2022, in this docket.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my rebuttal testimony is to respond to the testimony of Public Staff  
10 Witnesses D. Michael Franklin and Iris Morgan. My rebuttal testimony focuses on  
11 (1) the Public Staff witnesses' calculation of the original cost net investment in the  
12 Eagle Creek Wastewater Utility System (*i.e.*, the rate base), and (2) the Public Staff  
13 witnesses' disallowance of the additional purchase price of \$88,900 required by the  
14 Revised and Restated Asset Purchase Agreement ("APA") dated April 14, 2021  
15 between Sandler Utilities at Mill Run, LLC's ("Sandler Utilities" or "Sandler") and  
16 Currituck Water and Sewer, LLC ("CWS").

17 **Q. DOES THE APA CONTAIN A PROVISION ABOUT THE PURCHASE**  
18 **PRICE FOR CWS TO PURCHASE THE EAGLE CREEK WASTEWATER**  
19 **SYSTEM FROM SANDLER UTILITIES?**

20 A. Yes. The agreement of Sandler Utilities and CWS about the purchase price is  
21 contained in Section 4.2 of the APA.

1 **Q. PLEASE EXPLAIN THE PURCHASE PRICE AGREED TO BY SANDLER**  
2 **UTILITIES AND CWS.**

3 **A.** The APA between Sandler Utilities and CWS was filed with the Joint Application,  
4 which seeks authority from the North Carolina Utilities Commission  
5 (“Commission”) to transfer the Eagle Creek wastewater utility system (“Eagle  
6 Creek Wastewater System” or “Wastewater System”) and franchise in Currituck  
7 County, North Carolina to CWS and to approve rates for the wastewater operations.

8 The agreed upon and necessary purchase price for the Eagle Creek Wastewater  
9 System is \$250,000, plus additional Commission-approved capital costs incurred  
10 by Sandler up to the date of the closing, plus \$88,900 to be recovered after the  
11 closing as new connections are made to the Eagle Creek wastewater treatment plant  
12 from the adjacent Fost and Flora subdivisions that other developers will build.

13 **Q. HAS THE PUBLIC STAFF PROVIDED A RECOMMENDATION FOR**  
14 **THE SANDLER UTILITIES’ ORIGINAL COST NET INVESTMENT IN**  
15 **THE EAGLE CREEK WASTEWATER SYSTEM?**

16 **A.** Yes. Public Staff Witnesses Franklin and Morgan calculated the original cost net  
17 investment of the Eagle Creek Wastewater System as of December 31, 2021, to be  
18 \$389,499. As support for the Public Staff’s calculation of the rate base of \$389,499,  
19 Public Staff Witness Morgan determined the amount of the plant in service to be  
20 \$2,206,202 from Sandler Utilities’ last general rate case in Docket No. W-1130,  
21 Sub 8. Public Staff Witness Morgan then added the amount of \$484,389 (rather  
22 than Sandler Utilities’ total investment of \$686,564 in 2020, 2021, and 2022) of

1 additional plant items to the amount of plant in service, resulting in a total plant in  
2 service amount of \$2,690,591. Public Staff Witnesses Franklin and Morgan then  
3 reduced the total plant in service amount of \$2,690,591 to \$389,499 by adjusting  
4 for accumulated depreciation and depreciation expense and significant downward  
5 adjustments to Sandler Utilities' plant additions made in 2020 and 2021. Public  
6 Staff Witnesses Franklin and Morgan did not include the investment made by  
7 Sandler Utilities for system additions in the amount of about \$96,000 made in  
8 2022—the Public Staff witnesses simply did not address Sandler Utilities'  
9 improvements to the system in 2022. Specifically, without any explanation, the  
10 Public Staff witnesses did not expressly disallow—but simply elected not to  
11 include—all of the substantial system additions made by Sandler Utilities after  
12 December 31, 2021. However, Public Staff Witness Morgan testified that the  
13 “original cost net investment of \$389,499 is subject to change based on the  
14 inclusion of reasonable and prudent plant additions between December 31, 2021  
15 and closing, and net of plant retirements and additional accumulated depreciation  
16 and amortization through the date of closing.” (Public Staff Witness Morgan  
17 Testimony, p. 6.) Even though the Public Staff witnesses have committed to  
18 updating the rate base before the closing, there is no legitimate basis for the Public  
19 Staff to not consider the totality of Sandler Utilities' system investment after  
20 December 31, 2021 to date at this time.

1 **Q. PLEASE DESCRIBE THE ADJUSTMENTS THAT THE PUBLIC STAFF**  
2 **WITNESSES MADE TO SANDLER UTILITIES' WASTEWATER**  
3 **SYSTEM ADDITIONS IN 2020 AND 2021.**

4 **A.** Public Staff Witnesses Franklin and Morgan reduced Sandler Utilities' Wastewater  
5 System additions in 2020 and 2021 by \$207,633 (and, again, did not consider the  
6 system additions made in 2022). Public Staff Witnesses Franklin and Morgan also  
7 did not allow \$2,914 for Wastewater System additions in 2016. In regard to the  
8 Wastewater System investments that Sandler Utilities made in 2020, Public Staff  
9 Witnesses Franklin and Morgan disallowed \$130,744 for the replacement of  
10 controllers and 12 vacuum valves, \$3,941 for the cost of a temporary sewerage  
11 pump, and \$42,702 for labor and equipment expenses associated with the  
12 November 2020 wastewater system outage. For the Wastewater System  
13 improvements that Sandler Utilities made in 2021, Public Staff Witnesses Franklin  
14 and Morgan disallowed \$27,333 for repairs to the pump house and irrigation system  
15 and pipe and sprinkler heads.

16 **Q. WHAT IS THE PUBLIC STAFF'S EXPLANATION FOR ITS**  
17 **DISALLOWANCE OF \$207,633 OF CAPITAL IMPROVEMENTS IN 2020**  
18 **AND 2021?**

19 **A.** The stated justification by Public Staff Witnesses Franklin and Morgan for the  
20 majority of the adjustments to the Wastewater System additions in 2020 and 2021  
21 is that they do not view those system additions to be reasonable or prudent.  
22 Apparently, the Public Staff believes that the system improvements related to the

1 new controllers and valves would not have been incurred if Sandler Utilities had  
2 properly maintained the Wastewater System. Public Staff Witness Franklin stated  
3 that “the November 2020 outage stemmed from Sandler’s continuing failure to  
4 properly maintain the Eagle Creek wastewater utility system and take appropriate  
5 action to improve wastewater system reliability.” (Public Staff Witness Franklin  
6 Testimony, p. 27.)

7 I want to again mention that Sandler Utilities does not dispute that that the Eagle  
8 Creek Wastewater System has experienced a number of outages and sanitary sewer  
9 overflows, the vast majority of which occurred beginning in September of 2020.  
10 Sandler Utilities sincerely regrets these significant problems in the Vacuum  
11 Collection System. Sandler Utilities has made substantial investment in repairs and  
12 capital improvements in the Wastewater System—in particular in the Vacuum  
13 Collection System—to remedy the Vacuum Collection System’s problems and to  
14 ensure that the Wastewater System will function properly and reliably and in  
15 compliance with all regulatory and environmental regulations.

16 **Q. IS THE PUBLIC STAFF’S OPINION ABOUT THE NEED FOR THE NEW**  
17 **CONTROLLERS AND VALVES CORRECT?**

18 **A.** No. Sandler Utilities’ need to purchase and install new controllers and valves was  
19 not the result of “Sandler’s [alleged] continuing failure to properly maintain the  
20 Eagle Creek wastewater utility system.” The controllers and valves were at the end  
21 of their useful lives and needed to be replaced.

1 **Q. PLEASE DESCRIBE YOUR RESPONSE TO THE PUBLIC STAFF'S**  
2 **SPECIFIC ADJUSTMENTS TO THE PLANT ADDITIONS IN 2020 AND**  
3 **2021?**

4 **A.** The Public Staff improperly disallowed the following wastewater system  
5 improvements made by Sandler Utilities in 2020 and 2021:

- 6 • 10/12/2020 Invoice 0156 for FLOVAC for Controllers, Labor, Pump,  
7 and Motor in the amount of \$18,973.97. The new pump and motor are  
8 critical components to upgrading the Eagle Creek Wastewater System.
- 9 • 10/12/2020 Invoice 163 for FLOVAC for 45 Controllers and Shipping  
10 in the amount of \$9,561.84. The controllers were at the end of their  
11 useful life and needed to be replaced.
- 12 • 11/13/2020 Invoice 0179 for FLOVAC for 30 New Controllers in the  
13 amount of \$6,362.64. The controllers were at the end of their useful life  
14 and needed to be replaced.
- 15 • 11/23/2020 Invoice 0183 for FLOVAC for 26 New Controllers, 10 3"  
16 Valve Piston Type in the amount of \$10,746.71. This capital  
17 improvement was required to retrofit some of the pedestal mounted  
18 controllers.
- 19 • 11/30/2020 Invoice 0026223 for Envirolink for Vacuum Pump Renewal  
20 and Replacement in the amount of \$42,702.24. This improvement is a  
21 critical component to keeping the system upgraded and fully

1 operational. Renewal and replacement of pumps means greater  
2 longevity for the components of the Vacuum Collection System.

- 3 • 12/21/2020 Invoice 0199 for FLOVAC for 57 FloVac Controllers in the  
4 amount of \$7,101.75. This capital improvement was necessary to  
5 increase the supply of replacement controllers and replace the  
6 controllers that were at their end of life.

7 **Q. PLEASE EXPLAIN WHY THOSE CAPITAL IMPROVEMENTS SHOULD**  
8 **BE INCLUDED IN THE RATE BASE FOR THE EAGLE CREEK**  
9 **WASTEWATER SYSTEM.**

10 **A.** Sandler Utilities' capital investment in the new controllers, valves, and pumps was  
11 both reasonable and prudent and was not due to an alleged "failure to properly  
12 maintain the Eagle Creek wastewater utility system." In regard to the controllers,  
13 the average service life of current controllers is advertised to be 40 to 50 years with  
14 a rebuild requirement at year 10. However, that long service life was not available  
15 for the controllers that were on the market 20 years ago (and even 10 years ago)  
16 when the Eagle Creek Vacuum Collection System was constructed. Additionally,  
17 the HP controllers that had been previously purchased had been found to be firing  
18 (opening the valves) with 40 to 50 gallons of sewage, rather than the required 10  
19 gallons. This problem resulted in smaller amounts of emergency storage and thus  
20 shorter response time before the occurrence of a sanitary system overflow ("SSO"),  
21 which required Sandler Utilities to replace all of those controllers during an outage  
22 to resolve the SSO situation and allow the Vacuum Collection System to operate

1 properly. Due to those issues, along with the age of the Vacuum Collection System,  
2 impact from storms, high groundwater, and inflow and infiltration contribution  
3 from the homeowners' laterals, the service life of the controllers was reduced  
4 because the mechanical components were used to a greater capacity. The result  
5 was that the existing controllers were at the end of their useful life and could no  
6 longer be rebuilt, which required Sandler Utilities to purchase and install new  
7 controllers. New controllers and valves were also required for the pedestal mounted  
8 controllers to ensure that the new system being installed would be completely  
9 functional. It is also imperative that the operators of the Eagle Creek Wastewater  
10 System have a necessary supply of functional spare controllers on-site in rotation  
11 so that any necessary repairs can be performed expeditiously without extended  
12 impact to the homeowners. This is a critical component to keeping an aging system  
13 functional without significant downtime.

14 Regarding the pumps, while both the vacuum pump system and the sewage pump  
15 system can operate with one pump, it is critical to have both pumps fully operational  
16 to avoid long-term overload on the other pump, which could ultimately lead to total  
17 failure of the Vacuum Collection System. These pumps have a defined lifespan  
18 that is shortened when excessively used, so it is imperative to bring in new and/or  
19 upgraded pumps when necessary to allow for system improvements.

20 Therefore, I believe that Sandler Utilities' investment in the new controllers and  
21 valves was both reasonable and prudent. Accordingly, Sandler Utilities'

1 investment in the amount of approximately \$96,000 in 2020 and 2021 should be  
2 included in the rate base.

3 **Q. IN ADDITION TO THE PLANT INVESTMENTS THAT SANDLER**  
4 **UTILITIES MADE IN 2020 AND 2021, HAS SANDLER UTILITIES**  
5 **CONTINUED TO MAKE IMPROVEMENTS TO THE WASTEWATER**  
6 **SYSTEM IN 2022?**

7 **A.** Yes. To date, Sandler Utilities has made substantial investment in the Eagle Creek  
8 Wastewater System in 2022 in the amount of about \$195,000. Specifically,  
9 beginning on January 31, 2022, FloVac installed a remote monitoring system on  
10 the valve pits (each pit on the 8-inch main and additional sensors on the 10-inch  
11 main), along with two additional monitors on the collection lines. The remote  
12 monitoring system with the additional monitors will ensure that the Vacuum  
13 Collection System is reliable. The monitoring system allows multiple people to  
14 remotely monitor the vacuum flow status of the lines so that any possible leaks that  
15 might occur on the lines will be identified quickly. This expedient identification of  
16 any possible leaks on the collection lines will ensure that the contract operators may  
17 address the leaks quickly and before any homeowners might be affected. The cost  
18 of the remote monitoring system is \$195,297.69. Sandler Utilities is planning to  
19 install a control panel replacement in the amount of \$70,000.

20 **Q. DID THE PUBLIC STAFF INCLUDE SANDLER UTILITIES'**  
21 **INVESTMENT IN THE WASTEWATER SYSTEM IN 2022 IN THE RATE**  
22 **BASE?**

1 A. No. As previously mentioned, the Public Staff has not yet included Sandler  
2 Utilities' substantial investment in 2022 in the amount of about \$195,000 (to date)  
3 in the rate base. We believe that there is no justification for Sandler Utilities'  
4 investment in 2022 not being included in the rate base at this time.

5 **Q. IN REGARD TO SANDLER UTILITIES' CAPITAL IMPROVEMENTS IN**  
6 **2022, SHOULD THE PUBLIC STAFF UPDATE ITS RATE BASE**  
7 **CALCULATION TO INCLUDE THE 2022 INVESTMENT IN THE**  
8 **WASTEWATER SYSTEM?**

9 A. Yes. Sandler Utilities has provided the supporting documentation and invoices for  
10 its investment of about \$96,000 in the Eagle Creek Wastewater System in 2022 to  
11 the Public Staff. Sandler Utilities believes that the Public Staff should update its  
12 rate base calculation at this time to include the \$96,000 investment in 2022.

13 **Q. IS SANDLER UTILITIES CONTINUING TO MAKE CAPITAL**  
14 **IMPROVEMENTS IN THE EAGLE CREEK WASTEWATER SYSTEM?**

15 A. Yes. Sandler Utilities is continuing to invest in necessary improvements in the  
16 Eagle Creek Wastewater System, and particularly in the Vacuum Collection  
17 System. That investment will continue in 2022 and possibly after 2022.

18 **Q. SINCE SANDLER UTILITIES HAS MADE SUBSTANTIAL INVESTMENT**  
19 **IN THE EAGLE CREEK WASTEWATER SYSTEM SINCE DECEMBER**  
20 **31, 2021, IS IT YOUR UNDERSTANDING THAT THE PUBLIC STAFF**  
21 **INTENDS TO MAKE A SUPPLEMENTAL FILING PRIOR TO THE**  
22 **CLOSING WITH AN UPDATED AMOUNT FOR THE RATE BASE?**

1 A. Yes. Public Staff Witness Franklin stated in his testimony and the Public Staff  
2 stated in response to a data request that the Public Staff is recommending that the  
3 transfer be held in abeyance until either Sandler Utilities meets the conditions of  
4 the Amended Consent Judgment or CWS is made a party of the Amended Consent  
5 Judgment. In response to a data request, the Public Staff stated: “[S]upplemental  
6 filings will be required to support a subsequent hearing once it is determined the  
7 transfer should no longer be held in abeyance. At that time, a supplemental filing  
8 will be made with the then current original cost net investment.”

9 **Q. DO YOU AGREE WITH THE PUBLIC STAFF THAT A SUPPLEMENTAL**  
10 **FILING FOR INVESTMENTS MADE BY SANDLER UTILITIES AFTER**  
11 **THE PUBLIC STAFF’S INITIAL FILING SHOULD BE PROVIDED**  
12 **BEFORE THE CLOSING TO DETERMINE THE THEN-CURRENT RATE**  
13 **BASE?**

14 A. First, as stated previously, I believe that Sandler Utilities’ substantial investment in  
15 the Eagle Creek Wastewater System of about \$195,000 to date in 2022 should be  
16 included in the current rate base calculation.

17 Thereafter, Sandler Utilities’ substantial and continuing investment in the  
18 Wastewater System in 2022 (and afterwards)—to ensure that the Wastewater  
19 System will be safe and reliable and be in full compliance with the Amended  
20 Consent Judgment’s mandate to undertake to address “necessary upgrades to the  
21 design and physical infrastructure of the [Vacuum] Collection System”—should be  
22 included in the Public Staff’s updated calculation prior to the closing. Sandler

1 Utilities requests that the Commission allow Sandler the opportunity to respond to  
2 the Public Staff's supplemental rate base filing prior to the closing.

3 **Q. PURSUANT TO THE APA, IS CWS REQUIRED TO PAY THE AMOUNT**  
4 **OF \$88,900 FOR CONNECTION FEES COLLECTED FROM THE FOST**  
5 **AND FLORA CUSTOMERS?**

6 **A.** Yes. Sandler Utilities and CWS agreed in the APA that CWS would remit \$100  
7 for each of the anticipated 889 connections made to the Eagle Creek wastewater  
8 treatment plant from the Fost and Flora subdivisions. Therefore, Sandler Utilities  
9 and CWS anticipate that Sandler Utilities will receive an additional purchase price  
10 of \$88,900 when the additional connections are made.

11 **Q. WHAT IS THE PUBLIC STAFF'S POSITION ABOUT THE \$88,900**  
12 **AMOUNT TO BE PAID BY CWS TO SANDLER UTILITIES FOR THE**  
13 **FOST AND FLORA NEW CONNECTIONS?**

14 **A.** Public Staff Witnesses Franklin and Morgan "oppose" the \$88,900 as an additional  
15 purchase price amount. Presumably this means they oppose recognition of the  
16 \$88,900 for purposes of determining the rate base that will be approved for CWS  
17 as a result of the transfer. The Public Staff witnesses state that the Fost and Flora  
18 connections, and therefore the amount of \$88,900, "do not directly benefit" the  
19 Eagle Creek customers. Witness Franklin also points out that the new connections  
20 from the Fost and Flora subdivisions have not been made to the Eagle Creek  
21 wastewater treatment plant.

22 **Q. DO YOU AGREE WITH THE PUBLIC STAFF' POSITION?**

1 A. No. I believe that the Public Staff's position is neither reasonable nor, according  
2 to counsel, legally correct.

3 Q. PLEASE EXPLAIN YOUR RESPONSE TO THE PUBLIC STAFF'S  
4 POSITION THAT SANDLER UTILITIES SHOULD NOT BE ENTITLED  
5 TO RECEIVE THE FUTURE PAYMENTS TOTALING \$88,900 FOR THE  
6 FOST AND FLORA CONNECTIONS?

7 A. First, it should not matter that the connections have yet to be made. CWS has an  
8 existing contractual duty to pay Sandler the additional purchase price of \$88,900.  
9 The APA provides a timetable for paying the \$88,900 in quarterly installments as  
10 the new connections are made, and further states that "Buyer's obligation for the  
11 Additional Purchase Price shall survive the Closing."

12 Second, the prefiled direct testimony of CWS Witness Myers enumerates the many  
13 benefits that will accrue to the Eagle Creek ratepayers as a result of the transfer.

14 One of the benefits is that:

15 The addition of Fost & Flora customers, along with potential  
16 customers in the area, to the Eagle Creek wastewater treatment plant  
17 will result in a larger customer base and thus a greater economy of  
18 scale. This larger customer base will help to defer both initial capital  
19 upgrade costs and future cost of service expenditures, and will help  
20 to minimize increased rates in the future.

21 The Public Staff does not deny the economy of scale for the Eagle Creek  
22 Wastewater System that will result from the addition of the Fost and Flora  
23 customers, as asserted by CWS Witness Myers. Rather, the Public Staff witnesses  
24 simply contend there will not be any "direct" benefit. While economy of scale may

1 not be a “direct” benefit, it is certainly a real benefit. In a data response to Sandler  
2 Utilities, the Public Staff stated:

3 It is indeterminate whether the additional [Fost and Flora] customers  
4 that would be added would be of direct benefit to the existing  
5 customers since the addition may cause the need for additional  
6 improvements and/or expansion of the WWTP that otherwise would  
7 not be required.

8 The position that “[i]t is indeterminate” does not refute the testimony of CWS  
9 Witness Myers with facts. “Indeterminate” simply means the Public Staff does not  
10 know.

11 Third, CWS is not seeking any change in rates as part of this transfer docket. If the  
12 transfer is approved, CWS will have the burden of proving that any future rate  
13 increases it may seek are reasonable and prudent. In both the present transfer  
14 docket and in any future rate case, the interests of all ratepayers should be evaluated,  
15 not just the interest of Eagle Creek ratepayers. If the transfer were denied and  
16 Sandler Utilities operated the Eagle Creek Wastewater System for the Eagle Creek  
17 customers while CWS had to operate a separate wastewater system for Fost and  
18 Flora customers, none of the customers would benefit from the economy of scale  
19 of a combined wastewater operation.

20 **Q. ARE YOU AWARE OF OTHER TRANSFER CASES WHERE FUTURE**  
21 **CONNECTION FEES HAVE BEEN PART OF THE PURCHASE PRICE?**

22 **A.** Yes. Future connection fees have been recognized by the Commission as part of  
23 the purchase price in other transfer applications. In response to a data request from  
24 Sandler Utilities, the Public Staff replied: “To my knowledge, the Sandler-

1 Currituck transfer is the only transfer filed with the Commission with an APA that  
2 provides payment to the seller for future connections to the utility system being  
3 transferred.”

4 I have not done a comprehensive search of such cases, but my legal counsel has  
5 provided the following example where the purchase price included a value for  
6 future connections. In Docket Nos. W-1300, Sub 10, and W-1082, Sub 4, there  
7 was a transfer of the Twin Lake Farm water system from Dutchman Creek, Inc., to  
8 Old North State Water Company, LLC (“Twin Lake Farm Transfer Proceeding”).

9 The Commission’s February 4, 2016, Order stated in Finding of Fact No. 4:

10 Dutchman and Old North State entered into an Asset Purchase  
11 Agreement dated November 21, 2014, for Old North State to  
12 purchase from Dutchman all the Twin Lake water utility system  
13 facilities for the purchase price of \$50,000, plus \$600 per connection  
14 for the next 12 lots to receive water service for which Dutchman has  
15 already installed the distribution water main and a number of  
16 services.

17 In Twin Lake Farm Transfer Proceeding, the \$50,000 purchase price was more than  
18 the original cost net investment of Dutchman even without counting the additional  
19 purchase price of \$7,200 for future connections, and there was no positive  
20 acquisition adjustment, so the \$7,200 was not relevant to the determination of rate  
21 base for the buyer. Nonetheless, the additional purchase price was recognized by  
22 the Commission in the findings of fact. In this transfer proceeding, the additional  
23 purchase price for future connections in the Fost and Flora subdivisions is relevant  
24 to the transfer from Sandler Utilities to CWS because the purchase price without

1 the additional amount for future connections is less than the original cost net  
2 investment of Sandler Utilities.

3 In the Commission's Order in Twin Lake Farm Transfer Proceeding, denying a  
4 positive acquisition adjustment to allow the higher of the purchase price or seller's  
5 rate base to become the rate base for the buyer, the Commission relied on Public  
6 Staff testimony that "[a]ny benefits accruing to the Dutchman customers as a result  
7 of the proposed transfer would not outweigh the cost of including the excess  
8 purchase price in rate base." The main point of this Order is that benefits to the  
9 seller's customers must outweigh the amount of purchase price in excess of the  
10 seller's rate base before the purchase price can be included in the buyer's rate base.

11 The situation in the Twin Lake Farm transfer proceeding is different from the  
12 position of Sandler Utilities in the present case, where Sandler Utilities supports a  
13 rate base for CWS equal to the original cost net investment of Sandler because the  
14 full purchase price, including the \$88,900 for future connections, is greater than the  
15 original cost net investment of Sandler. However, it is appropriate for the  
16 Commission to recognize that connection fees are part of the purchase price in the  
17 present case just as it did in the Twin Lake Farm case.

18 **Q. ARE YOU AWARE OF OTHER CASES WHERE FUTURE CONNECTION**  
19 **FEES WERE CONSIDERED AS PART OF THE PURCHASE PRICE?**

20 **A.** Yes, although as noted previously, my analysis is the result of a non-comprehensive  
21 search and there could be other cases that neither I nor legal counsel have  
22 discovered yet. The next example is the transfer of the water system for Currituck

1 Club from The Currituck Associates to Carolina Water Service, Inc. of North  
2 Carolina. The August 20, 2001, Order in Docket No. W-354, Sub 249 states in  
3 Finding of Fact No. 9:

4 The purchase price for the initial facilities is \$100,000. In addition,  
5 CWS will also pay the Seller one half of each water tap-on fee  
6 collected on residential lots of numerical designation 300 or higher,  
7 the Center Court homesites, and any future homesites outside of  
8 Magnolia Bay, and the Club Cottages (approximately 252 lots at  
9 \$1,000 per lot will be reimbursed to the seller, for a total purchase  
10 price of \$352,000). Net plant in service at the time of transfer is  
11 greater than the \$352,000 total purchase price, therefore, CWS is  
12 entitled to include in rate base only the purchase price paid for the  
13 acquired facilities.

14 Clearly there are transfer cases where the Commission has recognized future  
15 connection fees as a proper component of the purchase price. In Docket No. W-  
16 354, Sub 249, the Commission accepted the amount for future connections as part  
17 of the purchase price that became the rate base for the buyer.

18 Therefore, the Public Staff is incorrect in suggesting the position of Sandler Utilities  
19 and CWS on this issue is unique to the present docket.

20 **Q. SHOULD THE COMMISSION CONSIDER THE ECONOMY OF**  
21 **SCALE BENEFITS THAT A COMBINED WASTEWATER SYSTEM**  
22 **WOULD PROVIDE TO THE EAGLE CREEK CUSTOMERS, ALONG**  
23 **WITH THE FOST AND FLORA CUSTOMERS?**

24 **A.** My legal counsel has informed me that the applicable statutory authority for  
25 Commission consideration of this transfer application is N.C. Gen. Stat. § 62-  
26 111 (a), which states in pertinent part:

1 No franchise now existing or hereafter issued under the  
2 provisions of this Chapter, other than a franchise for motor carriers  
3 of passengers shall be sold, assigned, pledged or transferred, nor  
4 shall control thereof be changed through stock transfer or otherwise,  
5 or any rights thereunder leased, nor shall any merger or combination  
6 affecting any public utility be made through acquisition or control  
7 by stock purchase or otherwise, except after application to and  
8 written approval by the Commission, which approval shall be given  
9 if justified by the public convenience and necessity.

10 N.C. Gen. Stat. § 62-111 (a), has been interpreted by the North Carolina Court of  
11 Appeals to require the Commission to inquire into all aspects of anticipated services  
12 and rates occasioned and engendered by the proposed transfer. *See Utilities*  
13 *Commission v. Village of Pinehurst*, 99 N.C. App. 224, 393 S.E.2d 111 (1990),  
14 *disc. review allowed*, 328 N.C. 97, 402 S.E.2d 427, *aff'd*, 331 N.C. 278, 415 S.E.2d  
15 199 (1992). In *Village of Pinehurst*, the Court made it clear that the correct legal  
16 standard for considering a transfer application is as follows: “[W]hen the  
17 Commission is adjudging public convenience and necessity in the context of  
18 proposed transfers of water and sewer franchises under G.S. § 62411(a), it must  
19 inquire into *all* aspects of anticipated service and rates occasioned and  
20 engendered by the proposed transfer, and then determine whether the transfer  
21 will serve the public convenience and necessity.”

22 The Public Staff witnesses’ position—that the amount of \$88,900 should be  
23 denied because it does not provide a direct benefit to just the Eagle Creek  
24 customers—is contrary to the enunciated legal standard. It is clear that the  
25 Commission must weigh all benefits, and for all customers.

1 **Q. WILL YOU PLEASE SUMMARIZE YOUR REBUTTAL ON THIS**  
2 **ISSUE?**

3 **A.** Yes. It would be manifestly unfair to ignore the full price being paid by CWS as  
4 an excuse to lower the rate base for CWS. CWS has testified to the economies of  
5 scale that will benefit the Eagle Creek customers, as well as the Fost and Flora  
6 customers, if the transfer is approved. In most transfer cases in which there is no  
7 positive acquisition adjustment, the Commission approves the rate base for the  
8 buyer as the lesser of the seller original cost net investment or the purchase price.  
9 That same approach is proper for the present case. In taking that approach, the  
10 amount of the purchase price should include the full amount to be paid by the buyer  
11 (CWS), and should not exclude the value of future connection fees as recommended  
12 by the Public Staff. The result in Docket No. W-354, Sub 249, supports Sandler's  
13 position on this issue in the present case.

14 **Q. IS SANDLER UTILITIES PERMITTED TO TERMINATE THE APA AND**  
15 **NOT PROCEED WITH THE SALE OF THE EAGLE CREEK**  
16 **WASTEWATER SYSTEM TO CWS IF IT IS NOT SATISFIED WITH THE**  
17 **AMOUNT OF THE RATE BASE?**

18 **A.** Yes. Section 4.2(c) of the APA gives Sandler Utilities the right to terminate the  
19 agreement in the event that Sandler is not satisfied with the amount of the rate base  
20 established by the Commission.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A.** Yes.

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Brittney Willis. I am employed by L.M. Sandler & Sons as a  
3 Senior Project Manager, and my business address is 448 Viking Drive, Suite  
4 220, Virginia Beach, Virginia 23452.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**  
6 **CAROLINA UTILITIES COMMISSION?**

7 A. Yes. I filed direct testimony on February 4, 2022 and rebuttal testimony on  
8 March 22, 2022, in this docket.

9 **Q. WHAT IS THE PURPOSE OF YOUR REVISED REBUTTAL**  
10 **TESTIMONY?**

11 A. The primary purpose of my corrected rebuttal testimony is to correct my  
12 statement that the Public Staff has not yet included Sandler Utilities'  
13 substantial investment in 2022 in the amount of about \$195,000 (to date) in  
14 the rate base. In fact, the Public Staff did include Sandler Utilities'  
15 investment in 2022 in the amount of about \$195,000 in the rate base.  
16 Therefore, I have removed that statement in this corrected rebuttal  
17 testimony.

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 A. The purpose of my rebuttal testimony is to respond to the testimony of Public  
20 Staff Witnesses D. Michael Franklin and Iris Morgan. My rebuttal testimony  
21 focuses on (1) the Public Staff witnesses' calculation of the original cost net  
22 investment in the Eagle Creek Wastewater Utility System (*i.e.*, the rate base),

1 and (2) the Public Staff witnesses' disallowance of the additional purchase  
2 price of \$88,900 required by the Revised and Restated Asset Purchase  
3 Agreement ("APA") dated April 14, 2021 between Sandler Utilities at Mill  
4 Run, LLC's ("Sandler Utilities" or "Sandler") and Currituck Water and  
5 Sewer, LLC ("CWS").

6 **Q. DOES THE APA CONTAIN A PROVISION ABOUT THE**  
7 **PURCHASE PRICE FOR CWS TO PURCHASE THE EAGLE**  
8 **CREEK WASTEWATER SYSTEM FROM SANDLER UTILITIES?**

9 **A.** Yes. The agreement of Sandler Utilities and CWS about the purchase price  
10 is contained in Section 4.2 of the APA.

11 **Q. PLEASE EXPLAIN THE PURCHASE PRICE AGREED TO BY**  
12 **SANDLER UTILITIES AND CWS.**

13 **A.** The APA between Sandler Utilities and CWS was filed with the Joint  
14 Application, which seeks authority from the North Carolina Utilities  
15 Commission ("Commission") to transfer the Eagle Creek wastewater utility  
16 system ("Eagle Creek Wastewater System" or "Wastewater System") and  
17 franchise in Currituck County, North Carolina to CWS and to approve rates  
18 for the wastewater operations. The agreed upon and necessary purchase  
19 price for the Eagle Creek Wastewater System is \$250,000, plus additional  
20 Commission-approved capital costs incurred by Sandler up to the date of the  
21 closing, plus \$88,900 to be recovered after the closing as new connections

1 are made to the Eagle Creek wastewater treatment plant from the adjacent  
2 Fost and Flora subdivisions that other developers will build.

3 **Q. HAS THE PUBLIC STAFF PROVIDED A RECOMMENDATION**  
4 **FOR THE SANDLER UTILITIES' ORIGINAL COST NET**  
5 **INVESTMENT IN THE EAGLE CREEK WASTEWATER SYSTEM?**

6 **A.** Yes. Public Staff Witnesses Franklin and Morgan calculated the original  
7 cost net investment of the Eagle Creek Wastewater System as of December  
8 31, 2021, to be \$389,499. As support for the Public Staff's calculation of the  
9 rate base of \$389,499, Public Staff Witness Morgan determined the amount  
10 of the plant in service to be \$2,206,202 from Sandler Utilities' last general  
11 rate case in Docket No. W-1130, Sub 8. Public Staff Witness Morgan then  
12 added the amount of \$484,389 (rather than Sandler Utilities' total investment  
13 of \$686,564 in 2020, 2021, and 2022) of additional plant items to the amount  
14 of plant in service, resulting in a total plant in service amount of \$2,690,591.  
15 Public Staff Witnesses Franklin and Morgan then reduced the total plant in  
16 service amount of \$2,690,591 to \$389,499 by adjusting for accumulated  
17 depreciation and depreciation expense and significant downward  
18 adjustments to Sandler Utilities' plant additions made in 2020 and 2021.  
19 Prior to closing, the Public Staff witnesses should include additional  
20 investment made by Sandler Utilities for the Eagle Creek system after the  
21 Public Staff's review. Public Staff Witness Morgan appears to agree with  
22 updating the rate base, as she testified that the "original cost net investment

1 of \$389,499 is subject to change based on the inclusion of reasonable and  
2 prudent plant additions between December 31, 2021 and closing, and net of  
3 plant retirements and additional accumulated depreciation and amortization  
4 through the date of closing.” (Public Staff Witness Morgan Testimony, p.  
5 6.)

6 **Q. PLEASE DESCRIBE THE ADJUSTMENTS THAT THE PUBLIC**  
7 **STAFF WITNESSES MADE TO SANDLER UTILITIES’**  
8 **WASTEWATER SYSTEM ADDITIONS IN 2020 AND 2021.**

9 **A.** Public Staff Witnesses Franklin and Morgan reduced Sandler Utilities’  
10 Wastewater System additions in 2020 and 2021 by \$207,633 (and, again, did  
11 not consider the system additions made in 2022). Public Staff Witnesses  
12 Franklin and Morgan also did not allow \$2,914 for Wastewater System  
13 additions in 2016. In regard to the Wastewater System investments that  
14 Sandler Utilities made in 2020, Public Staff Witnesses Franklin and Morgan  
15 disallowed \$130,744 for the replacement of controllers and 12 vacuum  
16 valves, \$3,941 for the cost of a temporary sewerage pump, and \$42,702 for  
17 labor and equipment expenses associated with the November 2020  
18 wastewater system outage. For the Wastewater System improvements that  
19 Sandler Utilities made in 2021, Public Staff Witnesses Franklin and Morgan  
20 disallowed \$27,333 for repairs to the pump house and irrigation system and  
21 pipe and sprinkler heads.

1 **Q. WHAT IS THE PUBLIC STAFF'S EXPLANATION FOR ITS**  
2 **DISALLOWANCE OF \$207,633 OF CAPITAL IMPROVEMENTS IN**  
3 **2020 AND 2021?**

4 **A.** The stated justification by Public Staff Witnesses Franklin and Morgan for  
5 the majority of the adjustments to the Wastewater System additions in 2020  
6 and 2021 is that they do not view those system additions to be reasonable or  
7 prudent. Apparently, the Public Staff believes that the system improvements  
8 related to the new controllers and valves would not have been incurred if  
9 Sandler Utilities had properly maintained the Wastewater System. Public  
10 Staff Witness Franklin stated that “the November 2020 outage stemmed from  
11 Sandler’s continuing failure to properly maintain the Eagle Creek  
12 wastewater utility system and take appropriate action to improve wastewater  
13 system reliability.” (Public Staff Witness Franklin Testimony, p. 27.)

14 I want to again mention that Sandler Utilities does not dispute that that the  
15 Eagle Creek Wastewater System has experienced a number of outages and  
16 sanitary sewer overflows, the vast majority of which occurred beginning in  
17 September of 2020. Sandler Utilities sincerely regrets these significant  
18 problems in the Vacuum Collection System. Sandler Utilities has made  
19 substantial investment in repairs and capital improvements in the  
20 Wastewater System—in particular in the Vacuum Collection System—to  
21 remedy the Vacuum Collection System’s problems and to ensure that the

1 Wastewater System will function properly and reliably and in compliance  
2 with all regulatory and environmental regulations.

3 **Q. IS THE PUBLIC STAFF’S OPINION ABOUT THE NEED FOR THE**  
4 **NEW CONTROLLERS AND VALVES CORRECT?**

5 **A.** No. Sandler Utilities’ need to purchase and install new controllers and  
6 valves was not the result of “Sandler’s [alleged] continuing failure to  
7 properly maintain the Eagle Creek wastewater utility system.” The  
8 controllers and valves were at the end of their useful lives and needed to be  
9 replaced.

10 **Q. PLEASE DESCRIBE YOUR RESPONSE TO THE PUBLIC STAFF’S**  
11 **SPECIFIC ADJUSTMENTS TO THE PLANT ADDITIONS IN 2020**  
12 **AND 2021?**

13 **A.** The Public Staff improperly disallowed the following wastewater system  
14 improvements made by Sandler Utilities in 2020 and 2021:

- 15 • 10/12/2020 Invoice 0156 for Flovac for Controllers, Labor, Pump, and  
16 Motor in the amount of \$18,973.97. The new pump and motor are critical  
17 components to upgrading the Eagle Creek Wastewater System.
- 18 • 10/12/2020 Invoice 163 for Flovac for 45 Controllers and Shipping in the  
19 amount of \$9,561.84. The controllers were at the end of their useful life and  
20 needed to be replaced.

- 1 • 11/13/2020 Invoice 0179 for Flovac for 30 New Controllers in the amount  
2 of \$6,362.64. The controllers were at the end of their useful life and needed  
3 to be replaced.
- 4 • 11/23/2020 Invoice 0183 for Flovac for 26 New Controllers, 10 3” Valve  
5 Piston Type in the amount of \$10,746.71. This capital improvement was  
6 required to retrofit some of the pedestal mounted controllers.
- 7 • 11/30/2020 Invoice 0026223 for Envirolink for Vacuum Pump Renewal and  
8 Replacement in the amount of \$42,702.24. This improvement is a critical  
9 component to keeping the system upgraded and fully operational. Renewal  
10 and replacement of pumps means greater longevity for the components of  
11 the Vacuum Collection System.
- 12 • 12/21/2020 Invoice 0199 for Flovac for 57 Flovac Controllers in the amount  
13 of \$7,101.75. This capital improvement was necessary to increase the supply  
14 of replacement controllers and replace the controllers that were at their end  
15 of life.
- 16 **Q. PLEASE EXPLAIN WHY THOSE CAPITAL IMPROVEMENTS**  
17 **SHOULD BE INCLUDED IN THE RATE BASE FOR THE EAGLE**  
18 **CREEK WASTEWATER SYSTEM.**
- 19 **A.** Sandler Utilities’ capital investment in the new controllers, valves, and  
20 pumps was both reasonable and prudent and was not due to an alleged  
21 “failure to properly maintain the Eagle Creek wastewater utility system.” In  
22 regard to the controllers, the average service life of current controllers is

1 advertised to be 40 to 50 years with a rebuild requirement at year 10.  
2 However, that long service life was not available for the controllers that were  
3 on the market 20 years ago (and even 10 years ago) when the Eagle Creek  
4 Vacuum Collection System was constructed. Additionally, the HP  
5 controllers that had been previously purchased had been found to be firing  
6 (opening the valves) with 40 to 50 gallons of sewage, rather than the required  
7 10 gallons. This problem resulted in smaller amounts of emergency storage  
8 and thus shorter response time before the occurrence of a sanitary system  
9 overflow (“SSO”), which required Sandler Utilities to replace all of those  
10 controllers during an outage to resolve the SSO situation and allow the  
11 Vacuum Collection System to operate properly. Due to those issues, along  
12 with the age of the Vacuum Collection System, impact from storms, high  
13 groundwater, and inflow and infiltration contribution from the homeowners’  
14 laterals, the service life of the controllers was reduced because the  
15 mechanical components were used to a greater capacity. The result was that  
16 the existing controllers were at the end of their useful life and could no longer  
17 be rebuilt, which required Sandler Utilities to purchase and install new  
18 controllers. New controllers and valves were also required for the pedestal  
19 mounted controllers to ensure that the new system being installed would be  
20 completely functional. It is also imperative that the operators of the Eagle  
21 Creek Wastewater System have a necessary supply of functional spare  
22 controllers on-site in rotation so that any necessary repairs can be performed

1 expeditiously without extended impact to the homeowners. This is a critical  
2 component to keeping an aging system functional without significant  
3 downtime.

4 Regarding the pumps, while both the vacuum pump system and the sewage  
5 pump system can operate with one pump, it is critical to have both pumps  
6 fully operational to avoid long-term overload on the other pump,  
7 which could ultimately lead to total failure of the Vacuum Collection  
8 System. These pumps have a defined lifespan that is shortened when  
9 excessively used, so it is imperative to bring in new and/or upgraded  
10 pumps when necessary to allow for system improvements.

11 Therefore, I believe that Sandler Utilities' investment in the new controllers and  
12 valves was both reasonable and prudent. Accordingly, of the amount the  
13 Public Staff recommends for disallowance, \$96,000 should be included in  
14 the rate base.

15 **Q. IN ADDITION TO THE PLANT INVESTMENTS THAT SANDLER**  
16 **UTILITIES MADE IN 2020 AND 2021, HAS SANDLER UTILITIES**  
17 **CONTINUED TO MAKE IMPROVEMENTS TO THE**  
18 **WASTEWATER SYSTEM IN 2022?**

19 **A.** Yes. To date, Sandler Utilities has made substantial investment in the Eagle  
20 Creek Wastewater System in 2022 in the amount of about \$195,000.  
21 Specifically, beginning on January 31, 2022, Flovac installed a remote  
22 monitoring system on the valve pits (each pit on the 8-inch main and

1 additional sensors on the 10-inch main), along with two additional monitors  
2 on the collection lines. The remote monitoring system with the additional  
3 monitors will ensure that the Vacuum Collection System is reliable. The  
4 monitoring system allows multiple people to remotely monitor the vacuum  
5 flow status of the lines so that any possible leaks that might occur on the  
6 lines will be identified quickly. This expedient identification of any possible  
7 leaks on the collection lines will ensure that the contract operators may  
8 address the leaks quickly and before any homeowners might be affected. The  
9 cost of the remote monitoring system is \$195,297.69. Sandler Utilities is  
10 planning to install a control panel replacement in the amount of \$70,000.

11 **Q. IS SANDLER UTILITIES CONTINUING TO MAKE CAPITAL**  
12 **IMPROVEMENTS IN THE EAGLE CREEK WASTEWATER**  
13 **SYSTEM?**

14 **A.** Yes. Sandler Utilities is continuing to invest in necessary improvements in  
15 the Eagle Creek Wastewater System, and particularly in the Vacuum  
16 Collection System. That investment will continue in 2022 and possibly after  
17 2022.

18 **Q. SINCE SANDLER UTILITIES HAS MADE SUBSTANTIAL**  
19 **INVESTMENT IN THE EAGLE CREEK WASTEWATER SYSTEM**  
20 **SINCE DECEMBER 31, 2021, IS IT YOUR UNDERSTANDING**  
21 **THAT THE PUBLIC STAFF INTENDS TO MAKE A**

1           **SUPPLEMENTAL FILING PRIOR TO THE CLOSING WITH AN**  
2           **UPDATED AMOUNT FOR THE RATE BASE?**

3   **A.**    Yes. Public Staff Witness Franklin stated in his testimony and the Public  
4           Staff stated in response to a data request that the Public Staff is  
5           recommending that the transfer be held in abeyance until either Sandler  
6           Utilities meets the conditions of the Amended Consent Judgment or CWS is  
7           made a party of the Amended Consent Judgment. In response to a data  
8           request, the Public Staff stated: “[S]upplemental filings will be required to  
9           support a subsequent hearing once it is determined the transfer should no  
10          longer be held in abeyance. At that time, a supplemental filing will be made  
11          with the then current original cost net investment.”

