

STATE OF CONNECTICUT :
V. :
THE OLD LYME SHORES BEACH ASSOCIATION, THE OLD COLONY BEACH CLUB :
ASSOCIATION AND MIAMI BEACH ASSOCIATION :

CONSENT ORDER

- A. With the agreement of the Old Lyme Shores Beach Association ("OLSBA"), the Old Colony Beach Club Association ("OCBCA") and Miami Beach Association ("MBA"), the Commissioner of Energy and Environmental Protection ("The Commissioner") finds:
1. The Old Lyme Shores Beach Association ("OLSBA") is a specially chartered municipal corporation located in the Town of Old Lyme. OLSBA was established in 1947 by Special Act of the Legislature. OLSBA has the power to levy and collect real estate taxes. By virtue of these powers, OLSBA qualifies for the funding of a sanitary sewer construction project from the state of Connecticut's Clean Water Fund Program.
 2. OLSBA submitted for the Commissioner's review a Wastewater Facilities Planning report dated January 2012 prepared by the consulting firm Fuss & O'Neill, Inc., and subsequently amended by the same firm in June 2012. This report identified numerous areas within the boundaries of OLSBA that could not support onsite wastewater treatment due to the overall density of development, lack of adequate space or adverse on-site subsurface conditions, such as shallow groundwater, bedrock, and rapidly draining soils. The report identified as the most technically and economically feasible alternative the conveyance of the wastewater to the City of New London via the towns of East Lyme and Waterford.
 3. The Old Colony Beach Club Association ("OCBCA") is a specially chartered municipal corporation located in the Town of Old Lyme. Old Colony was incorporated in 1935 by Special Act of the Legislature. Old Colony has the power to levy and collect real estate taxes. By virtue of these powers, Old Colony qualifies for the funding of a sanitary sewer construction project from the State of Connecticut's Clean Water Fund Program.
 4. OCBCA submitted for the Commissioner's review a Wastewater Management Plan for Old Colony dated October 25, 2011 and revised on January 20, 2012 prepared by the consulting firm RFP Engineering and subsequently amended by the consulting firm Fuss and O'Neill, Inc in June of 2012. The plan identified numerous areas within the boundaries of Old Colony that could not support onsite wastewater treatment due to the overall density of development, lack of adequate space or adverse on-site subsurface conditions, such as shallow groundwater and rapidly draining soils. The

report identified as the most technically and economically feasible alternative the conveyance of the wastewater to an offsite facility for treatment and disposal.

5. The Miami Beach Association (“MBA”) is a specially chartered municipal corporation located in the Town of Old Lyme. MBA was incorporated in 1949 by an act of the Legislature. MBA has the power to levy and collect real estate taxes. By virtue of these powers, MBA qualifies for the funding of a sanitary sewer construction project from the State of Connecticut’s Clean Water Fund Program.
6. MBA submitted for the Commissioner’s review a Wastewater Facilities Planning report dated December 13, 2013 and revised on April 1st, 2015 prepared by the consulting firm Fuss & O’Neill, Inc. This report identified numerous areas within the boundaries of MBA that could not support onsite wastewater treatment due to the overall density of development, lack of adequate space or adverse on-site subsurface conditions, such as shallow groundwater and rapidly draining soils. The April 1st 2015 report recommended as the most cost effective and technically feasible solution the construction of a regional wastewater system encompassing the installation of a gravity wastewater collection system within OLSBA, OCBA and MBA; heretofore jointly referred to as the “the beach associations”; and the construction of a single shared pump station and force main pipe for the conveyance of the wastewater to the City of New London via the towns of East Lyme and Waterford.
7. By virtue paragraphs A.2., A.4., and A.6 above, a community pollution problem exists and the beach associations are causing pollution of waters of the state.
8. On October 23, 2017, the Commissioner approved the report referenced in A.6. above.
9. OLSBA, OCBCA and MBA have not implemented any structural solutions to address the wastewater disposal problems pursuant to paragraphs A.2., A.4., and A.6. above.
10. The recommendation included in the April 1st, 2015 report referenced in A.6. above supersedes previous recommendations pursuant to paragraphs A.2. and A.4., above. The April 1st 2015 report estimates a combined daily average sewage flow of up to 156,000 gallons to be discharged into East Lyme’s wastewater conveyance system from the beach associations for final treatment and disposal at the Municipal Wastewater Treatment Plant in the City of New London.
11. The implementation of the remedial actions specified in the engineering report pursuant to paragraph A.6. above require the beach associations to procure capacity in the regional wastewater system serving the City of New London, the Town of Waterford and the Town of East Lyme; and design and construct a wastewater collection system within the boundaries of the beach associations and convey the wastewater through portions of the Town of Old Lyme to the regional wastewater system.
12. By virtue of the above, after giving due regard to regional factors, a community pollution problem exists and such pollution can best be abated by the action of the beach associations referenced in the paragraphs above.

13. By agreeing to the issuance of this consent order, OLSBA, OCBCA and MBA make no admission of fact or law except with respect to the matters addressed in the above paragraphs.

