

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

FILED

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

2022 JUL 18 P 12: 54

CURRITUCK CO., C.S.C.

STATE OF NORTH CAROLINA, *ex rel.*
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
Plaintiff,

JCT

v.

SANDLER UTILITIES AT MILL RUN,
LLC,
Defendant.

**SECOND AMENDED CONSENT
JUDGMENT**

This matter is before the Court on the Joint Motion for Joinder and to Amend Consent Judgment, filed by Plaintiff, the State of North Carolina, Defendant, Sandler Utilities At Mill Run, LLC (“Sandler”), and Transferee, Currituck Water and Sewer, LLC (“CWS”) (collectively, the “Parties”) pursuant to paragraph 14 on pages 16-17 (“Successors, Assigns, and Transferees”) of the Amended Consent Judgment signed by this Court on December 21, 2021 (“Amended Consent Judgment”) and Rule 20 of the N.C. Rules of Civil Procedure.

FINDINGS AND CONCLUSIONS

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 Sandler is a limited liability corporation formed in North Carolina with its principal office in Virginia and doing business in North Carolina. Sandler 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”) and operated pursuant to non-discharge permit number WQCS00290 (“Permit”)

3. Transferee Currituck Water & Sewer, LLC (“CWS”) is a limited liability corporation formed and doing business in North Carolina with an interest in acquiring the Collection System.

4. On March 2, 2021, Plaintiff filed a Complaint and Motion for Injunctive Relief against Sandler seeking to address repeated violations of its Permit and the State’s water quality laws.

5. Plaintiff and Sandler initially reached a resolution of the injunctive relief sought by Plaintiff through this suit and memorialized that agreement in a Consent Judgment, which was entered by this Court on July 1, 2021.

6. After entry of the Consent Judgment, the Collection System experienced performance issues resulting in SSOs in the months of October and November 2021.

7. On November 16, 2021, Plaintiff 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.

8. A Show Cause Hearing was held on December 6, 2021. After hearing initial testimony from witnesses for the parties, the Court reserved ruling on contempt and directed Plaintiff and Sandler 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.

9. On December 28, 2021, this Court entered an Amended Consent Judgment, supported by findings of fact and conclusions of law, hereby incorporated into the terms of this Second Amended Consent Judgment, amending the terms of the original Consent Judgment to require additional actions to bring the Collection System into compliance.

10. Paragraph 14 (“Successors, Assigns, and Transferees”) of the Amended Consent Judgment addresses the transfer of the collection system to a non-party. Specifically, paragraph 14 provides:

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.

11. On April 14, 2021, CWS and Sandler entered into an agreement, whereby CWS intends to acquire, upgrade and replace the Collection System. In addition, CWS initiated a proceeding in the North Carolina Utilities Commission to transfer the Collection System.

12. Since entry of the Amended Consent Judgment, Sandler has discharged several of the obligations set forth in the Amended Consent Judgment, including submission of an Independent Engineering Evaluation, submission of a Revised Interim Service and Restoration Plan, and Appointment of an Independent Specialist.

13. As contemplated by the Amended Consent Judgment, the Parties have reached agreement on terms by which CWS shall be joined as a defendant in this case and subject to the terms set forth in the Amended Consent Judgment as modified by this Second Amended Consent Judgment.

14. Based on the Court's review of the pleadings and materials submitted, the Court has concluded that the relief reflected in this Second 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 Second Amended Consent Judgment.

15. The Parties expressly waive any argument that the above Findings and Conclusions and those set forth in the Amended Consent Judgment are insufficient to support the injunctive relief ordered herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. **Joinder of CWS.** CWS is hereby joined as a defendant in this action and subject to the terms of this Second Amended Consent Judgment.
2. **Prevention of SSOs.** CWS 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 wastewater onto to land or into surface waters.
3. **Reporting to DWR.** CWS shall report SSOs to a DWR staff member in the Washington Regional Office as required under the Permit. In addition, CWS shall report to a DWR staff member in the Washington Regional Office as soon as possible but in no case more than 24 hours following knowledge of the occurrence of any

material equipment failure or material system failure. CWS shall provide DWR with actions taken or proposed to address the material equipment failure or material system failure and to prevent recurrence. CWS shall provide additional information as may be reasonably requested by DWR to evaluate the equipment failure or system failure. An equipment or system failure (which may include SSOs) shall be considered material if it affects four or more residences in the Eagle Creek Development. Planned service interruptions or service interruptions required to identify and repair service to other residents are not subject to this provision.

4. **Responding to Resident Complaints.** CWS 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 any 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 wastewater 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, CWS 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.

