

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
STAFF CONFERENCE AGENDA-SUPPLEMENTAL
January 8, 2024
Commission Hearing Room 2115, 10:00 a.m.

WATER AND WASTEWATER

*ORDER DISCHARGING EMERGENCY OPERATOR, APPOINTING
EMERGENCY OPERATOR, AND REQUIRING CUSTOMER NOTICE*

GGWTP, LLC

Docket No. W-1139, Sub 4 – Motion of the Public Staff to Replace
Emergency Operator for wastewater treatment service for Ginguite Woods
Subdivision, Dare County, North Carolina (*Darden//Lentz/Newell/Bernier*)

The Public Staff recommends approval of the preceding agenda item as
described above and reflected in proposed orders provided to the
Commission Staff.

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2. In a November 6, 2009, email correspondence to the Public Staff, Mr. Neal Blinken, owner of GWWRA, expressed that he did not have the necessary capital to adequately fund the continued operation of the sewer utility.

3. By order dated November 20, 2009, in Docket No. W- 1139, Sub 4, the Commission appointed Enviro-Tech as emergency operator of the sewer utility service for Ginguite Woods.

4. According to the Commission's Order Accepting and Approving Bond and Releasing Bond issued on February 11, 2011, in Docket No. W-1139, Sub 2, Enviro-Tech posted a \$20,000 corporate surety bond.

5. On or about August 2021, Enviro-Tech abandoned its role as emergency operator.

6. Pursuant to N.C. Gen. Stat. § 62-110.3(d), Enviro-Tech is deemed to have forfeited its \$20,000 corporate surety bond due to its abandonment of its role as emergency operator for Ginguite Woods.

7. There is inadequate wastewater utility service and risk of the further development of compliance issues due to the lack of a regulated utility company or responsible individual in charge, justifying the appointment of another emergency operator in accordance with N.C.G.S. § 62-116(b).

8. GWWTP has taken actions to address the emergency by hiring Atlantic OBX, Inc. (Atlantic OBX), a contract operator with the technical expertise to operate and maintain the system and complete initial plant improvements totaling approximately \$440,345.

9. GWWTP has the ability to perform and is willing to serve as the emergency operator of the sewer utility serving Ginguite Woods.

10. GWWTP filed an application on February 10, 2023, for a transfer of the CPCN in Docket Nos. W-1343, Sub 0 and W-1139, Sub 7, which is pending before the Commission¹.

11. The Public Staff has advised that it would be more appropriate for the circumstances for GWWTP to amend the transfer application to replace it with a CPCN application.²

12. The Public Staff will need to conduct a final audit of the records of Enviro-Tech to ensure an appropriate accounting transition from Enviro-Tech to GWWTP and evaluate whether customers have been charged just and reasonable rates.

¹ The Commission issued the Order Finding Application Incomplete on July 31, 2023.

² GWWTP is working toward filing a complete CPCN application that fulfills the requirements.

13. The Commission's Order dated November 20, 2009, approved an interim monthly rate of \$90 per single family equivalent (SFE) (360 gallons per day). This interim rate remains in effect.

14. It is appropriate, at this time, to increase the sewer utility rates for GWWTP to serve Ginguite Woods. These rates should be approved on a provisional basis, subject to true-up upon subsequent review and approval of the actual cost of operating the wastewater system. The present interim and proposed rates are as follows:

| | <u>Present Interim</u> | <u>Proposed</u> |
|---|------------------------|-----------------|
| Monthly Residential Flat Rate, per SFE: | \$90.00 | \$180.00 |
| (SFE is 360 gallons per day) | | |

CONCLUSIONS

Based upon the foregoing, the Commission is of the opinion that an emergency exists with the wastewater system serving the Ginguite Woods subdivision; such that there is an imminent danger of losing adequate wastewater utility service and further development of compliance issues, constituting an emergency pursuant to N.C.G.S. § 62-116(b). The Commission further finds and concludes that Enviro-Tech of North Carolina, Inc., the emergency operator previously appointed, has abandoned its role as emergency operator and a new emergency operator should be appointed; that the new emergency operator should be allowed to charge the rates reflected on Appendix A attached hereto, on a provisional basis and subject to quarterly review; and that customer notice should be given.

