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January 7, 2020

Ms. Janice Fulmore, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

***RE: In the matter of the Application for Transfer of Public Utility Franchise and for
Approval of Rates from Old North State Water Company to ONSWC- Chatham North
Docket No. W-1320 Sub 0***

Dear Ms. Fulmore:

On behalf of ONSWC- Chatham North, LLC, we herewith submit the REBUTTAL
TESTIMONY OF MICHAEL J. MYERS in the above-referenced matter and docket.

Should you have any questions concerning this filing, please do not hesitate to contact us.

Sincerely,

Sherry Brown

Legal Administrative Assistant to Karen Kemerait

Enclosure

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. W-1320, Sub 0
DOCKET NO. W-1300, Sub 55
DOCKET NO. W-1320, Sub 2
DOCKET NO. W-661, Sub 9**

REBUTTAL TESTIMONY

OF

MICHAEL J. MYERS

JANUARY 7, 2020

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

2 A. My name is Michael J. Myers. I am the President of ONSWC – Chatham

3 North, LLC (“ONSWC – Chatham North”), and I am a Member of Old North

4 State Water Company, LLC (“ONSWC”). My business address is 4700

5 Homewood Court, Suite 108, Raleigh, North Carolina 27609.

6 Q. HAVE YOU PREVIOUSLY TESTIFIED IN THESE DOCKETS?

7 A. Yes. I filed Direct Testimony in these dockets on December 4, 2019.

8 Q. ARE THERE ANY CORRECTIONS THAT YOU WOULD LIKE TO MAKE
9 TO YOUR DIRECT TESTIMONY?

10 A. Yes. In my Direct Testimony, I stated that I am the President of ONSWC. I
11 would like to correct my Direct Testimony to state that I am a Member of
12 ONSWC.

13 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

14 A. The purpose of my testimony is to respond to the testimony of Public Staff
15 Witness Charles Junis filed in these dockets on December 20, 2019.

16 Q. PLEASE DESCRIBE THE ENVIRONMENTAL STATUS OF THE BRIAR
17 CHAPEL WASTEWATER SYSTEM.

18 A. The Division of Water Resources (“DWR”) of the North Carolina
19 Department of Environmental Quality (“NCDEQ”) issued a Notice of
20 Violation (NOV-2019-PC-0658) (“NOV”) to ONSWC for the Briar Chapel
21 Wastewater Treatment Plant (“WWTP”) on September 23, 2019 (that was
22 attached to Public Staff Witness Junis’ testimony as **Junis Exhibit 2**). As a

1 result of the NOV, ONSWC has taken a number of actions to resolve the
2 NOV and expeditiously reestablish compliance with Permit No.
3 WQ0028552. Specifically, ONSWC has taken the following actions:

- 4 • Replaced the carbon in the filter serving the bar screen and
5 equalization basin to address odor issues with the WWTP.
- 6 • Added aeration units on the reclaimed water holding pond to address
7 odor issues with the WWTP.
- 8 • A chlorine feed on the reclaimed water system will be installed to
9 address odor issues with the WWTP before spring irrigation.
- 10 • Replaced the compressor and ordered a back-up compressor for the
11 reclaimed water storage ponds to address order issues with the
12 reclaimed water system.
- 13 • Improved operating procedures that are designed to minimize odors.
- 14 • Installed air release valves on the problem force main line and
15 changed the pump start-up speeds to address the Sanitary Sewer
16 Overflow (“SSO”) in the force main.

17 Q. HAS THERE BEEN ANY FURTHER COMMUNICATION FROM DWR
18 SINCE ONSWC PROVIDED THE CORRECTIVE ACTION?

19 A. Yes. By letter dated December 19, 2019, DWR transmitted an assessment of
20 civil penalty in the amount of \$1,533.52 (a civil penalty in the amount of
21 \$1,500 plus \$33.52 in enforcement costs) against ONSWC. DWR’s letter
22 requires ONSWC to select one of the following responses within thirty days of