12   **Q.    DO YOU AGREE WITH THE PUBLIC STAFF THAT A**  
13          **SUPPLEMENTAL FILING FOR INVESTMENTS MADE BY**  
14          **SANDLER UTILITIES AFTER THE PUBLIC STAFF’S INITIAL**  
15          **FILING SHOULD BE PROVIDED BEFORE THE CLOSING TO**  
16          **DETERMINE THE THEN-CURRENT RATE BASE?**

17   **A.**    Sandler Utilities’ continuing investment in the Wastewater System in 2022  
18          (and afterwards)—to ensure that the Wastewater System will be safe and  
19          reliable and be in full compliance with the Amended Consent Judgment’s  
20          mandate to undertake to address “necessary upgrades to the design and  
21          physical infrastructure of the [Vacuum] Collection System”—should be  
22          included in the Public Staff’s updated calculation prior to the closing.

1 Sandler Utilities requests that the Commission allow Sandler the opportunity  
2 to respond to the Public Staff's supplemental rate base filing prior to the  
3 closing.

4 **Q. PURSUANT TO THE APA, IS CWS REQUIRED TO PAY THE**  
5 **AMOUNT OF \$88,900 FOR CONNECTION FEES COLLECTED**  
6 **FROM THE FOST AND FLORA CUSTOMERS?**

7 **A.** Yes. Sandler Utilities and CWS agreed in the APA that CWS would remit  
8 \$100 for each of the anticipated 889 connections made to the Eagle Creek  
9 wastewater treatment plant from the Fost and Flora subdivisions. Therefore,  
10 Sandler Utilities and CWS anticipate that Sandler Utilities will receive an  
11 additional purchase price of \$88,900 when the additional connections are  
12 made.

13 **Q. WHAT IS THE PUBLIC STAFF'S POSITION ABOUT THE \$88,900**  
14 **AMOUNT TO BE PAID BY CWS TO SANDLER UTILITIES FOR**  
15 **THE FOST AND FLORA NEW CONNECTIONS?**

16 **A.** Public Staff Witnesses Franklin and Morgan "oppose" the \$88,900 as an  
17 additional purchase price amount. Presumably this means they oppose  
18 recognition of the \$88,900 for purposes of determining the rate base that will  
19 be approved for CWS as a result of the transfer. The Public Staff witnesses  
20 state that the Fost and Flora connections, and therefore the amount of  
21 \$88,900, "do not directly benefit" the Eagle Creek customers. Witness  
22 Franklin also points out that the new connections from the Fost and Flora

1 subdivisions have not been made to the Eagle Creek wastewater treatment  
2 plant.

3 **Q. DO YOU AGREE WITH THE PUBLIC STAFF' POSITION?**

4 **A.** No. I believe that the Public Staff's position is neither reasonable nor,  
5 according to counsel, legally correct.

6 **Q. PLEASE EXPLAIN YOUR RESPONSE TO THE PUBLIC STAFF'S**  
7 **POSITION THAT SANDLER UTILITIES SHOULD NOT BE**  
8 **ENTITLED TO RECEIVE THE FUTURE PAYMENTS TOTALING**  
9 **\$88,900 FOR THE FOST AND FLORA CONNECTIONS?**

10 **A.** First, it should not matter that the connections have yet to be made. CWS  
11 has an existing contractual duty to pay Sandler the additional purchase price  
12 of \$88,900. The APA provides a timetable for paying the \$88,900 in  
13 quarterly installments as the new connections are made, and further states  
14 that "Buyer's obligation for the Additional Purchase Price shall survive the  
15 Closing."

16 Second, the prefiled direct testimony of CWS Witness Myers enumerates the many  
17 benefits that will accrue to the Eagle Creek ratepayers as a result of the  
18 transfer. One of the benefits is that:

19 The addition of Fost & Flora customers, along with potential  
20 customers in the area, to the Eagle Creek wastewater treatment plant  
21 will result in a larger customer base and thus a greater economy of  
22 scale. This larger customer base will help to defer both initial capital  
23 upgrade costs and future cost of service expenditures, and will help  
24 to minimize increased rates in the future.

1 The Public Staff does not deny the economy of scale for the Eagle Creek  
2 Wastewater System that will result from the addition of the Fost and Flora  
3 customers, as asserted by CWS Witness Myers. Rather, the Public Staff  
4 witnesses simply contend there will not be any “direct” benefit. While  
5 economy of scale may not be a “direct” benefit, it is certainly a real benefit.

6 In a data response to Sandler Utilities, the Public Staff stated:

7 It is indeterminate whether the additional [Fost and Flora] customers that  
8 would be added would be of direct benefit to the existing customers  
9 since the addition may cause the need for additional improvements  
10 and/or expansion of the WWTP that otherwise would not be required.

11 The position that “[i]t is indeterminate” does not refute the testimony of CWS  
12 Witness Myers with facts. “Indeterminate” simply means the Public Staff  
13 does not know.

14 Third, CWS is not seeking any change in rates as part of this transfer docket.  
15 If the transfer is approved, CWS will have the burden of proving that any  
16 future rate increases it may seek are reasonable and prudent. In both the  
17 present transfer docket and in any future rate case, the interests of all  
18 ratepayers should be evaluated, not just the interest of Eagle Creek  
19 ratepayers. If the transfer were denied and Sandler Utilities operated the  
20 Eagle Creek Wastewater System for the Eagle Creek customers while CWS  
21 had to operate a separate wastewater system for Fost and Flora customers,  
22 none of the customers would benefit from the economy of scale of a  
23 combined wastewater operation.

1 **Q. ARE YOU AWARE OF OTHER TRANSFER CASES WHERE**  
2 **FUTURE CONNECTION FEES HAVE BEEN PART OF THE**  
3 **PURCHASE PRICE?**

4 **A.** Yes. Future connection fees have been recognized by the Commission as  
5 part of the purchase price in other transfer applications. In response to a data  
6 request from Sandler Utilities, the Public Staff replied: “To my knowledge,  
7 the Sandler-Currituck transfer is the only transfer filed with the Commission  
8 with an APA that provides payment to the seller for future connections to the  
9 utility system being transferred.”

10 I have not done a comprehensive search of such cases, but my legal counsel has  
11 provided the following example where the purchase price included a value  
12 for future connections. In Docket Nos. W-1300, Sub 10, and W-1082, Sub  
13 4, there was a transfer of the Twin Lake Farm water system from Dutchman  
14 Creek, Inc., to Old North State Water Company, LLC (“Twin Lake Farm  
15 Transfer Proceeding”). The Commission’s February 4, 2016, Order stated  
16 in Finding of Fact No. 4:

17 Dutchman and Old North State entered into an Asset Purchase Agreement  
18 dated November 21, 2014, for Old North State to purchase from  
19 Dutchman all the Twin Lake water utility system facilities for the  
20 purchase price of \$50,000, plus \$600 per connection for the next 12  
21 lots to receive water service for which Dutchman has already  
22 installed the distribution water main and a number of services.

23 In Twin Lake Farm Transfer Proceeding, the \$50,000 purchase price was more than  
24 the original cost net investment of Dutchman even without counting the

1 additional purchase price of \$7,200 for future connections, and there was no  
2 positive acquisition adjustment, so the \$7,200 was not relevant to the  
3 determination of rate base for the buyer. Nonetheless, the additional  
4 purchase price was recognized by the Commission in the findings of fact. In  
5 this transfer proceeding, the additional purchase price for future connections  
6 in the Fost and Flora subdivisions is relevant to the transfer from Sandler  
7 Utilities to CWS because the purchase price without the additional amount  
8 for future connections is less than the original cost net investment of Sandler  
9 Utilities.

10 In the Commission's Order in Twin Lake Farm Transfer Proceeding, denying a  
11 positive acquisition adjustment to allow the higher of the purchase price or  
12 seller's rate base to become the rate base for the buyer, the Commission  
13 relied on Public Staff testimony that "[a]ny benefits accruing to the  
14 Dutchman customers as a result of the proposed transfer would not outweigh  
15 the cost of including the excess purchase price in rate base." The main point  
16 of this Order is that benefits to the seller's customers must outweigh the  
17 amount of purchase price in excess of the seller's rate base before the  
18 purchase price can be included in the buyer's rate base.

19 The situation in the Twin Lake Farm transfer proceeding is different from the  
20 position of Sandler Utilities in the present case, where Sandler Utilities  
21 supports a rate base for CWS equal to the original cost net investment of  
22 Sandler because the full purchase price, including the \$88,900 for future

1 connections, is greater than the original cost net investment of Sandler.  
2 However, it is appropriate for the Commission to recognize that connection  
3 fees are part of the purchase price in the present case just as it did in the Twin  
4 Lake Farm case.

5 **Q. ARE YOU AWARE OF OTHER CASES WHERE FUTURE**  
6 **CONNECTION FEES WERE CONSIDERED AS PART OF THE**  
7 **PURCHASE PRICE?**

8 **A.** Yes, although as noted previously, my analysis is the result of a non-  
9 comprehensive search and there could be other cases that neither I nor legal  
10 counsel have discovered yet. The next example is the transfer of the water  
11 system for Currituck Club from The Currituck Associates to Carolina Water  
12 Service, Inc. of North Carolina. The August 20, 2001, Order in Docket No.  
13 W-354, Sub 249 states in Finding of Fact No. 9:

14 The purchase price for the initial facilities is \$100,000. In addition, CWS  
15 will also pay the Seller one half of each water tap-on fee collected on  
16 residential lots of numerical designation 300 or higher, the Center  
17 Court homesites, and any future homesites outside of Magnolia Bay,  
18 and the Club Cottages (approximately 252 lots at \$1,000 per lot will  
19 be reimbursed to the seller, for a total purchase price of \$352,000).  
20 Net plant in service at the time of transfer is greater than the \$352,000  
21 total purchase price, therefore, CWS is entitled to include in rate base  
22 only the purchase price paid for the acquired facilities.

23 Clearly there are transfer cases where the Commission has recognized future  
24 connection fees as a proper component of the purchase price. In Docket No.  
25 W-354, Sub 249, the Commission accepted the amount for future

1 connections as part of the purchase price that became the rate base for the  
2 buyer.

3 Therefore, the Public Staff is incorrect in suggesting the position of Sandler Utilities  
4 and CWS on this issue is unique to the present docket.

5 **Q. SHOULD THE COMMISSION CONSIDER THE ECONOMY OF**  
6 **SCALE BENEFITS THAT A COMBINED WASTEWATER**  
7 **SYSTEM WOULD PROVIDE TO THE EAGLE CREEK**  
8 **CUSTOMERS, ALONG WITH THE FOST AND FLORA**  
9 **CUSTOMERS?**

10 **A.** My legal counsel has informed me that the applicable statutory authority for  
11 Commission consideration of this transfer application is N.C. Gen. Stat. §  
12 62-111 (a), which states in pertinent part:

13 No franchise now existing or hereafter issued under the  
14 provisions of this Chapter, other than a franchise for motor carriers  
15 of passengers shall be sold, assigned, pledged or transferred, nor  
16 shall control thereof be changed through stock transfer or otherwise,  
17 or any rights thereunder leased, nor shall any merger or combination  
18 affecting any public utility be made through acquisition or control  
19 by stock purchase or otherwise, except after application to and  
20 written approval by the Commission, which approval shall be given  
21 if justified by the public convenience and necessity.

22 N.C. Gen. Stat. § 62-111 (a), has been interpreted by the North Carolina Court of  
23 Appeals to require the Commission to inquire into all aspects of anticipated  
24 services and rates occasioned and engendered by the proposed transfer. *See*  
25 *Utilities Commission v. Village of Pinehurst*, 99 N.C. App. 224, 393 S.E.2d  
26 111 (1990), *disc. review allowed*, 328 N.C. 97, 402 S.E.2d 427, *aff'd*, 331

1 N.C. 278, 415 S.E.2d 199 (1992). In *Village of Pinehurst*, the Court made  
2 it clear that the correct legal standard for considering a transfer  
3 application is as follows: “[W]hen the Commission is adjudging  
4 public convenience and necessity in the context of proposed transfers of  
5 water and sewer franchises under G.S. § 62411(a), it must inquire  
6 into *all* aspects of anticipated service and rates occasioned and  
7 engendered by the proposed transfer, and then determine whether the  
8 transfer will serve the public convenience and necessity.”

9 The Public Staff witnesses’ position—that the amount of \$88,900 should  
10 be denied because it does not provide a direct benefit to just the Eagle  
11 Creek customers—is contrary to the enunciated legal standard. It is clear  
12 that the Commission must weigh all benefits, and for all customers.

13 **Q. WILL YOU PLEASE SUMMARIZE YOUR REBUTTAL ON THIS**  
14 **ISSUE?**

15 **A.** Yes. It would be manifestly unfair to ignore the full price being paid by  
16 CWS as an excuse to lower the rate base for CWS. CWS has testified to the  
17 economies of scale that will benefit the Eagle Creek customers, as well as  
18 the Fost and Flora customers, if the transfer is approved. In most transfer  
19 cases in which there is no positive acquisition adjustment, the Commission  
20 approves the rate base for the buyer as the lesser of the seller original cost  
21 net investment or the purchase price. That same approach is proper for the  
22 present case. In taking that approach, the amount of the purchase price

1 should include the full amount to be paid by the buyer (CWS), and should  
2 not exclude the value of future connection fees as recommended by the  
3 Public Staff. The result in Docket No. W-354, Sub 249, supports Sandler's  
4 position on this issue in the present case.

5 **Q. IS SANDLER UTILITIES PERMITTED TO TERMINATE THE APA**  
6 **AND NOT PROCEED WITH THE SALE OF THE EAGLE CREEK**  
7 **WASTEWATER SYSTEM TO CWS IF IT IS NOT SATISFIED WITH**  
8 **THE AMOUNT OF THE RATE BASE?**

9 **A.** Yes. Section 4.2(c) of the APA gives Sandler Utilities the right to terminate  
10 the agreement in the event that Sandler is not satisfied with the amount of  
11 the rate base established by the Commission.

12 **Q. DOES THIS CONCLUDE YOUR CORRECTED REBUTTAL**  
13 **TESTIMONY?**

14 **A.** Yes.

1 CHAIR MITCHELL: Okay.

2 MS. HOLT: Chair Mitchell, if this is  
3 the appropriate time, we also move the admission of  
4 the stipulation and settlement and exhibits into  
5 the record.

6 CHAIR MITCHELL: All right. Hearing no  
7 objection to that motion, we will allow -- I will  
8 allow it.

9 (Joint settlement agreement and  
10 Stipulation, and Settlement Exhibit 1  
11 were admitted into evidence.)

12 CHAIR MITCHELL: And then, Ms. Holt,  
13 when we get to your witness -- your witnesses,  
14 we'll have you move testimony at that point in  
15 time.

16 Okay. Currituck, call your witness.

17 MR. ALLEN: Yes. Currituck Water and  
18 Sewer will call Mike Myers to the stand.

19 CHAIR MITCHELL: All right. Right hand  
20 on the Bible -- I mean left hand on the Bible,  
21 raise your right hand.

22 Whereupon,

23 MICHAEL J. MYERS,  
24 having first been duly sworn, was examined

1 and testified as follows:

2 CHAIR MITCHELL: Take it away.

3 DIRECT EXAMINATION BY MR. ALLEN:

4 Q. Good morning, Mr. Myers. Could you please  
5 state your name and position for the record?

6 A. My name is Mike Myers. I'm a vice president,  
7 secretary, and treasurer for Currituck Water and Sewer.

8 Q. Thank you. And did you cause to be filed on  
9 February 4, 2022, direct testimony consisting of  
10 39 pages?

11 A. I did.

12 Q. And if I were to ask you those same questions  
13 today from the stand, would your answers be the same?

14 A. They would.

15 Q. And to the best of your knowledge, are your  
16 answers to those questions in your direct testimony  
17 truthful and accurate?

18 A. They are.

19 Q. Thank you.

20 MR. ALLEN: At this time, we'd move for  
21 the direct testimony to be admitted into the  
22 record.

23 CHAIR MITCHELL: All right. The direct  
24 testimony of Currituck witness Myers filed on

1 February 4th consisting of -- I have 39 pages.

2 MR. ALLEN: Yes, 39 pages.

3 CHAIR MITCHELL: Thirty-nine pages,  
4 okay, shall be copied into the record as if given  
5 orally from the stand.

6 MR. ALLEN: Thank you.

7 (Whereupon, the prefiled direct  
8 testimony of Michael J. Myers was copied  
9 into the record as if given orally from  
10 the stand.)

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1 Q. PLEASE STATE YOUR NAME, POSITION WITH CURRITUCK WATER & SEWER, LLC, AND  
2 BUSINESS ADDRESS.

3 A. My name is Michael J. Myers, and I am the Vice-President, Secretary and Treasurer of  
4 Currituck Water & Sewer, LLC ("CWS"). My business address is 4700 Homewood Court,  
5 Suite 108, Raleigh, North Carolina 27609.

6 Q. IN ADDITION TO BEING THE VICE-PRESIDENT, SECRETARY AND TREASURER OF CURRITUCK  
7 WATER & SEWER, ARE YOU ALSO AN OFFICER WITH ENVIROLINK, INC.?

8 A. Yes. I am also the President of Envirolink.

9 Q. PLEASE SUMMARIZE YOUR CURRENT RESPONSIBILITIES WITH CURRITUCK WATER &  
10 SEWER.

11 A. As mentioned above, I am the Vice-President, Secretary and Treasurer of CWS. Ken Raber  
12 is the President of CWS but is not available to provide testimony because of health-related  
13 restrictions. My responsibilities are to provide local support of CWS's operation. Mr.  
14 Raber is located in Tennessee, so I provide local assistance under Mr. Raber's direction.

15 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

16 A. Yes. I provided testimony in the transfer application of Horse Creek Farms to ONSWC in  
17 Docket No. W-1300, Sub 19 and Docket No. W-888, Sub 6 and other ONSWC and AQUA  
18 NORTH CAROLINA dockets.

19 Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND.

20 A. I have a Bachelor's Degree and a Master's Degree in Biological Engineering from Ohio  
21 State University. I am active in numerous professional and technical societies, and I have

1 over twenty-five years of experience in the design, construction, management and  
2 operation of water and wastewater utilities from both the owner and regulatory  
3 perspective.

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5 A. The purpose of my testimony is to support the application filed by CWS for the transfer  
6 of the Eagle Creek wastewater system in Currituck County, North Carolina from Sandler  
7 Utility ("Sandler") to CWS, and for approval of rates.

8 Q. PLEASE DESCRIBE CURRITUCK WATER & SEWER.

9 A. Currituck Water & Sewer is a North Carolina limited liability company with its Articles of  
10 Incorporation filed with the North Carolina Secretary of State.

11 Q. DOES CURRITUCK WATER & SEWER CURRENTLY OWN ANY WATER OR WASTEWATER  
12 SYSTEMS?

13 A. No. CWS does not currently own any water or wastewater systems. However, should the  
14 application in this docket be granted, CWS will own the Eagle Creek wastewater system  
15 and anticipates owning the Fost wastewater collection system, Flora wastewater  
16 collection system, and the Carolina Village water and wastewater system once the new  
17 franchise applications are approved, as well as ETNC – Ocean Hills wastewater system  
18 once the transfer applications is filed and approved by the Commission.

19 Q. SINCE CURRITUCK WATER & SEWER DOES NOT YET OWN ANY WASTEWATER SYSTEMS,  
20 DOES CURRITUCK WATER & SEWER HAVE ANY EXPERIENCE OR EXPERTISE IN OWNING  
21 AND OPERATING WASTEWATER SYSTEMS?

1 A. Even though CWS does not yet own any wastewater systems, CWS will be able to rely  
2 upon substantial experience of the Company's officers. In addition to being the Vice-  
3 President of Currituck Water & Sewer, I am the President of EnviroLink. Also, Ken Raber,  
4 the President of CWS, has extensive experience in water, wastewater and electric utilities  
5 in North Carolina as a Director with Electri-Cities and as providing support to Longleaf and  
6 EnviroLink's efforts to acquire and upgrade non-viable utilities.

7 CWS's other officers, Jeff Yuknis, and Julius Bedford, have extensive experience in  
8 electrical utilities and capital markets. As officers, we bring a wealth of experience and  
9 expertise to CWS in the ownership and operation of the Eagle Creek wastewater system.

10 Q. WILL CWS HAVE THE TECHNICAL, MANAGERIAL, AND FINANCIAL CAPACITY TO PROVIDE  
11 ADEQUATE WASTEWATER SERVICE IN THE EAGLE CREEK SERVICE AREAS?

12 A. Yes. In addition to bringing experience and expertise to CWS in the ownership and  
13 operation of the Eagle Creek systems, CWS will have the necessary financing to provide  
14 capital improvements and upgrade and replace to the Eagle Creek wastewater system.

15 Q. PLEASE FURTHER DESCRIBE CURRITUCK WATER & SEWER, LLC.

16 A. CWS was created to acquire and operate public utility water and wastewater facilities in  
17 Currituck County. The stockholders include Longleaf Utility LLC, which holds 100% of the  
18 voting shares and Clear Current, LLC. CWS's sole function will be to own and operate  
19 public utility systems. CWS will not be a developer of subdivisions.

20 CWS intends to contract services with Tracy Miller, Operations Manager; Deborah  
21 Massey, Complaints or Billings; Chuck Donnell, Engineering Operations; Tracy Miller,

1 Emergency Services; Aron Gold, Accounting.

2 Q. PLEASE DESCRIBE CURRITUCK WATER & WASTEWATER'S FINANCIAL CAPABILITY TO OWN  
3 AND OPERATE THE EAGLE CREEK WASTEWATER SYSTEMS.

4 A. CWS has secured proposed financing in an aggregate amount not to exceed \$6,440,000  
5 from Stone Bank and equity of \$3,500,000. The financing will enable CWS to fund  
6 necessary capital improvements to the Eagle Creek wastewater system and to operate  
7 the system. Once the Commission has approved the transfer of the Eagle Creek  
8 wastewater system to CWS, CWS will file an application for approval of the debt financing  
9 with the Commission.

10 CWS has capital commitments from Clear Current, LLC (Equity), Longleaf Utility,  
11 LLC (Equity) and Stone Bank (Debt). These financial commitments are sufficient to finance  
12 the needed capital requirements to upgrade and maintain the Company's wastewater  
13 operations. Bernard Capital is a 100% unit holder of Clear Current. The Public Staff has  
14 undertaken a thorough investigation through discovery into CWS's finances and  
15 commitments of capital.

16 Q. WHAT RELATIONSHIP EXISTS BETWEEN CWS AND ENVIROLINK, THE CURRENT CONTRACT  
17 OPERATOR OF THE EAGLE CREEK WASTEWATER SYSTEM?

18 A. As addressed above, I am President of Envirolink and an officer of CWS.

19 Q. WHO PRESENTLY OWNS THE EAGLE CREEK WASTEWATER SYSTEM?

20 A. Sandler is a limited liability corporation formed in North Carolina with its principal office  
21 in Virginia and doing business in North Carolina. Sandler is the owner and operator of the

1 wastewater collection and treatment system serving the Eagle Creek Subdivision, Eagle  
2 Creek Golf Club, and Moyock Middle School in Moyock, Currituck County, North Carolina.

3 Q. PLEASE DESCRIBE THE EAGLE CREEK SERVICE AREA.

4 A. The Eagle Creek Subdivision includes approximately 420 single-family homes and is  
5 generally situated between Roland Creek Canal to the north and Guinea Mill Run Canal to  
6 the south. Stormwater swales run beside the roadways in the development and between  
7 homes. Those swales drain to the Roland Creek Canal to the north and Guinea Mill Run  
8 Canal to the south of the development.

9 Q. WHAT CPCN AND PERMITS DOES SANDLER HOLD?

10 A. On September 14, 1999 the Commission granted Sandler a CPCN to serve Eagle Creek.  
11 On May 2, 2013, DWR issued non-discharge permit (WQCS00290) to Sandler for operation  
12 of the collection system. An application has been filed by Sandler for renewal of the  
13 collection system permit, but a new permit has not been issued. Sandler is currently  
14 operating under the expired permit until a new permit is issued. On Oct 8, 2015, DWR  
15 issued a non-discharge permit (WQ0014306) to Sandler for the operation of the  
16 wastewater treatment and disposal system. This permit was subsequently renewed on  
17 August 4, 2021. The following summarizes applicable permits and status:

State ID	Agency	Type	Status	Date
W-1130 Sub 0	NCUC	CPCN	Closed	9/14/1999
W-1130 Sub 6	NCUC	Rate Increase	Closed	5/10/2010

W-1130 Sub 7	NCUC	Rate Increase	Closed	4/2/2013
W-1130 Sub 9	NCUC	Rate Decrease	Closed	12/9/2016
WQ0014309	NC DWR	WWTP	Current	8/4/2021
WQCS00290	NC DWR	Vacuum System	Expired- Application pending	TBD

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2 Q. PLEASE DESCRIBE THE EAGLE CREEK WASTEWATER SYSTEM THAT IS PROPOSED TO BE

3 TRANSFERRED TO CWS.

4 A. Sandler is the current owner of the Eagle Creek wastewater system, and has owned the

5 system since 1997. There are currently 421 residential customers and two commercial

6 customers, equal to 444.7 residential equivalent units in the Eagle Creek Subdivision

7 wastewater system service area. The Eagle Creek wastewater treatment system consists

8 of a 175,000 gallon per day (“gpd”) wastewater treatment plant, a five day upset and

9 infiltration pond and an irrigation storage pond. Reuse spray irrigation is utilized for

10 disposal of the treated effluent onto the Eagle Creek Golf Course.

11 The Eagle Creek wastewater collection system utilizes vacuum sewer collection

12 technology to transport water from the home to the wastewater treatment plant. The

13 North Carolina Department of Environmental Quality, Division of Water Resources

14 (“DWR”), has approved the wastewater collection and treatment systems and reuse spray

15 irrigation systems under permit numbers WQ0014306, and WQCS00290.

1 Q. PLEASE DESCRIBE IN GREATER DETAIL THE EAGLE CREEK SEWER COLLECTION SYSTEM.

2 A. The collection system consists of 4.8 miles of vacuum sewer and utilizes vacuum pumps  
3 to maintain a constant negative pressure within the sewer pipes. Domestic waste from  
4 individual homes connected to the system collects in containment vessels, commonly  
5 referred to as "pits," with each pit generally serving two homes. When the level of waste  
6 within the pit rises, pneumatic pressure triggers a valve to the piping connected to the  
7 sewer line. The vacuum withdraws wastewater from the pit into the sewer line and then  
8 remains open to draw air into the line. Typically, the volume of air equals the volume of  
9 air. When the wastewater within the pit is evacuated and air is introduced, the interface  
10 valve connecting the pit to the sewer line is closed, allowing waste to again collect within  
11 the pit and maintaining the vacuum on the sewer line.

12 Wastewater from the collection system is conveyed to the Sandler Utilities'  
13 wastewater treatment plant for treatment and disposal as authorized by a separate  
14 permit.

15 Q. DOES SANDLER CURRENTLY PROVIDE WATER SERVICE TO THE EAGLE CREEK  
16 SUBDIVISION?

17 A. No. Sandler provides only wastewater service to Eagle Creek. Currituck County provides  
18 water service to the subdivision.

19 Q. PLEASE DESCRIBE THE FOST SYSTEM THAT IS PROPOSED TO PROVIDE WASTEWATER  
20 SERVICE TO FOST COMMUNITY.

1 A Fost will have a separate wastewater collection system utilizing gravity sewer with a  
2 separate pump station and force main to convey wastewater directly to the Eagle Creek  
3 wastewater treatment plant. There are 479 residential customers planned for the Fost  
4 wastewater system service area. CWS has a separate agreement with Sandler to provide  
5 treatment to the Fost community, and CWS has filed application under Docket W-1133  
6 Sub 1, requesting authority to serve the Fost Community. The pump station and force  
7 main to serve the Fost community have been constructed and permitted by NC DWR  
8 (Permit No. WQ0042746).

9 Q. PLEASE DESCRIBE THE STATUS OF CONSTRUCTION FOR THE FOST FORCE MAIN.

10 A. The pump station and force main are substantially complete. There are two outstanding  
11 items that the contractor is finalizing. One remaining item is the seeding and strawing or  
12 sodding required on the golf course. The other item is installation of the permanent by-  
13 pass pump at the lift station. CWS's engineer and contractor are working with the golf  
14 course owner to ensure that restoration of the grass on the golf course is consistent with  
15 the course requirements.

16 There were three disruptions during construction. CWS's contractor hit the power  
17 line twice and the irrigation system once during construction. Prior to construction,  
18 CWS's engineer requested underground locating from all utility providers and had a  
19 meeting with the golf course owner to discuss irrigation system location, force main  
20 routing and construction schedules. During this meeting CWS presented a map showing

1 the location of irrigation lines and requested that the owner verify the accuracy of the  
2 drawings.

3 CWS conducted an investigation into each disruption. Dominion Power's locator  
4 took responsibility for inaccurately marking the underground power lines, and CWS's  
5 engineer concluded that the irrigation map was 65 feet off from the actual location of the  
6 irrigation lines. In each case, it was determined that the cause of the disruption was  
7 inaccurate locating of the underground utilities and not the fault of CWS's contractor or  
8 CWS.

9 Additionally, regarding the irrigation line hit, CWS's contractor had repair parts  
10 available and immediately requested that the irrigation pumps be shut down and locked  
11 out. During the repair, the golf course removed the lockout on the irrigation pumps and  
12 energized the pumps while CWS's contractor was repairing the line. CWS's construction  
13 coordinator notified the golf course and requested shut down of the irrigation pumps.  
14 This request was refused, leading to flooding in the area of the repair. CWS's contractor  
15 estimates that the repair would have taken about 30 minutes. Instead, CWS's contractor  
16 had to mobilize the next day while irrigation pumps were shut down and then completed  
17 the repair.

18 Q. DOES THE EAGLE CREEK WASTEWATER TREATMENT PLANT NEED UPGRADES?

19 A. Yes. The Eagle Creek wastewater treatment plant first 175,000 gpd phases were  
20 constructed in 1997. The wastewater treatment plant requires significant upgrades,  
21 including material treatment upgrades, to meet NC DWR permit requirements.

1 Q. WHAT ARE THE TERMS OF THE SALE OF THE EAGLE CREEK TO CURRITUCK WATER &  
2 SEWER?

3 A. CWS and Sandler have entered into an Asset Purchase Agreement dated January 3, 2019,  
4 under which CWS is purchasing the wastewater system for \$250,000, plus an additional  
5 \$88,900 for each new customer added from the Fost and future Flora communities. There  
6 are provisions in the agreement to increase the purchase price for Commission approved  
7 capital upgrades and improvements made to the Eagle Creek Wastewater system.

8 Q. IS CURRITUCK WATER & SEWER REQUESTING A RATE INCREASE AS PART OF THE  
9 TRANSFER APPLICATIONS?

10 A. No. CWS is not requesting that the rates for Eagle Creek be increased as part of this  
11 proceeding.

12 Q. IS CURRITUCK WATER & SEWER PLANNING TO CONSTRUCT IMPROVEMENTS TO THE  
13 EAGLE CREEK WASTEWATER SYSTEM?

14 A. Yes. CWS plans to replace the Eagle Creek vacuum sewer collection system, upgrade the  
15 Eagle Creek wastewater treatment facility and upgrade the golf course spray irrigation  
16 facilities in an attempt to repair the aged vacuum sewer collection system. CWS also plans  
17 to expand the existing 175,000 gpd extended aeration wastewater treatment plant into a  
18 350,000 MGD extended aeration wastewater system with tertiary treatment to serve the  
19 additional Fost and Flora customers and other nearby developments.

20 Q. ONCE THE PLANT HAS BEEN UPGRADED AND EXPANDED, WHAT WILL BE THE DISPOSAL  
21 METHOD FOR THE HIGH-QUALITY TREATED EFFLUENT?

1 A. Portions of the high-quality-treated effluent will continue to be sprayed at the DWR-  
2 approved spray irrigation and reuse sites on the Eagle Creek golf course, and infiltration  
3 pond, and portions of the treated effluent will be returned and discharged into a future  
4 infiltration pond or EOP site within the Fost Community development.

5 Q. PLEASE DESCRIBE THE BENEFITS TO THE EAGLE CREEK RESIDENTS FROM THE TRANSFER  
6 OF THE SYSTEMS TO CURRITUCK WATER & SEWER.

7 A. Current and future customers will benefit from the transfer of the wastewater systems to  
8 CWS in a number of significant ways. These benefits include the following:

9 1. The current wastewater treatment plant will be upgraded, and the high-  
10 quality treated effluent (a reclaimed water standard) will meet NC DWR requirements.  
11 The upgraded plant will benefit the environment and supply irrigation water to the golf  
12 course.

13 2. The highly unreliable wastewater collection system will be replaced. CWS  
14 has been evaluating numerous options and is working closely with the residents of Eagle  
15 Creek on the replacement of the Eagle Creek sewer collection system. CWS has or is  
16 currently in the process of evaluating low pressure, STEP, vacuum and gravity as potential  
17 options for replacement of the existing non-functioning vacuum sewer system. These  
18 options are addressed in greater detail below.

19 3. The addition of Fost & Flora customers, along with potential customers in  
20 the area, to the Eagle Creek wastewater treatment plant will result in a larger customer  
21 base and thus a greater economy of scale. This larger customer base will help to defer

1 both initial capital upgrade costs and future cost of service expenditures, and will help to  
2 minimize increased rates in the future.

3 4. The addition to the effluent disposal area provides a more robust and  
4 reliable disposal system that will benefit the Eagle Creek customers. In the event that the  
5 infiltration pond requires maintenance, the additional disposal area will allow CWS to  
6 utilize the disposal area during maintenance of the existing disposal areas. This results in  
7 a more sustainable wastewater system for all customers, including current and future  
8 customers.

9 Q. PLEASE PROVIDE A BRIEF HISTORY HAVE THEY EAGLE CREEK WASTEWATER TREATMENT  
10 SYSTEM.

11 A. The wastewater system was installed when the community was built in 1997. As  
12 mentioned above, the wastewater system includes a vacuum sewer collection system, a  
13 wastewater treatment plant, infiltration pond, irrigation water storage pond and spray  
14 irrigation on the golf course. The treatment plant includes equalization, aeration,  
15 clarification, sludge holding, filtration and disinfection via ultraviolet light.

16 Problems started with the collection system from the outset and have continued.  
17 A rate increase was granted in 2016 to address increased maintenance requirements, but  
18 while it appears some efforts have been completed, there are no maintenance records to  
19 demonstrate what work has been completed. Envirolink took over operations as contract  
20 operator for Sandler in late summer 2020. Envirolink evaluated the condition of the assets  
21 and is researching maintenance records. No records currently exist of system

1 maintenance from 1997 until 2020. Envirolink discovered that the collection system  
2 suffered from significant service issues, as well as issues with the WWTP, including  
3 evidence that the filters had been by-passed for several years, the ultraviolet system had  
4 not been cleaned and numerous bulbs were not functioning. Other issues included an  
5 infiltration pond that had been neglected and mismanaged, the spray irrigation system  
6 had operated without oversight from the utility, headworks had deteriorated and  
7 ammonia concerns were identified in groundwater wells. Envirolink immediately  
8 undertook steps to implement better maintenance records and gather information to  
9 implement a preventive maintenance program; nevertheless, significant problems have  
10 continued.

11 Q. PLEASE PROVIDE A BRIEF HISTORY OF CUSTOMER SERVICE EFFORTS FOR THE EAGLE  
12 CREEK COMMUNITY?

13 A. Prior to Envirolink's involvement, Customer Service was provided by Envirotech.  
14 Envirotech did not have customer service representatives, so all calls during business  
15 hours were answered by the office manager. After hours calls would be routed directly  
16 to the on-call operator. During partial shutdown, shut downs, or leaks, Envirotech did not  
17 have the ability to push notifications to the community, thus, unless a customer was  
18 directly impacted, the customer would not be aware of issues on the collection system.  
19 When Envirolink assumed operations, Envirolink requested customers voluntarily provide  
20 an email address, so that we could send alerts and notices. Additionally, Envirolink met  
21 with the HOA board to discuss operation of the Eagle Creek wastewater system. During

1 the meeting, it was discovered that the community was active on multiple social media  
2 platforms and that no one platform would reach all customers. Additionally, it was  
3 recognized that Envirolink could not require a customer to provide an email address and  
4 that the email distribution list would not reach all customers. The outcome of the  
5 meeting was that the HOA wanted the opportunity to review and comment on messages  
6 prior to distribution. After finalizing the message, the HOA would then post the message,  
7 and Envirolink would distribute the message via email.

8 After several weeks of distributing messages using this methodology, Envirolink  
9 met with the HOA Board to review communications. At this meeting, it was discussed  
10 that Envirolink would simplify the message and funnel communication through a HOA  
11 board representative. This would eliminate the need for review and comment by the HOA  
12 board.

13 As Mr. Sheppard indicated at the customer hearing, this practice continued for  
14 several weeks until the HOA Board decided that it could no longer support posting  
15 messages to Facebook. After that time, Envirolink continued to push notifications based  
16 on the directive of its field manager until December. In December, Envirolink worked with  
17 Currituck County staff to issue daily messages with Currituck County posting messages to  
18 the County website. Currently, this is the practice that Envirolink is following.

19 Q. HAS THE SYSTEM EXPERIENCED RECENT OPERATIONAL DIFFICULTIES?

20 A. Yes. The collection system in particular has experience significant service related issues,  
21 and these issues continue and have escalated in frequency.

1 Q. WHAT REQUIREMENTS ARE SET FORTH IN THE ENVIRONMENTAL PERMITS ADDRESSING  
2 VIOLATIONS?

3 A. Condition I.2 of the collection system permit requires that the collection system “shall be  
4 effectively managed, maintained and operated at all times so that there is no sanitary  
5 system overflow (“SSO”) to land or surface waters, nor any contamination of  
6 groundwater.” In the event of a system failure, the permittee is required to “take  
7 immediate corrective actions, including actions that may be required by [DWR] such as  
8 the construction of additional or replacement sewer lines and/or equipment.” Condition  
9 II.5 of the Permit provides that “for each pump station without pump reliability . . . at  
10 least one fully operational spare pump capable of pumping peak flow shall be maintained  
11 on hand.” Condition II.11 of the permit provides that, if an SSO occurs, Sandler “shall  
12 restore the system operation, remove visible solids and paper, sanitize any ground area  
13 and restore the surroundings.”

14 Condition IV.2 of the permit provides that SSOs of over 1,000 gallons and any SSO  
15 that reaches surface waters, must be verbally reported to DWR as soon as possible, but  
16 no later than “24 hours following the occurrence or first knowledge of the occurrence.”

17 Q. PLEASE DESCRIBE THE HISTORY OF THE SYSTEM FOR COMPLIANCE WITH THE DWR  
18 COLLECTION SYSTEM PERMIT.

19 A. As a result of problems with the vacuum station, on September 29, 2020, DWR began  
20 receiving complaints from Eagle Creek residents indicating that the collection system was  
21 not operating properly at homes throughout Eagle Creek. On September 30, 2020, DWR

1 investigated the complaints. DWR's investigation confirmed that the system had not  
2 been operating properly since September 27, 2020 due to failure of one of the two  
3 vacuum pumps. The vacuum pump failure caused SSOs that drained into stormwater  
4 swales in front of and between homes.

5 Due to unavailable replacement pumps on site or from suppliers, Sandler's  
6 purchase of replacement vacuum pumps extended the restoration of service.

7 Sandler provided cleanup and lime application at any location showing evidence  
8 of overflow and in all roadside ditches around October 9, 2021. Performance issues in the  
9 collection system were resolved by October 11, 2020.

10 As a result of a "high level" lockout caused by sewage pump failures at the central  
11 vacuum station, on October 26, 2020, DWR again began receiving complaints indicating  
12 that the collection system was experiencing further performance issues resulting in SSOs.  
13 On October 27, 2020, DWR conducted a site inspection to investigate the complaints and  
14 learned that a high water alarm within the collection system had failed, causing the water  
15 to overflow and to flood both of the system's vacuum pumps, taking them offline. The  
16 failure of the vacuum pump resulted in SSOs. In response to this incident, Sandler  
17 requested assistance from technicians from Airvac and another vacuum system supplier,  
18 Flovac, and the vacuum pumps were restored and fully operational by October 29, 2020.  
19 Among other equipment and parts, Sandler ordered new parts for the malfunctioning  
20 high water alarm, which were installed on November 5, 2020.

21 On November 13, 2020, DWR began receiving new complaints stating that,

1 beginning on or around November 11, 2020, the collection system was not operating  
2 properly causing SSOs. On November 14, 2020, DWR investigated the complaints. DWR's  
3 investigation confirmed the collection system was experiencing performance issues  
4 resulting in SSOs. A substantial number of houses and customers remained without  
5 functional sewer service through at least November 16, 2020.

6 Complaints recommenced on November 20, 2020. Residents indicated that the  
7 collection system was not functioning properly, that residents were again without sewer  
8 service due to vacuum leaks disrupting operation of the collection system, and that some  
9 pits were overflowing. A number of houses remained without functional sewer service or  
10 sporadic sewer service through about November 25, 2020 due to a lack of replacement  
11 parts.

12 On December 16, 2020 DWR again received complaints from Eagle Creek  
13 residents regarding disruption of sewer service and SSOs. DWR's investigation suggested  
14 that the problem was limited to one section of the Eagle Creek development and caused  
15 by significant rainfall resulting in multiple controller failures. Residences affected by the  
16 service disruption remained without functional sewer service or sporadic sewer service  
17 through approximately December 18, 2020. Additional complaints were received on  
18 January 26, 2021, with residents complaining that they lacked sewer service and  
19 describing other performance issues including SSOs.

20 Q. PLEASE DESCRIBE ENFORCEMENT ACTIONS TAKEN BY DWR IN REACTION TO THESE  
21 EVENTS.

- 1 A. Sandler has been subject to various enforcement actions by the DWR, including several  
2 enforcement actions related to the permit as a result of the incidents described above.  
3 On October 7, 2020 DWR issued a Notice of Violation and Notice of Intent to Enforce to  
4 Sandler pertaining to SSOs and system failures occurring from September 27, 2020 and  
5 ongoing as of the date the NOV was issued. The First NOV alleged the following violations:  
6 Violation of Permit Condition I.2 for failure to effectively manage, maintain and operate  
7 the collection system at all times so there are no SSOs to land or surface waters;  
8 Violation of Permit Condition II.11 for failure to restore the system operation, remove  
9 visible solids and paper, sanitize any ground area and restore surroundings after an SSO;  
10 Violation of Permit Condition IV.2 for failure to properly report SSOs.
- 11 Q. HOW DID SANDLER RESPOND?
- 12 A. In a letter dated October 27, 2020, Sandler responded to the First NOV. Sandler stated  
13 that replacement parts for the failed vacuum pumps were not readily available, causing a  
14 delay in repairing the collection system. Once the vacuum pump was replaced, Sandler  
15 noted that two sewage pumps malfunctioned, forcing the entire system offline again for  
16 cleaning. Sandler acknowledged that its operator's personnel resources were stretched  
17 and that additional support from a vacuum sewer specialist was called in. Sandler stated  
18 that cleanup of any discharges was performed and the system was ultimately repaired.  
19 DWR assessed a civil penalty of \$62,517.96 against Sandler arising out of the allegations  
20 in the First NOV on December 10, 2020 for fifteen violations of Permit Condition I.2  
21 between September 27, 2020 and October 11, 2020.

1           On November 23, 2020, DWR issued a Second Notice of Violation and Notice of  
2 Intent to Enforce to Sandler pertaining to SSOs and system failures occurring during the  
3 period from October 26, 2020 through November 5, 2020. In addition to alleging  
4 violations of Permit Conditions I.2, II.11 and IV.2, the Second NOV alleged violations of  
5 Permit Condition II.5 for failure to maintain operational replacement pumps for stations  
6 without pump reliability and violations of N.C. Gen. Stat. § 143-215.1(a)(1) for making an  
7 outlet into waters of the State without a permit.

8           In a letter dated December 15, 2020, Sandler responded to the Second NOV.  
9 Sandler stated that a “very large investment has been made into new equipment and  
10 parts” and that new equipment and parts were ordered. Sandler also stated that spills  
11 were addressed with lime application and solid waste overflow was physically removed.  
12 In response to the incident, Sandler installed a new vacuum pump and motor, acquired a  
13 spare vacuum pump and motor, purchased a new sewer pump, and replaced multiple  
14 controllers and valves within individual pits. Sandler further replaced parts needed to  
15 ensure functionality of the high-level alarm, which was the precipitating cause of this  
16 incident, to alleviate water intake into the vacuum sewer pumps causing failure.

17           On December 16, 2020, DWR issued a Third Notice of Violation and Notice of  
18 Intent to Enforce to Sandler pertaining to SSOs and system failures occurring during the  
19 period from November 11, 2020 through November 16, 2020. The Third NOV alleged  
20 violations of Conditions I.2, II.11, and IV.2 as well as N.C. Gen. Stat. § 143-215.1(a)(1).

21           On January 14, 2021, DWR issued a Fourth Notice of Violation and Notice of Intent

1 to Enforce to Sandler pertaining to SSOs and system failures occurring during the period  
2 from November 20 through November 25, 2020. The Fourth NOV alleged violations of  
3 Conditions I.2, II.11, and IV.2 as well as N.C. Gen. Stat. § 143-215.1(a)(1).

4 DEQ filed a court action on March 4, 2021, seeking injunctive relief for existing or  
5 threatened violations of various laws and rules governing the protection of water quality.  
6 The parties initially reached a resolution of the injunctive relief sought by DEQ through  
7 the suit and memorialized that agreement in a Consent Judgment, which was entered by  
8 the court on July 1, 2021.

