

This the 17th day of February, 2022.



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*Attorney for Sandler Utilities at Mill Run,
LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Response to Order Requiring Additional Information filed in Dockets W-1130, Sub 11 and W-1333, Sub 0, has been served on parties of record as shown on the Commission's Service List for these dockets, either by electronic mail or by depositing same in the U. S. Mail, first class delivery, postage prepaid.

This the 17th day of February, 2022.

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Attorneys for Sandler Utilities at Mill Run, LLC

STATE OF VIRGINIA
~~CITY~~
~~COUNTY~~ OF VIRGINIA BEACH

VERIFICATION

I, Brittney Willis, being first duly sworn, depose and say that I am duly authorized to act on behalf of Sandler Utilities at Mill Run, LLC as the Senior Project Manager; that I have read the foregoing Response to Order Requiring Additional Information, and that the same is true and accurate to my personal knowledge and belief.

This 17th day of February, 2022.

Brittney M. Willis
Brittney Willis, Senior Project Manager
Sandler Utilities at Mill Run, LLC

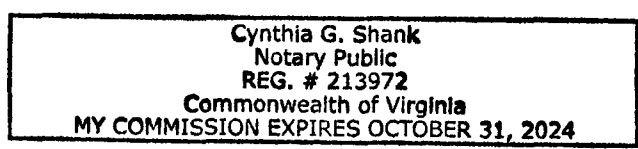
Sworn to and subscribed to before me this 17 day of February 2022.

Cynthia G. Shank
Notary Public (Signature)

(Seal)

Cynthia G. Shank
Notary Public (Printed)

My Commission Expires: 10/31/2024



STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 78

STATE OF NORTH CAROLINA, *ex rel.*,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
SANDLER UTILITIES AT MILL RUN,)
LLC,)
)
Defendant.)
)
)
)

CONSENT JUDGMENT

FILED
2021 JUL -1 P 1:14
CURRITUCK CO., C.S.C.
JLT
BY

Plaintiff, the State of North Carolina, by and through the North Carolina Department of Environmental Quality (“Plaintiff” or “DEQ”), and Defendant Sandler Utilities at Mill Run, LLC (“Defendant”) hereby agree to the entry of this Consent Judgment in order to resolve the matters in controversy between Plaintiff and Defendant.

The Court makes, and Plaintiff and Defendant (collectively “the Parties”) hereby stipulate to, the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is the sovereign State of North Carolina. This action was brought on the relation of the North Carolina Department of Environmental Quality (“DEQ”), the State agency established pursuant to N.C. Gen. Stat. § 143B-279.1 *et seq.*, and vested with the statutory authority to enforce the State’s environmental pollution laws, including laws enacted to protect the water quality of the State. The Division of Water Resources (“DWR”) is a division within DEQ and all actions taken by DWR are necessarily actions of the Plaintiff.

2. Defendant is a limited liability corporation formed in North Carolina with its principal office in Virginia and doing business in North Carolina. Defendant is the owner and operator of the wastewater collection system serving the Eagle Creek Subdivision, Eagle Creek Golf Club, and Moyock Middle School in Moyock, Currituck County, North Carolina (“Collection System”).

3. The Eagle Creek Subdivision is a development in Moyock, Currituck County, North Carolina. The development includes approximately 420 single-family homes and is generally situated between Roland Creek Canal to the north and Guinea Mill Run Canal to the south. Stormwater swales run beside the roadways in the development and between homes. Those swales drain to the Roland Creek Canal to the north and Guinea Mill Run Canal to the south of the development.

4. On May 2, 2013, DWR issued non-discharge permit number WQCS00290 (“Permit”) to Defendant for operation of the Collection System.

5. The Collection System consists of 4.8 miles of vacuum sewer and utilizes vacuum pumps to maintain a constant negative pressure within the sewer pipes. Domestic waste from individual homes connected to the system collects in containment vessels, commonly referred to as “pits,” with each pit serving two homes. When the level of waste within the pit reaches a determined level, pneumatic pressure triggers the opening of a valve to the piping connected to the sewer line. The vacuum withdraws waste and wastewater from the pit into the sewer line. When the waste level within the pit drops, the valve connecting the pit to the sewer line is closed, allowing waste to again collect within the pit and maintaining the vacuum in the sewer line.

6. Wastewater from the Collection System is conveyed to the Sandler Utilities Wastewater Treatment Plant for treatment and disposal as authorized by a separate permit,

WQ0014306.

7. A release of wastewater from a wastewater collection system such as Defendant's is referred to as a sanitary sewer overflow or "SSO."

8. Condition I.2 of the Permit requires that the Collection System "shall be effectively managed, maintained and operated at all times so that there is no SSO to land or surface waters, nor any contamination of groundwater." In the event of a system failure, the permittee is required to "take immediate corrective actions, including actions that may be required by [DWR] such as the construction of additional or replacement sewer lines and/or equipment."

9. Condition II.5 of the Permit provides that "for each pump station without pump reliability...at least one fully operational spare pump capable of pumping peak flow shall be maintained on hand."

10. Condition II.11 of the Permit provides that, if an SSO occurs, Defendant "shall restore the system operation, remove visible solids and paper, sanitize any ground area and restore the surroundings."

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

12. On September 29, 2020, DWR's Washington Regional Office began receiving complaints from Eagle Creek residents indicating that the Collection System was not operating properly at homes throughout Eagle Creek.

13. On September 30, 2020, DWR inspectors Sarah Toppen and Victoria Herdt from the Washington Regional Office conducted a site inspection to investigate the complaints. DWR's investigation confirmed that the system had not been operating properly since September 27, 2020

due to failure of one of the two vacuum pumps. The vacuum pump failure caused SSOs that drained into stormwater swales in front of and between homes.