1 receipt of the notice: submit payment of the penalty; submit a written request
2 for remission; or submit a written request for an administrative hearing.
3 DWR's December 19, 2019 letter is attached hereto as **Myers Rebuttal**
4 **Exhibit 1.**

5 Q. WHAT WILL ONSWC DO TO RESOLVE THE CIVIL PENALTY?

6 A. ONSWC will submit payment of \$1,533.52 to DWR within thirty days of
7 receipt of the notice.

8 Q. ONCE ONSWC PROVIDES PAYMENT OF THE CIVIL PENALTY, WILL
9 THE NOV BE RESOLVED?

10 A. It is ONSWC's understanding that the NOV will be fully resolved and
11 compliance with Permit No. WQ0028552 will be reestablished once the civil
12 penalty has been paid.

13 Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?

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

ROY COOPER
 MICHAEL S. REGAN
 LINDA CULPEPPER



NORTH CAROLINA
 Environmental Quality

Certified Mail # 7017 2680 0000 2236 7764

Return Receipt Requested

December 19, 2019

Michael J Myers
 Old North State Water Company LLC
 4700 Homewood Ct
 Ste 108
 Raleigh, NC 27609

SUBJECT: Notice of Violation and Assessment of Civil Penalty
 for Violations of North Carolina General Statute (G.S.) 143-215.1(a)(1)
 and Collection System Permit No. WQCS00372
 Old North State Water Company LLC
 Briar Chapel Collection System
 Case No. PC-2019-0064
 Chatham County

Dear Mr. Myers:

This letter transmits a Notice of Violation and assessment of civil penalty in the amount of \$1,533.52 (\$1,500.00 civil penalty + \$33.52 enforcement costs) against Old North State Water Company LLC.

This assessment is based upon the following facts: a review has been conducted of the multiple Sanitary Sewer Overflow (SSO) 5-Day Reports submitted by Old North State Water Company LLC and Old North State Water Company LLC responses to the Notices of Violations. This review has shown the subject facility to be in violation of the requirements found in Collection System Permit No. WQCS00372 and G.S. 143-215.1(a)(1). The violations that occurred are summarized in Attachment A to this letter.

Based upon the above facts, I conclude as a matter of law that Old North State Water Company LLC violated the terms, conditions or requirements of Collection System Permit No. WQCS00372 and G.S. 143-215.1(a)(1) in the manner and extent shown in Attachment A. In accordance with the maximums established by G.S. 143-215.6A(a)(2), a civil penalty may be assessed against any person who violates the terms, conditions or requirements of a permit required by G.S. 143-215.1(a).



North Carolina Department of Environmental Quality | Division of Water Resources
 Raleigh Regional Office | 5600 Battleground Drive | Raleigh, North Carolina 27633
 919-791-4200

Based upon the above findings of fact and conclusions of law, and in accordance with authority provided by the Secretary of the Department of Environmental Quality and the Director of the Division of Water Resources, I, Scott Vinson, Regional Supervisor, Raleigh Regional Office, hereby make the following civil penalty assessment against Old North State Water Company LLC:

\$1,500.00 For 1 of the 1 violations of Collection System Permit No. WQCS00372 and G.S. 143-215.1(a)(1) for Sanitary Sewer Overflow(s) resulting in a discharge without a valid permit.

\$1,500.00 **TOTAL CIVIL PENALTY**

\$33.52 Enforcement Costs

\$1,533.52 **TOTAL AMOUNT DUE**

Pursuant to G.S. 143-215.6A(c), in determining the amount of the penalty I have taken into account the Findings of Fact and Conclusions of Law and the factors set forth at G.S. 143B-282.1(b), which are:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

Within **thirty (30) days** of receipt of this notice, you must do **one** of the following:

- (1) Submit payment of the penalty, **OR**
- (2) Submit a written request for remission, **OR**
- (3) Submit a written request for an administrative hearing

Option 1: Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environmental Quality (*do not include waiver form*). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

Attn: PERCS Branch
Division of Water Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Option 2: Submit a written request for remission or mitigation including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the Division of Water Resources at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) was wrongfully applied to the detriment of the petitioner;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator had been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director of the Division of Water Resources will review your evidence and inform you of his decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Resources also requests that you complete and submit the enclosed "Justification for Remission Request."