9 Subsequent to entry of the Consent Judgment, the Collection System experienced  
10 three instances of performance issues resulting in SSOs in the months of October and  
11 November 2021. On November 16, 2021, DEQ filed a Motion to Show Cause Why  
12 Defendant Should Not Be Held in criminal and/or civil contempt based on the system  
13 performance issues, as well as alleged violations of approved plans under the original  
14 Consent Judgment.

15 A Show Cause Hearing was held on December 6, 2021. The Court heard testimony  
16 from an Eagle Creek resident and from Sandler's representative. An Eagle Creek resident  
17 testified that Sandler has not been responsive to calls for service when there are system  
18 performance issues or calls to clean up waste spilled onto his property. Sandler's  
19 representative testified that Sandler had complied in all respects with the Consent  
20 Judgment, had recently taken action to install an electronic monitoring system, had taken  
21 certain actions concerning the operation and maintenance of the system beyond what

1 DEQ required in the Consent Judgment and had been responsive to DEQ's requests  
2 concerning operation of the system. The Court reserved ruling on contempt.

3 After testimony at the hearing, the court directed the parties to submit a  
4 modification to the Consent Judgment to provide for changes necessary to bring the  
5 collection system into compliance with the permit and state water quality laws and  
6 regulations.

7 The parties reached a mutually agreeable resolution intended to bring the  
8 collection system into compliance with the permit and state water quality laws and  
9 regulations. They memorialized that agreement in the Amended Consent Judgment.

10 Q. WHAT ACTION DID THE COURT TAKE IN THE ACTION AGAINST SANDER?

11 A. As of the date of entry of the Consent Judgment, the court found that Sandler had  
12 repeatedly violated the conditions of its permit and North Carolina's water quality laws,  
13 including, but not limited to, failing to properly manage, maintain and operate the  
14 collection system to prevent SSOs, failing to maintain replacement equipment to prevent  
15 SSOs, and failure to restore consistent service to Eagle Creek residents. The court found  
16 that the current state of the collection system presents an ongoing threat and that the  
17 Eagle Creek Development will continue to experience performance issues and SSOs into  
18 nearby surface water in violation of the collection system permit, and in violation of N.C.  
19 Gen. Stat. § 143-215.1(a)(1). The court found that the State is entitled to permanent  
20 injunctive relief against Sandler to abate the repeated previous violations and prevent the  
21 threatened violations set forth in the Complaint pursuant to N.C. Gen. Stat. § 143-215.6C.

1 Q. WHAT REQUIREMENTS DID THE COURT IMPOSE?

2 A. The court ordered Sandler to do the following:

3 Prevention of SSOs. Sandler shall fully comply with all terms and conditions of the permit  
4 and State water quality laws to the extent possible under the current system, including  
5 devoting its best efforts to maintain the collection system in a manner that prevents the  
6 discharge of waste onto to land or into surface waters.

7 Reporting to DWR. Sandler shall report to a DWR staff member as soon as possible  
8 but in no case more than 24 hours following knowledge of the occurrence of any material  
9 equipment failure, any material system failure, or any SSO regardless of volume and file  
10 a written report within five days following Sandler's first knowledge of the occurrence.  
11 The report shall outline actions taken or proposed to address the equipment failure,  
12 system failure, and/or SSO and prevent recurrence to the extent possible under the  
13 current system. Sandler shall provide additional information as may be reasonably  
14 requested by DWR to evaluate the equipment failure, system failure, or SSO. A "material"  
15 equipment or system failure shall be defined to be a failure affecting eight or more  
16 residences in the Eagle Creek Development for more than 24 hours.

17 Responding to Resident Complaints. Sandler shall respond to all resident  
18 complaints of material equipment failures, material system failures, or SSOs regardless of  
19 volume, as follows:

20 providing accurate notices to all residents when a material system failure occurs as soon  
21 as possible and no later than two hours after receiving notice of the system failure;

1 initiating response to resident complaints of material equipment failures, material system  
2 failures, or SSOs within three hours of receiving the complaint; providing sanitation  
3 services within twenty-four hours of confirmation of a discharge of waste to land or  
4 surface water; and notifying residents within two hours of full system restoration and  
5 stating the operational status of individual pits.

6 To demonstrate compliance with this requirement, Sandler shall maintain a log of  
7 applicable resident complaints and actions taken in response to those complaints. Such  
8 log shall identify: (1) the complainant; (2) a summary of the substance of the complaint;  
9 (3) when the complaint was received; (4) a description of actions taken in response to the  
10 complaint, including but not limited to corrective action and sanitation services; (5) when  
11 response action was initiated; and (6) when the complaint was resolved. Such log shall  
12 be made available to DWR upon request.

13 Operator Training Plan. Sandler shall continue to implement and be bound by the  
14 requirements of the Operator Training Plan attached to the order, along with any  
15 subsequent updates.

16 Independent Engineering Evaluation. Within 30 calendar days of entry of the  
17 Amended Consent Judgment, Sandler shall provide to DWR a new engineering evaluation  
18 conducted by an independent firm approved by DWR with expertise in the operation of  
19 vacuum systems. This deadline may be extended upon approval by DWR if Sandler  
20 demonstrates that additional time is necessary to identify or accommodate the  
21 scheduling needs of a qualified independent firm. This Independent Engineering

1 Evaluation shall detail near-term and long-term actions necessary to prevent future SSOs  
2 and system performance issues, including but not limited to: (1) changes in staffing, (2)  
3 operation and maintenance procedures, (3) equipment replacement, (4) acquisition of  
4 additional backup equipment, and (5) upgrades to the design and physical infrastructure  
5 of the collection system.

6 Interim Service and Restoration Plan. Sandler shall implement the requirements  
7 of the Interim Service and Restoration Plan attached to the order, along with any  
8 subsequent updates. Within 14 calendar days of submission of the Independent  
9 Engineering Evaluation, Sandler shall submit for DWR review and approval (which may  
10 include conditions), revisions to the Interim Service and Restoration Plan to address  
11 recommendations of the Independent Engineering Evaluation that can be implemented  
12 on a short-term basis. Such revisions must include a proposed schedule with dates by  
13 which each activity will be completed and, as appropriate, the frequency with which those  
14 activities will be repeated.

15 New System Upgrade Plan. Within 30 calendar days of submission of the  
16 Independent Engineering Evaluation, Sandler shall submit to DWR for review and  
17 approval (which may include conditions) a new plan with actions to be taken to address  
18 the long-term recommendations of the Independent Engineering Evaluation. The New  
19 System Upgrade Plan must include a proposed schedule with dates by which each activity  
20 will be completed and, as appropriate, the frequency with which those activities will be  
21 repeated.

1 Appointment of Independent Specialist. Sandler shall appoint a qualified  
2 independent specialist in vacuum system operation to provide consulting services  
3 addressing operation of the collection system for a minimum of 30 days. The  
4 independent specialist shall be approved by DWR, and DWR must approve dismissal of  
5 the independent specialist and ending of the consultant period. The independent  
6 specialist shall provide a report to DWR within 45 days of commencement of the  
7 consultant period identifying (1) any deficiencies in the current operation and  
8 maintenance of the collection system; and (2) any additional measures not included in  
9 the Independent Engineering Evaluation that are needed to ensure compliance with the  
10 permit and state water quality laws. DWR may require that any measures recommended  
11 by the independent specialist be incorporated into the Interim Service and Restoration  
12 Plan or the New System Upgrade Plan if reasonably necessary to ensure compliance with  
13 the permit and State water quality laws. The Consultant Period shall commence as soon  
14 as possible and no later than 14 days following entry of the Amended Consent  
15 Judgment. This deadline may be extended upon approval by DWR if Sandler  
16 demonstrates that additional time is necessary to identify or accommodate the  
17 scheduling needs of a qualified independent specialist.

18 Execution of Plans. Once each submission is approved (the Operator Training  
19 Plan, the Interim Service and Restoration Plan, and the New System Upgrade Plan)  
20 including any conditions added by DWR or updates made after initial approval, Sandler  
21 shall execute each plan in accordance with the dates included therein.

1 Plan and Report Revisions. DWR and/or Sandler may seek revisions to Operator  
2 Training Plan, Interim Service and Restoration Plan, and/or the System Upgrade Plan  
3 referenced in the order as necessary to best serve the ends of effective and efficient  
4 compliance with the permit and North Carolina's water quality laws and regulations  
5 including provisions applicable to wastewater collection systems. Any disputes as  
6 between DWR and Sandler regarding whether or not such updates are reasonably  
7 necessary may be brought before the court for resolution. If DWR requires revisions in  
8 conjunction with mandatory plan submissions under this Amended Consent Judgment,  
9 Sandler shall resubmit the plan incorporating said revisions within 15 days of written  
10 notification by DWR that such revisions are required. DWR's discretion to require  
11 revisions for mandatory plan submissions shall be limited to revisions necessary to ensure  
12 compliance with the permit and North Carolina's water quality laws and regulations  
13 including provisions applicable to wastewater collection systems.

14 Final Report. Once the work set forth in the approved New System Upgrade Plan,  
15 including any conditions added by DWR, is completed, Sandler shall submit a final report  
16 documenting the results of the activities set forth in each respective plan. The final report  
17 shall include a certification from a licensed professional engineer.

18 Stipulated Penalties. In the event of a material system failure that results in a  
19 discharge of waste to land or surface water and results in an interruption in collection  
20 system service to any resident lasting 48 hours or more, Sandler agrees to pay stipulated  
21 penalties in the amount of \$2,500.00 per day until all areas affected by discharged waste

1 have been sanitized and service is restored to all residents. This stipulated penalties  
2 provision of the Consent Judgment shall not preclude DEQ from pursuing other  
3 enforcement actions as deemed necessary to ensure compliance with the permit and  
4 North Carolina water quality laws, nor shall it preclude Sandler from challenging those  
5 enforcement actions as provided for under North Carolina law; provided, however, that  
6 the stipulated penalties are in lieu of any civil assessments that could be levied arising out  
7 of the same events. Any disputes as between DWR and Sandler regarding application or  
8 duration of the penalties provided in this section may be brought before the court for  
9 resolution

10 Force Majeure. The stipulated penalties specified are not due if  
11 Sandler demonstrates by a preponderance of the evidence that noncompliance was  
12 caused by:

- 13 a. An act of God;
- 14 b. An act of war;
- 15 c. An intentional act or omission of a third party, but this defense shall not be  
16 available if the act or omission is that of an employee or agent of Defendant  
17 or  
18 if the act or omission occurs in connection with a contractual relationship with  
19 Sandler;
- 20 d. An extraordinary event beyond Sandler's control. Contractor delays or failure  
21 to obtain funding will not be considered as events beyond Sandler's control;

1                   or

2                   e. Any combination of the above causes.

3                   Duration. The court further ordered that the Amended Consent Judgment shall  
4 take effect immediately and shall remain in effect until Sandler can adequately  
5 demonstrate that the collection system can operate in a reliable manner and maintain  
6 compliance with North Carolina water quality laws and regulations on a consistent basis.  
7 Sandler may request termination of the Amended Consent Judgment by the court at no  
8 time sooner than one year following submittal of the final report and subsequent  
9 approval by DWR.

10                  Successors, Assigns, and Transferees. This Amended Consent Judgment shall be  
11 binding upon Sandler's successors and assigns. Sandler shall not transfer any of the assets  
12 that are the subject of the complaint, including the permit or the collection system, unless  
13 and until Sandler moves to join the transferee as a defendant in the case such that the  
14 Amended Consent Judgment shall be binding upon the transferee and the court issues an  
15 order granting such motion. DEQ agrees that it will not oppose dismissal of Sandler in the  
16 event the assets that are the subject of the Complaint have been transferred and the  
17 transferee has been added as a defendant in this case and is bound by this Consent  
18 Judgment. Nothing in the Amended Consent Judgment relieves Sandler of its duty to  
19 abide by the terms of the permit and State water quality law. DEQ retains its authority,  
20 in accordance with applicable law, to initiate any and all enforcement actions that would  
21 otherwise be available to it in the absence of this Amended Consent Judgment except as

1 to the civil assessments.

2 Retention of Jurisdiction. The court shall retain continuing jurisdiction in the case  
3 to enforce the terms and conditions of this Amended Consent Judgment, to modify the  
4 Amended Consent Judgment, and to resolve disputes arising under this Amended  
5 Consent Judgment until all parties have complied with all provisions of this Amended  
6 Consent Judgment.

7 Contempt. The contempt provisions of Article 2, Chapter 5A of North Carolina  
8 General Statutes shall be available to enforce the Amended Consent Judgment, including  
9 any and all provisions of the plans referenced in it, including any revisions to such plans.

10 Q. WHAT ACTIONS HAVE BEEN TAKEN IN RESPONSE TO THE COMPLAINTS AND THE  
11 CONSENT JUDGMENT?

12 A. Sandler's operator, Envirolink, at its cost, increased the on-site presence of technicians  
13 beginning on March 2021. Technicians were on site 20 hours per day. Then Sandler's  
14 operator, at its cost, further increased its on-site presence beginning July 2021 to provide  
15 at least one on site technician 24 hours per day, seven days per week. In December 2021  
16 Sandler completed significant system upgrades. Envirolink requested and Sandler  
17 authorized significant short term fixes for the failing system. These include a new  
18 monitoring system, which is fully online and installation of 110 pedestal mounted  
19 controllers. Additional upgrades are ongoing, including more pedestal mounted  
20 controllers and expansion of the monitoring system capabilities.

21 Q. WHAT VIEWS DOES CWS HAVE WITH RESPECT TO THIS HISTORY AND THE CURRENT STATE

1 OF AFFAIRS WITH RESPECT TO THE EAGLE CREEK SYSTEM AND THE STATE OVERSIGHT  
2 THROUGH THE CONSENT JUDGMENT?

3 A. As contract operator of the Eagle Creek system on Sander's behalf beginning in late  
4 summer 2020, Envirolink has endeavored to assist in making improvements and repairs  
5 and in complying with the state imposed requirements in assistance to Sandler. As  
6 described above, CWS has principals in common with Envirolink and in this fashion is  
7 familiar with recent developments. CWS has worked hand-in-hand with Envirolink to  
8 evaluate the non-compliance and to support on-going operations until CWS can obtain  
9 ownership of the collection system and replace the system. Envirolink and CWS have  
10 supported the on-going operations by conducting an engineering evaluation in late 2020  
11 and in providing these results to Sandler at no charge, employing six to seven fulltime  
12 technicians in order to increase Envirolink's on-site presence to 24 hour per day, seven  
13 days per week. Envirolink undertook these efforts without increasing its \$23,000 per year  
14 service fee. In addition, in September 2020 Envirolink sent three technicians to Indiana  
15 for training at Airvac's headquarters.

16 CWS maintains that these requirements in the consent decree are onerous,  
17 inordinately expensive, and require constant oversight and impose extensive  
18 administrative burdens

19 Although Envirolink observed and on occasion was permitted to comment upon  
20 some of the negotiations leading to the consent decree, Envirolink was not a party to the  
21 proceeding and did not agree to it or execute it. Although there were discussions of a

1 short term as well as a long term solution, from Envirolink's observation, the State has  
2 focused almost entirely on the short term fixes and has ignored a long term sustainable  
3 solution.

4 Envirolink maintains that the appropriate long term solution is to replace the  
5 vacuum system, ostensibly with a gravity system or other suitably reliable system. The  
6 analogy Envirolink used in these discussions was that when one's 20 year old automobile  
7 has exceeded its useful life and requires extensive and repeated maintenance; the best  
8 solution is to replace it. Envirolink observed and expressed the view that the provisions  
9 imposing the sanctions and penalties on any transferee of the Eagle Creek system were  
10 counterproductive and would discourage if not prevent transfer of the system to a non-  
11 developer utility owner.

12 CWS continues to express its willingness to comply with the Asset Purchase  
13 Agreement and, with the approval of the Commission, to acquire the Eagle Creek system  
14 and endeavor to replace the collection system and operate it in compliance with the  
15 public interest. Nevertheless, CWS needs relief from requirements that a transferee step  
16 into the shoes of Sandler with respect to imposition of penalties and subjecting itself to  
17 contempt. To the best of CWS's knowledge, CWS is the only suitable purchaser that has  
18 expressed any interest in acquiring the system. Without relief from provisions binding a  
19 transferee, the system will forever stay in the hands of Sandler, which is anxious to sell, is  
20 incurring substantial, unrecovered monthly costs, and is not in the business of long term  
21 operation of a wastewater collection and treatment system.

1 Q. WHAT REMEDY DOES CWS SUGGEST TO OBVIATE THE DILEMMA ADDRESSED ABOVE?

2 A. Should the Commission approve issuance of a CPCN to CWS, CWS intends to seek a new  
3 permit from DWR in its own name with appropriate conditions but without all those  
4 imposed upon Sandler and subjecting CWS to appropriate remedies for permit violations  
5 but not those including contempt set forth and the State/Sandler consent decree. Once  
6 the system is replaced, the requirements in the consent decree addressing improvements  
7 and maintenance of the existing system would be inapplicable and should not apply to  
8 CWS's new system.

9 Q. ENVIROLINK WITH SOME COMMONALITY WITH CWS HAS SERVED AS CONTRACT  
10 OPERATOR ON SANDLER'S BEHALF DURING THE PERIOD 2020 TO PRESENT AT A TIME  
11 WHEN SERVICE INADEQUACIES AND CUSTOMER DISCONTENT HAS BEEN PREVALENT.  
12 EAGLE CREEK CONSUMERS, UNDERSTANDABLY DISTRESSED WITH THE SERVICE THEY  
13 RECEIVE, HAVE EXPRESSED DISSATISFACTION WITH ENVIROLINK AS WELL AS SANDLER.  
14 WHAT IS CWS'S RESPONSE?

15 A. CWS understands and is sympathetic to consumers' dissatisfaction. Nevertheless, even  
16 though service disruptions have not been eliminated, much effort has been undertaken,  
17 and great expense has been incurred to rectify system deficiencies. Until consumers  
18 receive satisfactory service, they rightly can be expected to look to all affected, CWS,  
19 Sandler, Envirolink, DWR, Public Staff, NCUC, to seek relief. CWS has the resources,  
20 expertise, familiarity with the system and operating experience that provide the greatest  
21 opportunity to bring the system into a state to satisfy consumers' needs. Also, the service

1 inadequacies and deficiencies occurring in the 2020 through 2021 period have arisen from  
2 assets that have exhausted their useful life, long prior periods of wear and tear,  
3 obsolescence, and to some extent improper maintenance and repair. CWS would  
4 emphasize that the assets are close to 24 years old and have a stated life of 10-12 years  
5 according to Airvac Design Manuals, Airvac's presentation and the Water Environment  
6 Federations, Alternative Sewer System Manual of Practice MOP FD-12. Below is a  
7 summary of summary of these references:

- 8 • Page 18 of Airvac's presentation, provided to the residents of Eagle Creek and the  
9 Public Staff states.

- Typical Vacuum System Preventative Maintenance Schedule
  - **Vacuum Mains**—Exercise Division Valves once per year
  - **Vacuum Station**—Routine Visual inspection of gauges and safety measures (weekly), typical pump maintenance and inspection (3-6 months on average)
  - **Vacuum pits**—Inspect valves once per year, Rebuild Controllers every 10 years (Cost \$35 each), Rebuild Valves every 15 years (Cost \$40 each)

15  
16 Water Environment Federations Manual of Practice TD-12 presents the following  
17 information related to the life of the components of a vacuum system. Cost Estimates  
18 are in 2006 dollars.

### Water Environment Federation Manual Of Practice - FD -12

	Cost range (USD\$)*	Expected life (years)	Annual reconditioning and replacement costs (\$/year/vacuum station)
Vacuum pumps (2)	\$10,000 to \$34,500	15 to 20	\$500 to \$2,300
Discharge pumps (2)	\$6,000 to \$19,200	15 to 20	\$300 to \$1,280
Collection tank	\$5,000 to \$11,000	25 to 50	\$100 to \$440
Control panel	\$5,000 to \$21,200	20 to 25	\$200 to \$1,060
Miscellaneous equipment	\$2,000 to \$3,300	15 to 20	\$100 to \$220
Vacuum valves	\$27.00 to \$38.00	8 to 12	\$2.25 to \$4.75
Controller	\$27.00 to \$38.00	4 to 6	\$4.50 to \$9.50

1  
2 Q. SHOULD THE COMMISSION APPROVE CWS'S APPLICATION WHAT ARE CWS'S INTENTIONS  
3 WITH RESPECT TO IMPROVING THE OPERATIONS OF THE SYSTEM AND INCREASING THE  
4 QUALITY OF SERVICE?

5 A. The wastewater system has exceeded its useful life, has suffered from inadequate  
6 maintenance, and will continue to be plagued by disruptions. Therefore, CWS, if it  
7 receives the CPCN, intends to either completely or substantially replace the collection  
8 system.

9 Q. WHAT OPTIONS IS CWS CONSIDERING FOR REPLACING THE COLLECTION SYSTEM?

10 A. As described above, CWS is considering four options: gravity, low pressure, septic tank  
11 effluent pump, and replacing the vacuum system with a different vacuum system. Each  
12 of these options provides benefits designed to address the shortcomings unique to the  
13 existing system, and each has benefits and challenges that are unique in comparison to  
14 the other options under consideration. In making the determination as to which option  
15 should be employed, CWS intends to consider the following factors: cost, life of assets,

1 disruption, length of time to install, the reliability of the system, future operating cost and  
2 required oversight and the projected cost of maintenance. Consultations are under way  
3 with knowledgeable consulting engineers and Eagle Creek residents. Preliminarily, CWS  
4 favors a gravity system. Over time, the gravity system is less costly to maintain.

5 Q. PLEASE DESCRIBE THE POSITIVE AND NEGATIVE FEATURES OF A GRAVITY SYSTEM.

6 A. Gravity systems have been around since the beginning of sewer collection and are by far  
7 based on the most common technology used in sewer collection. Gravity systems require  
8 less maintenance compared to the other options. Construction standards for a gravity  
9 system are well established. There are fewer mechanical parts, requiring less precision  
10 and therefore breakdown infrequently. There are lower costs of operation for gravity  
11 system. Gravity systems are in widespread use in North Carolina and elsewhere. Should a  
12 gravity system be installed, it will be easier to hire and retain employees to operate the  
13 system. Gravity systems have a longer life expectancy --- 30 to 40 years. On the negative  
14 side, a gravity system requires lift stations, and the possibility exists of odor and sanitary  
15 sewer overflows. Upon installation there is a potential for deeper excavations, though  
16 CWS would attempt to keep excavations to less than 15 feet with the deeper excavations  
17 occurring on the golf course.

18 Q. BRIEFLY DESCRIBE THE GRAVITY SYSTEM UNDER CONSIDERATION FOR EAGLE CREEK.

19 A. Preliminarily there would be one manhole for approximately every four to five homes for  
20 a total of 105 manholes. There would be installation of clean out to each home.  
21 Installation of gravity lines would carry water to the lift station. Lift stations would not be

1 installed on personal property. To keep excavations under 15 feet, seven lift stations  
2 would be required. If excavations were increased to 20 feet, three lift stations would be  
3 required.

4 Any of the options employed to replace the current system will result in some  
5 inconvenience to consumers in the Eagle Creek community. Replacing the existing system  
6 poses problems that do not exist when installing a system prior to development and the  
7 construction of homes. For any of the options selected, the vacuum system pits currently  
8 in place on the lots of property owners must be replaced. CWS is mindful that such  
9 inconvenience will occur and will undertake to minimize it and communicate with  
10 homeowners to minimize inconvenience to the greatest extent possible.

11 Q. IS CWS REQUESTING AN INCREASE IN RATES AT THIS TIME?

12 A. No. Under optimal conditions once a determination is made as to which option for  
13 improvements is selected, it will take a number of months to complete construction. CWS  
14 will defer requesting rates through which to begin recovering replacement costs until  
15 after completion of construction.

16 Q. IS CWS SEEKING A PLANT ACQUISITION ADJUSTMENT?

17 A. The price negotiated between CWS and Sandler, once finally determined, is anticipated  
18 to equal net original cost of the system in the hands of Sandler. From CWS's perspective,  
19 Eagle Creek's existing rate base plus the addition of the recent investment will justify the  
20 purchase price. Nevertheless, CWS is not seeking an adjustments to it rates at this time  
21 and as certain costs are not currently now known, CWS will not seek a plant acquisition

1 adjustment in this proceeding.

2 Q. DOES THIS COMPLETE YOUR TESTIMONY?

3 A. Yes. We thank the Commission and the Public Staff for their assistance and attention to  
4 this matter.

1 Q. Mr. Myers, also on March 31, 2022, you filed  
2 rebuttal testimony. There was one set that was 23  
3 pages [sic] and another set that was 33 pages; is that  
4 correct?

5 A. That is correct.

6 Q. And if I were to ask you those questions  
7 today from the stand, would your answers be the same?

8 A. They would.

9 Q. And to the best of your knowledge, are those  
10 answers truthful and accurate?

11 A. They are.

12 Q. And included in those rebuttal testimonies  
13 were Exhibits A through N; is that correct?

14 A. That's correct.

15 Q. And I believe there were also maybe some  
16 attachments and appendices as well?

17 A. That's correct.

18 Q. Thank you.

19 MR. ALLEN: Chair Mitchell, I move that  
20 Mr. Myers rebuttal testimony including two sets,  
21 one I believe was 23 pages [sic], the other was  
22 33 pages, be admitted into the record, including  
23 the exhibits A through N and attachments and  
24 appendices.

1 CHAIR MITCHELL: All right. At this  
2 point I will allow the motion as to the testimony.  
3 The testimony shall be copied into -- the rebuttal  
4 testimony shall be copied into the record as if  
5 delivered orally from the stand. Exhibits to that  
6 testimony shall be marked for identification  
7 purposes as they were when they were prefiled.  
8 We'll hold -- I'll take a motion once your witness  
9 is -- once we're done with your witness to move  
10 that in. All right.

11 MR. ALLEN: Thank you.  
12 (Myers Rebuttal Exhibits A through N,  
13 were identified as they were marked when  
14 prefiled.)  
15 (Whereupon, the prefiled rebuttal  
16 testimony of Michael Myers was copied  
17 into the record as if given orally from  
18 the stand.)  
19  
20  
21  
22  
23  
24

1 Q. MUCH OF THE PUBLIC STAFF TESTIMONY ADDRESSES THE PERFORMANCE OF  
2 ENVIROLINK AS THE CONTRACT OPERATOR OF THE EAGLE CREEK WASTEWATER COLLECTION  
3 AND TREATMENT SYSTEM BEGINNING SEPTEMBER 2020. WHAT IS YOUR RESPONSE TO THE  
4 PUBLIC STAFF'S ASSESSMENT OF THE PERFORMANCE OF ENVIROLINK?

5  
6 A. The fundamental issue in this case is the suitability of Currituck Water & Sewer ("CWS")  
7 to acquire the Eagle Creek wastewater collection and treatment system from Sandler Utility.  
8 Under G.S. § 62-111 applications to transfer ownership of public utilities shall be given if  
9 justified by the public convenience and necessity. That transfer of this utility to a new owner  
10 such as CWS is in the public interest has never been clearer than in this proceeding. It has been  
11 demonstrated time after time that developer designed, built, owned and operated water  
12 and/or sewer utilities like Eagle Creek are doomed to experience service issues.

13 Regarding Envirolink, it is understandable, reasonable and anticipated that given the  
14 plight of the customers over the past 20 years and the catastrophic system failure of  
15 September/October of 2020, customers will be frustrated and look for answers from the only  
16 party they see on a day-to-day basis. It is understandable that customers will blame Envirolink  
17 for the system failures or for the condition of the system even if customer views are not based  
18 in accurate factual knowledge. As stated by Engineer Rigsby, in his recent independent review  
19 of the Eagle Creek system conducted by this NC DEQ approved consultant, eight independent  
20 reviews have been conducted, documenting poor operation and maintenance for at least 12  
21 years. It is important to understand that at the time of the system failures in 2020, Envirolink  
22 had only assumed operations 20 days before the first vacuum station failure. As Mr. Rigsby, the  
23 NC DEQ reviewer noted, the Eagle Creek vacuum system was an accident waiting to happen.

24 Contrary to the underlying theme of the Public Staff's testimony and the tenor of its  
25 questions to the public witnesses on March 2, 2022, the primary issue that led to the system  
26 failures of 2020 and 2021 was not the suitability of the system operator at that time but the  
27 lack of investment and the undercapitalization of the Eagle Creek wastewater system. Every

1 expert that has reviewed the Eagle Creek wastewater system agrees with Mr. Rigsby, the NC  
2 DEQ's independent reviewer, and has drawn the same conclusion: the cause of the system  
3 failures was not operations but poor maintenance and lack of prudent design redundancy. The  
4 system failures in the fall of 2020 were tragic for the residents of Eagle Creek, and while  
5 analysis of cause is prudent and necessary, the first priority should be to identify and  
6 implement solutions.

7 Some, including the Public Staff sponsored NC DEQ witnesses, attempt to deflect  
8 attention away from the root causes, focusing on certain reports and alleged imprudent  
9 actions. This testimony, in my view, is meant to avoid criticism and to draw attention away from  
10 the fact that NCDEQ was aware of the lack of maintenance, lack of investment and the  
11 repeated service outages for over 15 years.

12

13 Q. PLEASE DESCRIBE THE RELATIONSHIP BETWEEN ENVIROLINK AND ENVIROTECH AND  
14 BETWEEN ENVIROLINK AND CURRITUCK WATER & SEWER.

15

16 A. Envirolink acquired Envirotech and continued to rely upon former Envirotech employees  
17 to provide service through a transition period that extended through September 7, 2020.  
18 Of critical importance is that neither Envirolink nor Envirotech is an applicant in these dockets.  
19 Neither CWS, Envirolink or Envirotech has ever held a certificate of public convenience and  
20 necessity to own the Eagle Creek system or been issued permits to operate the Eagle Creek  
21 system. Neither of these two operators or CWS has had the responsibility to provide the  
22 funding to maintain, operate or make capital improvements to the system.

23 Envirolink and CWS have limited commonality of ownership though completely different  
24 sources of capital, and CWS intends to continue to rely upon Envirolink and the understanding  
25 of the system that Envirolink has gained, in part at its own expense, should the application be  
26 approved.

27

1 Q. WHAT ACTIONS DID ENVIROLINK TAKE IN ANTICIPATION OF THE POSSIBILITY THAT IT  
2 MIGHT TAKE OVER OPERATION RESPONSIBILITIES FOR THE EAGLE CREEK SYSTEM?

3  
4 A. Even before assuming operations, Envirolink, with the support of CWS, identified the  
5 need for investment in the Eagle Creek wastewater system and embarked on developing  
6 sustainable solutions. Prior to the system failures of 2020, beginning in the summer of 2020,  
7 Envirolink supported negotiations between CWS and Sandler Utility addressing the transfer of  
8 the wastewater facilities. It was obvious from Envirolink's first involvement that Sandler Utility  
9 lacked the willingness or desire to invest in the proper operations and maintenance of the Eagle  
10 Creek wastewater facility.

11  
12 Q. RATHER THAN MAKING A RECOMMENDATION AS TO THE BEST SYSTEM TO BE  
13 EMPLOYED IN PROVIDING SERVICE WITHIN THE EAGLE CREEK, THE PUBLIC STAFF, THROUGH  
14 THE TESTIMONIES OF WITNESSES FRANKLIN, MAY AND TANKARD, APPEARS TO BE FOCUSED ON  
15 ATTACHING CAUSE TO THE CURRENT STATE OF THE EAGLE CREEK SYSTEM. PLEASE COMMENT.

16  
17 A. It is troubling that after conducting extensive discovery and sending out innumerable  
18 data requests, communicating with customers, and after undertaking trips to the service area  
19 and after visiting only one partial vacuum system, the Public Staff basically has taken a pass,  
20 thrown up its hands, and makes no meaningful recommendations. The residents of Eagle Creek  
21 deserve state agencies that focus on sustainable solutions.

22 It is my opinion that there will be a time and place to focus on the current state of  
23 system and how it got into its current condition, but that right now the focus should be on  
24 finding and implementing a sustainable long term solution for the residents of Eagle Creek.  
25 However, if Public Staff deems it important to focus on the cause for the current state of the  
26 system, in my view, the agency should rely on the experts and the evidence, and should focus  
27 on the eight independent reviews, previous Sandler Utility rate case proceedings and six NC

1 DEQ inspection reports dating back to 2009. Five of the six inspection reports from 2009 to  
2 September 2020, every rate case proceeding and each of the eight independent reviews  
3 document poor maintenance, substandard service, inadequate record keeping and deficient  
4 capital planning.

5

6 Q. IF BLAME IS TO BE ATTACHED, WHERE, AND IN YOUR OPOINION SHOULD THE BLAME  
7 BE PLACED?

8

9 A. If the Public Staff is looking for an entity to blame for the fact that the Eagle Creek  
10 wastewater system has for a long period of time been deficient, it need look no further than  
11 the owner, Sandler, Envirotech (the operator for the first 25 years), DWR, and the Public Staff,  
12 upon whom the NCUC depends to investigate and monitor utilities under its jurisdiction.

13 Envirolink has and will bear responsibility for its limited operation under severely  
14 challenging conditions, but at least it has been a steady, constant presence for the community  
15 and has assisted CWS in looking beyond the existing crisis and in seeking a long term, cost  
16 effective solution. While the Public Staff has participated in one community meeting, the only  
17 party that has consistently and willingly met with residents of Eagle Creek is Envirolink, even  
18 though Envirolink only came onto the scene in late 2020. Some important facts to consider are  
19 that outside of one meeting that the Public Staff attended: Envirolink and CWS are the only  
20 parties that have embraced solutions and that have not avoided public scrutiny. Only Envirolink  
21 has met with the media, reporters, senators and representatives. Envirolink has conducted  
22 more than three townhall style meetings, has met with the HOA representatives on numerous  
23 occasions, and has met with residents one-on-one, while others, in my opinion, have stuck  
24 their heads in the sand.

25

26 Q. PLEASE SUMMERIZE THE CONCLUSIONS OF THE INDEPENDENT ENGINEER TO WHICH  
27 YOU MAKE REFERENCE.

1

2 A. As Mr. Rigsby, the independent engineer NC DWR insisted be hired, concluded:

- 3 • Eagle Creek has been an accident waiting to happen many years before the fall of 2020.
- 4 • The system suffers from over 12 years of poor maintenance.
- 5 • The owner was not engaged.
- 6 • The system needs to be replaced.

7 See Myers Rebuttal Exhibit A.

8

9 It is irresponsible, in response to public pressure, to focus attention on an operator that had  
10 been involved for less than one month before system failure. Envirolink has not avoided the  
11 public scrutiny, even though it had no responsibility for the condition of the facilities prior to  
12 September 2020, and had no ability to authorize investment. In addition, it is well documented  
13 that Envirolink has invested well beyond any compensation received by the owner in training,  
14 labor, equipment, studies, and engineering, because Envirolink has and remains focused on a  
15 sustainable solution. All of this to ensure that a sustainable solution is implemented.

16

17 Q. PLEASE ELABORATE ON THE HISTORY AND DESIGN OF THE EAGLE CREEK SYSTEM  
18 HISTORY LEADING UP TO ITS CONDITION TODAY.

19

20 A. Eagle Creek in the coastal county of Currituck is at an elevation barely above sea level  
21 and is susceptible to poor drainage and frequent rain events from hurricanes and other severe  
22 storms. The poor drainage required the installation of swales when the subdivision was  
23 developed. When Eagle Creek was developed, the decision was made to provide wastewater  
24 collection and treatment through a vacuum system. This has proven to be a poor choice  
25 because the design and construction were not suitable for this application. The developer was  
26 responsible for the design, construction, ownership and operation of the wastewater system  
27 from the very beginning.

1 Based on conversations with Florida DEQ, A3-USA, Quavac, Flovac, literature research  
2 and Public Staff testimony, CWS is convinced that the design and construction did not address  
3 known shortcomings and limitations of vacuum technology. As the Commission is well aware, it  
4 is very common for developers to underfund design, construction, operation and maintenance  
5 of utilities due to lack of industry knowledge and lack of focus on the long term sustainability of  
6 the utility system. For example, the following are some of the most significant design issues  
7 that should have been addressed up front:

- 8 • **Pit Volume:** The pit volume is undersized. While Airvac has stated that pit  
9 volume is determined based on the size of the lateral, this contradicts  
10 information obtained from Flovac, A3-USA, NC Regulation, Florida DEQ, CWS's  
11 review of literature and Faunhofer-Institut für Grenzflächen- und  
12 Bioverfahrenstechnik IGB "Guideline: Vacuum Sewer Systems" provided by the  
13 Public Staff in its response to CWS Data Request #1.
- 14 • **Saw Tooth Profile:** The saw tooth profile constructed at Eagle Creek is not  
15 consistent with current design criteria, as documented Airvac's Technical  
16 Manual, Flovac's observation, CWS's literature research and Faunhofer-Institut für  
17 Grenzflächen- und Bioverfahrenstechnik IGB "Guideline: Vacuum Sewer Systems"  
18 obtained by CWS from the Public Staff in its response to CWS Data Request #1.
- 19 • **Sewage and Vacuum Pump sizing and selection** – as recommended by Flovac  
20 and A3-USA: The pumps were minimally sized and did not include any safety  
21 factor in the design. Additionally, VFD are common on vacuum pumps and  
22 sewage pumps, which allow pumps to ramp up and down based on conditions in  
23 the vacuum mains. None was installed for Eagle Creek.
- 24 • **Inflow & Infiltration** – It is well documented by Airvac, Flovac, A3-USA, Quavac  
25 and virtually all of the literature on the subject addressing vacuum systems that  
26 inflow and infiltration are critical factors and must be eliminated. The well  
27 documented inflow and infiltration experienced with the Eagle Creek

1 wastewater system has been excessive by any known metric. Infiltration and  
2 inflow is a critical factor with the Eagle Creek system because of its detrimental  
3 impact on pipe hydraulics, vacuum pump life, and pit operation.

- 4 ● **Monitoring system** – Recommended by Airvac, Flovac and A3-USA to address  
5 the service related issues common in vacuum systems, as documented in  
6 numerous literature resources. Monitoring systems are valuable tools for  
7 assessing and eliminating sources of inflow and infiltration, as well as help for  
8 technicians to locate service issues during interface valve malfunctions. None  
9 was initially installed for Eagle Creek.
- 10 ● **Redundancy** – The system did not include many redundancy features required  
11 by other regulatory agencies with more experience than North Carolina. For  
12 example,
  - 13 ○ the system design should have included sufficient vacuum pump capacity,  
14 so that the system could operate normally with one vacuum pump out of  
15 service.
  - 16 ○ The system design should have included sufficient sewage pump capacity,  
17 so the system could operate normally with one sewage pump out of  
18 service.
  - 19 ○ The system design should have included sufficient receiving tank volume  
20 to dampen or cushion and vacuum loss in the collection network from  
21 service valve failures.
  - 22 ○ The system design should have included multiple tanks to permit  
23 maintenance on the tank without shutting the system down.
- 24 ● **Spare parts** – The design should have included spare parts for every component  
25 of a vacuum system. When Envirolink took over operations, the only spare parts  
26 were service valves and controllers. There were no spare vacuum pumps, no

1 spare sewage pumps, or other spare parts that would be expected as part of  
2 normal on-going program.

3 See Myers Rebuttal Exhibits B-G.  
4

5 Additional consideration should be given to Mr. Franklin's testimony where on Page 17  
6 of his testimony he states that based on his October 21, 2020 investigation, "Numerous pits  
7 were located in low lying areas, . . ." Vacuum systems are very rarely installed, as evidenced by  
8 information obtained from NC DEQ, that less than 4% of the collection system in Eastern North  
9 Carolina are vacuum systems. If this is extended to all of North Carolina, vacuum systems make  
10 up less than 1% of sewer collection systems in North Carolina or anywhere else.

11 The primary reasons other sewer collection technology is favored over vacuum is that  
12 vacuum has many moving parts that require immediate attention by operators who must be  
13 well trained to operate their unique features. The pool of such operators trained in the  
14 operation of any vacuum system is exceptionally limited. These important factors are well  
15 documented in the literature.

16 With respect to vacuum systems, there are far more interdependencies in contrast to  
17 much more simple and widely relied upon collection systems such as gravity, which by  
18 definition depends primarily upon the pull of natural forces, not upon constant negative  
19 pressure that depends upon a constant supply of electricity and where loss of vacuum in one  
20 part of the system can cause a widespread loss of vacuum and expansive system disruption of  
21 service. The pool of operators trained in the operation of gravity systems is much larger.  
22

23 Q. PLEASE ELABORATE FURTHER ON THE DESIGN OF THE EAGLE CREEK SYSTEM AND THE  
24 ROLE THE NORTH CAROLINA REGULATORS PLAYED WITH RESPECT TO THE DESIGN  
25

26 A. While NC DEQ and Public Staff either knew or should have known that the Eagle Creek  
27 wastewater system was a "accident waiting to happen", the design and construction were also

1 a significant challenge for the Eagle Creek wastewater system. The original design lacked  
2 several critical design safety features that should have been but were not incorporated into the  
3 original design. This was likely because the North Carolina Department of Environmental  
4 Quality had very little experience in regulating vacuum systems (only 14 in North Carolina), in  
5 1987 and were not aware of limitations on the critical design for vacuum systems, such as: pit  
6 volume, buffer tanks, inflow and infiltration impacts, receiving tank size, vacuum pump  
7 redundancy, sewage pump redundancy, monitoring systems, importance of the saw tooth  
8 profile, layout of the saw tooth profile, etc.

9 According to information obtained from the Public Staff in response to CWS Data  
10 Request #1, in developing the Public Staff testimony, neither NC DEQ nor the Public Staff have  
11 reached out to agencies in other states with more extensive experience than North Carolina in  
12 vacuum systems design to inquire into the experiences of these state agencies with vacuum  
13 sewers and some of the key design features those state agencies require. CWS, in developing  
14 its testimony and recommendations, has contacted Florida DEQ, Flovac, Quavac, A3-USA, has  
15 reviewed extensive literature and independent expert opinions. See Myers Rebuttal Exhibits B-  
16 G. Based on these evaluation, while Envirolink , which it has received some justifiable criticisms  
17 on a few operational and communication difficulties, maintains those difficulties did not cause  
18 the service failures and have been corrected.

19 In addition to the foregoing, the Commission can also refer to customer testimony. The  
20 Commission has heard and is hearing testimony from an individual at the March 2, 2022  
21 customer hearing who assisted with the original construction of the Eagle Creek, evidence from  
22 licensed engineers, vacuum technology providers, customers, Currituck County officials, North  
23 Carolina State Representatives, Health Directors, and even NC DEQ itself that document that  
24 service outages, lack of maintenance and mismanagement have been systemic at Eagle Creek  
25 dating as far back as 2012.

26

1 Q. BASED ON THESE DESIGN FAILURES, SHOULD REGULATORS HAVE PROVIDED  
2 GREATER OVERSIGHT, AND IS THE PUBLIC STAFF'S FOCUS ON ENVIROLINK'S OPERATIONS IN  
3 2020 JUSTIFIED?  
4

5 Contrary to implications in the Public Staff testimony, the Eagle Creek vacuum system  
6 has been beset by problems from the time it was installed due in large measure to these design  
7 shortcomings. Regulators have provided only sporadic and lax oversight of the Eagle Creek  
8 system. NC DEQ only conducted six inspections over the first 24 years of operation, with five  
9 indicating a non-compliant system. The inspections noted lack of maintenance, lack of  
10 maintenance records, no capital plan and numerous limit violations. Unfortunately, the  
11 frequency of inspections and aggressive enforcement actions did not begin until public scrutiny  
12 increased because of the critical system failures of 2020. There have been four inspections  
13 since September 2020. See Myers Rebuttal Exhibit H.

14 It appears that DWR depends in large measure upon customer complaints, conducts  
15 only infrequent inspections, and is slow to rectify deficiencies until the operation of these  
16 systems spins out of control.

17 Based in part on the Public Staff testimony, CWS questions whether the DWR  
18 supervisors or the Public Staff engineer have a complete understanding of how the vacuum  
19 systems are designed and operated. In many instances, witnesses, Franklin, Tankard and May  
20 fail to provide complete and accurate information. For example, on page 7 of witnesses  
21 Tankard and May's testimony they indicate that candy canes keep the vacuum from drawing  
22 water from drain traps and toilets within the homes or from otherwise damaging pipes.  
23 Contrary to this testimony, the main purpose of the candy canes is to allow air to enter the  
24 vacuum system in order to maintain a proper air-to-water ratio, so that water can be  
25 transmitted from the home to the central vacuum station.  
26

1 Q. ARE THERE EXAMPLES OF DWR AND THE PUBLIC STAFF PROVIDING AN INCOMPLPETE  
2 PICTURE OF THE EAGLE CREEK SYSTEM?

3  
4 A. Yes. Examples include:

- 5 • Witnesses Tankard and May failed to inform the Commission of the numerous  
6 non-compliant inspections dating back to 2012.

7 Witness Franklin failed to provide the Commission photos documenting the poor  
8 condition of the facilities provided to him through discovery. See Myers Rebuttal  
9 Exhibit I.

- 10 • Neither Witnesses Franklin, May or Tankard provide any information from  
11 independent reviews conducted initially by CWS and now Sandler.

