

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

STATE OF OHIO, *ex rel.*,
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO,
30 East Broad Street
Columbus, Ohio 43215,

Plaintiff,

vs.

GEM BEACH UTILITY CO., INC.
3201 North Carolina Street
Port Clinton, Ohio 43452,

Defendant.

CASE NO. 97-CUH 201

JUDGE _____

CONSENT ORDER

STATE OF OHIO, OTTAWA COUNTY

I hereby certify this to be a true copy of original on
file.

Subscribed to me this 27th day of

July 19 97
JoAn C. Monnett, Clerk of Courts

By [Signature] deputy

JOAN C. MONNETT
CLERK OF COURTS
OTTAWA COUNTY, OHIO

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COMMON PLEAS COURT

FILED

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter referred to as "Plaintiff") and Defendant Gem Beach Utility Company, Inc. (hereinafter referred to as "Defendant") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6109 of the Ohio Revised Code (hereinafter referred to as "R.C.") and the rules promulgated under that chapter. Venue is proper in this Court.

II. PERSONS BOUND BY THE ORDER

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendant and its assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendant. The Defendant shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges in its Complaint that Defendant has committed numerous violations of safe drinking water laws of the State of Ohio arising out of Defendant's operation of Defendant's Public Water System located on Catawba Island, in Ottawa County, Ohio. Specifically, Plaintiff alleges that Defendant has failed to provide adequate surface water treatment and failed to monitor the effectiveness of that treatment and report those results as required by Ohio Administrative Code (hereafter referred to a "OAC") Rules 3745-81-71 through 3745-81-75. Defendant has also failed to issue notice to the public of these violations as required by OAC Rule 3745-81-32. Defendant denies the violations of law and substantive facts alleged in the Complaint. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for the claims under such laws as alleged in the Complaint against Defendant.

Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief, against Defendant or other appropriate persons, for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint, nor shall anything in this Consent Order limit the right of Defendant to any defenses it may have for such

claims. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions which may present a threat to the public health, welfare or the environment and nothing in this Consent Order shall limit the rights of Defendant to any defenses it may have to such actions. Nothing in this Consent Order shall be construed as an admission of liability by Defendant.

IV. PERMANENT INJUNCTION

4. Defendant is hereby immediately and permanently enjoined and ordered to comply with all applicable provisions of R.C. Chapter 6109 and the rules promulgated under that chapter.

5. Defendant agrees and is hereby enjoined and ordered to prepare, and keep at its Public Water System, a contingency plan which complies with the criteria of OAC Chapter 3745-85 within one hundred twenty (120) days of the Court's entry of this Consent Order.

6. Defendant agrees and is hereby enjoined and ordered to install either a Waterboy treatment system, a slow sand filtration system, or other Ohio EPA approved treatment technology in accordance with the following terms.

A. Option to Install Waterboy Treatment System

7. If Defendant chooses to install a Waterboy treatment system, within sixty (60) days after the Court's entry of this consent order, Defendant shall submit, to the Ohio EPA, Division of Drinking and Ground Water, Northwest District Office, 347 N. Dunbridge Rd., Bowling Green, Ohio 43402, to the attention of Doug Scharp, detail approvable plans for the installation of a Model 133A Waterboy, manufactured by Wheelabrator Engineered Systems, Inc., modified as specified below ("Modified Model 133A Waterboy"), in compliance with the most current versions of Great Lakes Upper Mississippi River Board of State Public Health and Environmental Manager's Recommended

Standards for Water Works ("Ten States Standards", incorporated herein by reference) and R.C. Chapter 6109 and applicable regulations of OAC Chapters 3745-81 and 3745-91. Defendant shall submit at the same time a contingency plan in accordance with OAC Chapter 3745-85, which addresses how Defendant will provide safe drinking water to its residential customers during a shutdown of the Modified Model 133A Waterboy.