5. **Operator Training Plan.** CWS shall implement and be bound by the requirements of the Operator Training Plan attached hereto as Exhibit A and incorporated herein, along with any subsequent updates as contemplated in paragraph 10 below.
6. **Interim Service and Restoration Plan.** CWS shall implement the requirements of the Interim Service and Restoration Plan attached hereto as Exhibit B and incorporated herein, along with any subsequent updates as contemplated in paragraph 10 below.
7. **New System Upgrade Plan.** By no later than sixty days after transfer of the Permit from Sandler to CWS, CWS 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. Once the New System Upgrade Plan is

approved, including any conditions added by DWR or updates made after initial approval, CWS shall execute each plan in accordance with the dates included therein.

8. **Plan and Report Revisions.** DWR may require and CWS may request revisions to the 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 CWS 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, CWS 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.
9. **Final Report.** Once the work set forth in the approved New System Upgrade Plan, including any conditions added by DWR, is completed, CWS 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.
10. **Submission of Plans and Reports.** Unless otherwise indicated, CWS shall submit all plans and reports referenced above to:

David May, DWR
david.may@ncdenr.gov

11. **Duration.** This Second Amended Consent Judgment shall take effect upon transfer of the Permit from Sandler to CWS. CWS may request termination of this Second Amended Consent Judgment by the Court at no time sooner than 90 days following DWR approval of the engineer certification submitted pursuant to paragraph 9. The Parties shall comply with all terms of this Second Amended Consent Judgment. Until such time as this Second Amended Consent Judgment takes effect, the original parties, Plaintiff and Sandler, shall be bound by the terms of the Amended Consent Judgment entered by this Court on December 28, 2021.
12. **Successors, Assigns, and Transferees.** This Amended Consent Judgment shall be binding upon CWS's successors and assigns. CWS shall not transfer any of the assets that are the subject of the Complaint, including the Permit or the Collection System, unless and until CWS 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 CWS 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.
13. **Retention of Jurisdiction.** The Court shall retain continuing jurisdiction in this case to enforce the terms and conditions of this Second Amended Consent Judgment, to modify this Second Amended Consent Judgment, and to resolve disputes arising under this Second Amended Consent Judgment until all parties have complied with all provisions of this Second Amended Consent Judgment.
14. **Contempt.** The contempt provisions of Chapter 5A of North Carolina General Statutes

shall be available to enforce this Second Amended Consent Judgment, including any and all provisions of the plans referenced herein, including any revisions to such plans.

15. **Violations Due to SSOs.** CWS shall not be deemed in violation of the Amended Consent Judgment or this Second Amended Consent Judgment solely due to the occurrence of a sanitary sewer overflow provided CWS demonstrates that: (1) the sanitary sewer overflow is due to factors outside the reasonable control of CWS, its agents, and its employees; and (2) CWS has fully complied with all other applicable terms of the Second Amended Consent Judgment including but not limited to the Interim Service and Restoration Plan attached hereto as Exhibit B along with any subsequent updates as contemplated by paragraph 10. Nothing in this Amended Consent Judgment relieves CWS 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.
16. **Dismissal of Sandler.** Once the Permit is transferred to CWS, the Parties will notify the Court and may move to dismiss Sandler as a party to this action.
17. This Second 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 Second Amended Consent Judgment effective. Original signatures will be substituted at a later date.
18. Each undersigned representative of a party to this Second Amended Consent Judgment certifies that the representative is authorized to enter into the terms and conditions of

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

This the 18th of July 2022.



Superior Court Judge

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

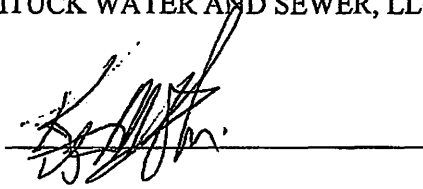
By: 

Raymond Gottlieb
Manager

CONSENTED TO BY:

CURRITUCK WATER AND SEWER, LLC

By:

A handwritten signature in black ink, appearing to read 'K. M. Faber', is written over a horizontal line.

KENNETH M. FABER.
PRESIDENT.

Exhibit A

Currituck Water and Sewer, LLC
Eagle Creek Collection System
Operator Training Plan

This Operator Training plan is intended to ensure that operators employed by Currituck Water and Sewer 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

Currituck Water & Sewer, LLC
Eagle Creek Collection System
Interim Service and Restoration Plan

This Interim Service and Restoration Plan (“ISRP”) is intended to prevent future sewer overflows, restore and sanitize areas impacted by prior sewer overflows, and expeditiously restore and maintain service to homeowners in the event of any system failures. In furtherance of this requirement, the ISRP requires Currituck Water & Sewer, LLC (“CWS”) to adhere to the following requirements.

