

Alan Randolph Holland, Jr.

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July 16, 2024

Environmental Protection Agency  
Four Penn Center  
1600 JFK Blvd.  
Philadelphia, PA 19103-2029

Attn: Mr. Adam Ortiz  
Regional Administrator

**SENT BY EMAIL TO [ortiz.adam@epa.gov](mailto:ortiz.adam@epa.gov)**

Subject: Crooked Run Wastewater Treatment Plant, Consent Agreement and Final Order,  
U.S. EPA Docket No. CWA-03-2024-0036

Ref: (A) July 12, 2022 letter from Dale G. Mullen/ Whiteford, Taylor & Preston to Promy  
Tabassum/EPA  
(B) Administrative Order on Consent Pursuant to Section 309(A) of the Clean Water  
Act, 33 U.S.C. § 1319(a), U.S. EPA Docket No. CWA-03-2024-0035DN

Dear Mr. Ortiz:

I provided the U.S. Environmental Protection Agency a public comment on the subject Consent Agreement and Final Order. I received the EPA, Region 3's response to that comment by email on June 25, 2024. In that response I was informed that I could, no later than 30 days thereafter, petition the Regional Administrator to set aside the associated proposed Consent Agreement and Final Order on the basis that material evidence was not considered, pursuant to 40 C.F.R. § 22.45(c)(4)(ii). I was later informed by Promy Tabassum, Assistant Regional Counsel for EPA, that there was no particular form required for the petition process. This letter, then, is intended to be such a petition.

I assert that the material evidence that was not considered by the EPA related to the subject Consent Agreement and Final Order with the Frederick-Winchester Service Authority and Frederick County Sanitation Authority, dba Frederick Water, (collectively, the "Respondents") includes the following:

- (1) The Respondents made a false statement/representation to the EPA regarding the violations which gave rise to the subject Consent Agreement and Final Order. Specifically, in the referenced July 12, 2022 letter from the Respondents' attorney it was stated that ". . . the Crooked Run WWTP serves only the Lake Frederick Community, whose users are charged an amount sufficient to cover the costs of service." However, the Respondents have stated multiple times in public forums, including on its own website, that "treatment costs for the . . . Crooked Run WWTP surpass revenue generated by the community." (*See Attachment #1 and <https://www.frederickwater.com/inter-county-service-area-icsa>*) For purposes of this petition I am assuming the latter statement was believed by the Respondents to be accurate and the one in the referenced letter was, both at the time it was made and on 10/26/23<sup>1</sup>, believed to be false. This false statement/representation in the referenced letter was made to justify, in part, a claim of "no economic benefit" to Respondents. Because (a) the civil penalty was calculated, in part, on the basis of EPA's assessment of the economic benefit to Respondents, (b) the true economic benefit to Respondents was obscured by the Respondents' statement in the referenced letter, and (c) the EPA relied on the Respondents' giving only information which was true, accurate, and complete in all discussions related to the violations, **the EPA was unable to consider** this information when determining the civil penalty.
- (2) The Respondents made a further false statement/representation to the EPA regarding the violations which gave rise to the subject Consent Agreement and Final Order. Specifically, in the referenced July 12, 2022 letter from the Respondents' attorney it was stated that ". . . Frederick-Winchester Service Authority Rules and Regulations for Wastewater Discharge already prohibit the discharge of this brine to the wastewater system . . . ." However, after making a diligent effort to find the "Rules and Regulations for Wastewater Discharge", it appears to me there is no such document. Instead, there is a "Water and Sewer Standards and Specifications". Regardless, Respondents only added such a prohibition to the Water and Sewer Standards and Specifications to restrict brine discharge by a vote by its Board on July 18, 2024 – two full years later than claimed in the letter. (*See Attachments #2 And #3 and <https://www.frederickwater.com/board-meetings>*) This false statement/representation in the referenced letter was made to justify, in part, a civil penalty which reflects Respondents having acted in good faith and without delay. Because (a) the civil penalty was calculated, in part, on the basis of EPA's assessment of the Respondents having acted in good faith and without delay, (b) the Respondents' actual actions were obscured by the Respondents in the referenced letter, and (c) the EPA relied on the Respondents' giving only information which was

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<sup>1</sup> The date the Respondents reaffirmed that all its earlier statements remained true, accurate, and complete.

true, accurate, and complete in all discussions, the EPA was **unable to consider** this information when determining the civil penalty.<sup>2</sup>

- (3) The Respondents made a false certification to the EPA regarding the subject Consent Agreement and Final Order. Specifically, Paragraph 13 of the relevant Administrative Order (Docket No. CWA-03-2024-0035DN, executed by Respondents on 10/26/23) states that “Respondents certify that any information or representation they have supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy, or completeness of such information or representation.” Based on paragraphs (1) and (2) above, the Respondents have clearly made a false certification regarding information or representation they supplied or made to the EPA concerning this matter. Whether this was fraudulent or negligent, and whether the information itself was material or not (irrelevant to the certification itself), the certification was intended to induce the EPA to enter into the subject Consent Agreement and Final Order. Because (a) the EPA’s decision to enter into the subject Consent Agreement and Final Order would be, in part, in reliance on the false certification regarding information or representations, (b) the false certification was given by the Respondents as an inducement for the EPA to enter into the subject Consent Agreement and Final Order, and (c) the EPA was unaware of such falsity prior to this petition, the EPA was **unable to consider** this information before entering into the subject Consent Agreement and Final Order and when determining the civil penalty.
- (4) The Respondents provided a certification to the EPA regarding the subject Consent Agreement and Final Order (Paragraph 13 of the relevant Administrative Order); the certification was willingly given by Respondents; the certification may have been known by Respondents at the time to be materially false, fictitious, or fraudulent, as described above; and it is irrelevant to the certification whether the underlying information which was untrue, inaccurate, and/or incomplete was itself material<sup>3</sup>. Therefore, Respondent may have knowingly and willfully made a materially false, fictitious, or fraudulent statement or representation to the EPA in violation of 18 U.S. Code § 1001 (Statements or entries generally). Because (a) the EPA’s decision to enter into the subject Consent Agreement and Final Order would be, in part, in reliance on the implicit assumption that the Respondents were in compliance with 18 U.S. Code § 1001, (b) it is possible that the Respondents were then in violation of 18 U.S. Code § 1001, (c) the EPA has the resources and authority to determine a violation of 18 U.S. Code § 1001, and (d) the EPA was unaware of such potential violation prior to this petition, the EPA was **unable to consider** this information before entering into the subject Consent Agreement and Final Order and when determining the civil penalty.