14. Upon learning of the incident, Defendant called in technical support from Airvac, the initial pump supplier, to assist in bringing the Collection System back on line. Due to insufficient replacement parts available on site, Defendant purchased replacement parts for the vacuum pumps and mechanical equipment located in the pits to address the reported issues.

15. Defendant provided cleanup and lime application at any location showing evidence of overflow and in all roadside ditches around October 9, 2021. Performance issues in the Collection System were resolved by October 11, 2020.

16. On October 26, 2020, the Washington Regional Office again began receiving complaints indicating that the Collection System was experiencing further performance issues resulting in SSOs.

17. On October 27, 2020, Ms. Toppen and another DWR inspector, Allen Stewart, conducted a site inspection to investigate the complaints and learned that a high water alarm within the Collection System had failed, causing the water to overflow and flood both of the system's vacuum pumps, taking them offline. The vacuum pumps' failure resulted in SSOs, and a water sample from the stormwater swale at 125 Eagleton Circle contained fecal coliform (bacteria from fecal matter) that were too numerous to count.

18. In response to this incident, Defendant requested assistance from technicians from Airvac and FloVac (another vacuum system supplier), and the vacuum pumps were restored and fully operational by October 29, 2020. Among other equipment and parts, Defendant ordered new parts for the malfunctioning high water alarm, which were installed on November 5, 2020.

19. On November 13, 2020, the Washington Regional Office began receiving new

complaints stating that, beginning on or around November 11, 2020, the Collection System was not operating properly causing SSOs.

20. On November 14, 2020, David May, DWR Regional Supervisor for the Washington Regional Office, conducted a site visit to investigate the complaints. DWR's investigation confirmed the Collection System was experiencing performance issues resulting in SSOs. A substantial number of houses and customers remained without functional sewer service through at least November 16, 2020.

21. Complaints to the Washington Regional Office recommenced on November 20, 2020. Residents indicated that the Collection System was not functioning properly, that residents were once again without sewer service due to vacuum leaks disrupting operation of the Collection System, and that some pits were overflowing. A number of houses remained without functional sewer service or sporadic sewer service through about November 25, 2020.

22. On December 16, 2020, the Washington Regional Office once again received complaints from Eagle Creek residents regarding disruption of sewer service and SSOs. DWR's investigation suggested that the problem was limited to one section of the Eagle Creek development due to a disconnected line in a pit and sustained rainfall. Residences affected by the disconnected line remained without functional sewer service or sporadic sewer service through approximately December 18, 2020.

23. Additional complaints to the Washington Regional Office were received on January 26, 2021, with residents complaining that they lacked sewer service and describing other performance issues including SSOs.

24. Defendant has been subject to various enforcement actions by the DWR related to the Permit as a result of the incidents described above.

25. On October 7, 2020, DWR issued a Notice of Violation and Notice of Intent to Enforce (“First NOV”) to Defendant pertaining to SSOs and system failures occurring from September 27, 2020 and ongoing as of the date the NOV was issued. The First NOV alleged the following violations:

- a. Violation of Permit Condition I.2 for failure to effectively manage, maintain and operate the Collection System at all times so there are no SSOs to land or surface waters;
- b. Violation of Permit Condition II.11 for failure to restore the system operation, remove visible solids and paper, sanitize any ground area and restore surroundings after an SSO;
- c. Violation of Permit Condition IV.2 for failure to properly report SSOs.

26. In a letter dated October 27, 2020, Defendant responded to the First NOV. Defendant stated that replacement parts for the failed vacuum pumps were not readily available, causing a delay in fixing the Collection System. Once the vacuum pump was replaced, Defendant noted that two sewage pumps malfunctioned, forcing the entire system offline again for cleaning. Defendant acknowledged that its operator’s personnel resources were stretched during the event limiting the ability to address the Collection System problems in a timely manner and that additional support from a vacuum sewer specialist was called in. Defendant stated that cleanup of any discharges was performed and the System was ultimately repaired.

27. DWR assessed a civil penalty of \$62,517.96 against Defendant arising out of the allegations in the First NOV on December 10, 2020 (“Civil Penalty”) for fifteen violations of Permit Condition I.2 between September 27, 2020 and October 11, 2020.

28. On November 23, 2020, DWR issued a Second Notice of Violation and Notice of

Intent to Enforce (“Second NOV”) to Defendant pertaining to SSOs and system failures occurring during the period from October 26, 2020 through November 5, 2020. In addition to alleging violations of Permit Conditions I.2, II.11 and IV.2, the Second NOV alleged violations of Permit Condition II.5¹ for failure to maintain operational replacement pumps for stations without pump reliability and N.C. Gen. Stat. § 143-215.1(a)(1) for making an outlet into waters of the State without a permit.

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

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

31. On January 14, 2021, DWR issued a Fourth Notice of Violation and Notice of Intent to Enforce (“Fourth NOV”) to Defendant pertaining to SSOs and system failures occurring during the period from November 20 through November 25, 2020. The Fourth NOV alleged violations

¹ A typographical error in the Second NOV identifies a violation of Permit Condition II.6, not II.5. The narrative description of the violation refers to Permit Condition II.5, however.

of Conditions I.2, II.11, and IV.2 as well as N.C. Gen. Stat. § 143-215.1(a)(1).

32. DEQ filed the instant action on March 4, 2021, seeking injunctive relief for existing or threatened violations of various laws and rules governing the protection of water quality pursuant to N.C. Gen. Stat. § 143-215.6C.

33. The Parties have reached a mutually agreeable and reasonable resolution of the injunctive relief sought by DEQ through this suit which they seek to memorialize in this Consent Judgment.