The Model 133A Waterboy shall be modified to provide the following:

- a. at least thirty (30) minutes of flocculation time;
- b. no more than a two (2) gallon per minute ("gpm") loading per square foot of tube settler cross section; and
- c. no more than a four (4) gpm per square foot loading on the filter area, at a design treatment rate of at least eighty (80) gpm.

8. Within thirty (30) days after receipt of written notice by Ohio EPA that any plan submitted pursuant to this section of this Consent Order is deficient, Defendant shall submit a revised plan which corrects the noticed deficiencies.

9. By September 15, 1997, Defendant will complete construction and installation of the Modified Model 133A Waterboy in accordance with the approved plans, will begin operating the Modified Model 133A Waterboy, and will be in full compliance with OAC Rules 3745-81-71 through 3745-81-73.

10. Defendant shall place and maintain the responsibility for the technical operation and maintenance of the Defendant's Public Drinking Water System, including the Modified Model 133A Waterboy, under the responsible charge of a certified operator in accordance with OAC Rule 3745-7-02(A).

11. Defendant agrees to operate the Modified Model 133A Waterboy at a treatment capacity not to exceed the approved capacity of the treatment system.

12. Defendant agrees that the installation of the Modified Model 133A Waterboy is a temporary measure until either a permanent connection with the Ottawa County Regional Drinking Water System becomes available to Defendant's customers or Defendant installs additional Ohio EPA approved treatment technology system as a backup treatment system. By April 2, 2002,

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Defendant shall have connected its customers to the Ottawa County Regional Drinking Water System or shall have installed additional Ohio EPA approved treatment technology system as a backup public treatment system. *Gal arr*

B. Option to Install Slow Sand Filtration System or Other Ohio EPA Approved Treatment Technology

13. If Defendant chooses to install a slow sand filtration system or other Ohio EPA approved treatment technology, within thirty (30) days after the Court's entry of this consent order, Defendant shall submit, if not already submitted, to the Ohio EPA, Division of Drinking and Ground Water, Northwest District Office, 347 N. Dunbridge Rd., Bowling Green, Ohio 43402, to the attention of Doug Scharp, detailed approvable plans for a slow sand filtration system or other Ohio EPA approvable treatment technology in compliance with the most current versions of the Ten States Standards and R.C. Chapter 6109 and applicable regulations of OAC Chapters 3745-81 and 3745-91.

14. Within thirty (30) days after receipt of written notice by Ohio EPA that any plan or report submitted pursuant to this section of this order is deficient, Defendant shall submit a revised plan or report which corrects the noticed deficiencies.

15. By September 15, 1997, Defendant will complete construction and installation of the

slow sand filtration system or other Ohio EPA approved treatment technology in accordance with the approved plans, will begin operating the slow sand filtration system or other Ohio EPA approved treatment technology, and will be in full compliance with OAC Rules 3745-81-71 through 3745-81-73.

16. Defendant shall place and maintain the responsibility for the technical operation and maintenance of the Defendant's Public Drinking Water System under the responsible charge of a certified operator in accordance with OAC Rule 3745-7-02(A).

V. TREATMENT STANDARDS

17. Defendant shall immediately begin to disinfect its water supply so as to provide three (3) log inactivation of *Giardia lamblia* cysts and meet the disinfection requirements of OAC Rules 3745-81-71 and 3745-81-72.

18. Defendant shall post, within ten (10) days from the Court's entry of this Consent Order, in conspicuous places throughout the area served by the Defendant's drinking water system as approved by the Ohio EPA in accordance with OAC Rule 3745-81-32, the agreed upon public notice attached hereto as Appendix A ("Public Notice"). Defendant shall post the Public Notice only until the Modified Model 133A Waterboy, slow sand filtration system, or other Ohio EPA approved treatment technology is installed and operating.

19. Defendant shall continually post the Public Notice in conspicuous places as approved by the Ohio EPA. Within thirty (30) days of the initial posting made pursuant to paragraph 18 of this Consent Order and monthly thereafter, Defendant shall provide the Ohio Environmental Protection Agency, Northwest District office with a copy of any and all Public Notices given pursuant to this Consent Order together with verification in accordance with OAC Rule

3745-81-32(A)(7).