- 12 • Witnesses Franklin only provides one comparative example, without conducting  
13 further investigations into other systems or oversight by states with more  
14 experience in regulating vacuum system.  
15

16 Q. PLEASE ADDRESS THE 2015 SANDLER GENERAL RATE CASE AND WHAT IT SHOWS ABOUT  
17 THE SYSTEM IN 2015 AND THE DEGREE OF REGULATORY OVERSIGHT.  
18

19 A. In Sandler's 2015 general rate case the Commission identified substantial service-related  
20 issues and required Sandler to take remediation steps. The system at that time was being  
21 operated by Envirotech, not Envirolink. Envirolink did not participate in Eagle Creek until five  
22 years later. While Sandler complied with some requirements of the Commission's order, it  
23 failed to comply with others, and the Public Staff failed to follow up adequately in requiring  
24 Sandler to comply.

25 On page 17 of Mr. Franklin's testimony he states in reporting on his October 21, 2020  
26 inspection of the Eagle Creek system, five years after the Commission's order, "Residential  
27 vacuum pits and candy canes were also inspected. Numerous pits were located in low lying

1 areas, and it was evident that the actions required under Ordering Paragraph 4 of the 2015 rate  
2 case order to complete renovations to reduce rainwater intrusion had not been fully  
3 implemented.” The result was that there were tell-tale signs that the system was not being  
4 adequately maintained and repaired. The conditions manifesting themselves in the events of  
5 2020 and 2021 are evidence of prior neglect of a system ill-suited for its application and one  
6 requiring an unusual level of oversight and reliance on technician response times.

7 The Eagle Creek system is owned by Sandler, the real estate developer. Sandler provides  
8 the funding, holds the certificate and the permits. Sandler hires and pays for the services of the  
9 contract operators. As stated above, ownership of water and wastewater systems by  
10 developers often results in service issues because they are focused on providing service only  
11 until lots have been sold and homes constructed. This manifests itself in minimal design  
12 standards, lack of investment, lack of engagement and oversight, and it should alert regulators  
13 to pay close attention. Sadly, such apparently was not the case. This should have prompted  
14 greater and more timely regulatory oversight.

15  
16 Q WHAT ABOUT DWR’S PARTICIPATION IN THE CONSENT JUDGMENT?  
17

18 A. DWR's oversight of the Eagle Creek vacuum system was not adequate until conditions  
19 that could have been anticipated devolved out of control, resulting in severe service disruptions  
20 to customers and degradation of the environment. In reaction to the emergency DWR and the  
21 North Carolina Attorney General focused on short term solutions without weighing the effect of  
22 these solutions on costs, manpower to implement them and long term sustainability. The Public  
23 Staff, which should have been advertent to costs, was absent in the process. Neither CWS,  
24 Envirolink or the expert reviewers have been able to influence regulators in addressing  
25 repeated requests that they take into account costs and a long term solution. Instead, the only  
26 step addressing long term issues mandated by these environmental regulators is to require in  
27 the consent decree that should Sandler sell the system, the acquirer is bound to step into

1 Sandler's shoes and accept potential judicial actions for Sandler's past actions and comply with  
2 the draconian obligations to implement the short term remedies imposed upon Sandler and be  
3 subject to contempt for failure to comply. Instead, much money is being spent as stop-gap  
4 measures that may prove unneeded for implementation of the most appropriate long term  
5 solution.

6

7 Q. PLEASE DESCRIBE THE CONDITION OF THE EAGLE CREEK SYSTEM WHEN ENVIROLINK  
8 TOOK OVER AS SYSTEM OPERATOR IN SEPTEMBER 2020.

9

10 A. The Public Staff witnesses provided an inaccurate and incomplete picture of conditions  
11 of the vacuum system at the end of 2020, almost immediately after Envirolink began  
12 operations. The system was an emergency waiting to happen. One Airvac reviewer, commented  
13 during a site visit, that he did not know how anyone could keep this system operational. The  
14 system had severe service outages before due to excessive storms, basic monitoring and no  
15 spare parts, much less elevated ones on pedestals to avoid flooding or that could be locked to  
16 avoid tampering. The pits are undersized. Pits contain 40 gallons for two homes, as compared  
17 to recommendation from Faunhofer-Institut für Grenzflächen- und Bioverfahrenstechnik IGB  
18 "Guideline: Vacuum Sewer Systems" obtained from the Public Staff in its response to CWS Data  
19 Request #1., which recommends 25% of average daily flow. Assuming two-three bedroom  
20 homes per pit and using NC DEQ Design Criteria, that would require a minimum of 180 gallons  
21 [note: other sources would require more storage]. Many homes in the Eagle Creek community  
22 have 4, 5, and even 6 bedrooms, so a more extensive analysis is required to determine the  
23 appropriate pit volume. The design of the vacuum pits is poorly suited for the service area as is  
24 evidence by the excessive inflow and infiltration entering through the pits. The problems with  
25 drainage due to the low elevation had manifested themselves before.

26

1 Q. PLEASE ADDRESS THE MANNER IN WHICH THE SYSTEM HAD BEEN MAINTAINED AND  
2 REPAIRED PRIOR TO ENVIROLINK'S BECOMING THE OPERATOR.

3 A. As evidenced in the NC DEQ inspection reports dating back to 2012, chronic deficiencies  
4 existed with the WWTP. Based in part upon lack of adequate resources the operator  
5 (Envirotech) had engaged in the process of waiting until parts of the collection system failed  
6 before repairing them or replacing them. See Myers Rebuttal Exhibit A. CWS witness Freed will  
7 address the difficulties Envirotech encountered. The more appropriate process would have  
8 been to engage in preventive maintenance activities, so that as parts reached the end of their  
9 useful lives or displayed potential malfunction due to unanticipated obsolescence or a history  
10 of inadequate maintenance, they could have been replaced. However, as Mr. Franklin's  
11 testimony indicates, even well maintained vacuum systems experience significant failures.  
12 While CWS disagrees that five failures per month constitute "rare" failures, Mr. Franklin's  
13 testimony does support the fact that even well-maintained vacuum systems require  
14 "continuous maintenance" and are prone to failure. This is the only logical conclusion. It  
15 doesn't take an expert in rocket science to appreciate this conclusion. Among the conditions  
16 cited by, Mr. Rigsby, the Independent Engineering Evaluation required by DWR are "lack of  
17 routine and preventive maintenance" and "lack of redundancy."

18 The February 28, 2022 Independent Engineering Evaluation by Century Engineering  
19 concludes the obvious:

20 **There have been eight independent third party technical evaluations of the system**  
21 **dating back to 2010 which all consistently document numerous problems with the**  
22 **Eagle Creek vacuum sewer collection system** including excessive infiltration and inflow,  
23 sanitary sewer overflows, vacuum leaks, vacuum pit valve and controller failures,  
24 vacuum station problems including vacuum pump failure and sewage pump failure, and  
25 the catastrophic system failure of September and October 2020  
26  
27

28 Q. YOU HAVE HAD FIRST-HAND KNOWLEDGE OF THE SYSTEM. IN RESPONSE TO THE PUBLIC  
29 STAFF FOCUS ON ENVIROLINK, PLEASE ELABORATE FURTHER ON YOUR ASSESSMENT AS TO THE

1 CAUSES FOR THE CONDITION OF THE EAGLE CREEK SYSTEM AND THE BEST SOLUTION FOR ITS  
2 LONGTERM APPROPRIATE OPERATION.

3  
4 A. As mentioned above, I believe resources should now be deployed to identify solutions,  
5 but if a scapegoat or an entity solely to blame for the critical condition of the Eagle Creek  
6 system it should not be Envirolink. To focus solely upon performance on the most recent  
7 operator is to ignore and misrepresent evidence, to attempt to shield many other actors with  
8 far greater responsibility for the condition of the system, including the regulators, who have  
9 thrown up their hands as to the best process to move forward, improve the condition of the  
10 system as it currently exists and provide for long term viability and provide adequate customer  
11 service.

12 Sandler wishes to sell. CWS wishes to acquire and replace. CWS wants to improve the  
13 system and service for the residents of Eagle Creek and has proposed a robust plan to upgrade  
14 the Eagle Creek wastewater treatment system, replace the Eagle Creek collection system with a  
15 new system and combine the Eagle Creek system with the neighboring systems of Fost and  
16 Flora in a systematic, cost effective way. This is a prudent sustainable solution that is not  
17 disputed.

18 Eight independent reviews have been conducted, including reports conducted by A3-  
19 USA and the recent report by NC DEQ's approved independent reviewer. These reviewers  
20 conclude that system replacement is the only viable solution. Envirolink personnel have  
21 communicated on numerous occasions to NC DEQ and the Public Staff that the only prudent  
22 solution is to keep the current permit in place so that NC DEQ can monitor operations in the  
23 interim until a permanent solution can be permitted and so that CWS can fund and construct  
24 appropriate system features. This requires transferring the Eagle Creek wastewater system to  
25 CWS, and allowing CWS to embark on system replacement.

26 Additional evidence supporting this solution is the meeting held in the summer of 2021  
27 at the request of Senator Steinburg and Representative Hanig. At that meeting, Senator

1 Steinburg and Representative Hanig called on state officials to remove barriers allowing  
2 implementation of an expeditious solution. Yet, as we close in on one year later, NC DEQ and  
3 now the Public Staff continue to focus on temporary fixes, studies and reporting requirements.

4 I emphasize again that every professional, other than NC DEQ and now the Public Staff,  
5 has reached the same conclusion; system replacement is necessary. To focus on blaming  
6 someone that had been on the job for only 20 days when the system collapsed and did not  
7 have the authority to make the necessary investments, is just not logical.

8

9 Q. HAVE THERE BEEN EARLIER EFFORTS, RECOGNIZING THE DEFICIENCIES OF THE VACUUM  
10 SYSTEM TO TAKE STEPS THAT WOULD HAVE RECTIFIED THE SYSTEM DEFICIENCIES AND PERHAPS  
11 AVOIDED THE DISRUPTION THAT SUBSEQUENTLY TOOK PLACE?

12

13 A. Yes. Currituck County agreed to acquire the Eagle Creek wastewater system several  
14 years ago. Currituck County currently has no interest in acquiring Eagle Creek and was only  
15 willing to acquire it earlier because of the known service issues and the need to find a  
16 responsible owner. Ultimately, that transaction did not proceed because community leaders  
17 objected to the County's plan to convert the collection system

18

19 Q. THE ENVIRONMENTAL AND PUBLIC STAFF REGULATORS PLACE RESPONSIBILITY FOR THE  
20 CONDITION OF THE EAGLE CREEK SYSTEM ON ENVIROLINK AND OTHERS. BASED ON YOUR  
21 OBSERVATION, WHAT ROLE HAVE THE REGULATORS PLAYED OVER TIME WITH RESPECT TO  
22 THEIR OVERSIGHT OF THE EAGLE CREEK SYSTEM?

23

24 A. DWR's method of oversight can be best described as "out of sight, out of mind". From  
25 their testimony it appears that DWR heavily relies upon the practice of assessing the frequency  
26 and whether remedial steps are required on public scrutiny and customer complaints.

1 The situation of a nearby systems, serving the Kinnakeet Shores subdivision in Dare  
2 County and the Town of Robersonville in Martin County from 2012, provides striking examples.  
3 The Kinnakeet Shores system has not yet resulted in disruptions of service to residence.  
4 Nevertheless, the WWTP major treatment units are no longer functional. Both clarifiers, the  
5 tertiary filter, spray irrigation system, and back-up generator are not functional. Biosolids have  
6 not been removed from the plant for at least seven years. DWR only recently placed the WWTP  
7 on sewer moratorium with no sewer taps, sewer extensions or additional flow effective as of  
8 the date of the moratorium. The owner of that system likewise is the developer of the  
9 community and has experienced difficulties the Commission has been forced to address.  
10 Customers in Kinnakeet Shores filed in a complaint before the Commission seeking immediate  
11 assistance. Neither the Public Staff nor the Commission has taken any action, although this  
12 complaint has been pending for many weeks.

13 Prior to 2012, the Town of Robersonville, NC had been allowed to degrade to the point  
14 that virtually none of the equipment within the plant functioned, the bar screen had over 8 feet  
15 of grease, and there was so many solids in the plant that vegetation was growing over much of  
16 the facility. It was only after the system was allowed to degrade to this point, that NC DWR  
17 arrested the operator. However, even this action did not address the problem that led to  
18 condition of the facility. Lack of investment by the Town in the prior 10 years led to DWR's  
19 action. Clearly, the operator made a poor decision, but DWR failed to recognize that it was the  
20 lack of investment and failure of oversight that put the operator into that situation. See Myers  
21 Rebuttal Exhibit N.

22  
23 Q. ALTHOUGH THE PUBLIC STAFF MAKES NO RECOMMENDATION ON THE LONG TERM  
24 SOLUTION FOR THE EAGLE CREEK SYSTEM, IT TAKES ISSUE WITH CWS'S ASSESSMENT OF THE  
25 CURRENT CONDITION OF THE SYSTEM. PLEASE RESPOND TO THE TESTIMONY OF THE PUBLIC  
26 STAFF ASSESSING THE SUITABILITY OF THE VACUUM SYSTEM CURRENTLY IN PLACE THROUGH  
27 WHICH SERVICE IS PROVIDED IN EAGLE CREEK.

1  
2 A. The Public Staff takes issue with the contention of CWS, in conflict with substantial  
3 expert opinion, that many components of the Eagle Creek vacuum system have reached the  
4 end of their useful lives. The documentation addresses components of vacuum systems that  
5 have only recently been repaired. Mr. Franklin bases this conclusion on the novel theory that  
6 as Envirolink and Sandler are expending substantial amounts of time and expense in replacing  
7 many of the components of the system or installing necessary parts, that system parts have not  
8 reached the end of their useful lives. This is completely illogical and is further evidence that the  
9 Public Staff did not perform a thorough analysis.

10 The fact that the parts are being replaced is irrefutable evidence that the system parts  
11 have exceeded their useful lives. Mr. Franklin's unusual theory seems to be that the  
12 components had not reached the end of their useful lives because, although nonfunctional,  
13 they were on schedule to be replaced in the future. Mr. Franklin testimony further supports  
14 CWS's position that in disallowing the replacement or rebuilding in his rate base calculation, he  
15 in essence admits that the expenditures are repairs and should not add life to the system.

16 In spite of Mr. Franklin's assertion that the Eagle Creek vacuum system has not  
17 exceeded its useful life based in part upon replacement of worn out or obsolete components,  
18 Mr. Franklin on page 8 of his testimony quotes from the Public Staff letter dated February 26,  
19 2021, "The letter further stated that the Public Staff is of the opinion that Sandler's continued  
20 practice of primarily replacing controllers is a temporary repair and does not adequately  
21 address ordering paragraph 4(b) of the 2015 Rate Case Order." Likewise, Mr. Franklin states on  
22 page 9 of his testimony, "pedestal mounted controllers have not been installed on all valve pits,  
23 nor would installation of the pedestal mounted controllers on all the pits prevent rainwater and  
24 run-off from flowing into the pits and adversely impacting valve pit operation." Essential parts  
25 of the existing Eagle Creek vacuum system never operated as they should have, are obsolete or  
26 are worn out altogether.

27

1 Q. CAN YOU PROVIDE ADDITIONAL EXAMPLES TO SUPPORT YOUR VIEW THAT ESSENTIAL  
2 PARTS OF THE SYSTEM HAVE EXCEEDED THE END OF THEIR USEFUL LIVES?  
3

4 A. When pits in which sewerage is initially collected are sinking into the ground and  
5 allowing excessive inflow and infiltration and do not meet current standards, it defies all logic  
6 to assert that these components of the sewage collection system have not exceeded their  
7 useful lives. Otherwise, they would not need to be replaced.

8 Had the regulators been the least bit responsive to a sustainable solution and the plan  
9 laid out by CWS, a solution would be in place, rather than causing additional delays by  
10 attempting to levy unreasonable restrictions or before imposing requirements that substantial  
11 components be replaced without a thorough examination into whether continued reliance on  
12 the vacuum system as it currently exists is appropriate. Nevertheless, replacing worn out parts  
13 does not support Mr. Franklin's conclusion that the system has not exceeded its useful life.

14 Moreover, to the extent one owns an automobile with 400,000 miles on the odometer  
15 and replaces the engine, the transmission, the mirrors, the catalytic converter, one still has a  
16 used car. The Public Staff argument does not support its position but instead supports CWS's  
17 point. The regulators seem content to address the catastrophic failure of the Eagle Creek  
18 system with a Band-Aid approach. The patient is sick, but its veins are fine, so no need to worry  
19 about the heart or the bloodwork? The system needs a systematic replacement.  
20

21 Q. YOU NOW HAVE THE REPORT OF CENTURY ENGINEERING ON THE STATE OF THE EAGLE  
22 CREEK SYSTEM REQUIRED BY DWR IN THE CONSENT DECREE. THROUGH DISCOVERY ANSWERS  
23 THE PUBLIC STAFF IS UNWILLING TO AGREE THAT THE CONCLUSIONS OF THIS REPORT, IN  
24 WHICH ENVIROLINK AND CWS HAD NO PART WHATSOEVER, IS NOT IN CONFLICT WITH THEIR  
25 TESTIMONY. PLEASE COMMENT.  
26

1 A. The best evidence that Public Staff and DWR are in error is the report of the  
2 independent engineer, Mr. Rigsby, that DWR insisted Sandler hire to evaluate the system. It is  
3 impossible to read this report, and conclude that the Public Staff is accurate that many  
4 components of the Eagle Creek vacuum collection system have not exceeded their useful lives.

5 The February 28, 2022 Century Engineer Report states:

6 There is a wealth of published literature which describes the design, operation, and  
7 maintenance of vacuum sewer systems in general which all consistently describe  
8 numerous problems and difficulties in operating and maintaining the systems, all of  
9 which are consistent with the findings of the eight third party technical evaluations  
10 (conducted for Eagle Creek).

11 \* \* \*

12  
13  
14 The engineer further recommends abandoning the vacuum sewer system in favor of an  
15 individual grinder pump and low pressure force main collection system which will result  
16 in a more environmentally sound, more reliable, and more cost effective long term  
17 solution.

18  
19 However, if the project stakeholders prefer to continue to rely upon the old and  
20 depreciated vacuum sewer collection system, then the engineer recommends splitting  
21 the current system into three separate smaller systems each with its own main vacuum  
22 tank and sewage pump station with separate force mains to the wastewater treatment  
23 plant.

24  
25 Q. ALTHOUGH THE PUBLIC STAFF SPENDS SUBSTANTIAL EFFORT IN ADDRESSING THE  
26 CONDITION OF THE EAGLE CREEK SYSTEM IN ITS TESTIMONY, WHAT RECOMMENDATION DOES  
27 THE PUBLIC STAFF PROVIDE TO THE COMMISSION ADDRESSING THE LONG TERM CORRECTIONS  
28 TO THE SYSTEM?

29  
30 A. In spite of taking issue with CWS's assessment of the Eagle Creek vacuum system and in  
31 contradiction of the independent engineer, and in spite of extensive discovery on the issue,  
32 the Public Staff comes forward with no recommendation to the Commission as to whether the  
33 vacuum should be replaced or should remain in place.

34

1 Q. PLEASE ADDRESS THE DISPLEASURE EXPRESSED BY THE CUSTOMERS WITHIN EAGLE  
2 CREEK IN STATEMENTS PROVIDED TO THE COMMISSION AND WITH THE PUBLIC STAFF AND  
3 OTHERS?  
4

5 A. Consumers of wastewater services within the Eagle Creek subdivision understandably  
6 are distressed at the inadequate services they have received and inadequate oversight by  
7 regulatory officials for many years. Envirolink became the operator of the system at a time that  
8 generally coincided with or shortly followed the beginning of what ended up being a  
9 catastrophic failure of the system. Envirolink managers and employees, by default through the  
10 absence of the owner and state officials, have become the face to residents due to  
11 unwillingness of owners and regulators to engage with the community. Understandably, many  
12 within the community direct their displeasure and ire at Envirolink. As Mr. Miller's testimony  
13 addresses, he has had conversations with many in the community that have expressed that  
14 their actions are the only way to get state officials attention. In spite of having inherited a very  
15 difficult situation, Envirolink has been consistent in its support of what it believes is in the best  
16 interest of the community and has expended substantial time and expense in supporting the  
17 operation of a dilapidated system.

18 One issue of which consumers legitimately complain is communication with the  
19 consumers with respect to outages. When Envirolink took over operations, the need for  
20 communications was apparent, and the need expanded exponentially. Envirolink recognized  
21 the need for communications and transparency with the residents and began developing  
22 communication protocols. The owner and prior operator of the system had no means of  
23 communication with customers. Envirolink met with community representatives and obtained  
24 input into communication protocols. Envirolink relied heavily on the information obtained in  
25 developing communication protocols. However, for reasons satisfactory to itself, the  
26 homeowners association as addressed by Mr. Lickfeld in his March 2, 2022 testimony,  
27 determined that it could no longer provide this assistance. Consequently, Envirolink quickly was

1 required to explore and identify alternative means of communications with customers. This  
2 resulted in a system through which Envirolink communicates with the customers through email,  
3 posting to the county website and internet messages.

4 Still, when the content of messages customers receive is notification of outages and  
5 requests to curtail usage, and when the customers are receiving information requesting that  
6 they change their normal habits, and the communication is being used for all practical  
7 purposes to announce a major inconvenience, customers will be dissatisfied. CWS witness  
8 Miller provides additional information on communications.

9

10 Q. PLEASE DESCRIBE OTHER METHODS THAT CWS AND ENVIROLINK HAVE USED TO  
11 PROVIDE INFORMATION TO THE CONSUMERS WITHIN EAGLE CREEK.

12

13 A. Envirolink has held meetings within the subdivision to address concerns and questions,  
14 providing slides presented to customers. See Myers Rebuttal Exhibits J-M. CWS and Envirolink  
15 requested the assistance of state legislators and initiated a meeting in Raleigh with Sandler, the  
16 Public Staff, DWR, leaders of the Homeowners Association, and developers such as the Fost  
17 developer. While many customers continue to be dissatisfied, as long as the system remains in  
18 a state of disrepair, customers cannot be expected to be happy. Understandably, the  
19 dissatisfaction initially from lack of timely messages now has become dissatisfaction with  
20 receiving too many messages.

21 In contrast, Sandler and NC DEQ have not participated in any community meetings. The  
22 Public Staff conducted only one community meeting.

23

24 Q. PLEASE ADDRESS THE ISSUE OF THE INSTALLATION OF THE FORCE MAIN INSTALLED TO  
25 INTERCONNECT TO FOST COLLECTION SYSTEM TO THE WASTEWATER TREATMENT PLANT IN  
26 EAGLE CREEK.

27

1 A. Customers point to efforts by CWS and Envirolink to install a force main from the Fost  
2 development through easements adjacent to the golf course property to support their view  
3 that any replacement of the existing vacuum collection system within the subdivision will result  
4 in undue disruption and displacement. First and foremost, construction is required regardless of  
5 the decision on technology. Based on the first-hand experience of Envirolink, parts of the  
6 collection system even if it remains in place as currently engineered and installed must be  
7 replaced. Pits are sinking. Pits are undersized. Pits are located on the property of the  
8 homeowners. Every two residences have one pit with 40 gallons of storage. There are hundreds  
9 of them. Nevertheless, the construction of the force main through the easements in proximity  
10 to the golf course property must be placed in proper context, and I refer to CWS rebuttal  
11 witnesses Bissell and Miller for additional information.

12 The owner of the golf course, in contradiction to his responsibilities with respect to  
13 receipt of effluent and paying for it under the terms of the contract, has resisted doing so. He  
14 has used opportunities to interfere with the easement rights of the owner of the sewer system  
15 as leverage to enhance his own financial interests. Alteration of a permit and obtaining a  
16 setback waiver were necessary to address issues with the infiltration pond. The owner of the  
17 golf course used his leverage in resisting the needed alteration of the permit that required his  
18 permission.

19 The easement providing the path in which the force main was installed unfortunately  
20 was likewise available to electric service and the golf course in the location of underground  
21 facilities. These entities, over which CWS and Envirolink had no connection, had mismarked  
22 their underground facilities. When the contractor installing the force main attempted to install  
23 the underground facilities, the contractor disrupted the service of these other entities because  
24 their lines were mismarked. There is no dispute that the lines were mismarked. Dominion  
25 Energy's locator has assumed responsibility. This resulted in disruption within the subdivision  
26 and to the golf course. The owner and operator of the golf course immediately placed the  
27 blame on Envirolink and CWS.

1           When the irrigation system was damaged, the owner of the golf course prevented the  
2 contractor from rectifying the situation expeditiously. It was necessary to call the Currituck  
3 County Sheriff to obtain assistance. Zach Basnight of Basnight Construction, the contractor for  
4 installing the force main, provides testimony verifying this narrative of events concerning the  
5 golf course and the installation of the force main.  
6

7       Q.     PLEASE ADDRESS THE ISSUE OF POTENTIAL DISRUPTION WITHIN THE EAGLE CREEK  
8 SUBDIVISION OF WHICH CONSUMERS EXPRESSED CONCERN TO THE EXTENT THAT  
9 REPLACEMENTS OF PARTS OF THE COLLECTION SYSTEM MUST BE REPLACED.  
10

11     A.     When construction activities are performed, disruption is to be expected. Every effort  
12 should and will be made to minimize the disruption, and CWS will work with every property  
13 owner and service provider to minimize disruptions. Moreover, if the community and the  
14 regulators conclude that they would rather continue with vacuum technology such as they have  
15 now because of the concerns of temporary disruptions, and other concerns, CWS has stated  
16 repeatedly and repeats here that it will comply with those wishes.  
17

18     Q.     THE PUBLIC STAFF MAKES NO RECOMMENDATION WITH RESPECT TO ITS VIEWS ON  
19 REPAIRING OR REPLACING THE VACUUM SYSTEM SERVING EAGLE CREEK. IN LIGHT OF THIS,  
20 WHAT IS THE RESPONSE OF CWS?  
21

22     A.     When upgrading, expanding, renovating or replacing water and sewer systems, the  
23 owner of sewer systems regulated by the state must provide the capital to install new or  
24 replacement facilities, and the responsibility for such installation and replacement rests with  
25 the entity that provides the money. The role of the regulator is to assess the reasonableness  
26 and prudence of the owner's decisions, even if they are unpopular ones. After the fact, the  
27 regulator determines which costs are recoverable from consumers. Should regulators in

1 response to valid concerns of consumers determine to order the manner in which facilities are  
2 constructed or operated, these determinations should be borne in mind when requests for cost  
3 recovery are sought. Interestingly, after extensive investigation by the Public Staff with data  
4 requests addressing issues such as the costs of replacing the vacuum system with a gravity  
5 system, the Public Staff is silent on the issue of whether the vacuum system should be retained  
6 or replaced.

7

8 Q. WHAT IS THE RESPONSE OF CWS TO WHAT YOU UNDERSTAND TO BE THE ULTIMATE  
9 RECOMMENDATION OF THE PUBLIC STAFF IN THIS CASE?

10

11 A. The Public Staff recommends that CWS's application to acquire the Eagle Creek system  
12 be held in abeyance until Sandler has complied with the conditions imposed by the consent  
13 decree issued at the insistence of DWR and that if CWS agrees to step into the shoes of Sandler,  
14 it undertake the responsibilities imposed upon Sandler and make itself subject to contempt for  
15 failure to do so.

16

17 Q. PLEASE ADDRESS THE PUBLIC STAFF RECOMMENDATION FOR A ONE MILLION DOLLAR  
18 BOND.

19

20 A. The Public Staff recommends that the Commission impose a bond of \$1,000,000 on  
21 CWS as a condition for its receipt of a certificate of public convenience and necessity to own  
22 and operate the Eagle Creek system. The Public Staff's response to CWS's discovery justifies the  
23 \$1 million bond recommendation on the need for the extensive upgrades required on the  
24 Eagle Creek wastewater facility. This justification conflicts with the justification in the Public  
25 Staff testimony. The Public Staff testimony cites as a reason for a \$1 million bond the fact that  
26 CWS has never owned and operated a system before. The Public Staff spends pages in its  
27 testimony criticizing Envirolink, the operator CWS intends to hire. The bond amount cannot be

1 based on lack of experience by CWS and the alleged poor performance by the operator it  
2 intends to engage.

3         The response to this allegation of poor performance directed at Envirolink is a simple  
4 one and is addressed in CWS's testimony. The allegation or implication that failure to meet  
5 effluent limitations was not occurring before Envirolink took over but only began to occur  
6 thereafter or that this was an intentional failure by Envirolink is erroneous, is slanderous, and it  
7 should never be countenanced. In time and in spite of the draconian operating strictures  
8 imposed by the DWR motivated consent decree, the effluent exceedances have been corrected.  
9 The Public Staff, were it willing to make a thorough presentation, would have acknowledged  
10 this.

11         With respect to the suggestion that CWS provide a \$1,000,000 bond, another basis  
12 relied upon by the Public Staff is that CWS has stated that it will seek authority to provide  
13 service in the Fost and Flora subdivisions. The application before the Commission to obtain a  
14 CPCN for the Fost subdivision has been pending before the Commission since June 1, 2021. As  
15 far as CWS can determine, this application has been languishing over this period of time due to  
16 Public Staff inaction. No application by CWS has been filed with respect to the Flora subdivision.  
17 Obviously, it would be premature and unreasonable to require a bond for operating the Flora  
18 and Fost systems when there has been no authorization by the Commission for CWS to serve  
19 those systems. When and if that point is reached, the time to address the bond for serving  
20 those systems would arrive. Interestingly and inconsistently, the Public Staff ignores the  
21 position of CWS that its efforts to serve Fost and Flora should reduce risks to customers in Eagle  
22 Creek. Obviously, the Public Staff wishes to have it both ways; it refuses to recognize the  
23 benefits of service in Eagle Creek in order to impose onerous conditions on CWS for its  
24 willingness to serve there.

25

1 Q. YOU HAVE RECITED THE PROVISIONS OF THE CONSENT DECREE ENTERED INTO BY DWR  
2 AND SANDLER UTILITY. WHAT ROLE , IF ANY, DID CWS OR ENVIROLINK PLAY IN NEGOTIATIONS  
3 LEADING UP TO THE TERMS OF THE CONSENT DECREE?  
4

5 A. While the negotiations leading up to the consent decree were underway and it terms  
6 addressed, an Asset Purchase Agreement had been negotiated between Sandler Utility and  
7 CWS for the sale of the wastewater system. CWS had filed its application before this  
8 Commission seeking approval of the transfer. Envirolink served as contract operator for the  
9 Eagle Creek system. Neither CWS nor Envirolink were parties to the consent decree. The  
10 defendant listed in the consent decree is Sandler Utility. Neither CWS, nor Envirolink, appeared  
11 before the Superior Court judge when the consent decree was presented for approval. To the  
12 best of my knowledge, neither the Public Staff nor representatives of the Commission were  
13 formal participants in the negotiations. The North Carolina Attorney General, DWR, and Sandler  
14 Utility apprised CWS and Envirolink of the negotiations leading up to the consent decree, and  
15 representatives of CWS and Envirolink participated in informal discussions addressing the  
16 consent decree. In these informal discussions, representatives of CWS and Envirolink  
17 maintained that the provision making a transferee of the Eagle Creek wastewater system a  
18 surrogate for the obligations imposed upon Sandler Utility and making the transferee subject to  
19 contempt for failure to comply with those provisions was counterproductive, unnecessary, and  
20 not in the best interests of the consumers within Eagle Creek. Representatives of CWS and  
21 Envirolink likewise argued that in addition to addressing the current need to rectify  
22 inadequacies of the Eagle Creek system, attention should be given to a longer term solution.  
23 Neither of these arguments found their way into the consent decree. CWS was in the process of  
24 undertaking a thorough analysis of the most cost effective and reliable system with which to  
25 provide service within Eagle Creek. From the perspective of CWS, expending substantial  
26 amounts of funds and labor to provide temporary repairs to the existing vacuum system was ill-  
27 advised.

1  
2 Q. HAS CWS UNDERTAKEN A STUDY TO COMPARE THE COST, ON BOTH OF INSTALLATION  
3 AND OF LONG TERM REPAIR AND MAINTENANCE OF REPLACING SUBSTANTIAL PARTS OF THE  
4 EAGLE CREEK SYSTEM WITH GRAVITY COLLECTION VERSUS LEAVING THE EXISTING VACUUM  
5 SYSTEM IN PLACE AND CONTINUING TO MAKE THE EXPENDITURES TO COMPLY WITH THE  
6 CONSENT DECREE AND TO MAINTAIN AND REPAIR THE VACUUM SYSTEM INTO THE FUTURE?

7  
8 A. Yes. In summary fashion our investigation shows that over the long term the cost for  
9 replacing important components of the collection system with gravity will be cheaper and will  
10 provide more reliable service. Our calculations show as follows:

Line	Item Description	Estimate
1	Vacuum System Replacement	\$2,865,000.00
2	Gravity System Replacement	
	2021 Estimate	\$1,667,000.00
	2022 Estimate	\$2,417,150.00

11  
12  
13 Q. WHAT ACTION DOES CWS REQUEST THE COMMISSION TO TAKE?  
14  
15 A. CWS urges the Commission to take greater affirmative initiative with respect to  
16 addressing the difficult circumstances in Eagle Creek than the laissez faire recommendation of  
17 the Public Staff. Just as CWS urged a comprehensive assessment and long term solution to the  
18 Eagle Creek situation in the Raleigh meeting among representatives of all the affected parties,  
19 CWS again urges that the Commission to assert itself in accomplishing a satisfactory long term  
20 solution that goes above and beyond the DWR sponsored consent decree. The Commission and  
21 the environmental regulators are supposed to be knowledgeable on utility service, and should  
22 be working in cooperation with those having the financial resources, willingness and experience  
23 in operating the Eagle Creek system, and collectively should be able to arrive at a reasonable  
24 solution.

1 CWS urges the Commission to endorse a solution which includes the following:

- 2 1. Direct the Public Staff to work with CWS, Sandler Utility and DWR to ensure that  
3 the existing collection system permit and Consent Judgement remain in place  
4 until the following steps can be implemented.
- 5 2. CWS receives the certificate of public convenience and necessity to own and  
6 operate the Eagle Creek wastewater collection and treatment system.
- 7 3. The Commission requires a reasonable bond based on the requirements to serve  
8 the Eagle Creek system.
- 9 4. CWS, Public Staff and DWR work to obtain a new collection system permit from  
10 DWR to construct and upgrade the collection system.
- 11 5. CWS, Public Staff and DWR work to transfer the wastewater treatment permit  
12 from Sandler Utility to CWS.
- 13 6. CWS upgrades or replaces the collection system for the residents of Eagle Creek.
- 14 7. The Commission, as part of its order to impose on CWS a requirement that upon  
15 receipt of the certificate of public convenience and necessity to replace the  
16 vacuum collection system serving the Eagle Creek community.
  - 17 a. To the extent the Commission, based on the evidence in these dockets,  
18 determines that the existing vacuum system for Eagle Creek should  
19 remain in place, CWS urges the Commission to so rule. It is unfortunate  
20 that the Commission has no recommendation from the agency charged  
21 with responsibility to investigate this issue.
  - 22 b. To the extent that the Commission, based on the evidence in these  
23 dockets, determines that it is appropriate to replace the vacuum system  
24 with another type system, CWS urges the Commission to so rule.
  - 25 c. To the extent the Commission determines that the decision to replace or  
26 repair should be left to the discretion of CWS, CWS urges the Commission  
27 to so rule.

- 1 d. To the extent that the Commission determines that CWS should compile  
2 and file periodic reports informing the Commission of progress in  
3 meeting service obligations or the expenditure of funds, CWS urges the  
4 Commission to so rule.
- 5 e. To the extent that the Commission determines that CWS should submit a  
6 budget and a timeline for making improvements to be overseen by the  
7 Commission, CWS urges the Commission to so rule.
- 8 8. CWS urges that the Commission, as part of its order, to prohibit CWS from  
9 requesting any rate increase until such time that the Eagle Creek vacuum system  
10 is replaced and the wastewater treatment plant is upgraded and expanded.
- 11 a. To the extent that the Commission determines that reasonable  
12 conditions should be imposed on CWS with respect to issues of service  
13 reliability and the expenditure of costs, CWS urges the Commission to  
14 articulate and approve such conditions.
- 15 b. To the extent that the Commission determines that reasonable  
16 limitations should be imposed upon the inclusion of expenditures in its  
17 rate base calculation related to the expenditures of funds necessary to  
18 bring the system into compliance with reasonable regulatory standards,  
19 CWS urges the Commission to so rule.
- 20 c. To the extent that the Commission determines that there should be a  
21 delay in a filing by CWS for an adjustment to rates until such time as the  
22 above conditions are met, CWS encourages the Commission to so rule.
- 23 9. Until such time in the future that the Commission takes action on either CWS's  
24 existing new franchise request for Fost or potential future contiguous extension  
25 request in the future for Flora, CWS urges that the Commission address the  
26 amount of the bond to serve those systems at that time.
- 27

1 . The Commission and DWR have full authority to oversee the implementation of such  
2 provisions. CWS anticipates the vacuum system replacement to take approximately 18 months  
3 (with a construction period of approximately 6 months). In the meantime, to the extent that  
4 repairs, replacements and additions to the existing vacuum system are necessary to alleviate  
5 short term issues, reliance on the provisions of a consent decree should continue.

6 From CWS's perspective, it would be appropriate for the Commission to consider  
7 whether or not the costs of such continued improvements should be added to Sandler's  
8 investment for which recovery is permissible. As the original agreement between Sandler and  
9 CWS contemplated, CWS maintains that the ability to increase purchase price, based on  
10 prudent NCUC approved upgrades, provides a meaningful incentive for Sandler to continue to  
11 invest until CWS can complete the required upgrades and replacements.

1 Q. And also, Mr. Myers, on -- yesterday, on  
2 June 7th, you filed supplemental testimony as well  
3 consisting of seven pages; is that correct?

4 A. That is correct.

5 Q. And if I were to ask you those questions  
6 today on the stand, would your answers be the same?

7 A. They would.

8 Q. And, to the best of your knowledge, are the  
9 answers to those questions accurate and truthful?

10 A. They are.

11 Q. Thank you.

12 MR. ALLEN: Chair Mitchell, I would move  
13 that Mr. Myers' supplemental testimony consisting  
14 of seven pages be admitted into the record.

15 CHAIR MITCHELL: All right. Hearing no  
16 objection to your motion, I'll allow the  
17 supplemental testimony filed June 7th consisting of  
18 seven pages to be copied into the record as if  
19 delivered orally from the stand.

20 MR. ALLEN: Thank you.

21 (Whereupon, the prefiled supplemental  
22 testimony of Michael Myers was copied  
23 into the record as if given orally from  
24 the stand.)

1 Q. PLEASE STATE YOUR NAME, POSITION WITH CURRITUCK WATER & SEWER, LLC, AND  
2 BUSINESS ADDRESS.

3 A. My name is Michael J. Myers, and I am the Vice-President, Secretary and Treasurer of  
4 Currituck Water & Sewer, LLC ("CWS"). My business address is 4700 Homewood Court,  
5 Suite 108, Raleigh, North Carolina 27609.

6

7

8 Q. What is the purpose of your supplemental testimony?

9

10 A. The purpose of my supplemental testimony is to support the Settlement Agreement and  
11 Stipulation entered to on June 6, 2022 among Currituck Water and Sewer LLC, Sandler Utilities  
12 at Mill Run LLC and the Public Staff North Carolina Utilities Commission. Through this  
13 settlement agreement and stipulation, the parties have attempted to resolve outstanding  
14 differences among them that have arisen during the course of this proceeding and that are  
15 documented in the testimony and exhibits of the witnesses that had been filed in this docket.

16

17 Q. Can you summarize the settlement agreement and stipulation?

18

19 A. Yes . Through the Settlement Agreement and Stipulation, the parties agree and support  
20 the transfer of the certificate of public convenience and necessity from Sandler to CWS. The  
21 Settlement Agreement and Stipulation includes a number of conditions and constraints under

1 which this transfer will take place. Most significantly, the Settlement Agreement and Stipulation  
2 attaches and incorporates as an exhibit the Second Amended Consent Judgment executed by  
3 the North Carolina Department of Environmental Quality, CWS and Sandler. The most  
4 significant issue was the subrogation of liability between the Sandler Utility and CWS. This  
5 Second Amended Consent Judgment to be filed for approval by the Superior Court addresses  
6 the conditions and constraints under which a permit from DEQ will be issued to CWS to provide  
7 the wastewater collection and treatment services for the Eagle Creek subdivision in Currituck  
8 County in place of Sandler. The original Consent Judgment and the First Amended Consent  
9 Judgment imposed requirements upon Sandler arising from service issues with respect to the  
10 vacuum collection system and wastewater treatment plant that on or about September 2020  
11 experienced a number of catastrophic failures. In the meantime, in compliance with the  
12 consent judgments the wastewater system at Eagle Creek, though it remains in a vulnerable  
13 condition, has reached a level of stability so that by and large a reasonable level of treatment  
14 and service has been restored.

15

16 Q. In your opinion, what factors precipitated a willingness of the parties to reach  
17 agreement on the contested issues?

18

19 A. After conducting extensive discovery, the Public Staff in its prefiled testimony  
20 maintained that the application of CWS should be held in abeyance pending release of Sandler

1 from the Superior Court imposed consent judgment or a willingness on behalf of CWS to be  
2 substituted with respect to Sandler's obligations under the Consent Judgment. As indicated  
3 above, many of the conditions and constraints by the time the parties entered into the  
4 Settlement Agreement and Stipulation had been at least partially fulfilled through the  
5 expenditure of substantial capital and personnel resources. Significantly, a major requirement  
6 of the Consent Judgment was that an independent engineering expert undertake a  
7 comprehensive evaluation of the Eagle Creek system and report its findings and that these  
8 findings be taken into account in providing a long term solution. Century Engineering undertook  
9 such an evaluation and in its report, they substantiated the earlier reports and CWS's position  
10 that it was in the best interest for those being served by the Eagle Creek system that the  
11 vacuum collection system be substantially modified or replaced. CWS has from the beginning  
12 advocated the need to substantially modify or replace the vacuum system rather than continue  
13 to expend substantial funds in making the modifications and improvements initially  
14 contemplated in the consent judgment.

15  
16 Based on the Century Engineering report and the steps undertaken to rectify service issues as  
17 required under the Consent Judgment, DEQ and CWS were able to negotiate the Second  
18 Amended Consent Judgment to recognize the condition of the system as of the date of the  
19 Second Amended Consent judgment, eliminate or modify some requirements in light of existing  
20 conditions and address long term solutions in light of the recommendations of Century

1 Engineering. Many of the system improvement requirements remain as well as many of the  
2 reporting requirements that will allow DEQ, the Public Staff and the Commission to oversee  
3 improvements and level of service within Eagle Creek.

4

5 Q. Is it your opinion that the Consent Judgment and Stipulation and Settlement Agreement  
6 are appropriate and that it is in the public interest for the Commission to approve the transfer  
7 of the certificate of public convenience and necessity from Sandler to CWS?

8

9 A. Yes. The agreement provides provisions to permit oversight by both the Commission  
10 and DEQ to insure service levels are maintained during the interim period while CWS upgrades  
11 the collection system and CWS's system upgrade plan.

12

13 Q. Does the Stipulation and Settlement Agreement address issues other than those  
14 addressed in the Second Amended Consent Judgment?

15

16 A. Yes. While CWS is concerned about the bond amount, CWS agrees that a substantial  
17 bond is prudent, especially during construction period to upgrade the facility. The parties have  
18 reached agreement on the level of bond to be imposed as a condition upon CWS' obtaining the  
19 CPCN. The parties have reached agreement upon the net original cost of the system at the time  
20 of the transfer and the purchase price under the Asset Purchase Agreement between Sandler

1 and CWS. After its extensive evaluation, the Public Staff concludes that CWS is substantially  
2 capitalized and has the financial resources to undertake service within Eagle Creek. CWS has  
3 not requested to adjust rates in this proceeding. CWS has agreed not to seek plant acquisition  
4 adjustment with respect to the Eagle Creek system.

1 Q. Thank you. Mr. Myers, do you have a summary  
2 of your supplemental testimony that you are able to  
3 give today?

4 A. Sure. Supplemental testimony, in essence, it  
5 summarizes the joint settlement agreement between  
6 Currituck Water and Sewer and the Public Staff, as well  
7 as the settlement agreement between Currituck Water and  
8 Sewer and the consent order -- or the consent judgment  
9 that Sandler Utilities and DEQ have executed.

10 Q. Thank you, Mr. Myers.

11 MR. ALLEN: The witness is available for  
12 questions.

13 CHAIR MITCHELL: All right. It's my  
14 understanding there is no cross examination for the  
15 witness.

16 MS. HOLT: That's correct.

17 CHAIR MITCHELL: Okay. For the record,  
18 thank you.

19 Commissioners, questions for the  
20 witness? Commissioner Clodfelter, go ahead.

21 EXAMINATION BY COMMISSIONER CLODFELTER:

22 Q. Mr. Myers, good morning. I have a couple of  
23 questions for you. We've got some terms that have been  
24 floating around in the case up to this point, and they

1 continue to float, and that's probably okay. I'm  
2 not -- I'm not judging that, but there continues to be  
3 evidence of things yet to be done. We use the term  
4 sometimes "modify," "substantially modify," "replace,"  
5 and we use the words "upgrade." All of those are  
6 future-oriented words. And so I want to ask you about  
7 one provision in the stipulation, just to be sure we're  
8 interpreting the stipulation correctly.

