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SUMMIT COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

**STATE OF OHIO, ex el.  
BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215-3428**

**Plaintiff,**

**v.**

**ZANA GENOVESE (d.b.a.)  
SANDY BEACH  
MOBILE HOME PARK  
3785 South Main Street  
Akron, Ohio 44319**

**and**

**JAMES GENOVESE (d.b.a.)  
SANDY BEACH  
MOBILE HOME PARK  
3785 South Main Street  
Akron, Ohio 44319**

**Defendants.**

**CASE NO. CV-2002-04-2342  
JUDGE MURPHY**

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**CONSENT ORDER**

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The Complaint in the above-captioned matter having been filed herein and the Plaintiff, State of Ohio, by and through its counsel, Attorney General Jim Petro ("Plaintiff") and the Defendants, Zana Genovese and James Genovese, who are doing business as the Sandy Beach Mobile Home Park ("Defendants") hereby consent to the entry of this Consent Order.

NOW THEREFORE, without trial of any issue of law or fact, 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 jurisdiction over the parties and subject matter jurisdiction over the case pursuant to R.C. Chapters 6109 and 6111. The Complaint states a claim upon which relief can be granted against the Defendants under R.C. Chapters 6109 and 6111 and the rules and regulations promulgated thereunder. Venue is proper in this Court.

**II. PERSONS BOUND**

2. All terms and provisions of this Consent Order shall apply to and be binding upon the Plaintiff and the Defendants, the Defendants' agents, officers, employees, assigns, successors in interest, and any 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 any of them.

3. The Defendants shall provide a copy of this Consent Order to each engineer, operator, contractor, and/or consultant employed to perform any and all work itemized herein. The Defendants shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

### **III. SATISFACTION OF COMPLAINT AND RESERVATION OF RIGHTS**

4. The Plaintiff's Complaint alleges that the Defendants operated their wastewater treatment plant ("WWTP"), formerly located at 3785 South Main Street, City of Akron, Summit County, Ohio, in such a manner as to result in violations of R.C. Chapter 6111, and the rules and regulations promulgated thereunder. Specifically, the Plaintiff's Complaint alleges that the Defendants' WWTP discharged "sewage" and/or "other wastes" to "waters of the State" as those terms are defined in R.C. 6111.01, at certain times without a valid and unexpired National Pollutant Discharge Elimination System ("NPDES") Permit. The Plaintiff's Complaint also alleges that the Defendants placed toxic and/or harmful substances into waters of the State.

5. The Plaintiff's Complaint further maintains that the Defendants operated their Public Water System Identification No. 7702812 ("PWS") currently located at 3785 South Main Street, City of Akron, Summit County, Ohio, in such a manner as to result in violations of R.C. Chapter 6109, and the rules and regulations promulgated thereunder. Specifically, the Plaintiff's Complaint alleges that the Defendants failed to sufficiently monitor their drinking water system for contaminants such as lead and copper, total coliform, synthetic organic chemicals, asbestos, cyanide, fluoride, nitrite, nitrate, sulfate, radiological contaminants, and volatile organic chemicals. The Defendants also exceeded the maximum contaminant level for total coliform bacteria and failed to issue public notices of the violations. The Plaintiff's Complaint further maintains that the Defendants failed to prepare and have available a written contingency plan in the event of an emergency and failed to maintain a written sample siting plan to ensure that water samples taken from the public drinking water system were representative of water throughout the water distribution system.

6. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims of violations alleged in the Plaintiff's Complaint.

7. Nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to seek relief against other appropriate persons for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the Plaintiff to seek relief against the Defendants or any other appropriate persons for claims or conditions not alleged in the Plaintiff's Complaint, including any violations that occurred after the filing of the Plaintiff's Complaint, nor shall anything in this Consent Order limit the right of the Defendants 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 Plaintiff to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare, or the environment.

#### IV. PERMANENT INJUNCTION

8. The Defendants are hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Water Pollution Control Law, R.C. Chapter 6111, and the rules and regulations promulgated thereunder, and the terms and conditions of any permit that may be issued to the Defendants.

9. The Defendants are hereby permanently enjoined and immediately ordered to comply with the applicable provisions of Ohio's Safe Drinking Water Law, R.C. Chapter 6109, and the rules and regulations promulgated thereunder, and the terms and conditions of any

license or plan approval that may be issued to the Defendants.

10. Commencing on the date of the signing of this Consent Order by the parties and continuing up to the date that the Defendants' PWS is properly abandoned the Defendants are enjoined and ordered to do the following:

- (a) properly monitor their PWS for lead and copper and other contaminants such as coliform, synthetic organic chemicals, asbestos, cyanide, fluoride, nitrite, nitrate, radiological contaminants, and volatile organic chemicals pursuant to the schedules and provisions set forth in Ohio Administrative Code 3745-81;
- (b) issue public notices in accordance with Ohio Administrative Code 3745-81-32;
- (c) prepare and have available a written contingency plan in the event of an emergency pursuant to Ohio Administrative Code 3745-85-01; and
- (d) prepare a written sample siting plan in accordance with Ohio Administrative Code 3745-81-21.

**V. TIME EXTENSIONS**

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

**VI. SUBMITTAL OF DOCUMENTS**

12. All required documents/notices required under this Consent Order shall be submitted to:

- a. Ohio EPA, DDAGW  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087-1969

Attn: Robert Henn

**VII. CIVIL PENALTY**

13. The Defendants are ordered and enjoined to pay a total civil penalty in the amount of \$20,000.00. The civil penalty shall be due and payable in installments according to the time frame set forth in 13(a)-(c) below:

- (a) The Defendants shall pay an initial civil penalty installment in the amount of \$6,000.00 within thirty (30) days of the filing of this Consent Order with the Court;
- (b) The Defendants shall pay a second civil penalty installment in the amount of \$7,000.00 within one-hundred twenty (120) days of the filing of this Consent Order with the Court; and
- (c) The Defendants shall pay a third and final civil penalty installment in the amount of \$7,000.00 within two-hundred ten (210) days of the filing of this Consent Order with the Court.