20. Defendant shall immediately begin and continue to monitor and report in accordance with OAC Rules 3745-81-74 and 3745-81-75, and shall submit required information on the proper monthly operating report forms and in the time frame required in accordance with OAC Rule 3745-83-05.

VI. TIME EXTENSIONS

21. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next working day following the weekend or holiday.

VII. SUBMITTAL OF DOCUMENTS

22. All required documents required under this Consent Order shall be submitted to:

a. Ohio EPA
Northwest District Office
347 N. Dunbridge Rd.
Bowling Green, Ohio 43402

Attn: Drinking Water Unit Supervisor

b. Ohio EPA
Division of Drinking and Ground Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn: Manager, Enforcement and Water Quality Section

VIII. POTENTIAL FORCE MAJEURE

23. If any event occurs which causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA in writing within twenty (20) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by

which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

24. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise at that time the question of whether it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limited to, acts of God, strikes, acts of war or civil disturbances. Plaintiff does not agree that such a defense exists, and Defendant asserts that such a defense does exist; however, it is hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, when a proceeding to enforce this Consent Order is commenced by Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances beyond the control of Defendant shall rest with Defendant. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Failure by Defendant to comply with the notice requirement of this Section shall render this section void and of no force and effect as to the particular incident involved except as to any potential force majeure defenses, and shall constitute a waiver of Defendant's right to request an extension of its obligation under this Consent Order based on such incident.

IX. CIVIL PENALTY

25. It is hereby ordered that Defendant shall pay to the State of Ohio a civil penalty of Ten Thousand Dollars (\$10,000.00) pursuant to the following payment schedule: the first payment

of Five Thousand Dollars (\$5,000) is due on or before Friday, January 17, 1997 and the second payment of Five Thousand Dollars (\$5,000) is due on or before Wednesday, October 1, 1997. Each civil penalty payment shall be paid by certified check for the appropriate amount, made payable to "Treasurer, State of Ohio", which check shall be delivered by mail, or otherwise, to Matthew Sanders, Administrative Assistant, or his successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

X. STIPULATED PENALTIES

26. In the event that Defendant fails to meet any of the deadlines and requirements specified in paragraphs 4 through 20 of this Consent Order, Defendant shall pay a stipulated penalty for each failure according to the following payment schedule: (a) for each day of each failure to meet each deadline or requirement, up to thirty (30) days -- Fifty Dollars (\$50.00) per each day for each deadline or requirement not met; (b) for each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days -- One Hundred Dollars (\$100.00) per day for each deadline or requirement not met; (c) for each day of each failure to meet each deadline or requirement, over sixty-one (61) days -- One Hundred Fifty Dollars (\$150.00) per each day for each deadline or requirement not met.

27. Any payment required to be made under the provisions of paragraph 26 of this Consent Order shall be made by delivering to Plaintiff's counsel, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, a certified check or checks for the appropriate amount(s), made payable to the order of "Treasurer, State of Ohio".

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

28. Performance of the terms of this Consent Order by Defendant are not conditioned on the receipt of any Federal or State grant or loan funds. In addition, Defendant's performance is not excused by the failure to obtain any Federal or State grant or loan funds, or by the processing of any applications for the same.

29. Defendant will diligently seek and/or apply in a timely manner for any and all approvals required and related to financing and/or increases of rates to the Public Utilities Commission of Ohio to ensure compliance with the terms and conditions of this Consent Order.

XII. RETENTION OF JURISDICTION

30. The Court will retain jurisdiction of this action for the purpose of enforcing Defendant's compliance with this Consent Order.

XIII. COURT COSTS

31. Defendant is hereby ordered to pay the court costs of this action.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGEMENT BY CLERK

32. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

33. If during the period of time from the file stamped date of this entry to September 15, 1997, the Ottawa County Regional Drinking Water System or similar system, receives financing approval and begins the process of construction, Plaintiff and Defendant agree to mutually discuss

the modifications of the terms and provisions of this Consent Order.