9 In paragraph G, the -- Currituck is agreeing  
10 that it will not seek a general rate increase until  
11 such time as the vacuum system is replaced. And there  
12 is one of those words, "replaced." I want to be sure  
13 we understand what's being committed to there.

14 And let me ask you if -- again, because  
15 sometimes the words used are "modified," sometimes the  
16 words used are "replaced," and sometimes the words used  
17 are "upgraded."

18 So, would I be fair in interpreting that  
19 provision to mean that Currituck will not be requesting  
20 a general rate case until such time as what you  
21 referred to as the "new system upgrade plan" has been  
22 implemented?

23 A. That is correct, sir.

24 Q. Whatever that is -- whether that's a

1 replacement, whether it's a modification of the  
2 existing system, whether that's some other upgrade,  
3 whether it's a wholesale replacement, whatever it is,  
4 until the new system upgrade plan is implemented, you  
5 won't seek a general rate increase?

6 A. That is correct. And I would just add --

7 Q. So, in -- in paragraph G, the use of the word  
8 "replaced" is sort of a little loose wording, in other  
9 words?

10 A. Yeah. I would say, you know, our position  
11 has been, from the beginning, that the existing vacuum  
12 system out there has reached the end of its life and it  
13 needs to be replaced with one technology or another,  
14 whether that be low pressure, gravity, or -- but that  
15 has been one of the -- at least from the public's  
16 perspective, one of the more contentious issues, is  
17 what will that replacement consist of.

18 Q. Right.

19 A. So we have been working with both DEQ and the  
20 community to, kind of, make sure that we try to address  
21 their needs with the replacement. But yeah, it's our  
22 intent to -- or our commitment to replace that system.

23 Q. I think, in your settlement testimony, you  
24 use the word "substantially modify" or "replace," and

1 that's a fairly broad inclusive thing.

2 It doesn't prejudge today exactly what that's  
3 gonna consist of, right?

4 A. That's correct.

5 Q. Good. Then I think we understand the  
6 stipulation the same way you do, so thank you for that.

7 The next question I've got for you is, just  
8 to be sure, again, we're all on the same page --  
9 Currituck and the Commission are on the same page.

10 So Currituck understands that the only thing  
11 before the Commission today is the approval of the  
12 transfer of ownership, correct?

13 A. That is correct.

14 Q. And that today the Commission, how it rules  
15 on the approval of the transfer of ownership will not  
16 at all involve any considerations of whether or not the  
17 Company will or will not be in a future rate case  
18 entitled to recover any particular expenditures it may  
19 make on the system going forward?

20 A. That is absolutely correct.

21 Q. Everybody understands that. Whatever you  
22 agree with DWR, whatever you agree in the consent  
23 judgment, that's still got to be reviewed and evaluated  
24 by this Commission for reasonableness and prudence, and

1 whether or not it's providing adequate reliable  
2 service, and that won't be determined by this  
3 Commission until a future general rate case.

4 The Company understands that?

5 A. We do, yes. So that's what we're -- yeah, we  
6 understand that. We're on the same page.

7 Q. Commission is not signing off on any  
8 particular course of action today.

9 A. Just transfer and nothing more.

10 Q. We're with you. Thank you very much for  
11 answering my questions.

12 CHAIR MITCHELL: All right. Go ahead,  
13 Commissioner McKissick.

14 EXAMINATION BY COMMISSIONER MCKISSICK:

15 Q. Thank you, Chair Mitchell. Just a few  
16 questions, and it relates to the consent order, consent  
17 judgment, and particularly Exhibit B. And, of course,  
18 that's the Interim Service and Restoration Plan.

19 Now, underneath this particular exhibit it  
20 states that there are gonna be certain tasks that are  
21 taken care of on a daily basis, and it's outlined  
22 through, I guess, items A through G. And then it moves  
23 down to what's being done on a weekly basis, and  
24 they're items A through E there. And then it goes to

1 monthly system checks, and it's items A through C. And  
2 then some annual matters.

3 Now, if you go back to the next section that  
4 follows this, it moves over to -- under item number 4,  
5 it talks about what's gonna happen if there's a sewer  
6 overflow or system failure. And it talks about what's  
7 gonna take place to expeditiously restore and maintain  
8 service to homeowners in event of those failures. And  
9 it specifically gets into what takes place within four  
10 hours. And under those conditions it talks about  
11 remove and dispose of solid waste, apply line to the  
12 affected areas, clean, sanitize the hard surfaces, and  
13 to the extent practical, vacuum any sewer overflows.

14 Now, let me ask you this, those are things  
15 that are always gonna consistently take place within  
16 four hours, regardless of how many homes are impacted;  
17 is that correct?

18 A. That is correct; yes, sir.

19 Q. Okay. So the language that is in the order  
20 earlier dealing with materiality, which talks about  
21 what's gonna take place when there is a material  
22 problem, that's separate, independent, and apart from  
23 that, because it has to impact at least four  
24 homeowners; is that correct?

1           A.       Yeah, that's correct. So there's -- on the  
2 vacuum system there's two, kind of, primary assets out  
3 there; one is what's called a central vacuum station,  
4 and the other are the lines and the valves that are out  
5 in the community themselves, and both have to work,  
6 kind of, in tandem. And so a lot of those individual  
7 tasks that you -- you were citing there, those are  
8 related to -- specifically to that central vacuum  
9 station, and then the service-response provisions that  
10 you were talk -- you were citing in there are related  
11 to the valves that are out in the community and if  
12 there's issues with the lines out in the community.

13          Q.       Okay. But it seems that the ones that deal  
14 with what I call sewer outfall problems, they take  
15 place and they're -- they're gonna be responded to  
16 regardless of whether there's four households impacted?

17          A.       That's correct.

18          Q.       All right. It wasn't clear to me, in reading  
19 the section dealing with materiality -- and the  
20 materiality section, I guess, is on page 4, and it goes  
21 into what's gonna take place if there is -- material  
22 things occur.

23          A.       Yeah. So the sewer overflows, that -- to  
24 clarify, that is whether it's one house or four houses,

1 it's immaterial. If there is any sewer overflow, that  
2 would be responded to immediately.

3 Q. And I guess, on page 5, there are provisions  
4 dealing with responding to citizens' complaints?

5 A. Yes.

6 Q. And it talks about responding in a timely  
7 way. And I guess in some instances here, they say if  
8 there is a material system failure, there's gonna be a  
9 response no later than two hours after receiving  
10 notice?

11 A. That's correct; yes, sir.

12 Q. And, of course, it goes into more greater  
13 specificity about how -- about certain responses will  
14 take place. And all of that language, it's been  
15 understood, agreed upon by the parties, and you feel  
16 there is staffing in place that can accommodate all of  
17 the requirements of this consent order?

18 A. That is correct; yes, sir.

19 Q. All right. Thank you. I don't have any  
20 further questions.

21 CHAIR MITCHELL: All right. Additional  
22 questions for the witness?

23 (No response.)

24 EXAMINATION BY CHAIR MITCHELL:

1 Q. All right, Mr. Myers, I have a few for you.  
2 Looking at the stipulation, section -- I believe it's  
3 section 2, paragraph J indicates that y'all file -- the  
4 Currituck agreement with Envirolink subsequent to the  
5 Commission's approval of the transfer application.

6 Why withhold until the Commission approves?  
7 Why not go ahead and file that now?

8 A. That just popped up in a settlement agreement  
9 within the last two or three days, and we just didn't  
10 feel that there was -- currently, that agreement isn't  
11 in place, and so we needed time to get that agreement  
12 prepared and submitted over to the Commission, and we  
13 didn't want to delay these proceedings.

14 Q. Okay. Okay. So when will that agreement be  
15 in place? Do y'all have -- I mean, is that -- when do  
16 you anticipate getting that agreement finalized?

17 A. Here over the next couple of weeks we should  
18 be able to get that in.

19 Q. Okay. So within the next couple of weeks  
20 we'll expect it to be -- we can expect it to be filed  
21 in this docket?

22 A. Yes, ma'am.

23 Q. Okay. All right. Responsibility for  
24 customer complaints. The stipulation involves

1 reporting obligations, both -- some are quarterly, and  
2 I believe there may be monthly obligations as well.  
3 And you are -- you would be obligated to report both to  
4 DEQ and DWR, and then I think also to the Public Staff  
5 under the stipulation.

6 With these overlapping reporting requirements  
7 across state agencies, we're a bit concerned about the  
8 defusion of responsibilities between agencies. Help us  
9 understand, sort of, your under- -- what is your  
10 understanding of the respective roles of the Public  
11 Staff and the DEQ agencies involved?

12 A. Well, I think -- the first thing is, I think  
13 our understanding is there is quarterly reports, and  
14 that the same report that we would be filing with DEQ  
15 we would be filing with Public Staff or the Commission  
16 here, so.

17 Q. Okay. So just to make sure I'm clear, as far  
18 as you're concerned, DEQ and the Public Staff will get  
19 the same information?

20 A. That is correct.

21 Q. Okay.

22 A. And, I'm sorry, can you repeat the last part  
23 of your question?

24 Q. Yes. We're -- so our concern is the defusion

1 of responsibilities across the respective agencies  
2 involved here, as well as confusion that might arise on  
3 the part of the customers of the system as to who's in  
4 charge here, to whom do we complain if there is  
5 problems, to whom do we look for, you know, to hold the  
6 Company accountable in the event of any future  
7 problems? And so I just want to -- I want to know your  
8 take on which agency -- you know, what the respective  
9 roles of the agencies are. You testified, and I heard  
10 your testimony today to be that you-all provide the  
11 same information, identical information, to DEQ and the  
12 Public Staff?

13 A. That is correct.

14 Q. And then do you -- in terms of outreach to  
15 customers, how will you address customer questions or  
16 concerns about our concern?

17 A. Yeah. So make sure I -- please make sure I  
18 answer your question correctly, but -- so DEQ, we see  
19 their role as regulating or oversight of the  
20 environmental and operation of the collection system  
21 and the wastewater treatment facility; and the Public  
22 Staff or the Commission's role is, if there are  
23 customer concerns that Currituck Water and Sewer does  
24 not resolve satisfactory to the customer, they have the

1 option to contact the Commission and get their voices  
2 heard in here; and additionally, if and when we do come  
3 in for a rate case, that, you know, the Commission  
4 would then oversee rate regulations and service levels  
5 for Currituck Water and Sewer.

6 Q. Okay. All right. The asset purchase  
7 agreement. So attached to the application that was  
8 filed in this docket was what is titled a Revised and  
9 Restated Asset Purchase Agreement by and Between  
10 Sandler Utilities at Mill Run, LLC and Currituck Water  
11 and Sewer, LLC. It's dated April 14, 2021. There is  
12 also reference to an APA in the stipulation and the  
13 settlement agreement that the companies and the Public  
14 Staff have entered into.

15 Is this April 21st -- I mean April 14, 2021,  
16 sorry. Is this -- is this April 14, 2021, asset  
17 purchase agreement still the document that controls or  
18 the contract that controls the rights and obligations  
19 between Sandler and Currituck?

20 A. It is.

21 Q. It hasn't been amended or revised, or is  
22 that --

23 A. It has not.

24 Q. Okay. It has not, okay. Okay. How -- we

1 have some questions about timing of the transaction  
2 here.

3 In my quick review of the APA, it does not  
4 appear that -- that -- as a precedent or a precondition  
5 to closing, that all government approvals have to be  
6 secured; is that -- am I reading the APA correctly?

7 A. That is correct. The typical process with  
8 DEQ is the closing has to happen first before they will  
9 accept the change of the owner on the permit. So after  
10 the Commission order comes out. And then we can move  
11 to closing, then we'll be able to file to DEQ to get  
12 the permit's name -- it's called name and ownership --  
13 changed over to the Currituck Water and Sewer.

14 Q. Okay. So help me just make sure I got this  
15 right.

16 Assuming the Commission approves this  
17 transfer application, then you-all will close, and then  
18 you would move to DEQ to have the permit transferred to  
19 Currituck -- from Sandler to Currituck?

20 A. That is correct. And one other thing that  
21 probably is important for the Commission to hear is  
22 that the consent judgment that Currituck Water and  
23 Sewer has negotiated with DEQ would not become  
24 effective until DEQ issued that permit in Currituck

1 Water and Sewer's name. They intend to file it with  
2 the courts ahead of time, but it would not become  
3 effective until DEQ issues the permit.

4 Q. Okay. Well, as I understand it, it wouldn't  
5 become effective until a judge executes the order; is  
6 that correct?

7 A. That's correct.

8 Q. So the -- I'm not sure if we can control the  
9 timing of when a judge issues -- executes the order,  
10 but what I'm hearing you say is that that won't happen  
11 until the permit is transferred to Currituck?

12 A. Water and Sewer; yes, ma'am.

13 Q. Okay. Okay. Whose responsibility is it  
14 to -- let me back up.

15 Has that second amended consent judgment been  
16 filed already with the Currituck County Court?

17 A. It has not, to my knowledge.

18 Q. Okay. Do you know when it will be filed?

19 A. We do not. I think -- my understanding is  
20 the Attorney General's Office and Sandler Utilities  
21 will take the lead on getting that filed with the  
22 courts.

23 Q. Okay. And when -- do you know when they plan  
24 to do that?

1           A.       Timing-wise, we've been told that that can  
2 happen prior to the permit application going in and  
3 prior to the Currituck Water and Sewer and Sandler  
4 closing. They can file with the courts, I think, any  
5 time now, but the timing on when the courts will -- the  
6 judge will rule on that, we don't know. But assuming  
7 he did adopt it, that it wouldn't go into effect until  
8 the actual permit came out.

9           Q.       Okay.

10                   CHAIR MITCHELL: I'd like to ask counsel  
11 for Currituck to provide notice to the Commission  
12 once the second amended consent judgment has been  
13 filed with Currituck County.

14                   MR. ALLEN: Understood, Chair Mitchell.

15                   CHAIR MITCHELL: Okay. Thank you.

16           Q.       All right. Mr. Myers, what is your -- what  
17 is your experience -- or do you have any thoughts on  
18 how long it will take DEQ to approve the transfer of  
19 that permit?

20           A.       Typically, it's a procedural issue with them,  
21 and, you know, they can issue it fairly quickly. I  
22 would say under 30 days. Though they have -- there  
23 have been occasions when it's taken them longer to do  
24 that. I think there's a priority on the Division's --

1 from the Division's perspective to want to process this  
2 as quickly as they can.

3 Q. And will this be -- will the transfer be  
4 handled by the regional office or a central office?

5 A. Central office.

6 Q. Okay.

7 A. Commissioner Mitchell, if I could add  
8 something to that?

9 Q. Please do.

10 A. There are two permits out here for -- that  
11 Sandler has on this. One is related to the treatment  
12 plant, the other is related to the collection system.  
13 The treatment plant permit has been issued. It's not  
14 expired. It's valid out there in Sandler Utilities'  
15 name. The collection system permit is in for a permit  
16 renewal. So the name and ownership change will likely  
17 be combined with the collection system renewal  
18 application that's already been filed.

19 Q. Okay. Make sure we got that right. So it's  
20 the collection system permit that's in for the renewal  
21 or it's the non-discharge --

22 A. No. It's the collection system permit that's  
23 in for renewal.

24 Q. Okay. And just following up with either, is

1 it -- just gonna test your memory here, because  
2 there's -- you're, sort of, addressing one of the  
3 questions we had for you, but is the collaboration  
4 system permit WQS -- WQCS-00290; does that seem right?

5 A. The WQCS certainly is the collection --  
6 indicates the collection system permit. Now, if that's  
7 the -- I'd have to go back to my -- you're asking too  
8 much of my memory.

9 Q. Okay. And then so the WQ permit --

10 A. That's for the treatment.

11 Q. -- that would be the discharge permit?

12 A. Or the non-discharge.

13 Q. Non-discharge. To be clear, it's the  
14 non-discharge permit, okay.

15 A. That's correct.

16 Q. So both the collection system permit and the  
17 non-discharge permit will be transferred to Sandler --  
18 I mean to Currituck. The transfer of the collection  
19 system permit will take place in conjunction with the  
20 renewal of that permit.

21 A. That's correct.

22 Q. That is how I understand your testimony.  
23 Do I understand your testimony correctly?

24 A. You do. That's our understanding.

1 Q. Okay. Thank you. What's the timing of the  
2 issue-- what is your understanding of the timing of  
3 the issuance of the collection system permit?

4 A. They -- we did get notice, I think about  
5 30 days ago, that they have assigned that permit  
6 renewal to somebody over at the Division.

7 Q. Okay.

8 A. So it is being actively worked on now.

9 Q. Is it also being handled by central office?

10 A. It is.

11 Q. Okay. All right. Mr. Myers, assuming the  
12 Commission issues an order accepting stipulation and  
13 approving the application for transfer, when does  
14 Currituck -- when will Currituck file the agreed-upon  
15 bond?

16 A. We're working with the bonding agency right  
17 now. I would expect that to be with -- 1st of July at  
18 the latest.

19 Q. Okay. All right. The stipulation -- looking  
20 at -- do you have -- you don't have it. Okay.  
21 Stipulation page 6, looking at, again, section 2, page  
22 6, paragraph B references all other regulatory  
23 approvals for operation of the wastewater system being  
24 attained.

1           Which other regulatory approvals are we  
2 talking about?

3           A.     The only regulatory approvals, aside from  
4 transfer proceedings here, would be the two DEQ permits  
5 that we have been talking about from DEQ. Those are  
6 the only permits we need to operate.

7           Q.     Okay. So the -- okay. All right. Got it.  
8 All right. Commissioner Clodfelter went over that  
9 information for you.

10           Can you explain, for the Commission's  
11 benefit, the changes to the corporate offices for  
12 Currituck since the filing of this application?

13           A.     I think there was a -- we -- initially, when  
14 we went in there, this was all under Longleaf  
15 Utilities. Longleaf Utilities then restructured the  
16 organization, and we have an equity partner, Clear  
17 Current, that is providing the equity needed for what  
18 we need -- the project that we need to do here.

19           Q.     So Ken Raber still involved?

20           A.     Yes.

21           Q.     In what capacity?

22           A.     He's a board member. President of Currituck  
23 Water and Sewer and a board member.

24           Q.     So he's president of --

1 A. Currituck Water.

2 Q. -- of the operating Company?

3 A. He is.

4 Q. Okay. And what about David Strum?

5 A. David Strum is director of operations and  
6 also an officer and vice president of Currituck Water  
7 and Sewer.

8 Q. Okay. And what are the plans for your  
9 participation in the operating Company?

10 A. I'll be one of the board members in Currituck  
11 Water and Sewer, and vice president, secretary, and  
12 treasurer.

13 Q. Okay. For purposes of the record, will you  
14 confirm the exact date that Envirolink entered into a  
15 contract with Sandler for the operation of the Eagle  
16 Creek Wastewater System?

17 A. So that was actually -- how we got involved  
18 with Eagle Creek was actually through an acquisition of  
19 a Company on the Outer Banks called Enviro-Tech. That  
20 transaction was closed in February of 2020 with a  
21 trans- -- like a six-month transition period. So the  
22 previous Enviro-Tech employees and owner continued to  
23 operate Eagle Creek until August of 2020, and it was --  
24 or I'm sorry, September of 2020. And then in

1 September of 2020 the Envirolink staff took over the  
2 operations of the Eagle Creek Wastewater System.

3 Q. So September 2020, Envirolink personnel took  
4 over operations?

5 A. That's correct.

6 Q. Okay. Was there any sort of documentation  
7 between Enviro-Tech and Envirolink that sets forth the  
8 terms and conditions of that, what you call the  
9 six-month transition period?

10 A. Yeah. I believe it was in the agreement  
11 between Envirolink and Enviro-Tech, the purchase  
12 agreement, that stipulated that there would be a  
13 transition period.

14 Q. Okay.

15 A. I don't know that it stipulated six months.  
16 It just stip- -- it kind of was vague, in terms of it  
17 stipulated a transition period.

18 Q. But your testimony today is that, until  
19 September -- until -- through -- at least through  
20 August, the Enviro-Tech personnel continued to operate  
21 and maintain the system, and then in September,  
22 Envirolink personnel --

23 A. The exact date is September 7th.

24 Q. September 7th, okay.

1           And who from Envirolink stepped in to take  
2 over the operations?

3           A.     So the project manager is a gentleman named  
4 Tracy Miller.

5           Q.     Okay. Okay.

6                     CHAIR MITCHELL: All right. I'm gonna  
7 ask, as a late-filed exhibit, the agreement between  
8 Enviro-Tech and Envirolink.

9                     MR. ALLEN: Okay. Sounds good.

10          Q.     All right. Mr. Miller's rebuttal testimony  
11 explains that competitor technology has replaced the  
12 Air-Vac Systems in other locations.

13                     What -- do you -- what is meant by competitor  
14 technology?

15          A.     So there is, I think, two other companies --  
16 as we've done our research in the vacuum systems,  
17 there's two other companies, Flovac and Qua-Vac.  
18 Flovac having operations in the U.S., Qua-Vac does not  
19 have operations in the United States. But, globally,  
20 both of those -- both of those competitors of Air-Vac  
21 have gone in and conducted -- or done retrofits on what  
22 were formerly Air-Vac-type -- Air-Vac systems.

23          Q.     So that competitor technology specifically  
24 meant vacuum system technology?

1 A. That is correct.

2 Q. Okay. Were the -- were the residents of  
3 Eagle Creek informed about the precautions or the  
4 contingencies that Currituck's planned for the  
5 construction of the gravity sewer system?

6 A. Yeah. So I think, all totaled, there's been  
7 in the range of about 10 town hall-style meetings that  
8 Currituck Water and Sewer has conducted with the  
9 residents out there to, kind of, keep them abreast of  
10 the pros- -- both the process of these proceedings, and  
11 our evaluation of the different technologies, and the  
12 construction techniques to address a number of their  
13 concerns. So, yeah, that information has been conveyed  
14 to the residents.

15 Q. And how did the residents receive that  
16 information, specifically? How do the residents  
17 receive that information relating to the precautions or  
18 the contingencies that would be observed if the system  
19 were to be replaced?

20 A. Both verbally through the town hall meetings,  
21 and then we had put out, kind of, informational  
22 brochures and presentations to the community.

23 Q. Okay. Specifically, my question -- I wasn't  
24 clear. My question is, how did they react?

1           A.       Oh, react. Yeah. I think there's still --  
2 understandably, there is a lot of frustration by the  
3 community out there, because, you know, this system has  
4 had service issues as far back as we can identify.  
5 Back to 2020 -- 2002 there had been service issues out  
6 here on this system, so there is a fairly high level of  
7 frustration with the community.

8                   I think their concern is during the  
9 construction phase. Disruptions to the community  
10 during construction. You know, tearing up yards. And  
11 so we have talked to them about directional drilling  
12 techniques, construction methods that can minimize, but  
13 I think we have been very forthright with them that  
14 there is going to be a disruption during the  
15 construction phase of this project. And they hear the  
16 six- to nine-month construction window, and I think  
17 that concerns them a lot.

18           Q.       Okay. Mr. Freed -- I'm gonna ask you about  
19 your co-witness testimony.

20                   COMMISSIONER HUGHES: I have a follow-up  
21 question. Are you done with --

22                   CHAIR MITCHELL: You can follow up  
23 there, sure.

24                   COMMISSIONER HUGHES: Just to get

1 clarification.

2 CHAIR MITCHELL: You may.

3 EXAMINATION BY COMMISSIONER HUGHES:

4 Q. There is a lot of talk with dealing with the,  
5 quote, community. Could you just tell us a little bit  
6 about the, sort of, the governance structure that  
7 you're facing there, versus other places you might have  
8 worked? Is it a solid homeowners association that  
9 you're going through? Is it -- is there a water task  
10 force that has been created? Is it just a series of  
11 vocal individuals that are, kind of, dealing  
12 independently with you?

13 A. I think it's all of the above. So they do  
14 have an HOA that we have worked -- from the beginning  
15 we worked through. Initially, we were working directly  
16 with the board of the HOA, and then they appointed one  
17 of their residents, kind of the liaison. She's an  
18 engineer in the water industry working for a consulting  
19 engineer. So they appointed her to, kind of, work with  
20 us as we work through this. But then there are  
21 citizens out there who -- outside of the HOA, who don't  
22 feel like the HOA is adequately representing them, and  
23 so they voice their opinion separately.

24 EXAMINATION BY CHAIR MITCHELL:

1 Q. All right. Mr. Myers, Mr. Freed's  
2 testimony -- specifically the rebuttal testimony filed  
3 for Mr. Freed -- mentions that Sandler was made aware  
4 of the problems with the wastewater treatment facility  
5 through several reports over the years. Just sort of  
6 makes generic reference to reports.

7 What are these reports? What's the source of  
8 these reports? Were the reports made by Enviro-Tech or  
9 were they made by some other third-party engineer or a  
10 regulator?

11 A. We're unaware -- other than inspection  
12 reports from DEQ, we have not been able to find any  
13 other reports filed by Enviro-Tech or third-party  
14 engineers or anything like that. One of -- the records  
15 from Enviro-Tech have been -- we have not been able to  
16 find a lot of records, in terms of the operation of the  
17 Eagle Creek system. Mr. Freed did not turn -- if he  
18 has them, he did not turn them over to us.

19 Q. Okay. So then do I understand your testimony  
20 to be that the only source of reports that you-all --  
21 that Currituck was able to identify would have been  
22 inspection reports from DEQ?

23 A. That is correct.

24 Q. The DEQ agency involved.

1           A.       That is correct.

2           Q.       Okay. Mr. Myers, your -- in your testimony,  
3 there is a presentation that was -- there was attached  
4 a presentation that was made at one of these town hall  
5 meetings in January of this year. And in that  
6 presentation there is reference to low-pressure sewer  
7 alternative and it's -- the low-pressure sewer  
8 alternative is identified as being both economically  
9 and technically infeasible. Help us understand why  
10 that is.

11          A.       Yeah. So -- and maybe it's a little bit of  
12 an update on that analysis that has -- so the initial  
13 quotes that we have got in from the contractors for low  
14 pressure actually were higher than installation of  
15 gravity for the community. We have, since that  
16 presentation, gone back out to the contractors and  
17 asked them to, kind of, give us some updated pricing.  
18 Those numbers have come down to where they are  
19 competitive with gravity at this point in time. That's  
20 an update since that presentation went out, but at that  
21 point in time, gravity was, from a financial stand- --  
22 or cost standpoint, the more attractive alternative.

23          Q.       Okay. Can you provide an update to us on the  
24 status of the construction of the collection system

1 serving the Fost and the Flora subdivisions?

2 A. So the pump station forced main, that work is  
3 complete and been commissioned and certified by the  
4 engineer. Startup on that pump station -- there's no  
5 flow coming to it, but startup has been done. Phase  
6 one of the collection system on the development side  
7 has been installed and certified. They are  
8 currently -- the design for phases 2 through 5 on the  
9 collection system for Fost are ready to be submitted to  
10 DEQ. And we have -- we have DEQ coming out for an  
11 inspection on Friday of this week. That is tied to our  
12 submittal of that permit application with the division.

13 Q. Okay. And what type of collection system was  
14 installed?

15 A. Gravity.

16 Q. Gravity, okay. All right. LM Sandler &  
17 Sons, how is LM Sandler & Sons connected to Sandler  
18 Utilities, if at all?

19 A. I believe they are affiliated organizations.  
20 If I can look to Mr. Drooz, he may be able to confirm  
21 my understanding.

22 Q. Okay. Tell me -- tell me -- hang on. Tell  
23 me what you know about Sandler and -- I mean, is the  
24 extent of your testimony that you understand them to be

1 affiliated, but you don't know anything else about --

2 A. I don't -- yeah. I can't confirm the  
3 ownership structure or anything like that within the  
4 organization.

5 CHAIR MITCHELL: Okay. Mr. Drooz, I'll  
6 ask for a late-filed exhibit explaining the  
7 relationship between LM Sandler & Sons and Sandler  
8 Utilities at Mill Run, LLC.

9 Q. All right. Last question for you, Mr. Myers.  
10 Is there a difference between the service  
11 lives of rebuilt valves and controllers as opposed to  
12 brand new valves and controllers?

13 A. There is. But I would say that one of the  
14 unique features of these controllers that are inside  
15 the pits that doesn't tie to, kind of, the life of that  
16 unit is that there is a membrane inside that controller  
17 that, if it gets wet, renders that controller  
18 nonfunctional. So even though that valve may have, you  
19 know, several more years of life on it, it would -- if  
20 it gets wet during the course of its operation, that  
21 valve or that controller would need to be rebuilt.

22 Q. Okay. The lawyer up here doesn't understand  
23 how you could have a component in a wastewater  
24 treatment system that would fail upon getting wet, but.

1           A.       That's a -- that's been a very valid and good  
2 question, and one that I know we've asked several  
3 times.

4           Q.       Certainly someone smarter than I am developed  
5 it. So anyway.

6                   CHAIR MITCHELL: All right. Let me  
7 pause here and see if we've got questions from --  
8 all right. No additional questions. I will check  
9 in with counsel to see if there are questions on  
10 the Commission's questions.

11                   Ms. Holt?

12                   MS. HOLT: No questions.

13                   CHAIR MITCHELL: All right, Mr. Drooz,  
14 go ahead.

15 CROSS EXAMINATION BY MR. DROOZ:

16           Q.       Mr. Myers, I'd like to ask you a little bit  
17 about the transition from Enviro-Tech to Envirolink,  
18 and my understanding was that Envirolink, which is the  
19 company you're part of; is that correct?

20           A.       That is correct.

21           Q.       And acquired Enviro-Tech in February of '21,  
22 is that --

23           A.       Yeah, late February '21. Or, I'm sorry,  
24 2020.

1 Q. 2020, I'm sorry. That's right.

2 And Mr. Freed was the principal operator of  
3 Enviro-Tech?

4 A. That -- well, he was the -- yes, sir.

5 Q. Okay. And is it fair to say that it is not  
6 easy to find qualified operators of vacuum systems in  
7 North Carolina?

8 A. I think not just North Carolina, but I think  
9 nationally, because of when you look at the universe of  
10 collection systems, vacuum systems comprise a very  
11 small percentage of that technology out there, and it  
12 does take a different skill set from this of the other  
13 technologies that are out there.

14 Q. And is that one of the reasons why Envirolink  
15 wanted that transition period?

16 A. I would say, at that point in time, we didn't  
17 necessarily -- while we knew Eagle Creek had a vacuum  
18 system and it was certainly part of the thought  
19 process, it was more of understanding the operations  
20 of, in addition to Eagle Creek, a number of their other  
21 systems that they were operating and allowing, kind of,  
22 a smooth transition from Enviro-Tech to Envirolink.

23 Q. At that time in February of 2020, was  
24 Envirolink deeply experienced in operating vacuum

1 systems?

2 A. We were not.

3 Q. Okay. And did that period of -- let me back  
4 up a second.

5 Did Envirolink employees, to some degree,  
6 shadow Enviro-Tech in that transition period?

7 A. They did.

8 Q. And was part of that process to learn more  
9 about how to operate the vacuum system?

10 A. It was. And it also gave us the opportunity  
11 to send some of our managers to a vacuum training by  
12 the manufacturers, themselves.

13 Q. And after some of the significant  
14 malfunctions in the fall of 2020, did Flovac, or other  
15 companies brought in by Sandler, provide additional  
16 training to Envirolink?

17 A. Yeah. Over the -- you know, during that  
18 period and since that period, there has been several  
19 training events provided by Flovac, in particular, to  
20 our operators and even some of the Sandler staff.

21 Q. And given the experience and training that  
22 Envirolink staff have had since 2020, does Enviro- --  
23 do you view Envirolink as experienced and qualified to  
24 operate the vacuum system -- setting aside that some

1 upgrades are needed, and it's not necessarily the best  
2 technology, is Envirolink's competency at a level now  
3 where you feel like you can do a good job for the  
4 customers?

5 A. Certainly, that's true. I would also add to  
6 that that there has been some -- some things that we  
7 have done and that Sandler have done that I think  
8 have -- while the system is still vulnerable right now,  
9 allowed it to allow us to focus more on a long-term  
10 solution for the community, and specifically I'm  
11 speaking of there has been a monitoring system that has  
12 been installed on the system.

13 Little bit of background, if there is an  
14 issue with a service in the community -- I think this  
15 is valuable for the Commission to hear -- there is an  
16 issue with a service in the community, that all -- up  
17 until when the monitoring system got put in, all our  
18 guys were able to do is identify there is a problem in  
19 the community somewhere. They weren't able to identify  
20 where the problem was. So they would have to go home  
21 to home to search each home to find out where that  
22 issue was located. And if you did not locate it and  
23 find it within a period of minutes, the system would  
24 lose vacuum and the entire community would be without

1 vacuum. So the installation of the monitoring system  
2 that has been done allows us to, one, be alerted there  
3 is a problem sooner to allow our guys -- and we have  
4 guys that are out there now 24 hours a day 7 days a  
5 week -- allow our guys to identify there is an issue  
6 sooner, but they are also able to identify where the  
7 problem is at. And so that -- those two things with  
8 the 24-hour coverage and the monitoring system being  
9 installed, I think have been the most effective, in  
10 terms of service and being able to sustain service out  
11 there, of anything that's been done today.

12 Q. Okay. And after you acquired Enviro-Tech,  
13 did Envirolink enter into a written agreement to become  
14 the contract operator for Sandler Utilities with a  
15 five-year term? If you're familiar. If you're not,  
16 that's okay.

17 A. I want to say I think so, but I'm not  
18 100 percent.

19 MR. DROOZ: Okay. That's all my  
20 questions. Thank you.

21 MR. ALLEN: No questions.

22 CHAIR MITCHELL: Okay. All right. At  
23 this time, I believe, Mr. Myers, your morning is  
24 concluded.

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COMMISSIONER CLODFELTER:

Chair Mitchell, if there is such a five-year operating agreement and it's not already in the record, can we have it supplied as a late exhibit? It may already be in the record, I just don't remember.

MR. DROOZ: We will supply that.

COMMISSIONER CLODFELTER: Thank you.

CHAIR MITCHELL: All right. With that, Mr. Myers, you may step down and I will take a motion.

MR. ALLEN: Yes. Chair Mitchell, I would move that the exhibits of Michael Myers' testimony be admitted into the record, including from the rebuttal, Exhibits A through N, along with the attachments and appendices as identified in the testimony.

CHAIR MITCHELL: All right. Hearing no objection to that motion, it will be allowed.

(Myers Rebuttal Exhibits A through N were admitted into evidence.)

CHAIR MITCHELL: Also want to remind you-all Mr. -- let's see, Mr. Drooz, I will take a motion from you regarding the report filed by

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1 Sandler on customer comments.

2 MR. DROOZ: We would ask that be  
3 admitted into the record as evidence.

4 CHAIR MITCHELL: All right. Hearing no  
5 objection, Sandler -- the report filed by Sandler  
6 on March 4th will be admitted into evidence.

7 (Sandler Report Filed March 4, 2022, was  
8 admitted into evidence.)

9 CHAIR MITCHELL: Currituck, similar from  
10 you?

11 MR. ALLEN: Yes. We would ask that it  
12 be moved into evidence.

13 CHAIR MITCHELL: All right. The report  
14 filed by Currituck on March 4, 2022, will be  
15 received into evidence, hearing no objection to  
16 that motion.

17 (Currituck Report Filed March 4, 2022,  
18 was admitted into evidence.)

19 CHAIR MITCHELL: Sandler Utilities filed  
20 a supplemental report on customer comments  
21 March 22nd.

22 MR. DROOZ: We would also ask that be  
23 admitted into the record as evidence.

24 CHAIR MITCHELL: All right. Hearing no

1 objection, we would allow that motion.

2 (Sandler Supplemental Report Filed  
3 March 22, 2022, was admitted into  
4 evidence.)

5 CHAIR MITCHELL: Sandler filed also a  
6 response to the Commission's February 8th order on  
7 February 18th.

8 MR. DROOZ: Yes. Really, everything  
9 we've filed we would ask to be admitted into  
10 evidence. I don't know if that's too much of a  
11 shortcut.

12 CHAIR MITCHELL: All right. It is.  
13 That is too much of a shortcut, Mr. Drooz. There  
14 has been a lot filed in this docket. All right.  
15 So, Mr. Drooz, I understand your motion to be that  
16 Sandler's response to the Commission's February 8th  
17 order, which was filed by Sandler on February 18th,  
18 which included as an attachment the consent  
19 judgment and amended consent judgment, be admitted  
20 into evidence, and that motion will be allowed.

21 MR. DROOZ: Thank you.

22 CHAIR MITCHELL: All right. All right.  
23 (Sandler's Response to Commission's  
24 February 8, 2022, Order Filed

1 February 18, 2022 - Including Consent  
2 Judgment and Amended Consent Judgment  
3 was admitted into evidence.)

4 CHAIR MITCHELL: With, that, anything  
5 further from the applicant?

6 MR. ALLEN: No. That's all,  
7 Chair Mitchell. That's all.

8 CHAIR MITCHELL: Okay. All right.  
9 Public Staff, you are up.

10 MR. LITTLE: Public Staff will call as a  
11 panel witnesses Michael Franklin and Iris Morgan.

12 CHAIR MITCHELL: All right. All right.  
13 Good morning, Ms. Morgan, Mr. Franklin. Would  
14 you-all please sit on down and I'll have you sworn  
15 in. Left hand on the Bible, raise the right hand.

16 Whereupon,

17 D. MICHAEL FRANKLIN AND IRIS MORGAN,  
18 having first been duly sworn, were examined  
19 and testified as follows:

20 CHAIR MITCHELL: All right. Ms. Holt,  
21 you may proceed. Y'all may proceed.

22 DIRECT EXAMINATION BY MR. LITTLE:

23 Q. Mr. Franklin, would you please state your  
24 name, your position at the Public Staff, and your

1 address, please?

2 A. (D. Michael Franklin) Yeah. My name is  
3 D. Michael Franklin, and I'm a public utilities  
4 engineer in the water, sewer, and telephone division.  
5 My work address is 430 North Salisbury Street, Raleigh,  
6 North Carolina.

7 Q. And on March 2nd of this year, did you  
8 prefile direct testimony consisting of 36 pages, an  
9 appendix, and five exhibits?

10 A. Yes, I did.

11 Q. And do you have any changes or corrections to  
12 the prefiled direct testimony?

13 A. I actually do. On page 27, line 21, it  
14 should read page 2, line 22, and page 3, lines 1  
15 through 6; versus page 2, line 22, and pages 1 through  
16 6.

17 Q. And did you say that was page 27?

18 A. That's correct.

19 Q. Okay. Do you have any other corrections?

20 A. I do not.

21 Q. And on June 6th of this year, did you prefile  
22 supplemental and settlement testimony consisting of  
23 eight pages?

24 A. Yes.

1 Q. And do you have any changes or corrections to  
2 the supplemental and settlement testimony?

3 A. I do not.

4 Q. And if I were to ask you the same questions  
5 in your prefiled direct testimony and your prefiled  
6 settlement and supplemental testimony today, would your  
7 answers be the same?

8 A. Yes, they would.

9 Q. And do you have a summary of your testimony?

10 A. Yes, I do.

11 Q. Would you read that --

12 A. Sure.

13 Q. -- please?

14 A. The purpose of my direct testimony filed on  
15 March 2, 2022, is to provide the Commission with the  
16 results of my investigation in two specific areas of  
17 the application filed on May 19, 2021, by Currituck  
18 Water and Sewer, LLC, also known as Currituck, in  
19 Docket Number W-1333, Sub 0; and Sandler Utilities at  
20 Mill Run, LLC, also known as Sandler, in Docket Number  
21 W-1130, Sub 11, for transfer of public utility  
22 franchise and for approval of rates, and referred to as  
23 the joint application, and whether the transfer is in  
24 the best interest of the using and consuming public.

1           In addition, my supplemental and settlement  
2 testimony filed on June 6, 2022, provides an update to  
3 plant in service and support for the settlement  
4 agreement and stipulation filed on June 6, 2022,  
5 between Currituck, Sandler, and the Public Staff.

6           Currituck proposes charging the current  
7 Commission-approved rates and connection charges for  
8 Sandler as specified in Docket Numbers W-1130, Sub 9  
9 and M-100, Sub 138. However, Currituck proposes  
10 charging different reconnection charges than the  
11 current Commission-approved reconnection charges for  
12 Sandler. Although the reconnection charges differ, the  
13 proposed rates and fees are just and reasonable.

14           In a joint application and responses to  
15 Public Staff data requests, Sandler has provided plant  
16 additions from 2016, the year following its last rate  
17 case, through May 2022. I recommend a total of  
18 \$515,820 for plant additions as reasonable and  
19 appropriate for inclusion in plant in service. As  
20 shown in Morgan's Supplemental Exhibit 1 and reflected  
21 in the stipulation, the net plant in service amount is  
22 \$424,779, which is appropriate for inclusion in rate  
23 base, as it is less than the purchase price of 16 --  
24 I'm sorry, of \$613,623.

1                   Consistent with North Carolina General  
2 Statute 62-110.3 and the stipulation conditions, the  
3 Public Staff believes a \$650,000 bond is appropriate to  
4 ensure the provision of adequate and sufficient service  
5 to Eagle Creek subdivision, Mill Creek Golf Club, and  
6 Moyock Middle School.

7                   Considering the conditions of the second  
8 amended consent judgment, the additional conditions in  
9 the stipulation to which Currituck is subject, the bond  
10 amount, and the testimony of Public Staff witness  
11 Phat Tran, establishing the financial viability of  
12 Currituck, the Public Staff believes that the customers  
13 of the Eagle Creek subdivision will be adequately  
14 protected and the transfer is in the best interest of  
15 the customers.

16                   The Public Staff, therefore, recommends  
17 approval of the joint application that would transfer  
18 the Eagle Creek wastewater utility system from Sandler  
19 to Currituck at the existing approved rates. As  
20 provided in the stipulation, approval of the transfer  
21 is still conditioned upon the second amended consent  
22 judgment being entered in the superior court of  
23 Currituck County and upon all other regulatory  
24 approvals for operation of the wastewater system being

1 obtained.

2 This concludes my testimony summary.

3 MR. LITTLE: Chair Mitchell, I move that  
4 Mr. Franklin's direct testimony and supplemental  
5 and settlement testimony be copied into the record  
6 in this proceeding as if given orally from the  
7 stand, and that the appendix and exhibits attached  
8 to his direct testimony be identified as marked  
9 when filed.

10 CHAIR MITCHELL: Hearing no objection,  
11 that motion will be allowed.

12 (Franklin Exhibits 1 through 5 were  
13 identified as they were marked when  
14 prefiled.)

15 (Whereupon, the prefiled direct  
16 testimony and Appendix A, and prefiled  
17 supplemental and settlement testimony of  
18 D. Michael Franklin were copied into the  
19 record as if given orally from the  
20 stand.)

21  
22  
23  
24

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0**

**SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11**

**TESTIMONY OF D. MICHAEL FRANKLIN  
ON BEHALF OF THE PUBLIC STAFF -  
NORTH CAROLINA UTILITIES COMMISSION**

**MARCH 2, 2022**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**  
2 **PRESENT POSITION.**

3 A. My name is D. Michael Franklin. My business address is 430 North  
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am a  
5 Public Utilities Engineer with the Water, Sewer and Telephone  
6 Division of the Public Staff – North Carolina Utilities Commission  
7 (Public Staff).

8 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

9 A. My qualifications and duties are included in Appendix A.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to provide the North Carolina Utilities  
12 Commission (Commission) with the results of my investigation of  
13 specific areas of the application filed on May 19, 2021 by Currituck  
14 Water and Sewer, LLC (Currituck) in Docket No. W-1333, Sub 0 and  
15 Sandler Utilities at Mill Run, LLC (Sandler) in Docket No. W-1130,

1 Sub 11, for transfer of public utility franchise and for approval of rates  
2 (the Joint Application) and whether the transfer is in the best interest  
3 of the using and consuming public.

4 **Q PLEASE DESCRIBE THE SERVICE AREA AND WASTEWATER**  
5 **SYSTEM.**

6 A. The Eagle Creek wastewater utility system serves approximately 420  
7 residential customers in the Eagle Creek Subdivision and two non-  
8 residential customers, Mill Creek Golf Club and Moyock Middle School,  
9 in Currituck County.

10 Sandler is the franchise holder for the Eagle Creek wastewater utility  
11 system, which is the only vacuum wastewater collection system the  
12 Commission regulates. The Eagle Creek wastewater collection system  
13 consists of an Airvac brand vacuum collection system. **Franklin**  
14 **Exhibit 1** provides a figure of an Airvac vacuum collection system,  
15 similar to that installed at Eagle Creek.

16 The Joint Testimony of David May and Robert Tankard describes the  
17 vacuum collection system and wastewater treatment plant (WWTP) in  
18 further detail.