Technician Availability

1. CWS will assign an onsite technician 24 hour per day, seven days per week.

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

1. **Daily System Checks.** On a daily basis, CWS will:
 - 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. Inspect chart recorder for vacuum and sewer pump run times.
 - c. Check compressor on high level valve to ensure that it is in the on position and is operating properly.
 - d. Check recirculation lines to ensure lines are open.
 - e. Check vacuum pump’s recirculation line float box for oil leaks.
 - f. Check oil levels in the vacuum pumps.
 - g. Inspect sewer pump couplings alignment and ensure mounting base is secured with proper bolts.
2. **Weekly System Checks.** On a weekly basis, CWS will:
 - a. Test alarm notifications.
 - b. Inspect check valves on force main headworks to verify that they are operating properly and replace as needed.
 - c. Check conical screens in vacuum pumps and replace any damaged screens.
 - d. Test the alarm system, sensors, and electrical components.
 - e. Test the monitoring system and conduct maintenance as necessary.
2. **Monthly System Checks.** On a monthly basis, CWS will:
 - a. Inventory on-site tools and spare parts, including operational controllers, valves and repair kits.
 - a. Change oil in vacuum pumps.
 - b. Inspect vacuum pump set points and confirm proper pressure limits are established and that solenoid valves are opening and closing.
 - c. Clean probes at tank and check against the design levels.
3. **Annually**
 - a. 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. Complete necessary repairs.
- b. Check collection tank for debris and remove debris if found.
4. **Additional Requirements.** CWS will:
- a. Replace vacuum filters every nine months or in accordance with manufacturer's specifications, which will be maintained on site and be available for inspection.

The following items must be completed or performed in the event of a sewer overflow or system failure and to expeditiously restore and maintain service to homeowners in the event of any system failures. CWS will:

- 1. Within 4 hours of knowledge of a discharge of sewage to the land or surface water begin performance of clean-up and sanitization services as follows:
 - a. Remove and dispose of solids.
 - b. Apply lime to the affected area.
 - c. Clean and sanitize hard surfaces.
 - d. To extent practical, vacuum any sewer overflow.

Contingency Plan. By no later than sixty days after transfer of the Permit from Sandler to CWS, CWS 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:

- 1. Use of larger vacuum trucks to bring pits back into service more quickly
- 2. Installation of new taps at select locations along primary vacuum lines for vacuum trucks to attach if sufficient vacuum pressure can be created
- 3. Provision of portable restroom/shower trailers to provide residents with toilets, sinks, and showers during outages

In lieu of submitting a Contingency Plan, CWS may elect to implement an approved Contingency Plan previously submitted by Sandler Utilities. If a contingency plan submitted by Sandler has been approved prior to transfer of the Permit, CWS shall implement such plan until an alternative plan has been approved by DWR.

Short term system and operational improvements, including improvements based on recommendation of the Independent Engineering Evaluation dated March 4, 2022. The following shall be completed by no later than sixty days after transfer of the Permit from Sandler to CWS (if not already completed prior to transfer of the Permit):

- 1. Complete installation of pedestal mounted controllers. To the extent CWS contends there is a condition that prevents installation for any reason, CWS will document and explain the circumstances of all such cases in future ISRP status reports.
- 2. Complete the upgrade of the vacuum tank control systems and upgrade and replace the vacuum station electrical control panel.
- 3. Purchase, lease, or have available to lease when needed, a portable vacuum system pump.

4. Do the following:
 - a. In the vacuum station, insert and properly mount all electrical and control wiring into conduits and discard broken and unused wires and cables.
 - b. Secure and label all chemicals in the vacuum station.
 - c. Install a lock on the vacuum station building.
 - d. Label everything in the vacuum station as appropriate.
 - e. Obtain copies of plans, specifications, and maintenance manuals of any new operating equipment that is installed.
 - f. Purchase the following spare parts to maintain the system:
 - vacuum pump w/motor (1)
 - sewage pump w/ motor (1)
 - controllers (50);
 - plunger valves (25);
 - repair kits (25);
 - pit level sensor tubes (10); and
 - pedestals for mounted controllers (5).and maintain an inventory of spare parts for inspection upon request.
5. Do the following:
 - a. Select strategic points along the main collection lines to install shut-off valves and install valved riser pipes for connection to portable vacuum sewage pumps.
 - b. Purchase a spare main sewage pump.

Reporting Requirement

By no later than March 31, June 30, September 30, December 31 of each calendar year, CWS shall provide a status report containing documentation sufficient to verify that all elements of the ISRP have been completed during the prior month. Such status reports shall document the occurrence of any SSOs regardless of volume. If a reportable SSO or material system or equipment failure occurs and upon request from DWR, CWS will submit status reports at the end of each calendar month. These status reports will be submitted via e-mail to David May.