34. The Court has reviewed the pleadings and supporting materials in this matter. Counsel for the Parties have represented to the Court that their respective clients have reviewed and approved the substance of the proposed Consent Judgment and that the Parties supported a request that this Court approve a Consent Judgment embodying their agreement.

CONCLUSIONS OF LAW

1. This matter is properly before this Court, which has jurisdiction over the Parties and subject matter of this action pursuant to N.C. Gen. Stat. § 143-215.6C and other provisions of law.

2. Venue is proper pursuant to under N.C. Gen. Stat. §§ 1-79 and 143-215.6C.

3. Defendant is subject to non-discharge collection system permit number WQCS00290. Pursuant to that permit, as well as North Carolina laws and regulations, Defendant is expressly prohibited from discharging collected sewage and wastewater to land and waters of the State. *See* 15A NCAC subchapter 2T (“Waste Not Discharged to Surface Waters”); N.C. Gen. Stat. § 143-215.1(a)(1) (disallowing any person from making “any outlets into waters of the State” without receiving a permit to do so).

4. Whenever DEQ has reasonable cause to believe that any person has violated or is

threatening to violate any of the provisions of the State’s environmental laws or administrative rules, including State water quality laws and rules, DEQ is authorized to “request the Attorney General to institute a civil action in the name of the State upon the relation of [DEQ] for injunctive relief to restrain the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C. That section further provides that “[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C.

5. As of the date of entry of this Consent Judgment, Defendant has repeatedly violated the conditions of its Permit and North Carolina’s water quality laws, including, but not limited to, failing to properly manage, maintain and operate the Collection System to prevent SSOs, failing to maintain replacement equipment to prevent SSOs, and failure to restore consistent service to Eagle Creek residents.

6. The current state of the Collection System presents an ongoing threat that the Eagle Creek Development will continue to experience performance issues and SSOs into nearby surface water in violation of the Collection System Permit, and in violation of N.C. Gen. Stat. § 143-215.1(a)(1).

7. The State is entitled to permanent injunctive relief against Defendant to abate the repeated previous violations and prevent the threatened violations set forth in the Complaint pursuant to N.C. Gen. Stat. § 143-215.6C.

8. Based on the Court’s review of the pleadings and materials submitted, the Court has concluded that the relief reflected in the Consent Judgment represents a lawful, fair, and reasonable resolution of this matter, consistent with the purposes of N.C. Gen. Stat. § 143-215.1,

and this Court further concludes that it is fully authorized and justified in entering this Consent Judgment.

9. The Parties expressly waive any argument that the recitation of the above Findings of Fact and Conclusions of Law is insufficient to support the injunctive relief ordered below.

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

Defendant is ordered to do the following:

1. Fully comply with all terms and conditions of the Permit and State water quality laws, including by maintaining the Collection System in a manner that prevents the discharge of waste onto to land or into surface waters;
2. Report to a DWR staff member as soon as possible but in no case more than 24 hours following knowledge of the occurrence of any material equipment failure, any material system failure, and any SSO regardless of volume and file a written report within five days outlining actions taken or proposed to address the equipment failure, system failure, and SSO and prevent recurrence. An equipment or system failure shall be considered material if there is any SSO associated with the failure or the failure affects four or more residences in the Eagle Creek Development. The reports referenced in this subparagraph shall be submitted to the following email address:

David May, DWR
david.may@ncdenr.gov

3. Within 30 calendar days of entry of this Consent Judgment:
 - a. Secure all pits to ensure only Defendant and its operators have pit access;

- b. Submit to DWR for approval (which may include conditions) a plan for Defendant's operators to receive any necessary training in operating and maintaining the Collection System, including specialized training in vacuum system operation, or provide documentation that such training has been received ("Operator Training Plan");
 - c. Submit to DWR for review and approval (which may include conditions) a plan to prevent future SSOs, restore and sanitize areas impacted by prior SSOs, and expeditiously restore and maintain service to homeowners in the event of any system failures pending an engineering evaluation of the Collection System ("Interim Service and Restoration Plan");
 - d. Provide to DWR a complete engineering evaluation detailing actions necessary to prevent future SSOs and system failures, including but not limited to necessary upgrades to the design and physical infrastructure of the Collection System ("Engineering Evaluation").
4. Within 60 calendar days of entry of this Consent Judgment:
 - a. Submit to DWR for review and approval (which may include conditions) a plan with actions to be taken to address necessary and proposed upgrades included in the Engineering Evaluation ("System Upgrade Plan"). The System Upgrade Plan must include a proposed schedule with dates by which each activity will be completed and, as appropriate, the frequency with which those activities will be repeated.
5. If DWR requires plan revisions in order for any of the plans listed above to be approved, Defendant shall resubmit the plan incorporating said revisions within 15 days of written

notification by DWR that such revisions are required. DWR's discretion to require plan revisions shall be limited to revisions necessary to ensure compliance with North Carolina's water quality laws and regulations including provisions applicable to wastewater collection systems.

6. Once each submission is approved (the Operator Training Plan, the Interim Service and Restoration Plan, and the System Upgrade Plan) including any conditions added by DWR to each, Defendant shall execute each plan in accordance with the dates included therein.
7. Once the work set forth in the approved System Upgrade Plan, including any conditions added by DWR, is completed, Defendant shall submit a final report documenting the results of the activities set forth in each respective plan. The final report shall include a certification from a licensed professional engineer.
8. Unless otherwise indicated, Defendant shall submit all plans and reports referenced above to:

David May, DWR
david.may@ncdenr.gov

9. It is further ordered that this Consent Judgment shall take effect immediately and shall remain in effect until the Permittee can adequately demonstrate that the collection system can operate in a reliable manner and maintain compliance with North Carolina water quality laws and regulations on a consistent basis. The Defendant may request termination of this Consent Judgment by the Court at no time sooner than one year following submittal of the final report described in Paragraph 7 above and subsequent approval by DWR. The Parties shall comply with all terms of this Consent Judgment.
10. This Consent Judgment shall be binding upon Defendant's successors and assigns.