19 **Q. PLEASE DESCRIBE SANDLER'S COMPLIANCE STATUS WITH**  
20 **THE COMMISSION ORDER THAT WAS ISSUED DECEMBER 11,**  
21 **2015 AND BECAME FINAL AND EFFECTIVE ON DECEMBER 29,**  
22 **2015, IN DOCKET W-1130, SUB 8.**

1 A. On December 11, 2015, the Commission issued the Recommended  
2 Order Granting Rate Increase, Requiring Refund, and Customer  
3 Notice in Docket No. W-1130, Sub 8, which became final and effective  
4 on December 29, 2015 (2015 Rate Case Order). Finding of Fact 5 of  
5 the 2015 Rate Case Order stated, “the overall quality of service  
6 provided by Sandler to its customers in Eagle Creek Subdivision is only  
7 marginally adequate.” This Finding of Fact was supported in part by  
8 testimony provided during the public hearing held on September 24,  
9 2015. Due to Sandler’s marginal quality of service, Ordering  
10 Paragraphs 4 through 6 of the 2015 Rate Case Order require Sandler  
11 to take certain actions to improve the Eagle Creek wastewater utility  
12 system performance.

13 Ordering Paragraph 4 of the 2015 Rate Case Order states that Sandler  
14 shall do the following:

15 (a) within 60 days of the effective date of this order,  
16 physically inspect every Air Vac valve pit package as to  
17 whether the pit package is subject to rain water intrusion  
18 during heavy rains; (b) within 150 days of the effective  
19 date of this order, complete renovations to reduce the  
20 rain water intrusion, including but not limited to raising  
21 and sealing pit packages subject to rain water intrusion;  
22 (c) within 180 days of the effective date of this order, file  
23 a written report with the Commission describing the  
24 completed renovations for each of the pit packages  
25 where renovations were necessary.

26 Ordering Paragraph 5 states,

27 That Sandler shall, within 180 days of the effective date  
28 of the [2015 Rate Case Order], complete renovations to

1 the second bank of UV lights at the wastewater  
2 treatment plant to bring the UV system in compliance  
3 with North Carolina Department of Environmental  
4 Quality, Division of Water Resources regulations.

5 Ordering Paragraph 6 states,

6 That Sandler shall: (a) within 60 days of the effective  
7 date of [this order] file with the Commission a detailed  
8 plan for the isolation of sections of the Eagle Creek  
9 sewage collection system, including the installation of  
10 isolation valves and also plans for the installation of any  
11 other necessary equipment to prevent the collection  
12 system losing its vacuum; (b) within 150 days of the  
13 effective date of this order, complete the necessary  
14 collection system isolation renovations, and installation  
15 of isolation valves, and the installation of any other  
16 necessary equipment to prevent the collection system  
17 losing its vacuum, pursuant to Sandler's detailed plan;  
18 (c) within 180 days of the effective date of this rate  
19 increase order, file a written report with the Commission  
20 describing the completed collection system isolation  
21 renovations, including the installation of necessary  
22 isolation valves, and the installation of any other  
23 necessary equipment to prevent the collection system  
24 losing its vacuum, pursuant to the detailed plan.

25 Based on my investigation, Sandler has not completed all actions  
26 required under the 2015 Rate Case Order.

27 On May 9, 2016, Enviro-Tech, the Eagle Creek wastewater utility  
28 system operator, filed a report in Docket No. W-1130, Sub 8, on the  
29 status of the actions required under the 2015 Rate Case Order. The  
30 report indicated that the only actions that had been taken to address  
31 Ordering Paragraph 4 were the inspection of the Airvac valve pit  
32 packages and the ranking of those pit packages on "a scale of 1 to 5,"  
33 with one being "Ok" and five being "Worst". In addition, the report

1 stated that options were being researched for remedial actions on the  
2 valve pits ranked as a “5”, which at the time was 39 pits, and that the  
3 least intrusive and least expensive option was being researched for  
4 those pits. No actions to complete renovations to the valve pits to  
5 reduce the rainwater intrusion, including but not limited to raising and  
6 sealing valve pit packages subject to rainwater intrusion, were  
7 identified in the report. No other filings were submitted to the  
8 Commission documenting whether the renovations required by  
9 Ordering Paragraph 4 to reduce rainwater intrusion were completed.  
10 Furthermore, a written report describing the completed renovations for  
11 each of the valve pit packages where renovations were necessary was  
12 not filed with the Commission. Lastly, prior to December 4, 2020, no  
13 other documents were filed with the Commission demonstrating that  
14 renovations to reduce rainwater intrusion into the valve pits were  
15 completed.

16 With respect to Ordering Paragraph 5, the Enviro-Tech report provided  
17 that the UV system repairs and renovations were completed in late  
18 February 2016 and the system had been functioning properly since the  
19 completion of this work. Based on the representations made in the  
20 Enviro-Tech report, it appears that Sandler complied with Ordering  
21 Paragraph 5 of the 2015 Rate Case Order.

1 With respect to Ordering Paragraph 6, the Enviro-Tech report advised  
2 that two new isolation valves were added in late December 2015. The  
3 report further stated that the addition of the two isolation valves  
4 enabled failed vacuum valves to be located and corrected in a shorter  
5 timeframe and helped avoid cascading failures caused by low vacuum  
6 pressure for extended periods. While a detailed plan for the isolation  
7 of sections of the Eagle Creek wastewater collection system was never  
8 filed with the Commission, two isolation valves were installed, and,  
9 based on the Enviro-Tech report, no additional actions were needed to  
10 prevent a loss of vacuum pressure in the collection system.

11 On December 4, 2020, after a significant Eagle Creek wastewater  
12 utility system outage, the Public Staff filed a letter that it had sent to  
13 Sandler in Docket No. W-1130, Sub 8. In part, the letter requested that  
14 Sandler file with the Commission the written report required under  
15 Ordering Paragraph 4 of the 2015 Rate Case Order and detail in that  
16 report the completed renovations for each of the valve pit packages  
17 where renovations were necessary. Sandler filed its response with the  
18 Commission on January 27, 2021 in Docket No. W-1130, Sub 8,  
19 stating,

20 . . . in the 24 months since receiving the  
21 Recommended Order Granting Rate Increase on  
22 December 11, 2015, 99 upgraded controllers were  
23 installed throughout the community, 6 upgraded valves  
24 were installed, 6 valve and controller combinations were

1 installed, 1 new controller and surge suppressor were  
2 added, and 4 entirely new valve pits were installed.

3 The Public Staff reviewed Sandler's response and in a letter dated and  
4 filed on February 26, 2021, stated that Sandler's actions in response  
5 to Ordering Paragraph 4(b) of the 2015 Rate Case Order, specifically  
6 to complete renovations including raising and sealing certain pit  
7 packages to reduce rainwater intrusion, were ineffective. The letter  
8 further stated that the Public Staff is of the opinion that Sandler's  
9 continued practice of primarily replacing controllers is a temporary  
10 repair and does not adequately address Ordering Paragraph 4(b) of  
11 the 2015 Rate Case Order. The Public Staff requested Sandler to  
12 respond within 20 days from the date of the letter and fully describe the  
13 actions Sandler would take to comply with Ordering Paragraph 4(b),  
14 specifically to reduce rainwater intrusion and minimize flooding of the  
15 valve pits.

16 On April 1, 2021, Sandler responded to the Public Staff's February 26,  
17 2021 letter (See **Franklin Exhibit 2**), identifying proposed remedial  
18 actions and improvements to reduce rainwater intrusion and minimize  
19 flooding of the valve pits in the Eagle Creek wastewater utility system.  
20 The proposed actions were based on recommendations provided to  
21 Sandler by Flovac, Inc. (Flovac), a wastewater vacuum collection  
22 system vendor. Sandler retained the services of Flovac to provide

1 recommendations to address and correct the problems with the Eagle  
2 Creek vacuum collection system.

3 For compliance, in part, with the consent judgment between the North  
4 Carolina Department of Environmental Quality – Division of Water  
5 Resources and Sandler, which the Currituck County Superior Court  
6 entered on July 1, 2021 (the Consent Judgment), Sandler has begun  
7 making renovations to the valve pits by installing pedestal-mounted  
8 controllers that elevate the controllers and has located them outside  
9 valve pits. However, pedestal-mounted controllers have not been  
10 installed on all the valve pits, nor would installation of the pedestal-  
11 mounted controllers on all the pits prevent rainwater and run-off from  
12 flowing into the pits and adversely impacting valve pit operation.

13 **Q. BRIEFLY DESCRIBE THE CURRENT SYSTEM OPERATOR,**  
14 **ENVIROLINK, INC. AND ITS RELATIONSHIP WITH SANDLER.**

15 A. Envirolink, Inc. (Envirolink) is the current contract operator Sandler  
16 hired to operate the Eagle Creek wastewater utility system.  
17 Envirolink is a full-service utility management company that  
18 specializes in the management of water, wastewater, and public  
19 works services for clients across North Carolina. Michael J. Myers is  
20 the president of Envirolink.

21 The original contract operator of the Eagle Creek wastewater utility  
22 system was William G. Freed, Inc., doing business as Enviro-Tech.

1 Enviro-Tech was a professional water and wastewater treatment  
2 services company based in Currituck County. On page 6, lines 3 and  
3 4 of Ms. Brittney Willis' direct testimony, Ms. Willis states that on  
4 February 6, 2020, Sandler was notified that Enviro-Tech had been  
5 acquired by Envirolink. On page 14, lines 19 and 20 of Mr. Myers'  
6 direct testimony, Myers states Envirolink took over as Sandler's  
7 contract operator in late summer 2020 (page 14, lines 19 and 20).  
8 The current service agreement between Envirolink and Sandler was  
9 signed on January 6, 2021.

10 In Mr. Myers' direct testimony, page 15, lines 1 through 7, Mr. Myers  
11 describes significant service issues Envirolink discovered with the  
12 Eagle Creek wastewater utility system. Public Staff Data Requests  
13 11 and 16<sup>1</sup> requested Sandler and Currituck respectively to provide  
14 written communications from Envirolink to Sandler identifying these  
15 service issues and recommendations to address these issues,  
16 including Sandler's responses. Based on Sandler's responses to  
17 discovery, the earliest written request dated back to September 30,  
18 2020, in which Envirolink provided a quote to Sandler for a new  
19 vacuum pump, a rebuilt vacuum pump, and the services of a

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<sup>1</sup> Currituck has requested that certain emails provided in response to this data request be kept confidential. Without waiving any objections the Public Staff could raise regarding this requested designation, this testimony solely refers to and cites discovery responses Sandler provided, which Sandler provided prior to Currituck and did not request be kept confidential.

1 technician from Airvac's parent company, Aqseptence Group, Inc.  
2 This request followed the September 27, 2020 failure of one of the  
3 two vacuum pumps, which resulted in extensive, wastewater utility  
4 system problems. Neither Sandler nor Currituck provided any  
5 documentation evidencing Envirolink identified issues or requested  
6 equipment or supplies prior to September 30, 2020.

7 **Q. BRIEFLY DESCRIBE THE ORGANIZATIONAL RELATIONSHIP**  
8 **BETWEEN ENVIROLINK AND CURRITUCK.**

9 A. Envirolink and Currituck have at least one principal in common. Mr.  
10 Myers is the President of Envirolink and the Vice-President,  
11 Secretary, and Treasurer of Currituck. Due to Mr. Myers' involvement  
12 with both companies, residents who have issues with Envirolink's  
13 operation of the Eagle Creek wastewater utility system have  
14 expressed doubts as to whether Currituck can address the ongoing  
15 Eagle Creek system performance issues.

16 **Q. HAS THE PUBLIC STAFF RECEIVED ANY CUSTOMER**  
17 **COMPLAINTS?**

18 A. Yes. The Public Staff Consumer Services Division (Consumer  
19 Services) has received three customer complaints, all of which  
20 occurred in the fall of 2020. On September 30, 2020, the Eagle Creek  
21 Golf Community Homeowner's Association President notified  
22 Consumer Services that Eagle Creek residents were experiencing

1 sewage backups into their homes. The Public Staff contacted  
2 Sandler, requested its expedited attention to the matter, and  
3 confirmed that the North Carolina Department of Environmental  
4 Quality (DEQ) was aware of the issue. On October 5, 2020, an Eagle  
5 Creek resident contacted Consumer Services to report the Eagle  
6 Creek subdivision was experiencing sewage backups and other  
7 sewage safety issues as a result. On that same day, another Eagle  
8 Creek resident contacted Consumer Services, stating that the  
9 wastewater utility system had been down since Sunday, September  
10 27, 2020. The customer also complained of not receiving notification  
11 from Envirolink regarding the wastewater utility system operational  
12 problems. Both customers were directed to contact DEQ.

13 In addition, I received email complaints from Eagle Creek residents  
14 Ms. Stephanie Harlow, Mr. Gary Lickfeld, and Ms. Susan Powers.

15 Ms. Harlow's complaint was filed with the Commission on December  
16 21, 2021, in Docket Nos. W-1130, Sub 11CS and W-1333, Sub 0CS.

17 In her complaint, Ms. Harlow stated that she would like to see the  
18 vacuum system repaired and Envirolink replaced. She also raised  
19 concerns regarding the disruptions the installation of a gravity  
20 collection system would have on her home and the Eagle Creek  
21 subdivision, given her experience with the installation of the force  
22 main connecting the Fost subdivision to the Eagle Creek WWTP.

1 Mr. Lickfeld's complaint was filed with the Commission on January  
2 31, 2022, in Docket Nos. W-1130, Sub 11CS, and W-1333, Sub 0CS.  
3 His complaint provides a table listing the wastewater system impacts  
4 at his residence from January 1, 2021 through December 9, 2021  
5 and indicating that there were 57 days when he had no sewer service  
6 at his residence. In particular, the table identifies six wastewater  
7 backups into his home and 13 backups into his yard.

8 In the document titled Consumer Statement of Position  
9 (Powers/Leone) that was filed with the Commission on February 9,  
10 2022 in Docket Nos. W-1130, Sub 11CS and W-1333, Sub 0CS, Ms.  
11 Powers provided a list of the outages in the Eagle Creek Subdivision  
12 based on emails she had received. According to her list, from August  
13 2020 through December 10, 2021, there were 20 system events  
14 resulting in 98 days when either (1) Eagle Creek Subdivision  
15 residents were told to conserve water or (2) Eagle Creek Subdivision  
16 residents were without partial or total wastewater service. This  
17 consumer statement of position contains similar information to that  
18 provided in the document titled Email and Sewage Outage List  
19 Exhibit, which was filed with the Commission on Ms. Powers' behalf  
20 in Docket Nos. W-1333, Sub 0 and W-1130, Sub 11 on December  
21 17, 2021.

1 In addition, beginning on December 14, 2021, I received emails from  
2 Ms. Trudy Elder providing a continuous daily sewer log documenting  
3 (1) communications Envirolink has posted on Facebook regarding  
4 the Eagle Creek wastewater utility system's status and (2) any  
5 Facebook posts Eagle Creek Subdivision residents submitted  
6 regarding the wastewater system (the Elder Sewer Report). On  
7 February 4, 2022, I filed with the Commission the Elder Sewer Report  
8 on Ms. Elder's behalf in Docket Nos. W-1333, Sub 0CS and W-1130,  
9 Sub 11CS. Between December 8, 2021 and February 3, 2022,  
10 residents identified 11 individual wastewater system issues over  
11 eight different days, specifically either a wastewater backup in their  
12 home or yard or no wastewater service at their home. There were no  
13 resident comments on Facebook on 43 of the 57 days listed in the  
14 Elder Sewer Report.

15 Furthermore, I reviewed a complaint from an Eagle Creek  
16 Subdivision resident who was not in contact with the Public Staff prior  
17 to filing consumer statements of position with the Commission. On  
18 January 24, 2022, in Docket Nos. W-1333, Sub 0 and W-1130, Sub  
19 11, Ms. Rhonda Klussmann filed with the Commission a document  
20 titled Eagle Creek Petitions, which Eagle Creek homeowners signed  
21 indicating their support for either upgrading the existing vacuum  
22 collection system or replacing the vacuum collection system with a  
23 gravity system. As indicated in Ms. Klussmann's cover letter, 247

1 homeowners, or 58% of the total number of Eagle Creek Subdivision  
2 homeowners, signed the petitions, with 234 supporting upgrading the  
3 existing vacuum collection system and 13 supporting replacing the  
4 vacuum collection system with a gravity system. Ms. Klussmann also  
5 spoke at the February 2, 2022 Commission public hearing describing  
6 the petition process and results.

7 As previously stated, a public hearing was held on February 2, 2022.  
8 During the public hearing, eight Eagle Creek subdivision residents  
9 provided testimony. The Public Staff has given this testimony proper  
10 consideration in formulating its recommendations.

11 **Q. ARE YOU AWARE OF OTHER CUSTOMER COMPLAINTS?**

12 A. Yes. Beginning in November 2020, the Washington Regional Office  
13 of the North Carolina Department of Environmental Quality - Division  
14 of Water Resources (Washington Regional Office) began forwarding  
15 me email messages, text messages, and voice mails the North  
16 Carolina Department of Environmental Quality - Division of Water  
17 Resources (DWR) was receiving from Eagle Creek Subdivision  
18 residents. I compiled the communications that provided a service  
19 address and were related to a wastewater system operational  
20 service complaint. I did not compile complaints regarding Sandler or  
21 Envirolink's inadequate or inaccurate communications. The compiled  
22 information is included in **Franklin Exhibit 3**. Complaints include

1 wastewater utility service being unavailable, wastewater backups  
2 onto lawns or into homes, and issues with valve pits being full or  
3 sinking. Between January 26, 2021 and November 5, 2021, there  
4 were 52 complaints from 34 residences, with nine residences having  
5 multiple complaints.

6 Additionally, between November 1, 2021 and November 24, 2021,  
7 the North Carolina Department of Justice, Consumer Protection  
8 Division received 28 complaints from Eagle Creek residents. Eagle  
9 Creek residents complained of frequent wastewater system outages  
10 and wastewater overflows into their yards and homes. Most  
11 complaints were for service issues since the fall of 2020. The North  
12 Carolina Department of Justice complaints were filed with the  
13 Commission on December 9, 2021 in Docket Nos. W-1130, Sub  
14 11CS and W-1333, Sub 0CS.

15 **Q. HAVE YOU INSPECTED THE WASTEWATER UTILITY SYSTEM,**  
16 **AND IF SO, WHAT WERE YOUR OBSERVATIONS?**

17 A. Yes. On October 21, 2020, I performed a site inspection of Sandler's  
18 vacuum collection system with Washington Regional Office staff.  
19 The site visit was performed approximately one week after a  
20 significant wastewater system outage due to the failure of a vacuum  
21 pump. At the time of the site visit, a sewerage pump had also failed.  
22 Since a spare sewerage pump was not available, Sandler installed a

1 temporary bypass sewerage pump. During my inspection, the  
2 wastewater system was operational.

3 Vacuum station equipment was showing its age, with piping covered  
4 in rust and paint peeling off. The overall cleanliness was poor, with  
5 parts and packaging debris lying around. Residential vacuum pits  
6 and candy canes<sup>2</sup> were also inspected. Numerous pits were located  
7 in low-lying areas, and it was evident that the actions required under  
8 Ordering Paragraph 4 of the 2015 Rate Case Order to complete  
9 renovations to reduce rainwater intrusion had not been fully  
10 implemented.

11 In addition, a limited site inspection was performed on October 18,  
12 2021 with Public Staff attorney William Grantmyre. During that  
13 inspection, the Public Staff met with Envirolink technicians and  
14 inspected valve pits with installed pedestal-mounted controllers. The  
15 pedestal-mounted controllers are intended to prevent tampering with  
16 the controllers and ensure the controllers are above elevated water  
17 levels due to weather events and valve pit overflows. Each pedestal-  
18 mounted controller is installed on a metal post in a lock box

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<sup>2</sup> The candy cane is a wastewater system component that is installed above ground at each residence, provides the vacuum collection system with a source of atmospheric air, and prevents the vacuum system from drawing water from plumbing traps that block sewer gas from entering the home. Candy canes are built with PVC, with piping connected directly to a valve pit sump. See **Franklin Exhibit 1** for a diagram of a typical Airvac vacuum collection system.

1 approximately four feet above grade, with a special tool required to  
2 access the lock box. At the time of the site inspection, the pedestal-  
3 mounted controllers had been installed at approximately a dozen  
4 valve pits. Sandler plans to install the pedestal-mounted controllers  
5 at all valve pits. The pedestal-mounted controllers will increase the  
6 reliability and useful life of the controllers, provided the controllers  
7 are installed in accordance with the manufacturer's instructions.

8 **Q. HAVE YOU INSPECTED OTHER WASTEWATER VACUUM**  
9 **COLLECTION SYSTEMS, AND IF SO, WHAT WERE YOUR**  
10 **OBSERVATIONS?**

11 A. Yes. On January 20, 2022, Public Staff attorney William Grantmyre  
12 and I, with the assistance of the Town of Oak Island Wastewater  
13 Superintendent, performed a site inspection of the Town of Oak  
14 Island, North Carolina's wastewater utility system. The site visit was  
15 conducted to gather information and compare Oak Island's vacuum  
16 collection system performance with the Eagle Creek vacuum  
17 collection system. The Oak Island wastewater system was selected  
18 because it is an Airvac vacuum collection system and because of its  
19 proximity to Raleigh. My notes from that inspection are provided in  
20 **Franklin Exhibit 4.**

21 A portion of the Oak Island wastewater utility system is a gravity  
22 collection system and a portion is a vacuum collection system. The

1 vacuum collection system is an Airvac designed system initially  
2 installed in 2007 and consisting of approximately 4,025 valve pits, 90  
3 miles of vacuum mains, sized from 4" to 10", and nine vacuum  
4 stations. For reference, this is approximately 19 times as many valve  
5 pits and 85 more miles of vacuum mains than the Eagle Creek  
6 wastewater collection system. The vacuum collection system  
7 continues to expand as new homes are built and added to the  
8 system. The Oak Island installed Airvac valve pit sizes are larger in  
9 size and capacity than the valve pits installed in the Eagle Creek  
10 Subdivision, although in some areas of Oak Island, four homes are  
11 connected to a single pit versus two at Eagle Creek. Additionally, the  
12 larger home sizes, some of which have comparable numbers of  
13 bedrooms and bathrooms as small hotels, necessitate larger valve  
14 pits.

15 Similar to Eagle Creek, the valve pit setpoint is ten gallons, which  
16 when reached, causes the vacuum valve to open and the valve pit  
17 contents to be removed by vacuum force. At Oak Island, overflows  
18 are rare but occasionally occur due to controller or sensor failures in  
19 the valve pit. According to Oak Island, controller failures occur  
20 approximately five times per month. In contrast, Sandler indicated in  
21 response to a Public Staff data request that from August 20, 2020  
22 through January 24, 2022 (542 days), Envirolink has rebuilt or  
23 replaced 3,081 controllers or **5.7 controllers per day**.

1 Two to three spares of each vacuum collection system component  
2 are kept in stock. Depending on budget and time constraints, onsite  
3 utility personnel will sometimes refurbish controllers. The wastewater  
4 utility system has five employees. Turnover of utility personnel is low  
5 with the newest wastewater utility system employee hired  
6 approximately five years ago.

7 The Oak Island wastewater system does not remotely monitor each  
8 individual vacuum pit. Instead, a Supervisory Control and Data  
9 Acquisition (SCADA) system monitors vacuum station parameters,  
10 including vacuum tank level(s), vacuum pressure, and vacuum and  
11 sewerage pump run times. Each vacuum station is checked daily,  
12 and each valve pit is inspected annually. Airvac performs an  
13 inspection of the system at least once a year, rendering system  
14 adjustments and providing inspection results.

15 Based on my inspection and discussions with the Oak Island  
16 Wastewater Superintendent, the Oak Island vacuum collection  
17 system operates well due to the experience of the system's  
18 personnel, preventative maintenance performed, and the availability  
19 of spare equipment. The Oak Island vacuum collection system's  
20 reliability is comparable to the Oak Island gravity collection system's.  
21 The performance of the Oak Island vacuum collection system  
22 demonstrates that if a vacuum collection system is maintained

1 properly, it can provide reliable service comparable to that of a  
2 gravity collection system. However, as compared to a gravity  
3 collection system, the vacuum collection system requires continuous  
4 maintenance.

5 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE BOND**  
6 **FOR THIS WASTEWATER UTILITY SYSTEM?**

7 A. I recommend a bond of \$1,000,000 for the wastewater utility system  
8 serving Eagle Creek Subdivision, Mill Creek Golf Club, and Moyock  
9 Middle School. Consistent with N.C. Gen. Stat. § 62-110.3, my bond  
10 amount recommendation is based on the following factors:

11 a) Currituck does not hold any other water or sewer franchises in this  
12 State, and, as a result, does not have a record of operation.

13 b) Currituck does not currently serve any customers. However, the  
14 Eagle Creek wastewater utility system that Currituck seeks to acquire  
15 serves approximately 420 residential customers in the Eagle Creek  
16 Subdivision and two non-residential customers, Mill Creek Golf Club  
17 and Moyock Middle School, in Currituck County. Furthermore, as  
18 stated on page 13, lines 19 and 20 of Mr. Myers' direct testimony,  
19 Currituck intends to add customers from the Fost and Flora  
20 subdivisions to the Eagle Creek WWTP. In response to a Public Staff  
21 data request, Currituck stated that Fost will add an additional 479  
22 residential equivalent units (REU) and Flora will add 277 REUs. This

1 would be in addition to the 420 residential and two non-residential  
2 customers currently served by the Eagle Creek wastewater utility  
3 system. Although both the Fost and Flora subdivisions will have  
4 gravity collection systems, the additional customers would  
5 significantly increase the current number of customers relying on the  
6 Eagle Creek wastewater utility system.

7 c) As stated above, assuming the Joint Application is approved, there  
8 is a likelihood of future expansion needs of the service. The Fost  
9 subdivision will add an additional 479 residential equivalent units  
10 (REU) and Flora will add 277 REUs, which would significantly  
11 increase the current number of customers relying on the Eagle Creek  
12 WWTP for wastewater service.

13 d) Currituck is not acquiring an existing company.

14 e) With regards to other relevant factors, I would note the following:

15 i) Currituck and Envirolink, which is the current contract operator of  
16 the Eagle Creek wastewater utility system, have a least one principal  
17 in common. Mr. Myers is the President of Envirolink and the Vice-  
18 President, Secretary, and Treasurer of Currituck. In DWR's Civil  
19 Penalty Assessments for the Eagle Creek WWTP NOVs (See **May**  
20 **and Tankard Exhibit 10**), specifically assessments for Case  
21 Numbers LV-2021-0350, LV-2021-0351, LV-2021-0352, LV-2021-  
22 0353, and LV-2021-0354, DWR states the following in the section

1 titled Assessment Factors with regards to Item 2) The duration and  
2 gravity of the violation: “[t]he facility has not been meeting effluent  
3 limits since the new operator took over the plant.” DWR further  
4 states, “[t]he gravity of the violations are significant!” In Item 6),  
5 captioned Whether the violation was committed willfully or  
6 intentionally, DWR states, “[t]he operator [Envirolink] is not managing  
7 the system as required.”

8 In response to a Public Staff data request, Currituck stated that it  
9 intends to outsource operation and maintenance of the Eagle Creek  
10 wastewater utility system to Envirolink. The similarities in  
11 management between Currituck and Envirolink, Currituck’s intention  
12 to use Envirolink as the Eagle Creek wastewater utility system  
13 operator, and DWR’s stated concerns with Envirolink’s tenure as the  
14 Eagle Creek wastewater utility system operator provide additional  
15 justification for the bond amount.

16 ii) On page 13, lines 9 and 13 of Mr. Myers’ direct testimony, Myers  
17 states that the current WWTP will be upgraded and the wastewater  
18 collection system will be replaced. While the exact upgrade and  
19 replacement costs are unknown at this time, preliminary costs  
20 estimates to upgrade the Eagle Creek wastewater utility system and  
21 replace the current vacuum collection system with a gravity collection  
22 system are \$3.1 million, as indicated in Attachment I of the Joint

1 Application. As indicated in a response to a Public Staff data request,  
2 the actual costs may be higher since the number of lift stations has  
3 increased from four to seven and the number of manholes has  
4 increased from 64 to over 100.

5 iii) On page 15, lines 19 and 20, of Ms. Brittney Willis' direct  
6 testimony, Ms. Willis states that Sandler has invested approximately  
7 \$673,834 in the Eagle Creek wastewater utility system in 2020 –  
8 2022 to comply with both the Consent Judgment and amended  
9 consent judgment between Sandler and DWR. The amended  
10 consent judgment between Sandler and DWR requires certain  
11 improvements and actions to enhance the Eagle Creek wastewater  
12 utility system's reliability and reduce sanitary sewer overflows (the  
13 Amended Consent Judgment). Although the final costs to comply  
14 with the Amended Consent Judgment have not yet been determined,  
15 it is reasonable to conclude Sandler's total investment will be  
16 significant.

17 Therefore, pursuant to N.C.G.S. § 62-110.3, the Public Staff believes  
18 that a \$1 million bond would be required to ensure the provision of  
19 adequate and sufficient service within all of Currituck's service areas.

20 **Q. WHAT ARE THE EXISTING AND PROPOSED WASTEWATER**  
21 **UTILITY SERVICE RATES?**

1 A. Currituck proposes charging the current Commission-approved rates  
 2 and connection charges for Sandler as specified in Docket Nos. W-  
 3 1130, Sub 9 and M-100, Sub 138. However, Currituck proposes  
 4 charging different reconnection charges than the current,  
 5 Commission-approved reconnection charges for Sandler. The  
 6 present and proposed rates and charges are as follows:

<u>Monthly Flat Rate Wastewater Service:</u>			
	<u>Present</u>	<u>Proposed</u>	
7			
8			
9	Residential Service	\$ 52.60	\$ 52.60
10	Mill Creek Golf Club	\$ 364.67	\$ 364.67
11	Moyock Middle School	\$ 884.20	\$ 884.20
12	<u>Connection Charge:</u>		
13	Residential, per residence	\$3,000	\$3,000
14	Commercial, per REU		
15	(360 gpd)	\$3,000	\$3,000
16	<u>Reconnection Charge:</u>		
17	If wastewater service cut off		
18	by utility for good cause:	Actual <sup>3</sup>	NA
19	Next Day Restore	NA	\$ 35.00
20	Same Day Restore <sup>4</sup>	NA	\$ 55.00
21	After Hours Restore	NA	\$ 100.00

22 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE**  
 23 **REQUESTED APPROVAL OF RATES?**

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<sup>3</sup> Neglect or failure to pay amounts due or otherwise comply with the provisions of this tariff shall be deemed to be sufficient cause for discontinuance of service. If such discontinuance of service becomes necessary, Sandler Utilities at Mill Run, LLC, will install a valve or other device to cut off and block the sewer line. The customer will be charged the actual cost of installing the valve or device including parts and labor.

<sup>4</sup> Same day restores will be billed at next day rate if request before 10:00 am (M-F), excluding holidays. Holidays billed at after-hours rate.

1 A. For the most part, the recommended rates are the same as the  
2 current Commission-approved rates for Sandler. Although the  
3 reconnection charges differ, the proposed rates and fees are just and  
4 reasonable.

5 **Q. WHAT ADJUSTMENTS HAVE YOU MADE TO PLANT**  
6 **ADDITIONS SINCE THE LAST RATE CASE?**

7 A. In the Joint Application and responses to Public Staff data requests,  
8 Sandler has provided plant additions from 2016, the year following  
9 its last rate case, through January 2022. I have reduced the plant  
10 addition amounts proposed by Sandler by \$207,633. I did not allow  
11 two items that Sander included as 2016 plant additions. These are  
12 replacing a starter and contactor on a vacuum pump for \$1,679 and  
13 replacing blower bearings for \$1,235. I consider both items to be  
14 repairs and not capital expenses.

15 I made significant adjustments to 2020 plant additions. I did not allow  
16 the addition of any controller or vacuum valve replacement in 2020,  
17 which totaled \$130,744. In 2020, Sandler had not completed  
18 renovations to reduce rainwater intrusion such as raising and sealing  
19 pit packages, which was required under Ordering Paragraph 4 of the  
20 2015 Rate Case Order. These controllers and valves were  
21 specifically replaced in 2020 because of ongoing flooding of valve

1 pits and other ongoing maintenance issues, which could have been  
2 avoided had Sandler been in compliance with Ordering Paragraph 4  
3 at that time. Many of the controllers and vacuum valves were  
4 replaced numerous times, and therefore retired. For similar reasons,  
5 I did not allow the cost of the temporary sewerage pump and  
6 emergency fee in the amount of \$3,941. I do not consider these  
7 additions to be prudent or justified.

8 Additionally, Sandler proposed \$43,441 in plant additions that  
9 include both labor and equipment charges associated with the  
10 November 2020 outage. Of this amount, I allowed \$739 of the \$1,155  
11 invoiced for parts required for the sewerage pumps. The \$1,155 was  
12 reduced to \$739 to account for insurance payments received by  
13 Sandler. I did not allow the remaining \$42,702 for labor and  
14 equipment expenses to be included because the November 2020  
15 outage stemmed from Sandler's continuing failure to properly  
16 maintain the Eagle Creek wastewater utility system and take  
17 appropriate action to improve wastewater system reliability.

18 I also did not allow a 2021 plant addition for repairs to pump house  
19 and irrigation system, pipe and sprinkler heads for \$27,333. These  
20 additions do not directly benefit the Eagle Creek wastewater  
21 customers. Furthermore, as stated on page 2, line 22 and pages 1-6  
22 of Ms. Willis' direct testimony, it is not Sandler's responsibility to

1 operate and maintain (1) the golf course irrigation system and (2) the  
2 golf course irrigation system's effluent disposal operations.

3 I allowed plant additions for controller and vacuum valve  
4 replacements purchased in 2021. During 2021, Sandler began  
5 installing pedestal-mounted controllers and performing additional  
6 actions stipulated in the Consent Judgment between Sandler and  
7 DWR and the Amended Consent Judgment.

8 In summary, I did not allow \$2,914 in 2016 plant additions because I  
9 considered the expenses to be operating and maintenance  
10 expenses rather than capital expenses. For 2020, I did not allow  
11 \$130,744 in plant additions for replacement of controllers and  
12 vacuum valves, \$3,941 for the cost of a temporary sewerage pump,  
13 and \$42,702 for labor and equipment expenses associated with the  
14 November 2020 wastewater system outage. I also did not allow  
15 \$27,333 in 2021 plant additions for repairs to the golf course pump  
16 house, irrigation system, and sprinkler heads. As described earlier, I  
17 do not consider the majority of these plant additions to be reasonable  
18 or prudent.

19 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE**  
20 **PURCHASE PRICE?**

1 A. On April 14, 2021, Sandler and Currituck entered into a Revised and  
2 Restated Asset Purchase Agreement for the Eagle Creek  
3 wastewater utility system (APA). Section 4.2.a. of the APA provides  
4 that the purchase price for the existing wastewater assets shall be  
5 \$250,000 that can be included as original cost rate base. In addition,  
6 the APA stipulates that “[i]n addition to the purchase price of  
7 \$250,000, the purchase price shall be increased by the amount of  
8 any costs incurred and paid by [Sandler] for renewal and  
9 replacements, capitalized repairs, and/or upgrades to the  
10 wastewater system as approved by the Commission and [Currituck]  
11 during the period from the effective date until the closing date.”

12 Furthermore, the APA provides for an additional purchase price of  
13 \$88,900 equivalent to \$100 for each of the 889 new connections  
14 made to the Eagle Creek wastewater utility system from the adjacent  
15 Fost and Flora subdivisions that other developers will build. At this  
16 time, those new connections have not been made.

17 The effective date of the APA is April 14, 2021, and the closing date  
18 of the APA would occur within 30 days after the date of issuance of  
19 a certificate of public convenience and necessity to Currituck.

20 As stated in Public Staff Financial Analyst Iris Morgan’s direct  
21 testimony, the original cost net investment of the Eagle Creek  
22 wastewater utility system as of December 31, 2021 is \$398,499,

1 which exceeds the \$250,000 purchase price amount. As a result, a  
2 purchase price of \$250,000 is reasonable and prudent. However, the  
3 original cost net investment is subject to change based on plant asset  
4 depreciations and retirements that have occurred between  
5 December 31, 2021 and the closing date. Furthermore, the Public  
6 Staff would oppose an additional purchase price of \$88,900 for new  
7 Fost and Flora connections to the Eagle Creek wastewater utility  
8 system since those connections do not directly benefit the Eagle  
9 Creek wastewater utility system customers. The final purchase price,  
10 including any purchase price additions specified in the APA, other  
11 than the Fost and Flora additional purchase price, will be limited by  
12 the original cost net investment at the time of closing and subject to  
13 reasonableness and prudence.

14 **Q. BRIEFLY DESCRIBE CURRITUCK'S PLANS FOR CAPITAL**  
15 **IMPROVEMENTS TO ADDRESS THE EAGLE CREEK**  
16 **WASTEWATER COLLECTION SYSTEM PERFORMANCE**  
17 **ISSUES.**

18 A. On page 33, lines 4 and 5 of Mr. Myers' direct testimony, Mr. Myers  
19 states "Envirolink maintains that the appropriate long term solution is  
20 to replace the vacuum system, ostensibly with a gravity system or  
21 other suitably reliable system." On page 35, line 4 of his direct  
22 testimony, Mr. Myers further states that the wastewater collection

1 system “assets are close to 24 years old and have a stated life of 10-  
2 12 years”.

3 In response to Public Staff data requests, Currituck provided  
4 preliminary plans of improvements needed to upgrade the vacuum  
5 collection system or replace the vacuum collection system with a  
6 gravity collection system or low pressure/septic tank effluent  
7 pumping (STEP) collection system.

8 For the vacuum collection system, Currituck’s preliminary plans  
9 include installing larger capacity valve pits, including installing a 500-  
10 gallon tank between each valve pit and home, increasing the number  
11 of vacuum pumps in service from two to three, replacing the vacuum  
12 tank with two stainless steel tanks, installing a monitoring system on  
13 all valve pits, and replacing the vacuum station.

14 Currituck’s preliminary plans for a gravity collection system include  
15 installing between 105 and 131 manholes, seven lift stations,  
16 approximately 34,000 feet of service lines, 22,500 - 25,000 feet of  
17 gravity wastewater lines and 8,600 – 9,550 feet of force mains  
18 throughout the Eagle Creek subdivision. Currituck’s preliminary  
19 plans for a low pressure/STEP system include installation of one  
20 grinder pump at each residence and one shared 720-gallon tank for  
21 every two residences. The 720-gallon tank will have two separate  
22 compartments of equal size, allowing each residence a volume of

1 360 gallons. Although this was not included in Currituck's response  
2 to Public Staff data requests, the Public Staff believes that the low  
3 pressure/STEP system will also require the installation of new  
4 collection system lines. Currituck has not finalized the costs  
5 associated with the gravity and low pressure/ STEP options. It will be  
6 incumbent upon Currituck to ensure a reasonable least cost option  
7 is selected and expenses are reasonable and prudent, and of benefit  
8 to customers.

9 **Q. DO YOU CONSIDER THE EAGLE CREEK WASTEWATER**  
10 **VACUUM COLLECTION SYSTEM TO BE AT THE END OF ITS**  
11 **USEFUL LIFE?**

12 A. I do not. On page 36, line 1 of Mr. Myers' direct testimony, there is a  
13 table from the Water Environment Federation, Manual of Practice –  
14 FD-12. The table shows the expected lives in years of various  
15 vacuum collection system components, including vacuum pumps  
16 and discharge pumps (15-20 years), control panel (20-25 years),  
17 vacuum valves (8-12 years) and controllers (4-6 years). Interestingly,  
18 on page 16, lines 11 through 13 of Ms. Willis' direct testimony, Ms.  
19 Willis states that for the "period of August 2020 through January 24,  
20 2022, Sandler has rebuilt or replaced 2,163 vacuum valves and  
21 3,081 controllers." Each of the approximately 212 valve pits has one  
22 vacuum valve and one controller. Based on Ms. Willis' testimony, that

1 would equate to approximately ten rebuilt or new vacuum valves and  
2 14 rebuilt or new controllers for each valve pit. As a result, each  
3 controller and vacuum valve currently installed at Eagle Creek has  
4 been installed on average for less than 19 months.

5 Regarding the pumps, **Franklin Exhibit 5** includes an email from Ms.  
6 Willis stating that sewage and vacuum pumps were replaced in 2020.  
7 As indicated in Ms. Willis' email, there was one new sewage pump  
8 and motor and one rebuilt pump. For the vacuum pumps, Sandler  
9 installed one new vacuum pump, two reconditioned pumps, and one  
10 new motor. Additionally, page 19, lines 4 and 5 of Ms. Willis'  
11 testimony provides that Sandler is planning to install a control panel  
12 replacement. As a result, many of the components that Mr. Myers  
13 identified as being at the end of their useful lives have recently been  
14 replaced and therefore have considerable remaining lives. The sole  
15 exceptions are the valve pits and vacuum mains. The vacuum lines  
16 and mains are fabricated from polyvinyl chloride (PVC), which is  
17 considered durable and long lasting, with some reports of buried  
18 PVC pipe lasting 50-100 years. While vacuum pits will potentially  
19 need replacing, pits can be replaced individually as needed or in a  
20 phased approach focusing first on pits that are required to be  
21 modified to prevent rainwater intrusion or show signs of wear and  
22 degradation.

1 Q. WHAT IS YOUR RECOMMENDATION REGARDING THE  
2 REQUESTED TRANSFER OF PUBLIC UTILITY FRANCHISE?

3 A. On page 16, line 7 through page 19, line 8 of Ms. Willis' direct  
4 testimony, Ms. Willis describes the repairs and upgrades that have  
5 been made to the Eagle Creek wastewater utility system between  
6 August 2020 and January 24, 2022. On page 15, lines 19 and 20,  
7 Ms. Willis also states that Sandler has invested approximately  
8 \$673,834 in years 2020 - 2022. Page 19, lines 18 through 20 of Ms.  
9 Willis' direct testimony provides that the additional improvements to  
10 the vacuum collection system the Consent Judgment require will  
11 "provide more assurance of the safe and reliable operation of the  
12 Eagle Creek wastewater utility system."

13 Beginning with the system failures that occurred in late summer  
14 2020, Sandler began investing resources in the Eagle Creek  
15 wastewater utility system. The Amended Consent Judgment, which  
16 the Currituck County Superior Court issued precisely because of  
17 Sandler's non-compliance with the original Consent Judgment,  
18 requires certain improvements and actions to enhance the Eagle  
19 Creek wastewater utility system's reliability and reduce sanitary  
20 sewer overflows. I recommend the Commission hold the Joint  
21 Application in abeyance until Sandler satisfies the terms of the

1 Amended Consent Judgment and Sandler satisfies any related,  
2 DWR legal proceedings.

3 Alternatively, I would recommend that the Commission hold the Joint  
4 Application in abeyance unless and until Sandler, in accordance with  
5 Ordering Paragraph 14 of the Amended Consent Judgment, files a  
6 motion joining Currituck as a defendant such that the Amended  
7 Consent Judgment is binding upon Currituck and the Currituck  
8 County Superior Court issues an order granting such motion. As  
9 Ordering Paragraph 14 specifically provides:

10 This Amended Consent Judgment shall be binding  
11 upon Defendant's successors and assigns. Defendant  
12 shall not transfer any of the assets that are the subject  
13 of the Complaint, including the Permit or the Collection  
14 System, unless and until Defendant moves to join the  
15 transferee as a defendant in this case such that this  
16 Amended Consent Judgment shall be binding upon the  
17 transferee and the Court issues an order granting such  
18 motion.

19 Sandler and Currituck should be required to submit a filing with the  
20 Commission when the terms and requirements of the Amended  
21 Consent Judgment have been satisfied in full, or when the Superior  
22 Court issues an order joining Currituck as a defendant to the  
23 Amended Consent Judgment. Once that filing has been submitted,  
24 the Commission could order further proceedings to determine  
25 whether the transfer is still in the public interest and should be  
26 approved.

1 I believe this recommendation provides the most prudent and  
2 reasonable solution, because it preserves the value of the  
3 investment and recent improvements made to the Eagle Creek  
4 vacuum collection system. It also supports the required actions DWR  
5 has identified in the Amended Consent Judgment.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes, it does.

**QUALIFICATIONS AND EXPERIENCE****D. MICHAEL FRANKLIN**

I graduated from the University of South Carolina, earning a Bachelor of Science Degree in Engineering. I worked in the electric utility industry for 33 years prior to joining the Public Staff in June 2019. While employed by the Public Staff, I have worked on utility rate case proceedings, new franchise and transfer applications, customer complaints, and other aspects of utility regulation.

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0**

**SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11**

**SUPPLEMENTAL AND SETTLEMENT TESTIMONY  
OF D. MICHAEL FRANKLIN  
ON BEHALF OF THE PUBLIC STAFF  
NORTH CAROLINA UTILITIES COMMISSION**

**MARCH 2, 2022**

- 1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**  
2 **PRESENT POSITION.**
- 3 A. My name is D. Michael Franklin. My business address is 430 North  
4 Salisbury Street, Dobbs Building, Raleigh, North Carolina. I am a  
5 Public Utilities Engineer with the Water, Sewer, and Telephone  
6 Division of the Public Staff – North Carolina Utilities Commission  
7 (Public Staff).
- 8 **Q. ARE YOU THE SAME D. MICHAEL FRANKLIN WHOSE DIRECT**  
9 **TESTIMONY AND EXHIBITS WERE FILED IN THIS DOCKET ON**  
10 **MARCH 2, 2022?**
- 11 A. Yes.