IT IS, THEREFORE, ORDERED as follows:

1. That Enviro-Tech of North Carolina, Inc., is hereby discharged as emergency operator, subject to completion of a final review by the Public Staff of the financial status of the system and forfeiture of the \$20,000 bond.

2. That GWWTP, LLC, is hereby appointed, effective January 1, 2024, as emergency operator of the Ginguite Woods wastewater utility system in Dare County, North Carolina.

3. That the Notice to Customers, attached hereto as Appendix A, be mailed with sufficient postage or hand delivered by GWWTP to all customers in the Ginguite Woods Subdivision no later than 15 days after the date of this Order; and that GWWTP submit to the Commission the attached Certificate of Service properly signed and notarized not later than 30 days after the date of this Order.

4. That the Schedule of Rates, attached as Appendix B, is approved on a provisional basis for wastewater utility service provided by the emergency operator of the Ginguite Woods wastewater system, subject to true-up upon subsequent review and approval of the actual expenses of operating the water system.

5. That the following provisions are adopted by this Order:

a. That the emergency operator shall maintain complete records of all receipts and expenses and shall file with the Commission and Public Staff a summary financial report 45 days after the end of the calendar year 2024 or effective date of a CPCN issued to GWWTP, LLC, whichever is sooner.

b. That the emergency operator shall have charge of the daily operation of the wastewater system in Ginguite Woods, and that the emergency operator's duties and responsibilities shall include, but not be limited to, the following:

- (i) Regular inspections and testing of the wastewater system;
- (ii) Billing of all customers and collection of bills;
- (iii) Routine and emergency maintenance and repair;
- (iv) System renovations and additions necessary to restore adequate wastewater service;
- (v) Quarterly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent; and
- (vi) Providing the mailing address and a telephone number to customers for routine correspondence and emergency calls.

c. That the emergency operator may contract with any person or corporation to carry out any of the duties necessary for operation and repair of the wastewater utility system, but the emergency operator shall have the ultimate, sole responsibility to see that such duties are carried out.

d. That the emergency operator, in the performance of its duties, shall be free to seek assistance from customers of the wastewater system, plumbers, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

e. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the Department of Environmental Quality, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Dare County Health Department.

f. That the emergency operator shall collect from the customers of the wastewater system such rates and assessments as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect said rates and assessments and to disburse those funds as may be necessary to provide safe, reliable, and adequate wastewater utility service to the customers. Any customer who fails to pay the bills authorized by this paragraph shall be disconnected by the emergency operator as provided by the orders, rules, and regulations of the Utilities Commission.

g. That the emergency operator shall be entitled to all available records relating to the wastewater utility system, and those records shall include, but not

be limited to, a list of customer names, addresses, and billing records from Enviro-Tech of North Carolina, Inc., and Envirolink, Inc.

h. That the emergency operator shall keep records of all monies collected through the rates and assessments, and all monies expended in the operation of the wastewater system. In order to protect the customers' interests in the wastewater utility system, the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the wastewater utility system, including, but not limited to, construction of new wastewater treatment facilities, and the cost of labor associated with those improvements whether performed by the emergency operator or a contractor hired by the emergency operator.

i. That the emergency operator shall pay only those liabilities incurred by the emergency operator on and after the date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Ginguite Woods wastewater system pursuant to Commission Order. The disbursements by the emergency operator shall be made from the separate account set up by the emergency operator; the emergency operator shall account for any funds advanced by it for the operations.

j. That the appointment of the emergency operator shall continue until terminated by an Order of the Commission finding that the emergency has ended and that the emergency operator is no longer required pursuant to N.C.G.S. 62-118(b) to provide wastewater public utility service to the customers of the Ginguite Woods wastewater system.

k. That the emergency operator may petition the Commission at any time to be discharged as the emergency operator herein; and the emergency operator, prior to its discharge, shall provide an acceptable accounting to the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing a petition for discharge shall also mail a copy of said petition to the Dare County Health Department and the Division of Environmental Health.

l. That this docket shall remain open for further motions, reports, etc., of the parties, the emergency operator, the Dare County Health Department, the Department of Environmental Quality, and for further Orders of the Commission.

m. That GWWTP shall have no responsibility for Enviro-Tech's handling of customer deposits, if any, or any other obligations or liabilities of Enviro-Tech arising from its operation of the wastewater utility system prior to GWWTP acquiring the real property and assets.

n. That GWWTP shall not be responsible for, or liable for, any acts, omissions, obligations, or liabilities of Enviro-Tech.

o. That GWWTP as emergency operator shall be made financially whole by being reimbursed for prudent and reasonable capital investment for replacements and upgrades and reasonable operating expenses as emergency operator.

p. That there be a true up at the time GWWTP is relieved of its duties.