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<sup>2</sup> There is concern among the Frederick County Board of Supervisors and affected residents that this brine discharge policy is not appropriate and/or legal, but that doesn’t alter the falsity of the statement by Respondents’ attorney.

<sup>3</sup> In other words, the certification can be materially false as to a material or immaterial matter.

I, therefore, respectfully ask that the EPA set aside the Consent Agreement and Final Order on the basis that material evidence was not considered, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), and recommence negotiations with the Respondents regarding the violations giving rise to subject Consent Agreement and Final Order.

Sincerely,

A handwritten signature in dark ink, appearing to read "A. R. Holland, Jr.", written in a cursive style.

Alan Randolph Holland, Jr.

cc: Promy Tabassum  
Assistant Regional Counsel  
US EPA Mid-Atlantic Region  
BY EMAIL: [tabassum.promy@epa.gov](mailto:tabassum.promy@epa.gov)

# **ATTACHMENT #1**

## Cost vs Contribution: A Breakdown of Sewer Subsidies for Lake Frederick

Lake Frederick residents pay the same sewer rates as the rest of Frederick Water Customers, while treatment costs for the developer-provided Crooked Run WWTP surpass revenue generated by the community.



In addition to requiring more than twice the funds to treat wastewater in Lake Frederick, the resources needed to operate the collection and conveyance system within the community are disproportionate to the rest of the system. The rest of Frederick Water's customers have subsidized sewer operations in Lake Frederick for more than 5 years. Adding additional costs for customers who receive no benefit does not align with Frederick Water's billing policy.

### Existing Sewer Connections



### Existing Sewer Pump Stations



# **ATTACHMENT #2**



315 Tasker Road  
Stephens City, Virginia 22655

PH (540) 868-1061  
Fax (540) 868-1429  
[www.FrederickWater.com](http://www.FrederickWater.com)

Eric R. Lawrence  
Executive Director

## **BOARD AGENDA**

### **Tuesday, June 18, 2024 –Regular Meeting**

Board Room – Frederick Water Administration Building

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#### **4:00 P.M. – Closed Session**

Pursuant to Section 2.2-3711 (A) Subsection 7 of the Code of Virginia, 1950 as amended for consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

#### **5:00 P.M. – Regular Meeting**

1. Call to Order
2. Customer Concerns
3. [Public Hearing: Crooked Run Pump Station & Force Main Project](#)
4. [Resolution Certifying Crooked Run Pump Station and Force Main Project and Authorizing Easement Acquisitions](#)
5. Approval of Minutes
  - a. [Regular Meeting – April 16, 2024](#)
6. [Treasurer's Report](#)
7. Liaison Reports
8. Reports
  - a. [Operations Summary](#)
  - b. [Finance Committee](#)
  - c. [Planning Committee](#)
  - d. [Executed Agreements](#)
9. [Proposed Updates to the Frederick Water Standards and Specifications](#)



10. [Resolution Authorizing the Execution of the Snyder Environmental Services Contract for the Crooked Run and Double Tollgate Pump Station and Force Main Projects](#)
11. [Resolution Authorizing the Execution of the Lantz Construction Company of Winchester, Inc. Contract for the Lake Frederick Water Treatment Plant](#)
12. Other Discussion
13. Adjournment

# **ATTACHMENT #3**



315 Tasker Road  
Stephens City, Virginia 22655

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Fax (540) 868-1429  
[www.FrederickWater.com](http://www.FrederickWater.com)

Eric R. Lawrence  
Executive Director

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## MEMORANDUM

**TO:** Frederick Water Board of Directors

**FROM:** Eric Lawrence, Executive Director

**SUBJECT:** **Proposed Updates to the Water and Sewer Standards and Specifications**

**DATE:** June 11, 2024

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Frederick Water utilizes the Water and Sewer Standards and Specifications manual to ensure that new development and expansions to the water and sewer system adhere to commonly accepted practices and AWWA design standards. Occasionally revisions to the manual are warranted. The Planning Committee reviewed the proposed revisions during their May and June meetings and forwarded their recommendation that Frederick Water adopt and implement the revisions. The revised manual is attached. ***Board action on the proposed revisions is appropriate.***

A summary of the proposed revisions would be added to page 3 of the Standards and Specifications' Change Log. The addition to the Change Log is below.

June 18, 2024	Add references to Clarke County as appropriate, allow additional generator manufacturers and require 10-year warranty, require electronic and searchable submissions, disallow spite strips, require final pavement for final completion, require zinc coating on DI fittings, disallow joint deflection with push on restrained gaskets, allow Foster and Flex Adaptors, require Valve Sentinel on bypass lines, require Municipex for service laterals, clarify use of Protectus III meters, disallow water softener brine from being discharged to sanitary sewer, better define conditions for drop manhole connections, require geotechnical design for very deep sewers, require Wet Well Wizard in pump station wet wells.
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Attachment: Proposed Water and Sewer Standards and Specifications