1 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL AND**  
2 **SETTLEMENT TESTIMONY?**

3 A. The purpose of my Supplemental and Settlement Testimony is to  
4 support the Settlement Agreement and Stipulation (Stipulation) filed  
5 on June 6, 2022, between Currituck Water and Sewer, LLC  
6 (Currituck), Sandler Utilities at Mill Run, LLC (Sandler), and the  
7 Public Staff (Collectively, the Stipulating Parties) and provide  
8 supplemental testimony regarding Sandler's filed updates to plant in  
9 service and address certain issues related to Currituck's and  
10 Sandler's application for transfer of public utility franchise and for  
11 approval of rates (the Joint Application), which was filed on May 20,  
12 2021.

13 **Q HAVE YOUR RECOMMENDATIONS REGARDING THE JOINT**  
14 **APPLICATION CHANGED SINCE FILING YOUR PREFILED**  
15 **DIRECT TESTIMONY?**

16 A. Yes. My recommendations regarding conditions for approval of the  
17 Joint Application, and my recommended bond and net plant in  
18 service amounts have changed.

19 In my prefiled direct testimony filed on March 2, 2022, I  
20 recommended that the Commission hold the Joint Application in  
21 abeyance until Sandler satisfies the terms of an Amended Consent  
22 Judgment, entered in the Currituck County Superior Court on  
23 December 28, 2021, and any related North Carolina Department of

1 Environmental Quality (DEQ) legal proceedings. Alternatively, the  
2 Public Staff recommended that the Commission hold the Joint  
3 Application in abeyance until and unless Sandler, in accordance with  
4 ordering paragraph 4 of the Amended Consent Judgment, which  
5 prohibits Sandler from transferring any assets of the utility, including  
6 the Permit or Collection System, moves to join the transferee  
7 (Currituck) as a defendant in the case such that the Consent  
8 Judgment is binding on the transferee, Currituck, and the Superior  
9 Court has issued an order granting such motion.

10 Since the filing of my prefiled testimony on March 2, 2022, Currituck  
11 has entered into a Second Amended Consent Judgment with the  
12 DEQ, which would replace the Amended Consent Judgment and  
13 preserve the prerequisites for approval of transfer of the Eagle Creek  
14 wastewater system. The Second Amended Consent Judgment holds  
15 Currituck accountable to comply with essentially the same service,  
16 maintenance, and upgrade requirements to which Sandler was  
17 bound and includes an Interim Service and Restoration Plan and  
18 New System Upgrade Plan. The Stipulation also includes conditions,  
19 which require Currituck to submit on a prescribed basis service  
20 status reports, cost estimates, and schedules to be implemented by  
21 Currituck as identified in the Interim Service and Restoration Plan  
22 and New System Upgrade Plan. Additionally, Currituck has agreed  
23 to regularly submit its status reports with the DEQ Division of Water

1 Resources and the Commission. A copy of the Second Amended  
2 Consent Judgement is attached to the Stipulation.

3 In my prefiled testimony, I also recommended that Currituck be  
4 required to post a \$1 million bond for various reasons including the  
5 fact Currituck intends to add at least two more service areas to the  
6 Eagle Creek wastewater system. The Stipulation provides that  
7 Currituck shall post a \$650,000 bond for only the Eagle Creek  
8 subdivision. Pursuant to N.C. Gen. Stat. § 62-110.3 and in  
9 consideration of the Second Amended Consent Judgement and  
10 Stipulation conditions, the Public Staff believes a \$650,000 bond is  
11 appropriate to ensure the provision of adequate and sufficient  
12 service within the Eagle Creek service area.

13 **Q. HAVE YOU UPDATED YOUR RECOMMENDED ADJUSTMENT**  
14 **TO PLANT ADDITIONS SINCE YOU FILED YOUR PREFILED**  
15 **DIRECT TESTIMONY?**

16 A. Yes. Since filing my prefiled direct testimony, Sandler has provided  
17 updated costs and capital expenses incurred to upgrade the  
18 wastewater system through May 2022. After reviewing the invoices  
19 and other information provided by Sandler to justify the plant  
20 additions, I included a total of \$515,820 as reasonable and  
21 appropriate costs for inclusion in Sandler's plant in service net of my  
22 prefiled testimony amount and retirements due to replacement. The

1 Stipulation includes a net plant in service amount of \$424,779. This  
2 net plant in service amount is included in Public Staff witness  
3 Morgan's Supplemental Exhibit I.

4 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE**  
5 **PURCHASE PRICE?**

6 A. The purchase price of \$613,623 is reflected in the Stipulation and  
7 witness Morgan's Supplemental Exhibit I, Schedule 2. The purchase  
8 price of \$613,623 exceeds the original cost net investment of  
9 \$424,779 and an acquisition adjustment is not requested, consistent  
10 with the terms of the Stipulation; therefore, \$424,779 is appropriate  
11 for inclusion in rate base.

12 **Q. DOES THE PUBLIC STAFF RECOMMEND COMMISSION**  
13 **APPROVAL OF THE JOINT TRANSFER APPLICATION?**

14 A. Yes. As stated in my prefiled direct testimony, this is Currituck's first  
15 application for a certificate of public convenience and necessity in  
16 North Carolina and it does not have a history of performance. However,  
17 Currituck's intended contract operator, Envirolink, Inc. (Envirolink) is  
18 the current contract operator Sandler hired to operate the Eagle  
19 Creek wastewater utility system. Envirolink is a full-service utility  
20 management company that specializes in the management of water,

1 wastewater, and public works services for clients across North  
2 Carolina.

3 Considering the experience of Envirolink, the Public Staff believes  
4 Currituck has the technical and managerial capabilities necessary to  
5 operate the Eagle Creek wastewater system. However, due to some  
6 instances of inconsistent performance, the Public Staff intends to  
7 closely monitor any complaint, service and/or compliance issues  
8 reported.

9 Considering the conditions of the Second Amended Consent  
10 Judgment, the additional conditions in the Stipulation to which  
11 Currituck is subject, the bond amount, and the testimony of Public  
12 Staff witness Phat Tran establishing the financial viability of  
13 Currituck, the Public Staff believes that the customers of the Eagle  
14 Creek subdivision will be adequately protected, and the transfer is in  
15 the best interest of the customers. The Public Staff, therefore,  
16 recommends approval of the Joint Application that will transfer the  
17 Eagle Creek wastewater utility system from Sandler to Currituck at the  
18 existing approved rates. As provided in the Stipulation, approval of the  
19 transfer is still conditioned upon the Second Amended Consent  
20 Judgment being entered in the Superior Court of Currituck County  
21 and upon all other regulatory approvals for operation of the  
22 wastewater system being obtained.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A. Yes, it does.

1 Q. Ms. Morgan, would you give us your name and  
2 address and position at the Public Staff, please?

3 A. (Iris Morgan) Yes. My name is Iris Morgan.  
4 My position, I'm a financial analyst at the Public  
5 Staff accounting division at 430 North Salisbury  
6 Street, Raleigh, North Carolina.

7 Q. Ms. Morgan, on March 2nd of this year, did  
8 you prefile direct testimony consisting of seven  
9 exhibits [sic] and one exhibits consisting of five  
10 pages?

11 A. Yes.

12 Q. Do you have any changes or corrections to  
13 that testimony?

14 A. No.

15 Q. And then on June 6th of this year, did you  
16 file supplemental testimony consisting of five [sic]  
17 pages and exhibits -- one exhibit consisting of 10  
18 pages?

19 A. Yes.

20 Q. Do you have any changes or corrections to  
21 that supplemental and settlement testimony?

22 A. No.

23 Q. And if I were to ask you those same questions  
24 in your prefiled direct testimony and your prefiled

1 supplemental and settlement testimony today, would your  
2 answers be the same?

3 A. Yes.

4 Q. And did you prepare a summary of your  
5 testimony?

6 A. I did.

7 Q. Can you please read that?

8 A. Yes. Currituck Water and Sewer, LLC filed  
9 rebuttal testimony on March 22, 2022. My supplemental  
10 testimony revises my direct testimony and exhibits to  
11 reflect updated information the Company provided to the  
12 Public Staff subsequent to the filing of the Public  
13 Staff direct testimony and exhibits. In addition, my  
14 supplemental testimony presents updates recommended by  
15 Public Staff witness Franklin as a result of the Public  
16 Staff review of additional information provided by the  
17 Company.

18 Based on the result of the Public Staff's  
19 investigation, net plant in service at  
20 June 30th of 2022, is \$424,779, consisting of plant in  
21 service of \$2,722,022, reduced by accumulated  
22 depreciation of \$359,644, and contributions in aid of  
23 construction of 1 million 2 -- I'm sorry \$1,937,599.  
24 Additionally, I calculate the purchase price of

1 \$613,623, consisting of \$250,000 from the asset  
2 purchase agreement, and \$413,590 of additional plant  
3 items less \$49,967 of accumulated depreciation as shown  
4 on Schedule 2 of Morgan Exhibit 1.

5 This concludes the summary of my supplemental  
6 testimony.

7 MR. LITTLE: Chair Mitchell, I move that  
8 Ms. Morgan's prefiled direct testimony and prefiled  
9 supplemental and settlement testimony be copied  
10 into the record in this proceeding as if given  
11 orally from the stand and that the exhibits and --  
12 attached to the testimony be identified as marked  
13 when filed.

14 CHAIR MITCHELL: All right. Hearing no  
15 objection to that motion, it will be allowed.

16 (Morgan Exhibit I and Morgan Exhibit I  
17 Revised, were identified as they were  
18 marked when prefiled.)

19 (Whereupon, the prefiled direct  
20 testimony and Appendix A and  
21 supplemental and settlement testimony of  
22 Iris Morgan was copied into the record  
23 as if given orally from the stand.)  
24

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0****SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11****TESTIMONY OF IRIS MORGAN  
ON BEHALF OF THE PUBLIC STAFF -  
NORTH CAROLINA UTILITIES COMMISSION****MARCH 2, 2022**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**  
2 **PRESENT POSITION.**

3 A. My name is Iris Morgan and my business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina. I am a Financial Analyst in  
5 the Water Section of the Public Staff – Accounting Division  
6 (Accounting Division) and represent the using and consuming public  
7 in this proceeding.

8 **Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE PUBLIC**  
9 **STAFF?**

10 A. I have been employed by the Public Staff – North Carolina Utilities  
11 Commission (Public Staff) since September 2, 2002. I joined the  
12 Accounting Division on December 1, 2008.

13 **Q. BRIEFLY STATE YOUR QUALIFICATIONS AND DUTIES.**

14 A. My qualifications and duties are included in Appendix A.

1 **Q. WHAT ARE YOUR DUTIES IN YOUR PRESENT POSITION?**

2 A. I am responsible for analyzing testimony, exhibits, and other data  
3 parties present before the North Carolina Utilities Commission  
4 (Commission). I am also responsible for performing examinations of  
5 the books and records of utilities involved in proceedings before the  
6 Commission and summarizing the results in testimony and exhibits  
7 for the Commission.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
9 **PROCEEDING?**

10 A. The purpose of my testimony is to (1) present the results of my  
11 investigation of the level of investment (rate base) Currituck Water  
12 and Sewer, LLC (Currituck) filed in its request to acquire the Eagle  
13 Creek Subdivision sewer system and franchise in Currituck County,  
14 North Carolina from Sandler Utilities at Mill Run, LLC (Sandler)  
15 (sometimes referred to collectively as the Applicants) and its request  
16 for Commission approval of its proposed rates (the Joint Application);  
17 and (2) recommend an original cost net investment that Currituck  
18 could recover from prospective customers if the Commission  
19 approved the transfer of the system and franchise.

20 **Q. PLEASE DESCRIBE THE SCOPE OF YOUR INVESTIGATION.**

21 A. On May 19, 2021, the Applicants filed the Joint Application, which  
22 seeks authority from the Commission to transfer Eagle Creek

1 Subdivision sewer system and franchise in Currituck County, North  
2 Carolina, to Currituck and approve rates for sewer operations. My  
3 investigation included a review of the data Applicants filed, prior case  
4 proceedings, and the Applicants' responses to Public Staff data  
5 requests.

6 **Q. WHAT EXHIBITS HAVE YOU PREPARED?**

7 A. I have prepared one exhibit that includes several schedules with my  
8 rate base adjustment calculations. Schedule 1 of my exhibit presents  
9 the original cost rate base. Schedules 1-1(a) and 1-1(b) present the  
10 Public Staff's calculations of utility plant in service, accumulated  
11 depreciation, and contributions in aid of construction (CIAC).

12 **Q. WHAT IS THE PUBLIC STAFF'S RECOMMENDED ORIGINAL**  
13 **COST NET INVESTMENT?**

14 A. As shown on Schedule 1, the Public Staff has calculated a net plant  
15 in service amount of \$398,499 as of December 31, 2021, including  
16 updates through January 31, 2022, for this proceeding. The  
17 Company presented an amount of \$2,752,573 for plant in service in  
18 the Joint Application. Based on my investigation, I calculated a  
19 different amount for plant in service.

20 First, I started with the plant in service amount of \$2,206,202, from  
21 the Company's last general rate case proceeding in Docket No. W-

1 1130, Sub 8. I added \$484,389 of additional plant items to this  
2 amount, in alignment with Public Staff Utilities Engineer D. Michael  
3 Franklin's recommendation. These adjustments result in a total plant  
4 in service amount of \$2,690,591, as shown on Schedule 1 of **Morgan**  
5 **Exhibit I.**

6 Next, I calculated accumulated depreciation and depreciation  
7 expense to reflect depreciation related to the adjusted plant in  
8 service shown on Schedules 1-1(a) and 1-1(b). I depreciated the  
9 property using the service lives Public Staff witness Franklin  
10 recommended. Finally, I calculated accumulated depreciation based  
11 on the length of time each plant item has been in service, using the  
12 half-year convention in the first year of an item's depreciable life,  
13 excluding additions made during the test year. These calculations  
14 resulted in a total amount of \$354,493 for accumulated depreciation  
15 and \$58,885 for depreciation expense, as shown on Schedule 1 and  
16 Schedule 1-1(b) of **Morgan Exhibit I.**

17 **Q. PLEASE EXPLAIN HOW YOU DETERMINED THE PURCHASE**  
18 **PRICE.**

19 A. The asset purchase agreement between Currituck and Sandler (the  
20 APA) provides that the purchase price for the Eagle Creek  
21 wastewater utility system is \$250,000. In addition, the purchase price  
22 shall be increased by the amount of any costs incurred and paid by

1 Sandler(Seller) for renewal and replacements, capitalized repairs,  
2 and/or upgrades to the Wastwater System as approved by the  
3 Commision and Currituck (Buyer). The APA also provides for an  
4 additional purchase price of \$88,900, equivalent to \$100 for each of  
5 the 889 new connections made to the Eagle Creek wastewater utility  
6 system from the adjacent Fost and Flora subdivisions that other  
7 developers plan to build (Fost and Flora Additions). At this time,  
8 these new connections have not been made and the Public Staff  
9 would oppose the Fost and Flora Additions as the underlying  
10 connections do not directly benefit Eagle Creek wastewater utility  
11 system customers. For the reasons set forth in Public Staff witness  
12 Franklin's testimony and at this time, the Public Staff is of the opinion  
13 that a purchase price of no greater than the original cost net  
14 investment is reasonable for ratemaking purposes, which is  
15 \$398,499. Excluding the Fost and Flora additions, which the Public  
16 Staff opposes, Currituck would only be entitled to recover the original  
17 cost net investment at closing, as closing is defined in the APA.

18 Furthermore, the original cost net investment of \$398,499 is subject  
19 to change based on the inclusion of reasonable and prudent plant  
20 additions between December 31, 2021 and closing, and net of plant  
21 retirements and additional accumulated depreciation and  
22 amortization through the date of closing.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A. Yes, it does.

**QUALIFICATIONS AND EXPERIENCE**

## IRIS MORGAN

I graduated from North Carolina Wesleyan College with a Bachelor of Science Degree in Accounting and Business Administration in 2007. In addition, I graduated from the Keller Graduate School of Management with a Master of Accounting and Financial Management (2011), a Master of Business Administration (2013), and a Master of Public Administration (2014).

Prior to joining the Public Staff, I was employed by WorldCom, Inc., as a CORE Analyst. My duties included providing customer service support and addressing customer billing and reporting requirements.

I joined the Public Staff in September 2002 as an Administrative Assistant. In 2006, I was promoted to the position of Consumer Services Complaint Analyst, where I resolved numerous consumer complaints and performed utility reporting analysis. After completion of my accounting degree, I was promoted to the position of Public Staff Accountant in December 2008.

I have performed audits and filed testimony and exhibits in several water rate cases, and assisted in investigations addressing a wide range of topics and issues related to the water, electric, and gas industries.

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0**

**SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11**

**SUPPLEMENTAL TESTIMONY OF  
IRIS MORGAN  
ON BEHALF OF THE PUBLIC STAFF -  
NORTH CAROLINA UTILITIES COMMISSION**

**JUNE 6, 2022**

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND**  
2 **PRESENT POSITION.**

3 A. My name is Iris Morgan and my business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina. I am a Financial Analyst in  
5 the Water Section of the Public Staff – Accounting Division  
6 (Accounting Division) and represent the using and consuming public  
7 in this proceeding.

8 **Q. ARE YOU THE SAME IRIS MORGAN WHOSE DIRECT**  
9 **TESTIMONY AND EXHIBITS WERE FILED IN THIS DOCKET ON**  
10 **MARCH 2, 2022?**

11 A. Yes.

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL**  
13 **TESTIMONY IN THIS PROCEEDING?**

1 A. The purpose of my supplemental testimony is to present the  
2 accounting adjustments I have made to my direct testimony and  
3 exhibit because of additional information provided by Sandler Utilities  
4 at Mill Run, LLC (Sandler) to the Public Staff subsequent to the filing  
5 of the Public Staff's direct testimony and exhibits. In addition, my  
6 supplemental testimony also presents revisions recommended by  
7 Public Staff witness Franklin as a result of additional information  
8 provided in response to Public Staff data requests.

9 **Q. PLEASE EXPLAIN THE REVISIONS YOU HAVE MADE IN YOUR**  
10 **SUPPLEMENTAL EXHIBITS.**

11 A. I have prepared one exhibit, which includes four schedules.  
12 Schedule 1 presents the calculation of net plant in service. Schedule  
13 2 presents the calculation of the purchase price. Schedules 3 and 4  
14 present the calculation of plant in service, accumulated depreciation  
15 and depreciation expense before and after April 21, 2021, the signing  
16 date of the Asset Purchase Agreement between Sandler and  
17 Currituck Water and Sewer, LLC. Additionally, I calculated  
18 accumulated depreciation and depreciation expense to reflect  
19 depreciation related to the revised plant in service shown on  
20 Schedules 3 and 4. I depreciated the property using the service lives  
21 recommended by Public Staff witness Franklin. Finally, I calculated  
22 a revised accumulated depreciation amount based on the length of

1 time each plant item has been in service, using the half-year  
2 convention in the first year of an item's depreciable life.

3 **Q. PLEASE EXPLAIN THE CALCULATION FOR NET PLANT IN**  
4 **SERVICE.**

5 A. As shown on Schedule 1, the Public Staff has calculated a revised  
6 net plant in service amount of \$424,779 through June 30, 2022, for  
7 this proceeding.

8 First, I started with the plant in service amount of \$2,206,202 and  
9 contribution in aid of construction amount of \$1,937,599, approved  
10 by the Commission in the Company's last general rate case  
11 proceeding in Docket No. W-1130, Sub 8. This plant in service is now  
12 fully depreciated and/or contributed. To this amount, I added  
13 \$515,820 of additional plant items recommended by Public Staff  
14 witness Franklin, for a total amount of \$2,722,022 for plant in service.  
15 Next, I calculated \$91,041 of accumulated depreciation on the  
16 additional plant items using the service lives Public Staff witness  
17 Franklin recommended. These revisions result in a total net plant in  
18 service amount of \$424,779, as shown on Schedule 1 of **Morgan**  
19 **Supplemental Exhibit I.**

20 **Q. WHAT REVISIONS HAVE BEEN MADE TO THE PURCHASE**  
21 **PRICE?**

1 A. The Public Staff calculated a purchase price of \$613,623 for this  
2 transfer proceeding. This amount includes \$250,000 from the  
3 Revised and Restated Asset Purchase Agreement (APA) and  
4 \$413,590 of additional plant items since April 14, 2021, less \$49,967  
5 of accumulated depreciation. This calculation results in a purchase  
6 price of \$613,623, as shown on Schedule 2 of **Morgan**  
7 **Supplemental Exhibit 1.**

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes, it does.

1 MR. LITTLE: One -- before I offer up  
2 the panel for cross examination, there is one thing  
3 I would like to do. In Commission questions for  
4 Mr. Myers there was referenced a verified response  
5 from the public hearing of Currituck. The Public  
6 Staff filed a response to that filing on  
7 March 14th, and it's entitled verified on March --  
8 we filed two responses, excuse me.

9 On March 11, 2022, Public Staff filed a  
10 verified response of the Public Staff on customer  
11 comments from public hearings by Currituck Water  
12 and Sewer, LLC; and then, on March 14th, the Public  
13 Staff filed a verified response of the Public Staff  
14 on customer comments from public hearings by  
15 Sandler Utilities at Mill Run. I would like those  
16 marked as exhibits and, pending any objections and  
17 questions, admitted into the record.

18 CHAIR MITCHELL: All right. Mr. Little,  
19 what I'm gonna do, is I'll call for a motion from  
20 you for all public -- for all evidence the Public  
21 Staff wants to move in subsequent to these two  
22 witnesses. So I'll entertain this motion at that  
23 time, just so we can keep the record clear.

24 MR. LITTLE: That's fine. Thank you.

1 CHAIR MITCHELL: And just to be sure,  
2 you referenced Public Staff's response to  
3 Currituck's report, which was filed on March 11th;  
4 is that right?

5 MR. LITTLE: That's correct.

6 CHAIR MITCHELL: And then Public Staff's  
7 response to Sandler's report, which was filed on  
8 March 14th?

9 MR. LITTLE: That's correct.

10 CHAIR MITCHELL: All right. So please  
11 do. I will entertain that motion subsequent to  
12 disposition of these witnesses.

13 MR. LITTLE: Thank you. And the panel  
14 is available for cross.

15 CHAIR MITCHELL: All right. Let me  
16 check in with Commissioners, see if we've got  
17 questions. I'm assuming no cross for these  
18 witnesses?

19 MR. ALLEN: No questions.

20 CHAIR MITCHELL: Okay. Go ahead.

21 EXAMINATION BY COMMISSIONER CLODFELTER:

22 Q. Mr. Franklin, I've got a question for you.  
23 It's really more general in nature. It's certainly  
24 pertinent to this case because of its history and the

1 way it's probably gonna go forward from this point, but  
2 it also would be applicable to other cases. It just  
3 happens to be that this was the first chance I get to  
4 talk to you about it here.

5 So talk to me a little bit about how Public  
6 Staff and DWR sort of handle the somewhat overlapping  
7 and somewhat concurrent responsibilities when you've  
8 got customer issues. How does that work with DWR?  
9 Just give me a general education about it.

10 A. (D. Michael Franklin) Just in general?

11 Q. Yeah.

12 A. Well, normally we interface with, on  
13 wastewater systems, DWR to get -- you know, for rate  
14 cases, especially, get notices of violation and that  
15 type of information from them. And, typically, there's  
16 an engineer assigned to each wastewater system from DWR  
17 that we interact -- interface with.

18 With consumer complaints, oftentimes there's  
19 confusion on the customer's side, whether they should  
20 contact DEQ or contact us. And quite honestly,  
21 sometimes there's confusion on our side, whether it's a  
22 Public Staff issue or a DEQ, but as Mr. Myers  
23 explained, it's a regulatory issue, we always refer  
24 them back to DEQ. If it's a service issue or a

1 customer service issue or something involving rates or  
2 those type of concerns, then we refer them to the  
3 Consumer Services Division in the Public Staff.

4 Q. I may be the only one here who doesn't know,  
5 but the only way I find out things I don't know is to  
6 ask questions. So excuse me if I'm the only one that  
7 doesn't know it.

8 All right. Had there ever been any thought  
9 given to trying to, sort of, formalize protocols  
10 between DWR and the Public Staff about how you respond  
11 to customer complaints? Are there any formalized  
12 protocols?

13 A. Not that I'm aware of; no, sir.

14 Q. Has that ever been something that's been  
15 discussed with DWR about who's gonna take the lead on  
16 what kinds of things and whose got the first call,  
17 whose got the second call, and how that works?

18 A. Not that I --

19 Q. Not that you know of?

20 A. Not that I know of, no.

21 Q. Just curious again, because it comes up in  
22 this case, but it's also come up in other cases and it  
23 will in the future, so I was just curious. Thank you  
24 for helping me out today. Appreciate it.

1 CHAIR MITCHELL: Commissioner

2 Brown-Bland?

3 EXAMINATION BY COMMISSIONER BROWN-BLAND:

4 Q. So following up on what you were just  
5 discussing with Commissioner Clodfelter, is there -- is  
6 there a routine and regular practice of both of the  
7 agencies, that is Public Staff and DEQ, letting the  
8 other know that they received a complaint?

9 A. (D. Michael Franklin) I mean, the experience  
10 I have had is yes, because what will happen, DEQ  
11 will -- if it's something that I'm involved with, they  
12 will call me and say that they received a complaint,  
13 and they think it's more on the Public Staff's side of  
14 the house. And, likewise, if I receive something, then  
15 I reach out to the DEQ, typically to the regional  
16 office who is in charge, and I refer that to them.

17 Q. Okay. But is that happening and occurring  
18 because the one that receives it thinks that it belongs  
19 to the other, or my initial question is, is there just  
20 an informational notification that we're having issues  
21 with this -- with this system or these customers? Do  
22 you see the need to have any such -- just a running  
23 list of knowing what's happening with the systems from  
24 the DEQ side?

1           A.       I think, for some of the systems that have  
2       been problematic, we have had more of a sharing of  
3       information and identification of ongoing issues or new  
4       issues; but I think, on some of these others that  
5       aren't -- you know, we don't hear too much about, and  
6       they seem to be operating fairly reasonably or  
7       adequately without -- with an occasional violation, we  
8       don't get that type of sharing of information. But the  
9       ones that are more problematic, I do see a more sharing  
10      of the issues and getting each other involved.

11          Q.       So would it be fair to take from what you  
12      said that you don't see the need that on the -- that  
13      all of the complaints that might come in to DEQ just be  
14      on your radar somewhere or just some -- receive some  
15      routine list of this month we had complaints from these  
16      systems, just for your information?

17          A.       I think communication is very important, and  
18      the more we communicate with each other, the better off  
19      we both are. That's my personal position on that.

20          Q.       So maybe something to think about.

21                    So with respect to this transfer docket  
22      that's in front of us and these systems, who do you --  
23      I guess there's a split jurisdiction between the two  
24      about certain issues --

1 A. Right.

2 Q. -- but are the customers in any way told, so  
3 that they could process that for themselves, who to  
4 call should they start out?

5 A. For this particular one, they started going  
6 directly to David May, who was the regional DWR  
7 supervisor from the Washington regional office, about  
8 complaints, but again, those were primarily the  
9 sanitary system overflows that they were experiencing,  
10 and we initially -- when they first had the large  
11 outage in September of 2020, we received calls that  
12 were sent to consumer services, but after that, most of  
13 the identification of issues was handled through  
14 David May and his group, but they were -- they always  
15 included me on the complaints and any email that they  
16 received or that they sent.

17 Q. And in your testimony here, you stated that  
18 the Public Staff intends to closely monitor any  
19 complaint service and/or compliance issues reported due  
20 to inconsistent performance from Envirolink in the  
21 past.

22 What does that mean to you? How -- how will  
23 you follow it closely? Do you plan to follow -- does  
24 that necessitate you having a higher level of

1 communication with DEQ?

2 A. I think, because of this particular system,  
3 there will continue to be the interfaces that we  
4 currently have and the communications that we currently  
5 have. And I also -- I'm also listed on the HOA's  
6 website for the Eagle Creek as a contact, and so I get  
7 communications directly from -- from homeowners through  
8 that information; and also, again, David May and I  
9 communicate back and forth with information that we  
10 receive, and I expect that to continue.

11 Q. All right. Thank you, Mr. Franklin.

12 CHAIR MITCHELL: Commissioner McKissick?

13 EXAMINATION BY COMMISSIONER MCKISSICK:

14 Q. Sure. And this is along the same line of  
15 questions that Commissioners Clodfelter and Brown-Bland  
16 have been asking. I mean, I -- and perhaps you can  
17 help me with this. I know in the consent judgment, you  
18 know, this page 5, 6, and 4, I mean, it specifically  
19 addresses responding to citizen's complaint, and it  
20 provides a great deal of specificity. You know, under  
21 subsection A it talks about when a resident complains  
22 about a material failure -- and again, material is  
23 affecting at least four homes -- that within two hours  
24 of receiving a notice it's going to respond to the

1 citizen. Then it says under section B, in terms of  
2 initiating response it says complaints for equipment  
3 failure, systems failures, sewer outfall problems, they  
4 are gonna do that within three hours of receiving the  
5 complaint. And then it gets down to subsection C, it  
6 says in terms of providing sanitation services, that's  
7 gonna be provided within four hours of confirmation of  
8 the discharge. And then it gets down to D, and it  
9 talks about, you know, continuously performing  
10 sanitation surveys. And then going down to E,  
11 notifying residents of full system restoration. So  
12 once it's done, within two hours. And then it's gonna  
13 be a report prepared that Currituck's gonna give to  
14 DWR, and it's gonna be pretty precise. You know, says  
15 it's gonna maintain an accurate log of the residents'  
16 complaint, actions that were taken to those complaints,  
17 identify the complainant, summary of the substance of  
18 the complaint, when the complaint was received,  
19 description of the action taken in response to the  
20 complaint, including but not limited correction action  
21 plans, when the response was initiated, when the  
22 complaint was resolved. Now, all of that is going to  
23 DWR.

24 At what point do they have a feedback loop

1 that, perhaps, shares that information --

2 A. (D. Michael Franklin) I believe in the --

3 Q. -- with the Commission?

4 A. I'm sorry.

5 Q. Go ahead. Yeah.

6 A. I believe, in the stipulation agreement or in  
7 the settlement agreement, there is also requirements  
8 for them to file similar information with the  
9 Commission.

10 Q. I think that's quarterly, though, or is that  
11 more frequent? And perhaps you're correct about that.

12 A. I would have --

13 Q. Seems like there were some quarterly reports  
14 coming in.

15 A. Either way, again, because of our concerns  
16 that have happened, you know, with this system over the  
17 last several years, we will interface directly with DWR  
18 about the complaints they receive, and we're also going  
19 to -- I think we need to educate the homeowners also  
20 about consumer services, because we want to track  
21 complaints as well so that we can monitor them more  
22 closely internally, and by having them filed with -- or  
23 have them register a complaint with consumer services,  
24 that also gives customers more -- some additional

1 options about getting their complaint addressed. So I  
2 have already talked to the vice president of the HOA  
3 that that's our plan and that we were going to ask  
4 consumers to also file a complaint with the consumer  
5 services over service issues.

6 Q. I'm glad to hear that, and I hope it works  
7 out that way, but as I remember from reviewing the case  
8 file from when the current owner was last before the  
9 Commission, there was language in the order about  
10 monitoring and providing information and follow-up. As  
11 I recall, the follow-up on the Public Staff's side did  
12 not -- was not as conscientious.

13 A. That is true.

14 Q. So I hope we will see a more vigorous effort  
15 to remain engaged --

16 A. Yes, sir.

17 Q. -- as this moves forward.

18 A. That's certainly our intent.

19 Q. Thank you.

20 CHAIR MITCHELL: All right. Thank you  
21 all for your testimony so far and your  
22 participation in this proceeding. I have a few  
23 more questions for you.

24 EXAMINATION BY CHAIR MITCHELL:

1 Q. First, Mr. Franklin or Ms. Morgan, will y'all  
2 just confirm for me that the purchase price is now  
3 \$613,623?

4 A. (Iris Morgan) That is correct.

5 Q. Okay. And that's clearly set forth in the --  
6 in the settlement agreement.

7 A. Yes.

8 Q. I just wanted to make sure I was reading it.

9 A. Yes.

10 Q. I took a look again at the asset purchase  
11 agreement, and there is a section in the agreement,  
12 specifically it's in Article 4 -- and I know y'all  
13 probably don't have this in front of you, so you're  
14 gonna have to accept this subject to check. It's  
15 Article 4, Section 42, which is titled purchase price,  
16 and then subsection C deals with rate-based treatment  
17 of purchase price. And the -- this contract provision  
18 provides that, in the event the Commission fails to  
19 establish a rate base or is not -- or the buyer is not  
20 satisfied with the amount of the rate base the  
21 Commission establishes, buyer has rights to walk away  
22 from the agreement. And I'm paraphrasing, but that's  
23 the way I understand that provision.

24 I assume, given the parties have settled

1 here, that irrespective of this term and the APA,  
2 you-all are not aware of any interest on the part of  
3 the buyer to walk away from the agreement?

4 A. (D. Michael Franklin) That's correct, we're  
5 not aware.

6 A. (Iris Morgan) Yes.

7 Q. Okay. Okay. Was this contract provision  
8 discussed at all during the course of the settlement,  
9 to your knowledge?

10 A. (D. Michael Franklin) We just requested and  
11 required that Sandler make sure that they had  
12 communicated with Currituck, and that they were all in  
13 agreement with the information.

14 Q. Okay. Okay. All right. Let's see.  
15 Mr. Franklin, we've got one for you. Hang on one  
16 second.

17 Question for you, Mr. Franklin, about cost  
18 estimates on the types of the collection system  
19 alternatives that are -- that are -- have been  
20 discussed in this case.

21 In your direct testimony you indicate that  
22 the exact cost for each of the sewer collection system  
23 alternatives wasn't known at that point in time; is  
24 that still the case?

1 A. Yes.

2 Q. Okay.

3 A. I think you heard from Mr. Myers' testimony  
4 that he just recently got a new estimate for a  
5 low-pressure system, so that's still the case, yes.

6 Q. Okay. Mr. Franklin, you were in the hearing  
7 room when Mr. Myers gave us his understanding of the  
8 times of this transaction.

9 Just to make sure we're all on the same page,  
10 can you help me understand the Public Staff's  
11 understanding of the timing of this transaction, and  
12 specifically what has to happen in order for there to  
13 be closing and in order for there to be a transfer of  
14 the permit?

15 A. (No response.)

16 Q. Just walk me through the order of events.

17 A. I will do my best.

18 Q. Okay.

19 A. This is my understanding. Currituck will  
20 post the bond amount of \$650,000 and file that with the  
21 Commission.

22 Q. First, before you begin, are you assuming  
23 approval of --

24 A. Yes. I'm sorry.

1 Q. All right. Assuming approval of this  
2 application?

3 A. That's right. Yes. That Currituck will post  
4 the bond amount of \$650,000, subject to Commission  
5 acceptance; that Sandler is not authorized transfer of  
6 any of the assets until -- of the utility, including  
7 the permit, unless until Sandler moves to join  
8 Currituck to the second amended consent judgment as  
9 defendant.

10 MR. DROOZ: I'm sorry to interrupt, but  
11 that's been done by the second amended consent  
12 judgment, hasn't it?

13 THE WITNESS: Okay. All right. Let's  
14 see. And then once that is done -- let's see --  
15 that the superior court will have to make a  
16 decision on whether they accept the second amended  
17 consent judgment and make any additional changes  
18 that they think are necessary. And at that time,  
19 my understanding is they can pursue with the  
20 closing and transfer of the system to Currituck.

21 Q. Okay. So Mr. Myers testified today that,  
22 assuming approval of the application, Currituck would  
23 be in a position to post the bond, the \$650 bond or  
24 letter of credit that's been -- \$650,000 bond or letter

1 of credit that's been agreed to in the stipulation by  
2 mid-July of this year. I know the Commission has on  
3 file bond in the amount of, I believe it's \$200,000 for  
4 Sandler.

5 A. That's right.

6 Q. So what point do you envision, in the timing  
7 of this whole thing, releasing the bond that the  
8 Commission holds for Sandler?

9 A. Once we have validation that the closing has  
10 occurred.

11 Q. Okay. And so you anticipate closing won't  
12 occur until subsequent to entry of the -- execution of  
13 the second amended consent order?

14 A. That's right. That's my understanding,  
15 but --

16 Q. Okay. And you heard Mr. Myers' testimony  
17 about the transfer of the two permits at issue here?

18 A. Right.

19 Q. And do you take any issue with his testimony  
20 to us today?

21 A. No.

22 Q. Okay. Okay.

23 CHAIR MITCHELL: All right. Any  
24 additional questions for Mr. Franklin?

1 (No response.)

2 Q. All right. One last question for you-all.  
3 This is in light of this -- all of the facts and the  
4 circumstances underlying the evidence provided to the  
5 Commission in this case, is it the Public Staff's  
6 opinion that transfer of this franchise and this  
7 wastewater utility system to Currituck is in the public  
8 interest?

9 A. Yes. With the oversight that's provided in  
10 the settlement agreement.

11 Q. Okay. So just to make sure I understand your  
12 testimony, assuming that Currituck complies with the  
13 terms and conditions of the settlement agreement and  
14 Public Staff is kept informed about what is -- what is  
15 transpiring at the system, as well as the relevant  
16 regulatory authorities or divisions within DEQ, Public  
17 Staff's position is this transfer is in the public  
18 interest?

19 A. That's correct.

20 Q. And Public Staff feels comfortable that there  
21 are sufficient public -- customer protections in place  
22 with respect to the settlement agreement?

23 A. That's correct.

24 Q. Okay. Let me ask that clearer.

1           The settlement agreement adequately protects  
2 consumer interests, those customers of this system?

3           A.     That's correct.

4           Q.     Okay. Do you -- has the public -- there  
5 has -- let me back up.

6           Mr. Myers testified about the extensive  
7 outreach that's occurred with customers of the system  
8 over the past year. We, the Commission, held a public  
9 hearing in this proceeding. I'm satisfied the Public  
10 Staff has been interacting with customers of this  
11 system for some time now.

12           Do you -- do you believe that this -- that  
13 the Commission's approval of this application is going  
14 to be well received by the customers of the system?

15           A.     I think there are some -- the concerns I  
16 think with some of the residents are the disruptions  
17 that would occur as a result of the collection systems  
18 replaced and the impacts of those on their everyday  
19 life, like loss of power, loss of internet connections,  
20 that sort of thing. But I believe, with all the  
21 options that have been considered and all the -- that  
22 this is the best solution to the problems at Eagle  
23 Creek.

24           Q.     Okay. And when you say "this is the best,"

1 you mean --

2 A. The transfer.

3 Q. -- the transfer as envisioned by the  
4 settlement agreement?

5 A. That is correct.

6 Q. Okay. All right.

7 CHAIR MITCHELL: Let me see if there are  
8 any other questions for Mr. Franklin.

9 (No response.)

10 CHAIR MITCHELL: All right. Let me  
11 check in with counsel. Questions on Commission's  
12 questions?

13 MR. LITTLE: No questions.

14 CHAIR MITCHELL: All right, Mr. Drooz.

15 CROSS EXAMINATION BY MR. DROOZ:

16 Q. So when that forced main was installed there  
17 were some interruptions that impacted customers; is  
18 that right?

19 A. (D. Michael Franklin) That's correct.

20 Q. And did it turn out that those were not  
21 caused by Envirolink or Currituck, but instead by  
22 mistakes by the locator service of outside companies?

23 A. That's my understanding.

24 Q. Okay. Is -- I'm not sure if this is

1 necessary, but I just want to ask if the Public Staff  
2 would be amenable to, with the other parties to the  
3 settlement, filing a list of the activities, a  
4 timeline, a sequence, so that we can all be on the same  
5 page as to, if this transfer is approved, what occurs  
6 next. Would y'all be willing to talk with us and then,  
7 perhaps, offer that as a late-filed exhibit to the  
8 Commission?

9 A. Yes.

10 Q. Okay. Thank you.

11 CHAIR MITCHELL: I'll take you up on  
12 that offer, Mr. Drooz. We'll take a late-filed  
13 exhibit setting forth the steps to closure and then  
14 permit transfer, et cetera.

15 MR. DROOZ: We will do that.

16 CHAIR MITCHELL: Good.

17 Q. And last question's for Ms. Morgan. In your  
18 summary, you mentioned Currituck Water and Sewer filed  
19 rebuttal testimony, then you talk about you received  
20 updated information from the Company that fed into your  
21 rate base and purchase price numbers.

22 Was it Sandler Utilities that provided  
23 updated information on rate base and purchase price for  
24 your use?

1 A. (Iris Morgan) I believe so.

2 Q. Okay. Thank you.

3 A. Yes.

4 MR. DROOZ: That's all.

5 CHAIR MITCHELL: One more question from  
6 Commission.

7 COMMISSIONER HUGHES: Yeah, I couldn't  
8 get your attention. I'm sorry.

9 EXAMINATION BY COMMISSIONER HUGHES:

10 Q. We've been talking a lot about the  
11 replacements and various aspects.

12 From an operations standpoint, could you just  
13 clarify if there is anything in this agreement that is  
14 setting a higher, and if so, a significantly higher  
15 standard of operation requirements on this facility  
16 moving forth from other similar facilities in  
17 North Carolina? So staffing requirements, number of  
18 hours. I'm unfamiliar exactly with the operator, sort  
19 of, classification of this, but I know there is a lot  
20 in this discussion today about staffing.

21 Is it a basic, or will we be moving forward  
22 with a higher level of staffing required for this  
23 facility than maybe DEQ would require?

24 A. (D. Michael Franklin) I don't -- well, all

1 the other systems in the state are operated by  
2 municipal systems and not by public utilities. So --  
3 but what I will say is the second amended consent  
4 judgment provides criteria for Currituck to meet, and  
5 that ensures that a higher standard of operation is  
6 maintained. They have seen significant improvement in  
7 operations since December of 2021 when the amended  
8 consent judgment took effect, and we expect similar  
9 continued satisfactory operation with the second  
10 amended consent judgment.

11 Q. And I appreciate that. Maybe I wasn't just  
12 clear, but from a cost standpoint, from a number of  
13 hours, somebody on site, will this -- will this  
14 facility be operated differently than a facility down  
15 the street that wouldn't have gone through this entire  
16 process?

17 A. Well, if it's a different type of system.  
18 The thing about the vacuum system is really you need  
19 somebody there 24 hours a day because, as Mr. Myers  
20 testified, if you start having a leak in one of the  
21 valve chambers and it -- or the valve pits and it goes  
22 unnoticed, it just cascades, and it can take down the  
23 whole system if it's not promptly corrected. So you  
24 don't have hours to wait to get this -- to get the leak

1 addressed.

2 Q. And is it in your interpretation that that  
3 level of operation will -- if there is a different  
4 technology moving forward, that that level of operation  
5 could change with it, or will the existing agreement  
6 carry forth to a potential -- a potential system that  
7 could require less operation?

8 A. Sure. I think if it was a different type of  
9 system, there is the potential that there is less  
10 operational oversight than the current system.

11 Q. Okay. And we are not locking ourselves into  
12 an agreement?

13 A. No.

14 Q. Okay. Thanks.

15 CHAIR MITCHELL: All right. Just one  
16 more question and then I'll let you guys up.

17 EXAMINATION BY CHAIR MITCHELL:

18 Q. Mr. Franklin, did you review Mr. Myers'  
19 testimony filed yesterday on the settlement agreement?

20 A. (D. Michael Franklin) Not in depth, no. I  
21 just got it this morning.

22 Q. Okay. Well, my read of the testimony -- and  
23 your counsel can object to my read, but my read of the  
24 testimony is that the system is -- the operation of the

1 system is stable at this point in time and has been for  
2 a few months.

3 A. Uh-huh.

4 Q. Is that -- do you take any issue with that  
5 testimony?

6 A. I do not.

7 Q. Is that your opinion, the Public Staff's  
8 opinion?

9 A. That's my understanding. And, actually, I  
10 had an email Sunday from the vice president of the HOA,  
11 and he stated the same thing, that the system's been  
12 stable since December of 2021, and also, the engineer  
13 that Mr. Myers had mentioned from the -- that lives in  
14 the neighborhood, I checked with her when I thought the  
15 hearing was gonna be earlier than this date, and she  
16 had told -- so that was about a month ago, and she also  
17 told me that the system has been performing well since  
18 December of 2021.

19 Q. So is it your impression then that both of  
20 those individuals to whom you spoke are satisfied with  
21 the level of service being provided at this point in  
22 time in the neighborhood?

23 A. Yes.

24 Q. Okay.

1 CHAIR MITCHELL: Okay. Questions on  
2 Commissioners' questions? Let's see. Let's start  
3 over here.

4 MR. DROOZ: No.

5 CHAIR MITCHELL: Okay. Go ahead.  
6 Public Staff.

7 REDIRECT EXAMINATION BY MR. LITTLE:

8 Q. Mr. Franklin, responding to Mr. Hughes'  
9 questions, you said that the system -- this vacuum  
10 system needs an operator present 24/7.

11 Is that a function of this type of system?  
12 Would another system, such as a gravity system, require  
13 a 24/7 operator?