Defendant shall not transfer any of the assets that are the subject of the Complaint, including the Permit or the Collection System, unless and until Defendant moves to join the transferee as a defendant in this case such that this Consent Judgment shall be binding upon the transferee and the Court issues an order granting such motion. DEQ agrees that it will not oppose dismissal of Defendant in the event the assets that are the subject of the Complaint have been transferred and the transferee has been added as a defendant in this case and is bound by this Consent Judgment. Nothing in this Consent Judgment relieves Defendant of its duty to abide by the terms of the Permit and State water quality law. DEQ retains its authority, in accordance with applicable law, to initiate any and all enforcement actions that would otherwise be available to it in the absence of this Consent Judgment.

11. The Court shall retain continuing jurisdiction in this case to enforce the terms and conditions of this Consent Order, to modify this Consent Order, and to resolve disputes arising under this Consent Order until all parties have complied with all provisions of this Consent Judgment.
12. The contempt provisions of Article 2, Chapter 5A of North Carolina General Statutes shall be available to enforce this Consent Judgment.
13. This Consent Judgment may be signed out-of-court, out-of-term, out-of-county, and may be signed in multiple counterpart originals, all of which, taken together, shall be considered one and the same document. Facsimile or scanned signatures will be sufficient to render this Consent Judgment effective. Original signatures will be substituted at a later date.
14. Each undersigned representative of a party to this Consent Judgment certifies that the

representative is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such party to this Consent Judgment.

This the 23rd day of June, 2021.

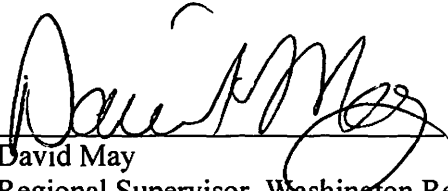


Superior Court Judge
Currituck County

[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]

CONSENTED TO BY:

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: 
David May
Regional Supervisor, Washington Regional Office, Division of Water Resources

CONSENTED TO BY:

SANDLER UTILITIES AT MILL RUN, LLC

By:



Raymond Gottlieb
Manager

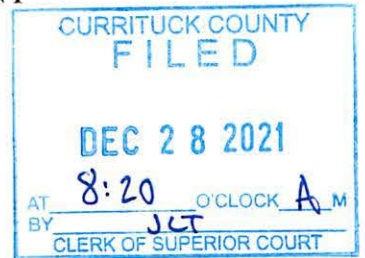
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N.C. Dept. of Justice
Environmental Division

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 78

STATE OF NORTH CAROLINA, *ex rel.*,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
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v.)
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SANDLER UTILITIES AT MILL RUN,)
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**AMENDED CONSENT
JUDGMENT**



Plaintiff, the State of North Carolina, by and through the North Carolina Department of Environmental Quality (“Plaintiff” or “DEQ”), and Defendant Sandler Utilities at Mill Run, LLC (“Defendant”) hereby agree to the entry of this Amended Consent Judgment in order to resolve the matters in controversy between Plaintiff and Defendant.

The Court makes, and Plaintiff and Defendant (collectively “the Parties”) hereby stipulate to, the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is the sovereign State of North Carolina. This action was brought on the relation of the North Carolina Department of Environmental Quality (“DEQ”), the State agency established pursuant to N.C. Gen. Stat. § 143B-279.1 *et seq.*, and vested with the statutory authority to enforce the State’s environmental pollution laws, including laws enacted to protect the water quality of the State. The Division of Water Resources (“DWR”) is a division within DEQ and all actions taken by DWR are necessarily actions of the Plaintiff.

2. Defendant is a limited liability corporation formed in North Carolina with its principal office in Virginia and doing business in North Carolina. Defendant is the owner and operator of the wastewater collection system serving the Eagle Creek Subdivision, Eagle Creek Golf Club, and Moyock Middle School in Moyock, Currituck County, North Carolina (“Collection System”).

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28. On November 23, 2020, DWR issued a Second Notice of Violation and Notice of

Intent to Enforce (“Second NOV”) to Defendant pertaining to SSOs and system failures occurring during the period from October 26, 2020 through November 5, 2020. In addition to alleging violations of Permit Conditions I.2, II.11 and IV.2, the Second NOV alleged violations of Permit Condition II.5¹ for failure to maintain operational replacement pumps for stations without pump reliability and N.C. Gen. Stat. § 143-215.1(a)(1) for making an outlet into waters of the State without a permit.

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

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

31. On January 14, 2021, DWR issued a Fourth Notice of Violation and Notice of Intent to Enforce (“Fourth NOV”) to Defendant pertaining to SSOs and system failures occurring during the period from November 20 through November 25, 2020. The Fourth NOV alleged violations

¹ A typographical error in the Second NOV identifies a violation of Permit Condition II.6, not II.5. The narrative description of the violation refers to Permit Condition II.5, however.

of Conditions I.2, II.11, and IV.2 as well as N.C. Gen. Stat. § 143-215.1(a)(1).

32. DEQ filed the instant action on March 4, 2021, seeking injunctive relief for existing or threatened violations of various laws and rules governing the protection of water quality pursuant to N.C. Gen. Stat. § 143-215.6C.

33. The Parties initially reached a resolution of the injunctive relief sought by DEQ through this suit and memorialized that agreement in a Consent Judgment, which was entered by the court on July 1, 2021.