6. That the emergency operator shall maintain clear and accurate accounting records for emergency operations at Ginguite Woods.

7. That the Public Staff shall review the quarterly accounting filed by the emergency operator with the Commission pursuant to Decretal Paragraph 5b.(v) and shall file with the Commission on or before March 1 of each year, the Public Staff's recommendation as to whether the interim monthly residential flat rate should continue as approved herein, or be modified.

8. That the Commission shall retain jurisdiction and supervision over the emergency operator for the duration of the emergency and that GWWTP as emergency operator may petition the Commission at any time to be discharged as the emergency operator, which discharge the Commission shall approve with good cause shown.

9. That the Commission shall provide such other and further relief as deemed necessary and required in this matter.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

APPENDIX A

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

**NOTICE TO CUSTOMERS
DOCKET NO. W-1139, SUB 4
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

Notice is given that that on January 3, 2024, the Public Staff filed a verified Motion to Appoint Emergency Operator and recommended that GWWTP, LLC (GWWTP), be appointed emergency operator of the sewer system in Ginguite Woods Subdivision in Dare County, North Carolina. On January 8, 2024, the Public Staff recommended at the Commission's Regular Staff Conference that the Commission grant its motion and discharge Enviro-Tech as emergency operator, appoint GWWTP as emergency operator, conditionally approve increased rates, and require customer notice.

The Commission has concluded that an emergency exists with respect to the sewer utility system serving Ginguite Woods Subdivision and that there is an imminent danger of loss of adequate sewer utility service and further development of compliance issues, constituting an emergency pursuant to G.S. 62-116(b). The Commission has therefore appointed an emergency operator for the system. The contact information for the emergency operator is as follows:

GWWTP, LLC, Post Office Box 90, Kill Devil Hills, North Carolina, 27948. The phone number is (252) 441-9003.

Ginguite Woods Water Reclamation Association, Inc., GWWRA is the current franchised utility of the Ginguite Woods Subdivision sewer facility.

The monthly flat sewer rate at this time will increase to the interim rates below:

INTERIM Monthly Residential Flat Rate, per SFE: 1/ \$180.00

1/ Single Family Equivalent (SFE) is 360 gallons per day

The Public Staff is authorized by statute to represent consumers in proceedings before the Commission. Written statements to the Public Staff concerning the appointment of the emergency operator should be addressed to Mr. Christopher J. Ayers, Executive Director, Public Staff, 4326 Mail Service Center, Raleigh, North Carolina, 27699-4326. Written statements can also be faxed to (919) 715-6704.

This the ____ day of January, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

APPENDIX B

SCHEDULE OF INTERIM RATES

for

GINGUITE WOODS WATER RECLAMATION ASSOCIATION, INC.**(GWWTP, LLC, Emergency Operator)**for providing sewer utility service inGINGUITE WOODS SUBDIVISION

Dare County, North Carolina

INTERIM Monthly Residential Flat Rate, per SFE: ^{1/} \$180.00^{1/} Single Family Equivalent (SFE) is 360 gallons per dayReconnection Charge:

If sewer service cut off by utility for good cause: \$15.00

Bills Due: On billing dateBills Past Due: 25 days after billing dateBilling Frequency: Shall be monthly for service in arrearsFinance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after the billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1139, Sub 4, on this the __th day of _____, 2024.

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1139, Sub 4, and the Notice was mailed or hand delivered by the date specified in the Order.

This the ____ day of _____, 2024.

By:

Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1139, Sub 4.

Witness my hand and notarial seal, this the ____ day of _____, 2024.

Notary Public

Printed Name

(SEAL) My Commission Expires:

Date

[Back to Agenda](#)