14 A. (D. Michael Franklin) I don't believe so,  
15 no.

16 Q. And the other requirements, staffing and  
17 corrective actions, that's a -- a lot of that is a  
18 function of the second amendment consent judgment, or  
19 the amended consent judgment and the second amended  
20 consent judgment when that is entered with the superior  
21 court; is that correct?

22 A. That's correct.

23 Q. If the system is upgraded or the design  
24 changed to gravity or a low-pressure system, staffing

1 requirements and maintenance requirements are going to  
2 be different; is that correct?

3 A. That's correct.

4 Q. So what we have today for maintenance and  
5 staffing is not set in stone then?

6 A. That's subject to change, yes.

7 MR. LITTLE: That's all I have.

8 CHAIR MITCHELL: All right. If there  
9 are no additional questions, you-all may step down,  
10 be excused. Thank you very much for your  
11 participation.

12 I will entertain motions from you,  
13 Mr. Little.

14 MR. LITTLE: I move that the testimony  
15 and exhibits of Ms. Morgan and Mr. Franklin be  
16 admitted, and then the March 11th Public Staff  
17 response to Sandler and the March 14th response to  
18 Currituck be moved into the record, and the other  
19 witness', Public Staff witness Phat Tran, his  
20 testimony be admitted into the record.

21 CHAIR MITCHELL: Okay. All right. So  
22 the -- hearing no objection to those motions, the  
23 exhibits attached to the testimonies of Public  
24 Staff witness Franklin and Public Staff witness

1 Morgan are admitted into evidence.

2 (Franklin Exhibits 1 through 5 and  
3 Morgan Exhibit I and Morgan Exhibit I  
4 Revised were admitted into evidence.)

5 CHAIR MITCHELL: The Public Staff's  
6 responses to reports, one of which was filed on  
7 March 11th and the other of which was filed on  
8 March 13th, are admitted into evidence.

9 (Verified Response of the Public Staff  
10 on Customer Comments From Public  
11 Hearings By Currituck Water and Sewer,  
12 LLC Filed March 11, 2022; and Verified  
13 Response of the Public Staff on Customer  
14 Comments From Public Hearings By Sandler  
15 Utilities At Mill Run Filed  
16 March 14, 2022, were admitted into  
17 evidence.)

18 CHAIR MITCHELL: The testimony -- the  
19 joint testimony of Public Staff witnesses May and  
20 Tankard will be copied into the record as if  
21 delivered orally from the stand and exhibits to  
22 that testimony will be marked for identification as  
23 they were when prefile and admitted into evidence,  
24 as will be the case for the appendices to that

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joint testimony.

(May and Tankard Exhibits 1 through 10,  
were admitted into evidence.)

(Whereupon, the prefiled joint testimony  
and Appendices A and B of David May and  
Robert Tankard and was copied into the  
record as if given orally from the  
stand.)

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JUN 22 2022

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0  
AND****SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11****JOINT TESTIMONY OF DAVID MAY AND ROBERT TANKARD****ON BEHALF OF THE PUBLIC STAFF****NORTH CAROLINA UTILITIES COMMISSION****MARCH 2, 2022**

- 1 **Q. MR. DAVID MAY, PLEASE STATE YOUR NAME, BUSINESS**  
2 **ADDRESS, AND PRESENT POSITION.**
- 3 A. My name is David May. My business address is 943 Washington  
4 Mall, Washington, North Carolina 27889. I currently serve as the  
5 Regional Supervisor of the Water Quality Regional Operations  
6 Section in the Washington Regional Office of the North Carolina  
7 Department of Environmental Quality, Division of Water Resources.
- 8 **Q. MR. DAVID MAY, BRIEFLY DESCRIBE THE ROLE AND**  
9 **RESPONSIBILITIES OF THE WATER QUALITY REGIONAL**  
10 **OPERATIONS SECTION IN THE WASHINGTON REGIONAL**  
11 **OFFICE.**

1 A. The Water Quality Regional Operations Section of the Washington  
2 Regional Office (Washington Regional Office) provides regulatory  
3 oversight of wastewater system operations across an area covering 21  
4 counties in northeastern North Carolina, among fulfilling  
5 responsibilities in several other program areas. Regional staff perform  
6 facility compliance inspections, provide input on permit language  
7 structure, follow-up on complaints from the general public, and  
8 coordinate with permittees, agents, and a variety of parties associated  
9 with wastewater facility management and operations.

10 **Q. MR. DAVID MAY, BRIEFLY STATE YOUR EDUCATION AND**  
11 **EXPERIENCE.**

12 A. My qualifications and duties are included in Appendix A. I have been  
13 responsible for overseeing regulatory compliance of wastewater  
14 collection systems, including vacuum systems, in the Washington  
15 Region since 2013.

16 **Q. MR. ROBERT TANKARD, PLEASE STATE YOUR NAME,**  
17 **BUSINESS ADDRESS, AND PRESENT POSITION.**

18 A. My name is Robert Tankard. My business address is 943  
19 Washington Mall, Washington, North Carolina 27889. I currently  
20 serve as the Assistant Regional Supervisor of the Water Quality  
21 Regional Operations Section in the Washington Regional Office.

1 **Q. MR. ROBERT TANKARD, BRIEFLY STATE YOUR EDUCATION**  
2 **AND EXPERIENCE.**

3 A. My qualifications and duties are included in Appendix B. I have been  
4 responsible for inspecting and monitoring regulatory compliance of  
5 wastewater collection systems, including vacuum systems, in the  
6 Washington Region from 1993 to 2004, and again from 2013 to  
7 present.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of our testimony is to provide the North Carolina Utilities  
10 Commission (Commission) with an overview of the North Carolina  
11 Department of Environmental Quality, Division of Water Resources'  
12 (DWR) past experiences and involvement with the Eagle Creek  
13 wastewater utility system owned by Sandler Utilities at Mill Run, LLC  
14 (Sandler) in Moyock, Currituck County, North Carolina, including the  
15 State's recent injunctive action against Sandler in *State of North*  
16 *Carolina, ex rel. North Carolina Department of Environmental Quality*  
17 *v. Sandler Utilities at Mill Run, LLC*, 21 CVS 78.

18 **Q. BRIEFLY DESCRIBE THE INVOLVEMENT OF THE WASHINGTON**  
19 **REGIONAL OFFICE WITH THE EAGLE CREEK WASTEWATER**  
20 **UTILITY SYSTEM.**

1 A. The Washington Regional Office is responsible for overseeing  
2 compliance with the water quality permits issued for the Eagle Creek  
3 wastewater utility system, including Systemwide Collection System  
4 Permit No. WQCS00290 issued to Sandler on May 2, 2013 for  
5 operation of the Eagle Creek Collection System (“Collection System”),  
6 and Non-discharge Permit No. WQ014306 issued to Sandler on  
7 October 8, 2015 and renewed on August 4, 2021 for operation of the  
8 Eagle Creek Wastewater Treatment and Disposal System  
9 (Treatment and Disposal System). A true and accurate copy of  
10 Systemwide Collection System Permit No. WQCS00290 issued to  
11 Sandler on May 2, 2013 (the Collection System Permit) is attached  
12 hereto as **May and Tankard Exhibit 1**. A true and accurate copy of  
13 the Non-discharge Permit No. WQ014306 issued to Sandler on  
14 October 8, 2015 and renewed on August 4, 2021 for operation of the  
15 Treatment and Disposal System (the Treatment and Disposal  
16 System Permit) is attached hereto as **May and Tankard Exhibit 2**.

17 In our compliance oversight role, the Washington Regional Office  
18 conducts inspections, receives and evaluates reports of sanitary  
19 sewer overflows from the permittee, receives and conducts  
20 investigations in response to citizen complaints, and issues notices  
21 of violations (NOVs) and civil penalty assessments where  
22 appropriate to address instances of noncompliance. In addition, the

1 Washington Regional Office is currently responsible for overseeing  
2 Sandler's compliance with the Amended Consent Judgment issued  
3 by the Honorable Wayland J. Sermons in *State of North Carolina, ex*  
4 *rel. North Carolina Department of Environmental Quality v. Sandler*  
5 *Utilities at Mill Run, LLC, 21 CVS 78 (Currituck County).*

6 **Q. PLEASE DESCRIBE THE SERVICE AREA AND HOW THE**  
7 **SYSTEM IS INTENDED TO FUNCTION.**

8 A. The Collection System is a wastewater collection system in Moyock,  
9 Currituck County, North Carolina that serves residential customers  
10 in the Eagle Creek Subdivision and two non-residential customers,  
11 the Mill Creek Golf Club and the Moyock Middle School. The  
12 Collection System consists of 4.8 miles of vacuum sewer and utilizes  
13 vacuum pumps to maintain a constant negative pressure within the  
14 sewer pipes. Domestic waste from individual homes connected to  
15 the system collects in containment vessels, commonly referred to as  
16 "pits," with each pit serving two homes. When the level of waste  
17 within a pit reaches a determined level, pneumatic pressure triggers  
18 the opening of a valve to the piping connected to the sewer line. The  
19 vacuum withdraws waste and wastewater from the pit into the sewer  
20 line. When the waste level within the pit drops, the valve connecting  
21 the pit to the sewer line is closed, allowing waste to again collect  
22 within the pit and maintaining the vacuum in the sewer line.

1 Aboveground vents, often referred to as “candy canes” because of  
2 their shape, are connected to the sewer lines that convey waste from  
3 each home to the pit. The candy canes keep the vacuum system  
4 from drawing water from drain traps and toilets within homes, or from  
5 otherwise damaging pipes when the vacuum is engaged.

6 Wastewater from the Collection System is conveyed to the  
7 Treatment and Disposal System, where it enters the wastewater  
8 treatment plant (WWTP). The Treatment and Disposal System  
9 consists of a 175,000 gallon per day reclaim water generation/high rate  
10 infiltration facility. The WWTP includes an equalization basin with a  
11 manual bar screen, a flow splitter box, two aeration basins, a 148,250  
12 gallon clarifier and a 28,220 gallon clarifier, an aerated sludge holding  
13 tank, a 135 square foot travelling bridge filter, an ultraviolet disinfection  
14 unit, blowers, a dosing tank, pumps, a standby generator, a  
15 turbidimeter, and a flow meter. When treated wastewater meets  
16 reclaim quality effluent standards, it is discharged from the WWTP to  
17 an irrigation storage pond, and then used to irrigate 112.5 acres at the  
18 adjacent Mill Creek Golf Club. When treated wastewater does not meet  
19 reclaim standards, it should be diverted to a 5.5 million gallon high rate  
20 infiltration basin. The diversion should happen automatically when the  
21 turbidity, or cloudiness, of the treated wastewater is over ten

1 Nephelometric Turbidity Units (NTUs). When the wastewater does not  
2 meet fecal coliform limits, it has to be manually transferred.

3 **Q. WHAT IS A SANITARY SEWER OVERFLOW AND HOW ARE**  
4 **SANITARY SEWER OVERFLOWS ADDRESSED IN THE**  
5 **COLLECTION SYSTEM PERMIT.**

6 A. An unpermitted release of wastewater from a collection system such  
7 as Sandler's onto land or into surface waters is referred to as a  
8 sanitary sewer overflow or SSO. Condition I.2 of the Collection  
9 System Permit provides that the Collection System "shall be  
10 effectively managed, maintained and operated at all times so that  
11 there is no SSO to land or surface waters, nor any contamination of  
12 groundwater." In the event of a system failure, the permittee is  
13 required to "take immediate corrective actions, including actions that  
14 may be required by [DWR] such as the construction of additional or  
15 replacement sewer lines and/or equipment." Condition II.11 of the  
16 Collection System Permit provides that if an SSO occurs, the  
17 permittee "shall restore the system operation, remove visible solids  
18 and paper, sanitize any ground area and restore the surroundings."  
19 Condition IV.2 of the Collection System Permit provides that SSOs  
20 of over 1,000 gallons and any SSO that reaches surface waters must  
21 be verbally reported to DWR as soon as possible, but no later than

1 "24 hours following the occurrence or first knowledge of the  
2 occurrence."

3 **Q. BRIEFLY EXPLAIN YOUR EXPERIENCE WORKING WITH AND**  
4 **REGULATING VACUUM COLLECTION SYSTEMS.**

5 A. The Washington Regional Office currently oversees the operation of  
6 approximately four vacuum systems, including the system at Eagle  
7 Creek. Although there are a limited number of vacuum sewer  
8 systems in operation across the state, we are not aware of any  
9 evidence indicating that these systems are unreliable or prone to  
10 noncompliance, and DWR does not discourage the use of these  
11 systems. In our experience, vacuum systems that are well  
12 maintained and have a routine maintenance schedule have minimal  
13 problems. For example, the City of New Bern has approximately 43  
14 miles of vacuum line that serves over 2,000 homes. That system has  
15 had very few problems and has been in operation for over 20 years.

16 **Q. BRIEFLY DESCRIBE THE OWNER OF THE COLLECTION**  
17 **SYSTEM AND THE TWO OPERATORS WHO HAVE BEEN**  
18 **CHARGED WITH OVERSEEING THE MAINTENANCE AND**  
19 **OPERATION OF THE COLLECTION SYSTEM.**

20 A. Sandler is based out of Virginia Beach, Virginia, and holds the  
21 Collection System Permit and Treatment and Disposal System

1 Permit for the Eagle Creek wastewater system. Sandler has  
2 contracted with independent wastewater utility operator firms to  
3 operate and manage these systems.

4 William G. Freed, Inc., doing business as “Enviro-Tech” and based  
5 out of Harbinger, Currituck County, North Carolina, managed the  
6 Eagle Creek wastewater utility system from approximately  
7 September 2002 until approximately spring 2020.

8 In early 2020, Envirolink, Inc. (Envirolink) acquired Enviro-Tech and  
9 took over operation of the Eagle Creek wastewater utility system.  
10 Envirolink is a North Carolina corporation that provides water,  
11 wastewater, and public works services to clients across the State.

12 Both Envirolink and Enviro-Tech have employed certified wastewater  
13 system operators to operate and maintain the Eagle Creek  
14 wastewater utility system. Operators are responsible for keeping the  
15 system owner informed of system needs and seeking authorization  
16 when needed to perform required work to keep the system functional  
17 and in working order. Individuals associated with Eagle Creek  
18 wastewater utility system operations changed when oversight  
19 transferred from Enviro-Tech to Envirolink.

20 **Q. BRIEFLY DESCRIBE THE PERFORMANCE OF AND ANY**  
21 **COMPLIANCE ISSUES WITH THE EAGLE CREEK**

1           **WASTEWATER UTILITY SYSTEM WHEN ENVIRO-TECH WAS**  
2           **THE OPERATOR.**

3       A.     With respect to the Collection System, our records indicate that the  
4           Washington Regional Office received few complaints while Enviro-  
5           Tech was the operator, with only three logged complaints and/or  
6           incidents associated with the vacuum system from 2002 until spring  
7           2020.

8           Washington Regional Office inspections of the Collection System  
9           while Enviro-Tech was the operator identified flooding issues with  
10          below-grade pits during major storm events, as well as occasions  
11          where a Capital Improvement Plan was absent and unavailable. A  
12          Capital Improvement Plan is required to verify that the system owner  
13          has considered long-term maintenance of the system and has the  
14          funds available to address future issues.

15          Our inspection records indicate that the Treatment and Disposal  
16          System did not experience major operational problems while Enviro-  
17          Tech was the operator. The most common issue with the Treatment  
18          and Disposal System related to a stormwater pump not working  
19          correctly, which at times resulted in stormwater backing up within the  
20          Eagle Creek Subdivision and contributed to pits flooding in the  
21          neighborhood. Enviro-tech addressed such problems when repair  
22          needs were identified. Additional issues that arose during Enviro-

1 Tech's time as operator included (i) a failure to post notices at the  
2 Mill Creek Golf Club that reclaimed water was used for irrigation, (ii)  
3 a time when controllers were not sending non-reclaim quality water  
4 away from the irrigation basin, and (iii) difficulty maintaining the  
5 infiltration basin. Each of these problems was addressed upon notice  
6 from DWR.

7 **Q. BRIEFLY DESCRIBE THE DWR NOTICES OF VIOLATIONS AND**  
8 **PENALTY ASSESSMENTS ISSUED TO SANDLER WHEN**  
9 **ENVIRO-TECH WAS OPERATING THE EAGLE CREEK**  
10 **WASTEWATER UTILITY SYSTEM.**

11 A. With respect to the Collections System, our records indicate that  
12 approximately three NOVs were issued while Enviro-Tech was the  
13 operator. Violations included failure to develop a contingency plan  
14 for a pump failure; failure to designate operators; and failure to  
15 develop and implement a Capital Improvement Plan, Public  
16 Education Program, and Spill Response Action Plan. True and  
17 accurate copies of the three NOVs issued to Sandler while Enviro-  
18 Tech was operating the Collections System are attached hereto as  
19 **May and Tankard Exhibit 3.**

20 Our records indicate that approximately seven NOVs were issued for  
21 the Treatment and Disposal System while Enviro-Tech was the  
22 operator. Violations ranged from operational deficiencies to effluent

1 quality limit exceedances. True and accurate copies of the seven  
2 NOVs issued to Sandler while Enviro-Tech was operating the  
3 Treatment and Disposal System are attached hereto as **May and**  
4 **Tankard Exhibit 4.**

5 DWR assessed no civil penalties for the Collection System while  
6 Enviro-Tech was the operator. Two civil penalties totaling \$4,654.96  
7 were issued for the Treatment and Disposal System related to (i)  
8 failure to install signs around the infiltration and irrigation ponds as  
9 well as at the Mill Run Golf Club regarding the presence and use of  
10 reclaimed water, (ii) failure to install a weather station, (iii) failure to  
11 install measuring and recording instruments to monitor reclaimed  
12 water disposal, and (iv) failure to send non-reclaim quality water to  
13 the infiltration pond. True and accurate copies of the two civil penalty  
14 assessments issued to Sandler while Enviro-Tech was operating the  
15 Treatment and Disposal System are attached hereto as **May and**  
16 **Tankard Exhibit 5.**

17 **Q. DESCRIBE THE RECENT PERFORMANCE AND COMPLIANCE**  
18 **ISSUES RELATING TO THE COLLECTION SYSTEM THAT LED TO**  
19 **THE FILING OF THE STATE'S INJUNCTIVE ACTION AGAINST**  
20 **SANDLER.**

21 A. On September 29, 2020, the Washington Regional Office began  
22 receiving complaints from Eagle Creek residents indicating that the

1 Collection System was not operating and that SSOs were occurring at  
2 numerous homes throughout the Eagle Creek Subdivision. Residents  
3 described sewage and wastewater backing up into their homes,  
4 leaking from candy canes located next to their homes, and overflowing  
5 from pits. The sewage and wastewater spilled from aboveground vents  
6 and the pits drained into stormwater swales in front of and between  
7 homes, and pooled or seeped into the ground in other areas.

8 On September 30, 2020, Washington Regional Office inspectors  
9 Sarah Toppen and Victoria Herdt conducted a site inspection to  
10 investigate the complaints. DWR's investigation showed that at  
11 approximately 6:00 p.m. on September 27, 2020, one of the  
12 Collection System's two vacuum pumps failed. The sole functioning  
13 pump failed to provide adequate vacuum within the sewer lines to  
14 withdraw waste from the pits throughout the entire system. Many  
15 homeowners experienced the backup and discharge of sewage into  
16 the interior of their homes through plumbing fixtures. At some  
17 locations, the pits and candy canes overflowed, leading to sewage  
18 and wastewater discharges onto land and into Eagle Creek's  
19 stormwater drainage network. Sandler and Envirolink failed to notify  
20 DWR of the system failure or that any SSOs had occurred. Sewer  
21 service was not restored until on or around October 11, 2020,  
22 approximately two weeks after the system failure began on

1 September 27, 2020. During this period, residents continued to  
2 report sewage and wastewater leaking from candy canes as well as  
3 pits overflowing into community stormwater swales.

4 On October 26, 2020, the Washington Regional Office again began  
5 receiving complaints that the Collection System was not operational  
6 and that SSOs were occurring throughout the Eagle Creek  
7 Subdivision.

8 On October 27, 2020, Ms. Toppen and another inspector, Allen  
9 Stewart, conducted a site inspection to investigate the complaints.  
10 They found similar issues to those reported by residents beginning  
11 on September 30, 2020. DWR's investigation showed that a high  
12 water alarm within the Collection System had failed, causing the  
13 water to overflow and flood both of the system's vacuum pumps. The  
14 flooding caused the vacuum pumps to fail, and resulted in SSOs and  
15 a lack of sewer service to households throughout the Eagle Creek  
16 Subdivision for well over a week through at least November 5, 2020.  
17 Sandler and Envirolink failed to notify DWR of the SSOs or the  
18 system failure. DWR investigators also collected a water sample  
19 from the stormwater swale at 125 Eagleton Circle. Results from that  
20 sample showed that fecal coliform in the water sample were too  
21 numerous to count.

1 On November 13, 2020, the Washington Regional Office once again  
2 began receiving complaints that, beginning on or around November  
3 11, 2020, the Collection System was not operating and sewage was  
4 overflowing onto residents' properties.

5 On November 14, 2020, David May conducted a site visit to  
6 investigate the complaints. DWR's investigation confirmed failure of  
7 the Collection System, sanity sewer overflows, and lack of active and  
8 functional sewer service to individual households throughout  
9 portions of the Eagle Creek Subdivision. A substantial number of  
10 customers remained without functional sewer service through at  
11 least November 16, 2020. DWR's investigation revealed that Sandler  
12 and Envirolink were aware of the system failure as of November 11,  
13 2020 yet failed to report it or any SSOs to DWR.

14 Complaints to the Washington Regional Office recommenced on  
15 November 20, 2020. Residents indicated that the Collection System  
16 was not functioning and that residents were once again without  
17 sewer service and pits were overflowing. A number of houses  
18 remained without functional sewer service or sporadic sewer service  
19 through approximately November 25, 2020.

20 On December 16, 2020, the Washington Regional Office again  
21 received complaints from Eagle Creek residents. Residents  
22 indicated that homes in the subdivision did not have sewer service,

1 pits were overflowing, and candy canes were discharging  
2 wastewater and sewage. DWR's investigation indicated that the  
3 problem was related to a disconnected line in a pit and sustained  
4 rainfall. Residences affected by the disconnected line remained  
5 without functional sewer service or sporadic sewer service through  
6 approximately December 18, 2020.

7 Additional complaints to the Washington Regional Office were  
8 received on January 26, 2021, with residents complaining that they  
9 lacked sewer service, sewage was backing up into their homes, and  
10 pits were again overflowing. Pit overflows, sewage backups, and  
11 spills from the candy canes continued through at least February 16,  
12 2021. Residents complained that they were not receiving prompt  
13 responses to their requests that Sandler and Envirolink fix these  
14 service problems.

15 **Q. PLEASE DESCRIBE THE PERFORMANCE AND COMPLIANCE**  
16 **ISSUES THAT HAVE OCCURRED AT THE TREATMENT AND**  
17 **DISPOSAL SYSTEM SINCE AUGUST 1, 2020.**

18 A. On August 19, 2020, shortly after Envirolink took over as operator,  
19 an inspection of the Treatment and Disposal System revealed that (i)  
20 the tertiary filter was not operational and was being bypassed, (ii)  
21 one of the aeration basins was closed and had vegetation growth in  
22 it, (iii) operational logs were not present on site, and (iv) there was

1 an excessive amount of woody vegetation growing around the high  
2 rate infiltration pond. However, no significant issues or findings were  
3 noted by the next inspection on October 21, 2020.

4 Beginning in November 2020, non-discharge monitoring and  
5 analysis reports showed regular exceedances of effluent limits for  
6 fecal coliform, ammonia, biological oxygen demand, turbidity and  
7 total suspended solids. DWR noted several instances in which  
8 Sandler had failed to properly monitor for various parameters as well.  
9 Despite exceeding effluent limitations, wastewater was not diverted  
10 to the infiltration basin, and instead entered the irrigation pond and  
11 was used for golf course irrigation.

12 During two unannounced inspections of the Treatment and Disposal  
13 System in November and December 2021, overflows or spills were  
14 observed on the ground around the WWTP due to the tertiary filter  
15 being bypassed. In such cases, not all treated wastewater was being  
16 directed to permitted areas for disposal.

17 In a letter dated February 11, 2022, David May notified Sandler that  
18 chronic noncompliance at the WWTP could result in a sewer  
19 moratorium prohibiting further sewer extensions and connections. A  
20 true and accurate copy of the February 11, 2022 letter is attached  
21 hereto as **May and Tankard Exhibit 6**.

1 Q. PLEASE DESCRIBE THE NOTICES OF VIOLATION AND  
2 PENALTIES DWR HAS ISSUED SINCE AUGUST 1, 2020 WITH  
3 RESPECT TO THE COLLECTION SYSTEM.

4 A. From August 1, 2020 until February 18, 2022, DWR has issued  
5 approximately nine NOVs. Violations include: (i) failure to effectively  
6 manage, maintain, and operate the Collection System to prevent  
7 SSOs; (ii) failure to restore the system operation, remove visible  
8 solids and paper, sanitize any ground area, and restore surroundings  
9 after an SSO; (iii) failure to maintain replacement pumps; and (iv)  
10 making an outlet into waters of the state. True and accurate copies  
11 of the nine NOVs issued to Sandler while Envirolink has been the  
12 operator are attached hereto as **May and Tankard Exhibit 7**.

13 Of note, around the time Envirolink took over as operator, DWR  
14 began issuing a single NOV per monthly violation as opposed to its  
15 prior practice of issuing a single NOV for multiple violations covering  
16 several months.

17 In addition, Sandler was assessed one civil penalty associated with  
18 the Collection System while Envirolink has been the operator for  
19 \$62,517.96. A true and accurate copy of the Collection System civil  
20 penalty assessment is attached hereto as **May and Tankard Exhibit**  
21 **8**.

1 Q. PLEASE DESCRIBE THE NOTICES OF VIOLATION AND  
2 PENALTIES DWR HAS ISSUED SINCE AUGUST 1, 2020 WITH  
3 RESPECT TO THE TREATMENT AND DISPOSAL SYSTEM.

4 A. From August 1, 2020 until February 18, 2022, approximately 21  
5 NOVs were issued for operational issues and effluent limit violations.  
6 True and accurate copies of the NOVs issued to Sandler for the  
7 Treatment and Disposal System while Envirolink has been the  
8 operator are attached hereto as **May and Tankard Exhibit 9**. During  
9 the same timeframe, Sandler was assessed approximately 14 civil  
10 penalties associated with the Treatment and Disposal System  
11 totaling \$57,822.46. True and accurate copies of the Treatment and  
12 Disposal System civil penalties assessed to Sandler while Envirolink  
13 has been the operator are attached hereto as **May and Tankard**  
14 **Exhibit 10**.

15 Q. BRIEFLY DESCRIBE THE INJUNCTIVE ACTION DWR FILED ON  
16 MARCH 4, 2021 AGAINST SANDLER.

17 A. On March 2, 2021, the State filed a Complaint and Motion for  
18 Injunctive Relief against Sandler seeking to address Sandler's  
19 repeated violation of its Collection System Permit and the State's  
20 water quality laws. The Complaint sought various forms of  
21 preliminary and permanent injunctive relief intended to restore

1 service to Eagle Creek Subdivision residents and prevent future  
2 SSOs.

3 To resolve the Complaint, Sandler and DWR agreed to a Consent  
4 Judgment, entered by the Currituck County Superior Court (the  
5 Court) on July 1, 2021 (the Consent Judgment). Among other things,  
6 the Consent Judgment mandates that Sandler: (i) fully comply with  
7 all terms and conditions of non-discharge permit WQCS00290, as  
8 well as state water quality laws; (ii) adhere to additional reporting  
9 requirements; (iii) secure pits from tampering; (iv) implement an  
10 Operator Training Plan; (v) implement an Interim Service and  
11 Restoration Plan; (vi) conduct an Engineering Evaluation to identify  
12 actions necessary for system upgrades; and (vii) implement a  
13 System Upgrade Plan.

14 **Q. PLEASE DESCRIBE SANDLER'S COMPLIANCE WITH THE**  
15 **CONSENT JUDGMENT AND THE EVENTS THAT LED TO THE**  
16 **AMENDED CONSENT JUDGMENT BETWEEN SANDLER AND**  
17 **DWR.**

18 A. On October 1, 2021, DWR began to receive complaints from Eagle  
19 Creek Subdivision residents indicating that the Collection System  
20 was not operating properly. Residents indicated that sewage was  
21 overflowing from pits and backing up into their homes. DWR staff  
22 verified the Collection System failure and residents' complaints

1 during a site visit on October 4, 2021. Areas of the community  
2 remained without functional sewer service until approximately  
3 October 8, 2021. On October 15, 2021, DWR sent Sandler a NOV  
4 documenting Sandler's violations of the Collection System Permit.

5 On October 30, 2021, DWR again began receiving complaints that  
6 Eagle Creek Subdivision residents had lost sewer service and had  
7 sewage overflowing from pits onto their yards and into stormwater  
8 swales. Numerous residents sent in photographs of used toilet  
9 paper, fecal matter, and sewer water on the ground outside of their  
10 homes. DWR staff again verified the Collection System failure and  
11 residents' complaints during a site visit on November 2, 2021.  
12 Collection System failures continued until at least November 9, 2021.  
13 Contrary to the Consent Judgment's express directives, Sandler  
14 failed to provide a written report within five days of the system failure  
15 outlining actions taken and actions proposed to address the  
16 problems and prevent recurrence.

17 In addition to failing to prevent SSOs, report system failures, and  
18 implement corrective action, Sandler failed to abide by the terms of  
19 the Consent Judgment by failing to implement the Interim Service  
20 and Restoration Plan that DWR approved with conditions on October  
21 15, 2021. Specifically, Sandler failed to have technicians on site from

1 4 a.m. until 12 a.m., Monday through Friday, to ensure any Collection  
2 System issues would be promptly addressed.

3 Sandler also failed to provide timely status reports regarding  
4 implementation of the Interim Service and Restoration Plan, the first  
5 of which was due on November 1, 2021.

6 In addition, Sandler failed to clean all SSOs, physically remove and  
7 properly dispose of solids, and mobilize vacuum trucks or other  
8 equipment to recover spilled wastewater as needed.

9 On November 16, 2021, the State filed a verified Motion to Show  
10 Cause Why Defendant Should Not Be Held in Criminal and/or Civil  
11 Contempt based on Collection System performance issues, as well  
12 as violations of plans approved under the Consent Judgment.

13 A show cause hearing was held on December 6, 2021. The Court  
14 heard testimony from Eagle Creek Subdivision resident Kevin  
15 Wetzel. Among other things, Mr. Wetzel testified that since the entry  
16 of the Consent Judgment in July 2021, (i) his family had gone several  
17 days without sewer service on multiple occasions, (ii) waste had  
18 been discharged onto his property, (iii) neither Sandler nor Envirolink  
19 had been responsive to service calls when there were system  
20 performance issues, and (iv) neither Sandler nor Envirolink had  
21 taken any steps to clean up waste spilled onto his property. The

1 Court reserved ruling on the Motion to Show Cause, directing the  
2 parties to submit a modification to the Consent Judgment to provide  
3 for changes necessary to bring the Collection System into  
4 compliance with the requirements of the Collection System Permit  
5 and state water quality laws and regulations.

6 **Q PLEASE SUMMARIZE THE REQUIREMENTS OF THE AMENDED**  
7 **CONSENT JUDGMENT.**

8 A On December 28, 2021, the Court entered an Amended Consent  
9 Judgment (the Amended Consent Judgment), which, among other  
10 things, requires Sandler to do the following:

11 (i) Provide timely and accurate responses to all resident complaints  
12 of equipment failures, system failures, or SSOs and maintain a log  
13 of resident complaints and actions taken in response to those  
14 complaints;

15 (ii) Continue to implement an Operator Training Plan to ensure that  
16 technicians at the site are competent to operate the system and  
17 address service issues;

18 (iii) Submit an Independent Engineering Evaluation conducted by an  
19 independent firm approved by DWR with expertise in the operation  
20 of vacuum systems;

- 1 (iv) Update Sandler's Interim Service and Restoration Plan to include  
2 recommendations of the Independent Engineering Evaluation;
- 3 (v) Submit a new System Upgrade Plan with actions to be taken to  
4 address the long-term recommendations of the Independent  
5 Engineering Evaluation; and
- 6 (vi) Appoint a qualified independent specialist in vacuum system  
7 operation to provide consulting services addressing operation of the  
8 Collection System for a minimum of 30 days and provide a report to  
9 DWR of any deficiencies and additional measures needed to ensure  
10 compliance.

11 In addition to these requirements, both the Consent Judgment and  
12 the Amended Consent Judgment contain the following provision  
13 designed to ensure that any subsequent owner or operator of the  
14 Eagle Creek wastewater utility system adheres to the requirements  
15 of the Amended Consent Judgment:

16 This Amended Consent Judgment shall be binding  
17 upon Defendant's successors and assigns. Defendant  
18 shall not transfer any of the assets that are the subject  
19 of the Complaint, including the Permit or the Collection  
20 System, unless and until Defendant moves to join the  
21 transferee as a defendant in this case such that this  
22 Amended Consent Judgment shall be binding upon the  
23 transferee and the Court issues an order granting such  
24 motion.

1 Q PLEASE DESCRIBE WHAT MEASURES HAVE CURRENTLY  
2 BEEN IMPLEMENTED UNDER THE AMENDED CONSENT  
3 JUDGMENT.

4 A Several actions have been taken to implement the requirements of  
5 the Amended Consent Judgment.

6 On January 13, 2022, David Rigby was approved as an Independent  
7 Engineer with expertise in vacuum system operation to conduct the  
8 Independent Engineering Evaluation. As of February 18, 2022, Mr.  
9 Rigby's evaluation was not yet complete.

10 On January 31, 2022, Flovac Vacuum Sewerage Systems came to  
11 the site to begin the Amended Consent Judgment's Consultant  
12 Period as Sandler's approved and qualified independent specialist in  
13 vacuum system operation.

14 On February 2, 2022, Sandler submitted its latest status report  
15 outlining its implementation of the Operator Training Plan. The report  
16 indicates that all individuals have received either complete training  
17 or partial training by a third-party training provider and attached  
18 staffing reports for the month of January.

19 Also on February 2, 2022, Sandler submitted its latest status report  
20 outlining its implementation of the Interim Service and Restoration  
21 Plan. This report indicates that regular systems checks were ongoing

1 to ensure the Collection System's consistent operation. In addition,  
2 the report states that a new control panel was ordered, and pedestal  
3 mounted controllers continued to be installed throughout the  
4 neighborhood. Six additional vacuum sensors and 110 new remote  
5 monitoring system kits were also ordered to assist with timely  
6 responses to problems.

7 **Q. WHAT PROBLEMS DOES THE COLLECTION SYSTEM**  
8 **CONTINUE TO EXPERIENCE?**

9 A. Since the filing of the State's injunctive action, the Collection  
10 System's operational reliability appears to have improved and the  
11 timeframe for system recovery following widespread sewer service  
12 outage incidents has been reduced. DWR has observed a decrease  
13 in the number of reported SSOs and system outages since entry of  
14 the Amended Consent Judgment.

15 We will have a more comprehensive understanding of the current  
16 state of the Collection System once we have received the  
17 Independent Engineering Evaluation from Mr. Rigby. However, the  
18 Collection System is still considered vulnerable to complications from  
19 heavy rainfall events and sensitive to site conditions that may upset  
20 balance within the system. Vacuum leaks continue to be identified  
21 and repaired on a daily basis.

1 **Q. DO YOU HAVE ANY CONCERNS WITH THE REQUESTED**  
2 **TRANSFER OF PUBLIC UTILITY FRANCHISE?**

3 A. We do not have a position at this time on whether the transition of  
4 the Eagle Creek wastewater utility system to Currituck Water and  
5 Sewer, LLC (CWS) and CWS' proposal to replace the Collection  
6 System represent an appropriate long-term resolution to compliance  
7 and performance issues. We note that even if the Commission were  
8 to approve the transfer and even if the Collection System were to be  
9 replaced, the current Collection System will remain in operation for a  
10 significant period of time while a new system is installed. In light of  
11 (i) the Collection System's continuing compliance and performance  
12 issues, and (ii) the resulting impacts on Eagle Creek Subdivision  
13 residents, we believe that the requirements of the Amended Consent  
14 Judgment are reasonable and necessary to ensure that the  
15 Collection System is operated in a manner that protects water quality  
16 and public health. Any party that takes ownership of the Eagle Creek  
17 wastewater utility system must continue to abide by the requirements  
18 of the Amended Consent Judgment.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.

## QUALIFICATIONS AND EXPERIENCE

DAVID MAY

I graduated from North Carolina State University, earning a Bachelor's Degree in Geology and have since worked with the North Carolina Department of Environmental Quality over the last 26 years with job duties focused on protection of groundwater and surface water resources. I have been in my current supervisory position since October 2004. My North Carolina Licensed Geologist credentials have been maintained since 1999.

My project background includes focused interests in soil and groundwater assessment and remediation efforts for a variety of incident sites, as well as well construction practices and groundwater resource management. In my current role administering environmental regulatory programs, there is frequent involvement and interaction with wastewater facility operations of different types and scale across northeastern North Carolina (including animal waste management systems), permittees and consultants, and special interest and stakeholder groups. Environmental rules and regulations are administered to help ensure compliance with permit-based requirements, and function as a means to protect environmental resources, environmental health, and public health.

**QUALIFICATIONS AND EXPERIENCE**

## ROBERT TANKARD

I have a Bachelor's Degree in Mechanical Engineering from North Carolina State University, Engineer in Training. I also have a Master's Degree in Business Administration from East Carolina University. I have five years' experience in the air filtration industry and have approximately 32 years of environmental and regulatory experience with the North Carolina Department of Environmental Quality, Division of Water Resources. I have been in my current supervisory position since October 2014.

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CHAIR MITCHELL: In addition, the testimony of Public Staff witness Tran will be copied into the record as if delivered orally from the stand. Portions of his testimony are confidential and will be so identified in the record, and I ask the Public Staff counsel to work with the court reporter to ensure that confidentiality is identified in the -- the confidential information is clearly identified in the record.

(Whereupon, the prefiled direct testimony of Phat Tran was copied into the record as if given orally from the stand.)

**CURRITUCK WATER AND SEWER, LLC  
DOCKET NO. W-1333, SUB 0**

**SANDLER UTILITIES AT MILL RUN, LLC  
DOCKET NO. W-1130, SUB 11**

**TESTIMONY OF PHAT H. TRAN  
ON BEHALF OF THE PUBLIC STAFF  
NORTH CAROLINA UTILITIES COMMISSION**

**March 2, 2022**

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS**  
2 **ADDRESS FOR THE RECORD.**

3 A. My name is Phat H. Tran, and my business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina. I am a Public Utilities  
5 Financial Analyst in the Economic Research Division of the Public  
6 Staff – North Carolina Utilities Commission (Public Staff).

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND**  
8 **AND EMPLOYMENT EXPERIENCE.**

9 A. I received a Bachelor of Science degree in Economics, with a Minor  
10 in Accounting from North Carolina State University in 2009, and a  
11 Master of Economics degree from North Carolina State University  
12 in 2010. I joined the Public Staff in October of 2021. Prior to joining  
13 the Public Staff, I was a Senior Defined Benefit Specialist at Fidelity  
14 Investment for four years and a Senior Trading Control Analyst at

1 Alliance for Cooperative Energy Services for seven years. Since  
2 joining the Public Staff, I have conducted rate of return studies in  
3 water and wastewater utility rate cases, and filed an affidavit on fair  
4 rate of return in a small water utility rate case in Docket No. W-  
5 1063, Sub 5. In addition, I have been involved in the investigation  
6 and analysis of electric public utilities' proposed avoided cost rates.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
8 **PROCEEDING?**

9 A. The purpose of my testimony is to present my recommendation to  
10 the North Carolina Utilities Commission (Commission) regarding  
11 the financial viability of Currituck Water and Sewer, LLC (Currituck  
12 or the Company) to acquire and operate the Eagle Creek  
13 wastewater system that Sandler Utilities at Mill Run, LLC (Sandler)  
14 currently owns.

15 **Q. WHY IS IT NECESSARY TO ASSESS THE COMPANY'S**  
16 **FINANCIAL VIABILITY?**

17 A. In addition to the costs Currituck would incur operating the Eagle  
18 Creek wastewater system, the Eagle Creek wastewater system  
19 needs significant system upgrades to comply with the North  
20 Carolina Department of Environmental Quality, Division of Water  
21 Resources' (DWR) permitting requirements, and state

1 environmental law. Accordingly, it is important that Currituck have  
2 the financial capability to make the needed capital expenditures that  
3 were identified in the pre-filed testimonies of Company witness and  
4 Vice President Michael J. Myers and Public Staff witness D.  
5 Michael Franklin. I am also aware that the Amended Consent  
6 Judgment between Sandler and DWR that was issued on  
7 December 28, 2021 requires Sandler, among other things, to make  
8 certain system improvements, which will require significant capital  
9 expenditures.

10 **Q. WHAT INFORMATION DID YOU EXAMINE IN THE COURSE OF**  
11 **YOUR INVESTIGATION?**

12 A. In conducting my investigation of Currituck's financial viability, I  
13 examined the financial and accounting information that Currituck  
14 provided in connection with the Joint Application for a Utility Transfer  
15 for Currituck Water and Sewer and Sandler Utilities at Mill Run (the  
16 Joint Application), Mr. Myer's pre-filed testimony, and Currituck's  
17 responses to the Public Staff's data requests, in particular Currituck's  
18 financial statements, and pro forma financial modeling.

19 **Q. PLEASE DESCRIBE YOUR INVESTIGATION OF THE**  
20 **COMPANY'S FINANCIAL VIABILITY.**

21 A. My investigation and analysis indicate that Currituck has the

1 financial funding to obtain and operate the Eagle Creek wastewater  
2 system. Currituck will be able to obtain 80% of its equity needs from  
3 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**  
4 **CONFIDENTIAL]**, and 20% from **[BEGIN CONFIDENTIAL]**  
5 [REDACTED] **[END CONFIDENTIAL]**. In addition, **[BEGIN**  
6 **CONFIDENTIAL]** [REDACTED] [REDACTED] **[END CONFIDENTIAL]** has  
7 committed to provide Currituck a Business & Industry (B&I) loan;  
8 however, approval of the loan is contingent upon final plan and  
9 regulatory approvals, which are underway.

10 In response to a Public Staff data request, the Company provided  
11 (1) financial modeling on a stand-alone basis and (2) financial  
12 projections assuming that wastewater service is provided to the  
13 nearby Fost and Floral developments, as proposed in Currituck's  
14 application for a certificate of public convenience and necessity that  
15 was filed on June 1, 2021 in Docket No. W-1333, Sub 1. Given  
16 certain express financial commitments Currituck's equity investor  
17 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**  
18 has made to Currituck, and which were detailed in Currituck's  
19 responses to Public Staff data requests, both the stand-alone basis  
20 financial modeling and combined-basis financial projections  
21 indicate that Currituck is financially viable. Based on the information  
22 provided, Currituck, on a stand-alone basis, will have positive net

1 income beginning five years after its projected acquisition of the  
2 Eagle Creek wastewater system and public franchise, and positive  
3 net income on a combined basis beginning two years after its  
4 projected acquisitions. Based on discussions with Public Staff  
5 witness Franklin, there is a concern that Currituck might be  
6 underestimating its projected system improvement costs. With  
7 respect to this issue, **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**  
8 **CONFIDENTIAL]** is committed to providing additional capital if  
9 required. As such, Currituck should be able to absorb higher capital  
10 costs.

11 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE**  
12 **FINANCIAL VIABILITY OF THE COMPANY TO ACQUIRE AND**  
13 **OPERATE THE EAGLE CREEK WASTEWATER SYSTEM?**

14 A. Based on my evaluation of the information mentioned above, I  
15 conclude that Currituck is financially viable to acquire and operate  
16 the Eagle Creek wastewater system. In addition, Currituck has the  
17 financial viability to make necessary system improvement upgrades  
18 and adequately maintain the wastewater system. However,  
19 Currituck's financial viability is merely one factor the Public Staff  
20 considers in its review and is not dispositive of the Public Staff's  
21 ultimate recommendation to the Commission regarding the Joint  
22 Application.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A. Yes.

1 CHAIR MITCHELL: All right. With that,  
2 we will take proposed orders from the -- proposed  
3 orders from the parties 30 days from the notice of  
4 the filing of -- availability of the transcript.  
5 Certainly, we will take them sooner if you-all want  
6 to get that done.

7 Anything else before we adjourn for the  
8 morning?

9 MS. HOLT: We have nothing.

10 CHAIR MITCHELL: All right. With that,  
11 we will be adjourned, and let's go off the record.  
12 Thank you very much, everybody.

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14 (Hearing concluded at 11:45 a.m.)

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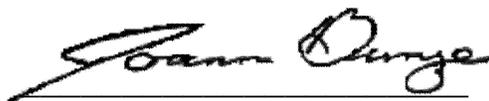
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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

I, Joann Bunze, RPR, the officer before whom the foregoing hearing was conducted, do hereby certify that any witnesses whose testimony may appear in the foregoing hearing were duly sworn; that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewritten format under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

This the 21st day of June, 2022.



JOANN BUNZE, RPR

Notary Public #200707300112