34. Subsequent to entry of the Consent Judgment, the Collection System experienced three instances of performance issues resulting in SSOs in the months of October and November 2021. On November 16, 2021,² DEQ filed a verified Motion to Show Cause Why Defendant Should Not Be Held in Criminal and/or Civil Contempt based on the system performance issues, as well as alleged violations of approved plans under the original Consent Judgment.

35. A Show Cause Hearing was held on December 6, 2021. The Court heard testimony from Eagle Creek resident Kevin Wetzel and Defendant's representative Brittney Willis. Mr. Wetzel testified that, among other things, since entry of the Consent Judgment in July 2021, on multiple occasions his family has gone several days without sewer service, waste has been discharged onto his property, Defendant has not been responsive to calls for service when there are system performance issues, and Defendant has not taken any steps to clean up waste spilled onto his property. Ms. Willis testified that Defendant has actively attempted to comply with the Consent Judgment, has taken certain actions concerning the operation and maintenance of the system beyond what DEQ required in the Consent Judgment, including recent installation of an electronic monitoring system, and has recently been more responsive to DEQ's requests

² A Notice of Corrected Filing to include attachments referenced in the November 16 Motion was filed on November 24, 2021.

concerning operation of the system. Defendant did not challenge the factual allegations contained in the verified Motion to Show Cause other than through testimony and exhibits offered by Ms. Willis. The Court reserved ruling on contempt.

36. After testimony at the hearing, the Court directed the parties to submit a modification to the Consent Judgment to provide for changes necessary to bring the Collection System into compliance with the Permit and State water quality laws and regulations.

37. The Parties have reached a mutually agreeable and reasonable resolution intended to bring the Collection System into compliance with the Permit and State water quality laws and regulations. They seek to memorialize that agreement in this Amended Consent Judgment.

38. The Court has reviewed the pleadings, motion, and supporting materials in this matter. Counsel for the Parties have represented to the Court that their respective clients have reviewed and approved the substance of the proposed Amended Consent Judgment and that the Parties supported a request that this Court approve an Amended Consent Judgment embodying their agreement.

CONCLUSIONS OF LAW

1. This matter is properly before this Court, which has jurisdiction over the Parties and subject matter of this action pursuant to N.C. Gen. Stat. § 143-215.6C and other provisions of law.

2. Venue is proper pursuant to under N.C. Gen. Stat. §§ 1-79 and 143-215.6C.

3. Defendant is subject to non-discharge collection system permit number WQCS00290. Pursuant to that permit, as well as North Carolina laws and regulations, Defendant is expressly prohibited from discharging collected sewage and wastewater to land and waters of the State. *See* 15A NCAC subchapter 2T (“Waste Not Discharged to Surface Waters”); N.C. Gen.

Stat. § 143-215.1(a)(1) (disallowing any person from making “any outlets into waters of the State” without receiving a permit to do so).

4. Whenever DEQ has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of the State’s environmental laws or administrative rules, including State water quality laws and rules, DEQ is authorized to “request the Attorney General to institute a civil action in the name of the State upon the relation of [DEQ] for injunctive relief to restrain the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C. That section further provides that “[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C.

5. As of the date of entry of this Consent Judgment, Defendant has repeatedly violated the conditions of its Permit and North Carolina’s water quality laws, including, but not limited to, failing to properly manage, maintain and operate the Collection System to prevent SSOs, failing to maintain replacement equipment to prevent SSOs, and failure to restore consistent service to Eagle Creek residents.

6. The current state of the Collection System presents an ongoing threat that the Eagle Creek Development will continue to experience performance issues and SSOs into nearby surface water in violation of the Collection System Permit, and in violation of N.C. Gen. Stat. § 143-215.1(a)(1).

7. The State is entitled to permanent injunctive relief against Defendant to abate the repeated previous violations and prevent the threatened violations set forth in the Complaint pursuant to N.C. Gen. Stat. § 143-215.6C.

8. Based on the Court's review of the pleadings and materials submitted, the Court has concluded that the relief reflected in the Amended Consent Judgment represents a lawful, fair, and reasonable resolution of this matter, consistent with the purposes of N.C. Gen. Stat. § 143-215.1, and this Court further concludes that it is fully authorized and justified in entering this Consent Judgment.

9. The Parties expressly waive any argument that the recitation of the above Findings of Fact and Conclusions of Law is insufficient to support the injunctive relief ordered below.

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

Defendant is ordered to do the following:

1. **Prevention of SSOs.** Defendant shall fully comply with all terms and conditions of the Permit and State water quality laws, including by maintaining the Collection System in a manner that prevents the discharge of waste onto to land or into surface waters;
2. **Reporting to DWR.** Defendant shall report to a DWR staff member as soon as possible but in no case more than 24 hours following knowledge of the occurrence of any material equipment failure, any material system failure, or any SSO regardless of volume and file a written report within five days following Defendant's first knowledge of the occurrence. The report shall outline actions taken or proposed to address the equipment failure, system failure, and/or SSO and prevent recurrence. Defendant shall provide additional information as may be reasonably requested by DWR to evaluate the equipment failure, system failure, or SSO. An equipment or system failure shall be

considered material if there is any SSO associated with the failure or the failure affects four or more residences in the Eagle Creek Development.

3. **Responding to Resident Complaints.** Defendant shall provide timely and accurate responses to all resident complaints of equipment failures, system failures, or SSOs regardless of volume, including:

- a. Providing accurate notices to all residents when a material system failure occurs as soon as possible and no later than two hours after receiving notice of the system failure;
- b. Initiating response to resident complaints of equipment failures, system failures, or SSOs within three hours of receiving the complaint;
- c. Providing sanitation services within four hours of confirmation of a discharge of waste to land or surface water;
- d. Continuously performing sanitation surveys while providing incident response, with actions taken as necessary to address sanitation needs (it shall not be incumbent upon a resident to report sanitation issues to initiate a sanitation response); and
- e. Notifying residents within two hours of full system restoration and stating the operational status of individual pits.