B. With the agreement of the beach associations, the Commissioner, acting under Sections 22a-6, 22a-424, 22a-427, 22a-428 and 22a-458 of the Connecticut General Statutes orders OLSBA, OCBCA and MBA to undertake the following actions as follows:

1. Compliance schedule.

- a. The beach associations have retained Fuss & O'Neill, Inc., to prepare the documents, implement and oversee the actions required by this consent order. The beach associations shall retain one or more qualified consultant(s) acceptable to the Commissioner until this consent order is fully complied with, and, within ten days after retaining any consultant other than the one originally identified under this paragraph, the permittee shall notify the Commissioner in writing of the identity of such other consultant. The consultant(s) retained shall be a qualified professional engineer licensed to practice in Connecticut. The permittee shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this consent order within ten days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
- b. Unless another deadline is specified in writing by the Commissioner, on or before 547 calendar days after execution of this consent order by the beach associations and the Commissioner, the beach associations shall submit for the Commissioner's review and written approval, contract plans and specifications for the approved remedial actions identified in paragraph A.6., above. As part of the Commissioner's review and approval process of the plans and specifications, the beach associations shall provide the Commissioner with, 1) written legal confirmation that the wastewater capacity pursuant to paragraph A.11., above has been procured; 2) written confirmation that the application for all required permits and approvals have been submitted; 3) written legal confirmation that all required easements and/or right of ways necessary to construct the project pursuant to paragraph A.6., above have been secured; and 4) a project schedule listing anticipated bid and contract award dates; as well as a detailed schedule with tasks to be performed during the construction phase of the project pursuant to paragraph A.6., above.
- c. Unless another deadline is specified in writing by the Commissioner, the beach associations shall perform the approved remedial actions in accordance with the approved schedule(s), but in no event shall the approved remedial actions be completed later than 547 calendar days

after the approval of the plans and specifications pursuant to paragraph B.1.b., above.

- d. The beach associations may request that the Commissioner approves in writing revisions to any document approved hereunder in order to make such document consistent with law or for any other appropriate reason.
 - e. This Consent Order supersedes and administratively closes Consent Orders No. CO-WR-MU-12-001 and CO-WR-MU-12-002 issued on August 14, 2012 and October 1, 2012 to OCBCA and OLSBA, respectively.
2. Full compliance. The beach associations shall not be considered in full compliance with this consent order until all actions required by this order have been completed as approved and to the satisfaction of the Commissioner.
3. Approvals. The beach associations shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. If the Commissioner notifies the beach associations that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the beach associations shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
4. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
5. Dates. The date of "issuance" of this consent order is the date the consent order is deposited in the U.S. mail or personally delivered, whichever is earlier. The date of submission to the Commissioner of any document required by this consent order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this consent order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

6. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed jointly by the beach associations or, if the beach associations is not an individual, by the chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.”

7. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this consent order may subject the beach associations to an injunction and penalties.
8. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
9. Notice of transfer; liability of the beach associations. Until the beach associations have fully complied with this consent order, the beach associations shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this consent order or after obtaining a new mailing or location address. The beach associations' obligations under this consent order shall not be affected by the passage of title to any property to any other person or municipality.
10. Respondent's obligations under law. Nothing in this consent order shall relieve the beach associations of other obligations under applicable federal, state and local law.
11. No assurance by Commissioner. No provision of this consent order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by the beach associations pursuant to this consent order will result in compliance or prevent or abate pollution.
12. Access to site. Any representative of the Department of Energy and Environmental Protection may enter OLSBA, OCBCA or MBA without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
13. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.

14. Notice to Commissioner of changes. Within 15 days of the date the beach associations become aware of a change in any information submitted to the Commissioner under this consent order, or that any such information was inaccurate or misleading or that any relevant information was omitted, the beach associations shall submit the correct or omitted information to the Commissioner.
15. Notification of noncompliance. In the event that the beach associations become aware that they did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, the beach associations shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, the beach associations shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and the beach associations shall comply with any dates which may be approved in writing by the Commissioner. Notification by the beach associations shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
16. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Carlos A. Esguerra, Sanitary Engineer
Department of Energy and Environmental Protection
Bureau of Water Protection of Land Reuse
Water Planning and Management Division
79 Elm Street
Hartford, Connecticut 06106-5127
17. Joint and several liability. The beach associations shall be jointly and severally liable for compliance with this consent order.

The beach associations consent to the issuance of this consent order without further notice. "The undersigned certifies that he or she is fully authorized to enter into this consent order and to legally bind the beach associations to the terms and conditions of the consent order.

The Old Lyme Shores Beach Association

BY: Paul Yellen
Paul Yellen, President
The Old Lyme Shores Beach Association
2/10/18
Date

The Old Colony Beach Club Association

BY: Douglas Whalen
Douglas Whalen,
Chairman, Board of Governors
2/12/18
Date

Miami Beach Association

BY: Mark A. Mongillo
Mark A. Mongillo, President
2/8/18
Date

Issued as a final order of the Commissioner of Energy and Environmental Protection.

Robert J. Klee
Robert J. Klee
Commissioner

2/14/2018
Date

ORDER NO. COWRMU18001

RECEIVED

FEB 13 2018

**Bureau of Water Protection and Land Reuse
& Water Planning & Management Division**