34. If Defendant chooses to install a slow sand filtration system pursuant to this Consent Order, and after installation of the slow sand filtration system the Ottawa County Regional Drinking Water System (or similar system) is constructed and in operation, Defendant shall have the right to terminate the operation of its slow sand filtration system, and ~~connect~~ its customers ^{shall connect} to the Ottawa County Regional Drinking Water System. ~~After Defendant connects all of its customers to the Ottawa County Regional Drinking Water System,~~ ^{Thereafter} Defendant shall have no responsibility, of any kind, to supply, meter or distribute water and shall cease all water service to its customers pursuant to R.C. Chapter 6109. In the event of the foregoing, and Defendant is in compliance with this Consent Order, ~~at the time it connects its customers to the Ottawa County Regional Drinking Water System,~~ this Consent Order shall be terminated after a sixty (60) day notice to Plaintiff at the address set forth below and in substantially the form attached at Appendix B (which is specifically incorporated by reference herein). If Plaintiff does not agree with the information contained in the notice, then it shall file an objection with this Court within sixty (60) days of the receipt of said notice. Notwithstanding any termination of this Consent Order, Defendant is and shall be responsible for any and all amounts that may be due and owing pursuant to paragraphs 25 and 26 of this Consent Order.

Ohio Environmental Protection Agency
Enforcement Coordinator
Division of Drinking & Groundwater
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43216-1049

IT IS SO ORDERED:

S/ PAUL C. MOON

Date

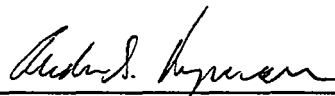
JUDGE, COURT OF COMMON PLEAS,
OTTAWA COUNTY, OHIO

APPROVED:

BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

GEM BEACH UTILITY CO., INC.

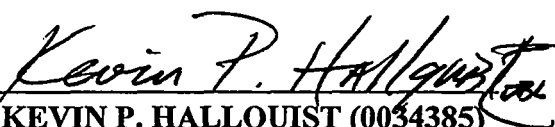
BY :



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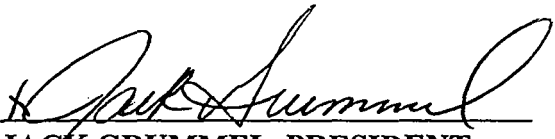
BY:



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Counsel for Defendant

BY:



JACK GRUMMEL, PRESIDENT
Gem Beach Utility Co., Inc.
3201 North Carolina Street
P. O. Box 36
Port Clinton, Ohio 43452

*Authorized Representative of
Defendant*

APPENDIX A

GEM BEACH UTILITY COMPANY, INC.
("GEM BEACH")

PUBLIC WATER SUPPLY SYSTEM
PUBLIC NOTICE

The United States Environmental Protection Agency ("USEPA") sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease, jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. USEPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet USEPA requirements is associated with little to none of this risk and should be considered safe.

Because of outbreaks of waterborne microbial disease, public water supply systems have been the subject of increased regulation over the last several years. Public water supply systems that use surface water as the source of drinking water were required to have certain types of filtration, disinfection and monitoring in place by June 29, 1993. These requirements were result of federal regulations to improve drinking water treatment and to reduce the possibility of outbreaks of disease caused by microbial contaminants.

The Ohio Environmental Protection Agency has determined that Gem Beach does not meet the filtration requirements as required by Ohio Administrative Code Rule 3745-81-72. Without an

admission of liability, the Ohio Environmental Protection Agency and Gem Beach have entered into a Consent Order which requires Gem Beach to install a new filtration system.

APPENDIX B

NOTICE OF TERMINATION OF CONSENT ORDER

Defendant Gem Beach Utility Company, Inc. hereby serves notice to the Ohio Environmental Protection Agency of its intended filing of the notice of termination of the Consent Order in Case No. _____ filed in the Ottawa County Common Pleas Court, Ottawa County, Port Clinton, Ohio 43452.

Respectfully submitted,

Attorney for Gem Beach Utility
Company, Inc