To demonstrate compliance with this requirement, Defendant shall maintain an accurate log of resident complaints and actions taken in response to those complaints. Such log shall identify: (1) the complainant; (2) a summary of the substance of the complaint; (3) when the complaint was received; (4) a description of actions taken in response to the complaint, including but not limited to corrective action and sanitation

services; (5) when response action was initiated; and (6) when the complaint was resolved. Such log shall be made available to DWR upon request.

4. **Operator Training Plan.** Defendant shall continue to implement and be bound by the requirements of the Operator Training Plan attached hereto as Exhibit A, along with any subsequent updates as contemplated in paragraph 10.
5. **Independent Engineering Evaluation.** Within 30 calendar days of entry of this Amended Consent Judgment, Defendant shall provide to DWR a new engineering evaluation conducted by an independent firm approved by DWR with expertise in the operation of vacuum systems (“Independent Engineering Evaluation”). This deadline may be extended upon approval by DWR if Defendant demonstrates that additional time is necessary to identify or accommodate the scheduling needs of a qualified independent firm. This Independent Engineering Evaluation shall detail near-term and long-term actions necessary to prevent future SSOs and system performance issues, including but not limited to: (1) changes in staffing, (2) operation and maintenance procedures, (3) equipment replacement, (4) acquisition of additional backup equipment, and (5) upgrades to the design and physical infrastructure of the Collection System.
6. **Interim Service and Restoration Plan.** Defendant shall implement the requirements of the Interim Service and Restoration Plan attached hereto as Exhibit B, along with any subsequent updates as contemplated in paragraph 10. Within 14 calendar days of submission of the Independent Engineering Evaluation, Defendant shall submit for DWR review and approval (which may include conditions), revisions to the Interim Service and Restoration Plan to address recommendations of the Independent

Engineering Evaluation that can be implemented on a short-term basis. Such revisions must include a proposed schedule with dates by which each activity will be completed and, as appropriate, the frequency with which those activities will be repeated.

7. **New System Upgrade Plan.** Within 30 calendar days of submission of the Independent Engineering Evaluation, Defendant shall submit to DWR for review and approval (which may include conditions) a new plan with actions to be taken to address the long-term recommendations of the Independent Engineering Evaluation (“New System Upgrade Plan”). The New System Upgrade Plan must include a proposed schedule with dates by which each activity will be completed and, as appropriate, the frequency with which those activities will be repeated.
8. **Appointment of Independent Specialist.** Defendant shall appoint a qualified independent specialist in vacuum system operation to provide consulting services addressing operation of the Collection System for a minimum of 30 days (“Consultant Period”). The independent specialist shall be approved by DWR, and DWR must approve dismissal of the independent specialist and ending of the Consultant Period. During the Consultant Period, the independent specialist must be on site for a minimum of four hours daily, five days a week. The independent specialist shall provide a report to DWR within 45 days of commencement of the Consultant Period identifying (1) any deficiencies in the current operation and maintenance of the Collection System; and (2) any additional measures not included in the Independent Engineering Evaluation that are needed to ensure compliance with the Permit and State water quality laws. DWR may require that any measures recommended by the

independent specialist be incorporated into the Interim Service and Restoration Plan or the New System Upgrade Plan if reasonably necessary to ensure compliance with the Permit and State water quality laws. The Consultant Period shall commence as soon as possible and no later than 14 days following entry of the Amended Consent Judgment. This deadline may be extended upon approval by DWR if Defendant demonstrates that additional time is necessary to identify or accommodate the scheduling needs of a qualified independent specialist.

9. **Execution of Plans.** Once each submission is approved (the Operator Training Plan, the Interim Service and Restoration Plan, and the New System Upgrade Plan) including any conditions added by DWR or updates made after initial approval, Defendant shall execute each plan in accordance with the dates included therein.
10. **Plan and Report Revisions.** DWR may require and Defendant may request revisions to Operator Training Plan, Interim Service and Restoration Plan, and/or the System Upgrade Plan referenced herein as necessary to best serve the ends of effective and efficient compliance with the Permit and North Carolina's water quality laws and regulations including provisions applicable to wastewater collection systems. Any disputes as between DWR and Defendant regarding whether or not such updates are reasonably necessary may be brought before the Court for resolution. If DWR requires revisions in conjunction with mandatory plan submissions under this Amended Consent Judgment, Defendant shall resubmit the plan incorporating said revisions within 15 days of written notification by DWR that such revisions are required. DWR's discretion to require revisions for mandatory plan submissions shall be limited to revisions necessary to ensure compliance with

the Permit and North Carolina's water quality laws and regulations including provisions applicable to wastewater collection systems.

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

12. **Submission of Plans and Reports.** Unless otherwise indicated, Defendant shall submit all plans and reports referenced above to:

David May, DWR
david.may@ncdenr.gov

13. **Duration.** It is further ordered that this Amended Consent Judgment shall take effect immediately and shall remain in effect until Defendant can adequately demonstrate that the collection system can operate in a reliable manner and maintain compliance with North Carolina water quality laws and regulations on a consistent basis. The Defendant may request termination of this Amended Consent Judgment by the Court at no time sooner than one year following submittal of the final report described in Paragraph 11 above and subsequent approval by DWR. The Parties shall comply with all terms of this Amended Consent Judgment.