14. The civil penalty payments 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 Jena Suhadolnik, Administrative Assistant, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428.

15. The payment of the civil penalty shall be deposited in its entirety into the Drinking Water Protection Fund pursuant to R.C. Chapter 6109.30.

16. In lieu of paying an additional \$10,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be brought pursuant to R.C. 6109, the Defendants agree to the following:

- (i) The Defendants shall connect the Sandy Beach Mobile Home Park ("SBMHP") to the Consumers Ohio Water Company – Stark Regional Water System ("COWC") and commence drinking water flow within thirty (30) days of the availability or accessibility of a COWC water line to the SBMHP. Within seven (7) days of being notified by the COWC of the availability or accessibility of a water line to the SBMHP, the Defendants shall send written confirmation of the availability or accessibility of such water line to the Northeast District Office of the Ohio EPA, DDAGW, Attn: Robert Henn (at the address set forth Paragraph 12).
- (ii) The Defendants shall complete connection of the SBMHP to the COWC and commence drinking water flow no later than six (6) months after the signing of this Consent Order by the parties.
- (iii) The Defendants shall physically disconnect the drinking water wells from the distribution system on the same day that drinking water flow from the COWC has been directed to the SBMHP. The Defendants shall then properly abandon and decommission the PWS. Such decommissioning and abandonment shall at a minimum include proper disposal of chemicals and other materials in accordance with the applicable requirements of Ohio law.
- (iv) The Defendants shall, no later than seven (7) days after drinking water flow from the COWC has been directed to the SBMHP, properly abandon the drinking water

wells in accordance with Ohio Administrative Code 3745-9 and submit copies of the water well sealing reports filed with the Ohio Department of Natural Resources to document the same.

- (v) Within seven (7) days of the completion of each item listed in Paragraphs (i) through (iv) above, the Defendants shall submit to Ohio EPA a written report describing the actions taken therein.

### **VIII. STIPULATED PENALTIES**

17. In the event that the Defendants fail to meet any of the deadlines and requirements of this Consent Order, the Defendants 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 fifteen (15) days -- Two Hundred and Fifty Dollars (\$250.00) per day for each deadline or requirement not met;
- (B) For each day of each failure to meet each deadline or requirement, from sixteen (16) to thirty (30) days -- Five Hundred Dollars (\$500.00) per day for each deadline or requirement not met;
- (C) For each day of each failure to meet each deadline or requirement, from thirty-one (31) to sixty (60) days -- Seven Hundred and Fifty Dollars (\$750.00) per day for each deadline or requirement not met; and
- (D) For each day of each failure to meet each deadline or requirement, over sixty-one (61) days -- One Thousand Dollars (\$1,000.00) per day for each

deadline or requirement not met.

18. Any payment required to be made under provision VIII of this Consent Order shall be made by delivering to Jena Suhadolnik, or her successor, at the address set forth in Section VII 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". The Defendants shall also state in writing the specific failure of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by the Defendants and the acceptance of such stipulated penalties by the Plaintiff for specific violations of this Order shall not be construed to limit the Plaintiff's authority to seek judicial enforcement of this Consent Order.

**IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

19. Performance of the terms of this Consent Order by the Defendants are not conditioned on the receipt of any federal or state grant or loan funds. In addition, the Defendants' 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.

**X. MISCELLANEOUS**

20. Nothing in this Consent Order shall affect the Defendants' obligation to comply with all applicable federal, state, or local law, regulation, rule, or ordinance. The Defendants shall obtain any and all federal, state, or local permits necessary to comply with this Consent Order.

21. The Defendants shall inform the Ohio EPA of any change of its business addresses or telephone numbers.

**XI. POTENTIAL FORCE MAJEURE**

22. If any event occurs which causes or may cause a delay in the Defendants' compliance with any requirement of this Consent Order, the Defendants shall notify the Ohio EPA in writing within ten (10) days from when the Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to the Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendants to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

23. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, the Defendants may raise that they are entitled to a defense that their conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war, or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by the Defendants and the 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, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, the Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of the Defendants. Unanticipated delays in construction, however, for

any reason, or increased costs associated with the implementation of any action required by this Consent Order, or a change in the Defendants' financial circumstances, shall not constitute circumstances beyond the control of the Defendants or serve as a basis for an extension of time under this Consent Order. Failure by the Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of the Defendants' right to request an extension of their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that the Defendants qualify for an extension of a subsequent date or dates. The Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

**XII. RETENTION OF JURISDICTION**

24. The Court shall retain jurisdiction of this action for the purpose of enforcing and administrating the Defendants' compliance with this Consent Order.

**XIII. COURT COSTS**

25. The Defendants are hereby ordered to pay the costs of this action.

**XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK**

26. The parties agree and acknowledge that final approval by the Plaintiff and the Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for

public comment, and the consideration of any public comments. Both the Plaintiff and the Defendants reserve the right to withdraw this Consent Order based upon comments received during the public comment period. The Defendants shall pay the costs of public notice within thirty (30) days of receipt of a bill or notice from the State of Ohio.

27. 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.

IT IS SO ORDERED.

JUDGE MURPHY, COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

DATE

APPROVED:

JIM PETRO  
ATTORNEY GENERAL OF OHIO

Michael E. Buckley 4/16/03

Michael E. Buckley (0069727)  
Sherry L. Mowry (0074494)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
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Zana Genovese  
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Attorney for Defendants  
Attorney for Defendants