Both forms should be submitted to the following address:

Attn: PERCS Branch
Division of Water Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

AND

Scott Vinson, Regional Supervisor
Water Quality Regional Operations Section
Raleigh Regional Office
Division of Water Resources, NCDEQ
1628 Mail Service Center, Raleigh
Raleigh, NC 27699-1628

Option 3: File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document, you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The petition may be filed by facsimile (fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process.

The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

6714 Mail Service Center
Raleigh, NC 27699 6714
Tel: (919) 431-3000
Fax: (919) 431-3100

One (1) copy of the petition must also be served on DEQ as follows:

Mr. William F. Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Please indicate the case number (as found on page one of this letter) on the petition.

Failure to exercise one of the options above within thirty (30) days of receipt of this letter, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action. Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment.

If you have any questions, please contact Mitchell Hayes with the Division of Water Resources staff of the Raleigh Regional Office at (919) 791-4200 or via email at mitch.hayes@ncdenr.gov.

Sincerely,



Scott Vinson, Regional Supervisor
Water Quality Regional Operations Section
Raleigh Regional Office
Division of Water Resources, NCDEQ

ATTACHMENTS

Cc: WQS Raleigh Regional Office - Enforcement File
PERCS Compliance/Enforcement Unit - Enforcement File
Laserfiche

ATTACHMENT A

Old North State Water Company LLC

CASE NUMBER: PC-2019-0064

PERMIT NO: WQCS00372

REGION: Raleigh

FACILITY: Briar Chapel Collection System

COUNTY: Chatham

Other Violations

INCIDENT NUMBER	VIOLATION DATE	VIOLATION TYPE	VIOLATION DESCRIPTION	TOTAL VOLUME (GALLONS)	PENALTY AMOUNT
	9/10/2019	Spills	SSO incident Numbers: 201900237, 201900781, 201901001, 201901062, 201901249, 201901312, 201901350, 201901423, 201901481	23,000	\$1,500.00

JUSTIFICATION FOR REMISSION REQUEST

Case Number: PC-2019-0064

County: Chatham

Assessed Party: Old North State Water Company LLC

Permit No.: WQCS00372

Amount Assessed: \$1,533.52

Please use this form when requesting remission of this civil penalty. You must also complete the "Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in evaluating your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to N.C.G.S. § 143B-282.1(c), remission of a civil penalty may be granted only when one or more of the following five factors apply. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- ☐ (a) one or more of the civil penalty assessment factors in N.C.G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner *(the assessment factors are listed in the civil penalty assessment document)*;
- ☐ (b) the violator promptly abated continuing environmental damage resulting from the violation *(i.e., explain the steps that you took to correct the violation and prevent future occurrences)*;
- ☐ (c) the violation was inadvertent or a result of an accident *(i.e., explain why the violation was unavoidable or something you could not prevent or prepare for)*;
- ☐ (d) the violator had not been assessed civil penalties for any previous violations;
- ☐ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions *(i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance)*.

EXPLANATION:

STATE OF NORTH CAROLINA

DEPARTMENT OF ENVIRONMENTAL QUALITY

COUNTY OF CHATHAM

IN THE MATTER OF ASSESSMENT
OF CIVIL PENALTIES AGAINST

Old North State Water Company LLC
Briar Chapel Collection System

PERMIT NO. WQCS00372

) **WAIVER OF RIGHT TO AN**
) **ADMINISTRATIVE HEARING AND**
) **STIPULATION OF FACTS**

)
)
)
) **CASE NO. PC-2019-0064**

Having been assessed civil penalties totaling \$1,533.52 for violation(s) as set forth in the assessment document of the Division of Water Resources dated December 12, 2019, the undersigned, desiring to seek remission of the civil penalty, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director of the Division of Water Resources within thirty (30) days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after (30) days from the receipt of the notice of assessment.

This the _____ day of _____, 20____

SIGNATURE

ADDRESS

TELEPHONE

OFFICIAL COPY

Jan 07 2020