14. **Successors, Assigns, and Transferees.** This Amended Consent Judgment shall be binding upon Defendant's successors and assigns. Defendant shall not transfer any of the assets that are the subject of the Complaint, including the Permit or the Collection System, unless and until Defendant moves to join the transferee as a defendant in this case such that this Amended Consent Judgment shall be binding upon the transferee and the Court issues an order granting such motion. DEQ agrees that it will not oppose

dismissal of Defendant in the event the assets that are the subject of the Complaint have been transferred and the transferee has been added as a defendant in this case and is bound by this Consent Judgment. Nothing in this Amended Consent Judgment relieves Defendant of its duty to abide by the terms of the Permit and State water quality law. DEQ retains its authority, in accordance with applicable law, to initiate any and all enforcement actions that would otherwise be available to it in the absence of this Amended Consent Judgment.

15. **Retention of Jurisdiction.** The Court shall retain continuing jurisdiction in this case to enforce the terms and conditions of this Amended Consent Judgment, to modify this Amended Consent Judgment, and to resolve disputes arising under this Amended Consent Judgment until all parties have complied with all provisions of this Amended Consent Judgment.
16. **Contempt.** The contempt provisions of Article 2, Chapter 5A of North Carolina General Statutes shall be available to enforce this Amended Consent Judgment, including any and all provisions of the plans referenced herein, including any revisions to such plans.
17. This Amended Consent Judgment may be signed out-of-court, out-of-term, out-of-county, and may be signed in multiple counterpart originals, all of which, taken together, shall be considered one and the same document. Facsimile or scanned signatures will be sufficient to render this Amended Consent Judgment effective. Original signatures will be substituted at a later date.
18. Each undersigned representative of a party to this Amended Consent Judgment certifies that the representative is authorized to enter into the terms and conditions of this

Amended Consent Judgment, and to execute and legally bind such party to this Amended Consent Judgment.

This the 21st day of December, 2021.



Superior Court Judge

[ADDITIONAL SIGNATURES ON FOLLOWING PAGES]

CONSENTED TO BY:

NORTH CAROLINA DEPARTMENT
OF ENVIRONMENTAL QUALITY

By:



David May

Regional Supervisor, Washington Regional Office, Division of Water Resources

CONSENTED TO BY:

SANDLER UTILITIES AT MILL RUN, LLC

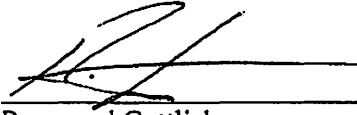
By: 
Raymond Gottlieb
Manager

Exhibit A

Updated Operator Training Plan

Sandler Utilities at Mill Run, LLC
Eagle Creek Collection System
Operator Training Plan

This Operator Training plan is intended to ensure that operators employed by Sandler Utilities at Mill Run, LLC, (“Permittee”) receive necessary training in operating and maintaining the Eagle Creek Collection System. The Permittee shall adhere to the following requirements:

1. At least one trained lead technician will be onsite or available for consultation 24/7/365 with that individual being on-site during business hours. This operator must be knowledgeable of the location of all the collection chambers, lines, division valves, and other key components of the system. This operator must have a thorough knowledge of the main components of the vacuum sewer system and how the different components (pits, vacuum station, and homeowner services) are interrelated and work together as a system. Other staff must be under the direct supervision of this lead operator.
2. Both Owner and Operator recognize that proper training is critical for identification of faulty services, and overall, this system requires skilled technicians to minimize service disruptions. Formal training via a third-party vendor such as Flovac has been and will continue to be provided. Additionally, four months of on-site training under a qualified trained lead operator must be performed prior to qualification to become a lead technician. Operator shall submit a monthly report to the Defendant identifying plant operators and the level of training, type of training (onsite or formal), and present a monthly schedule confirming that at least one qualified lead technician is onsite during business hours and available during non-business hours.
3. Training will be held annually for all full-time operators assigned to the plant that have not previously received formal training. A qualified third-party vendor will provide a 3-day operator training course which must cover the following items:
 - a. Day 1 Classroom - Introduction to Vacuum Systems
 - i. How they work and basic principals
 - ii. Major Components
 - iii. Vacuum Pump Station
 - iv. Vacuum Pipework and Division Valves
 - v. Household Gravity Line and Venting
 - vi. Vacuum Collection Pit and Vacuum Valve
 - vii. Design Basics
 - viii. System Layout
 - ix. Master Plan
 - x. Reading a Design Drawing
 - xi. Extensions
 - xii. Systems Overview

- xiii. Layout
- b. Day 1 Classroom - Vacuum Pump Station
 - i. Vacuum Pumps
 - ii. Sewage Pumps
 - iii. Collection Tank and Pipework
 - iv. Controls
 - v. Reading a Chart Recorder
 - vi. Vacuum Valves and Controllers
 - vii. Operation
 - viii. Components
 - ix. Rebuilding (to include rebuilding controllers and valves)
- c. Day 2 Classroom
 - i. Tuning a Vacuum System
 - ii. Air/Liquid Ratio
 - iii. Controller Timing
 - iv. System Alarms
 - v. Vacuum Level
 - vi. Long Running Vacuum Pump
 - vii. Low Vacuum Alarm
 - viii. Homeowner Call
 - ix. Noisy Vacuum Pit
 - x. Affected Service
 - xi. Sewage Overflow
 - xii. Troubleshooting
 - xiii. Finding a vacuum leak
 - xiv. Flooded vacuum main
 - xv. Valve won't open
 - xvi. Valve won't close
- d. Day 2 Field
 - i. Vacuum Pump Station Review
 - ii. Air Liquid ratio calculation
 - iii. Sources of leaks
 - iv. Regular Maintenance Items
- e. Day 3 Field
 - i. Collection Pit Set-ups
 - ii. Troubleshooting
 - iii. Broken Pipework Repair

The Permittee will keep a running list of full-time plant technicians with documentation of training received and/or scheduled training to be received. This will be kept at the plant location and will be available for review upon request. Additionally, a monthly report will be provided to DWR on the first business day of each calendar month identifying plant technicians and their schedule, level of training received, and type of training received.

Exhibit B

Updated Interim Service and Restoration Plan

Sandler Utilities at Mill Run, LLC
Eagle Creek Collection System
Interim Service and Restoration Plan

This Interim Service and Restoration Plan (“ISRP”) is intended to prevent future SSOs, restore and sanitize areas impacted by prior SSOs, and expeditiously restore and maintain service to homeowners in the event of any system failures. In furtherance of this requirement, the ISRP requires Sandler Utilities at Mill Run, LLC (“Permittee”) to adhere to the following requirements.

Technician Availability

1. The Permittee will assign two onsite technicians from 8am-5pm Monday through Friday, and one assigned on-site technician 5pm–12am and 4am–8am Monday through Friday.
2. On Saturday and Sunday, one technician will be assigned to the facility from 4am-12am.
3. The Permittee will ensure that at least one on-call shift technician lives within 30-mile radius of the plant for response during wet weather events or during any service disruptions where additional resources are required. Additional on-call shift technicians will be available to work at one time during an outage to the extent that is necessary to properly recover the system as quickly as possible.

The following items must be completed or performed to prevent future SSOs:

1. **Daily System Checks.** On a daily basis, the Permittee shall:
 - a. Record and review daily pump run times via the standard log sheet to assist in evaluating vacuum pump and sewage pump operating conditions
 - b. Calibrate chart recorder for vacuum and sewer pump run times
 - c. Inspect check valves on force main headworks to verify that they are operating properly and replace as needed
 - d. Check compressor on high level valve to ensure that it is in the on position and is operating properly
 - e. Check recirculation lines to avoid sewer pump cavitation and ensure lines are open and remain open.
 - f. Check vacuum pump’s recirculation line float box and ensure there are no oil leaks.
 - g. Check oil levels in the vacuum pumps and repair oil leaks to ensure oil levels are maintained for a reasonable duration of time
 - h. Inspect sewer pump couplings to ensure proper alignment and ensure mounting base is secured with proper bolts.
 - i. For pits without pedestal mounted controllers:
 - i. Connect all hoses within vacuum pits as needed
 - ii. Replace in-sump breathers within vacuum pits as needed
 - j. Repair clipped vacuum lines as needed
2. **Weekly System Checks.** On a weekly basis, the Permittee shall:
 - a. Test alarm notifications

- b. Check conical screens in vacuum pumps and replace any damaged screens
 - c. Verify that appropriate tools and spare parts are available on site, including operational controllers, valves and repair kits
 - i. A purchase list shall be sent from Operator to Owner every Monday with items needed.
 - d. Test the monitoring system and conduct maintenance as necessary
3. **Monthly System Checks.** On a monthly basis, the Permittee shall:
- a. Ensure that the alarm system, sensors, and electrical components have been inspected by a qualified electrician
 - b. Inspect all individual customer valve pits and:
 - i. Test each valve multiple times by hand
 - ii. Check hose orientation and confirm connection correctness per operation manual
 - iii. Clean and secure sump breathers
 - iv. Inspect vents and the pit area for overflows and provide sanitation services as necessary.
 - v. Complete necessary repairs.
 - c. Change oil in vacuum pumps and replace vacuum filters
 - d. Inspect vacuum pump set points and confirm proper pressure limits are established and that solenoid valves are opening and closing.
 - e. Check collection tank for debris and remove debris if found
 - f. Clean probes at tank and check against the design levels
4. **Additional Requirements.** The Permittee shall:
- a. Replace control panel in the vacuum pump station by March 15, 2022
 - b. Install air admittance at four system dead end locations by March 15, 2022
 - c. Install Pedestal Mounted Controllers on an expedited schedule with all pits having been outfitted with a Pedestal Mounted Controller no later than February 15, 2022.

The following items must be completed or performed in the event of an SSO or system failure and to expeditiously restore and maintain service to homeowners in the event of any system failures. The Permittee shall:

1. ***Within 4 hours of knowledge of a discharge of waste to land or surface water begin performance of clean-up and sanitization services as follows:***
 - a. All solids must be physically removed and disposed of properly
 - b. Lime shall be applied at all locations where wastewater is suspected of having discharged
 - c. Hard surfaces shall be cleaned with bleach and any ponded cleanup water shall be properly managed by neutralizing and returning the ponded cleanup water to the wastewater treatment plant.
 - d. Vacuum trucks shall be mobilized as needed to recover any spilled wastewater

2. *The Permittee shall communicate with residents in accordance with paragraph 3 of the Amended Consent Judgment.*
3. *By no later than January 31, 2022, the Permittee shall develop a contingency plan for review and approval by DWR to provide residents with sewer service in the event of material system failures.* Such contingency plan may include, but should not be limited to:
 - a. Use of larger vacuum trucks to bring pits back into service more quickly
 - b. Installation of new taps at select locations along primary vacuum lines for vacuum trucks to attach if sufficient vacuum pressure can be created
 - c. Provision of portable restroom/shower trailers to provide residents with toilets, sinks, and showers during outages

Reporting Requirement

By the first business day of each calendar month, the Permittee shall provide a monthly report to DWR to convey progress of the Interim Service and Restoration Plan. The Report must include documentation sufficient to verify that all elements of the ISRP have been completed during the prior month. These monthly status reports will be submitted via e-mail to David May.

RECEIVED
JAN 03 2022
N.C. Dept. of Justice
Environmental Division