



August 22, 2005

Ms. Beth A. O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

REC'D
AUG 29 2005
PUBLIC SERVICE
COMMISSION

In the Matter of:
Alternative Rate Filing Adjustment Case No. 2005-00235
Of Mallard Point Disposal System, INC).

Dear Ms. O'Donnell:

I have previously applied for intervenor status with the PSC for the above-referenced rate adjustment case. To date I have not received an official status of my approval, nor have many others who also have applied—reference psc.ky.gov/-pscscf/2005-00235/. I further understand that there is a Monday deadline (August 29, 2005) for filing protests. This affirmation is to preserve my constitutional rights to file and, if challenged by the utility's counsel, or by any other attorney, it is my expressed intent to preserve my appealable actions for all matters herein. Further, this document is filed under the Scott County Circuit Court Judge Johnson's **PROTECTIVE ORDER**. This protective order is signed July 22, 2005, and I understand it protects me from any lawsuit which might be filed against me for stating my views in the matter before the PSC—please see Scott Circuit Court Civil Action No. 05-CI-239.

**REQUEST FOR INFORMATION
TO MALLARD POINT DISPOSAL SYSTEMS, INC.**

- 1.1 Please provide a lengthy narrative response how the present PSC rate of \$35.29 can be justified—especially if/when your *treatment* facility is slated to become a *pumping* station only—to carry the sewage from Sadieville up to Mallard Point and then on to Georgetown.

- 1.2 Please provide a lengthy narrative response what specific improvements have been made at your treatment facility in the last 20 months that concretely demonstrates the justification for your last rate increase (from \$31.10 to \$35.29).

- 1.3 Has your treatment facility undergone sufficient rehabilitation of its 50,000 GPD plant to bring it up to a 150,000 GPD capacity? If not, why not—since part of the last 2003 PSC rate increase was pro-rated to meet this need?
- 1.4 Please provide a lengthy narrative response why the odors from your treatment facility are most often so pungent that people living at or near to your facility choke and experience severe nausea. Further, there seem to be several ineffective pumps/line breaks *throughout* Mallard Point that permit the sewage to seep out into the environment. Those leaks have been detailed in some of the approved intervenor 2003 protests against rate increases, and still go unrepaired (especially on Mallard Point Drive across from Drake Lake). Why have you not repaired these obnoxious nausea-producing leaks? What are your immediate plans and commitments to the PSC and to Mallard Point rate payers to repair these gaseous leaks? And please list in detail your commitment to make timely repairs in the future to any/all leaking locations which emit obnoxious fumes/odors?
- 1.5 You claim to be using adequate chemicals to treat the sewage. Please explain in accurate detail the process you use to treat the sewage, the chemicals used and their frequency used, to treat the raw sewage collected and sent to your facility.
- 1.6 Please explain in accurate detail why the effluent that comes out of your plant, and collected downstream from your plant, is often on an independent test day so contaminated with E. Coli—many times above the legal EPA limit. Why is this so?
- 1.7 Please provide a list of all customers in the last 20 months who have bought their grinder pumps from you or through you, the price of each, and please provide a detailed accounting of this income. Since it seemingly doesn't appear on MPDS's income statements filed with the PSC, how has this money been accounted for and how and where have the appropriate income taxes been paid on it? Please provide proof of income tax payments made, if applicable.
- 1.8 Please describe in accurate detail how a common person's perception—that the proposed 2005 rate increase to take our monthly sewer services rate to over \$50 per month-- is nothing other than subsidizing your business expansion plans on the backs of present utility users. Please explain how your business plan with the PSC might be ill-advised for you to proceed upon—especially now that your utility is in dispute in the Scott County Court (see public documents Civil Action No 05-CI-239).

1.9 Isn't it a fact that your business expansion plans include securing new customers from other than Mallard Point, Harbor Village, Cedar Hills and your own Westwood subdivision? If so, please indicate the other new customer bases that you plan to harvest. Please respond to how your present treatment facility can have the effective capacity to treat this additional sewage effectively and within EPA guidelines.

1.10 Please describe in detail the zone change request you presently have in front of the Georgetown Planning and Zoning board—which gets to the issue of whether present rate payers will be paying for your business expansion

1.11 Please provide *forensic* accounting detail that unquestionably proves the accuracy of your last six (6) quarters filed with the PSC (January 1, 2004-June 30, 2005). Or, in the alternative, please provide an affidavit from your current accounting firm for the accuracy of their work on your behalf.

1.12 Recently all of us living in Mallard Point and in Harbor Village were treated to Mr. Smith's new version of the 900 pound "stamp"—whereby you delivered, without written notice or courtesy phonecall to at least two residents, a huge drum filled with concrete and secured it to the neighbor's property with a chain, and double padlock (see Attachment 1 & 2). **Please provide a plausible defense why this collection policy of yours is not in severe violation of Federal Law (see below).** Most reputable businesses don't start collections until after 120 days—and no one uses a 900 pound stamp!

"The Fair Debt Collection Practices Act"

As published by the Federal Trade Commission and

As amended by Public Law 104-208, 110 Stat 3009 (Sept 30, 1996) and

As especially outlined in Section 806 "Harassment or Abuse" which reads,

"§ 808. Unfair practices [15 USC 1692f]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if -

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business. "

It is the specific understanding of MPDS users that your 900 pound "stamp" constitutes "unconscionable means". Please describe in detail how you think you are not violating federal law and please comment how you will adopt more customer-friendly business practices in future. Please provide further how you—in your role of Mallard Point Owner's Association President—are *not* in severe conflict of interest with your position as sole owner of Mallard Point Disposal Services, Inc.

1.13 Further, since you have claimed on many occasions that Mallard Point "is your life", then why do you treat us residents with such disrespect in this specific instance of collection and then—after the fact—annotate your 8/21/2005 MPDS "Sewer Notice" with the following: **"MAKE CHECKS PAYABLE TO MPDS AND REMIT TO ABOVE ADDRESS. A \$5 LATE FEE WILL BE ASSESSED IF PAYMENT IS NOT RECEIVED BY THE DUE DATE. ANY ACCOUNT WITH A PAST DUE BALANCE OVER 30 DAYS IS SUBJECT TO SEWER SERVICE SHUT-OFF WITHOUT FURTHER NOTICE...."** Please explain how this severe policy collection serves the public good.

Respectfully,



JERRY BRATFISH
110 GREENWING COURT
GEORGETOWN, KENTUCKY 40324

Attachment: Judge Johnson's **PROTECTIVE ORDER**, signed 7/22/05
Attachment 1: 132 Greenwing Court, Mallard Point, Georgetown, KY 40324
Attachment 2: 101 Anchorage, Harbor Village, Georgetown, KY 40324

Certificate of Mailing

I certify that on August 22, 2005, the above original Request for Information, from Mallard Point Disposal Systems, Inc., along with ten photocopies of same Request, was mailed postage prepaid to:

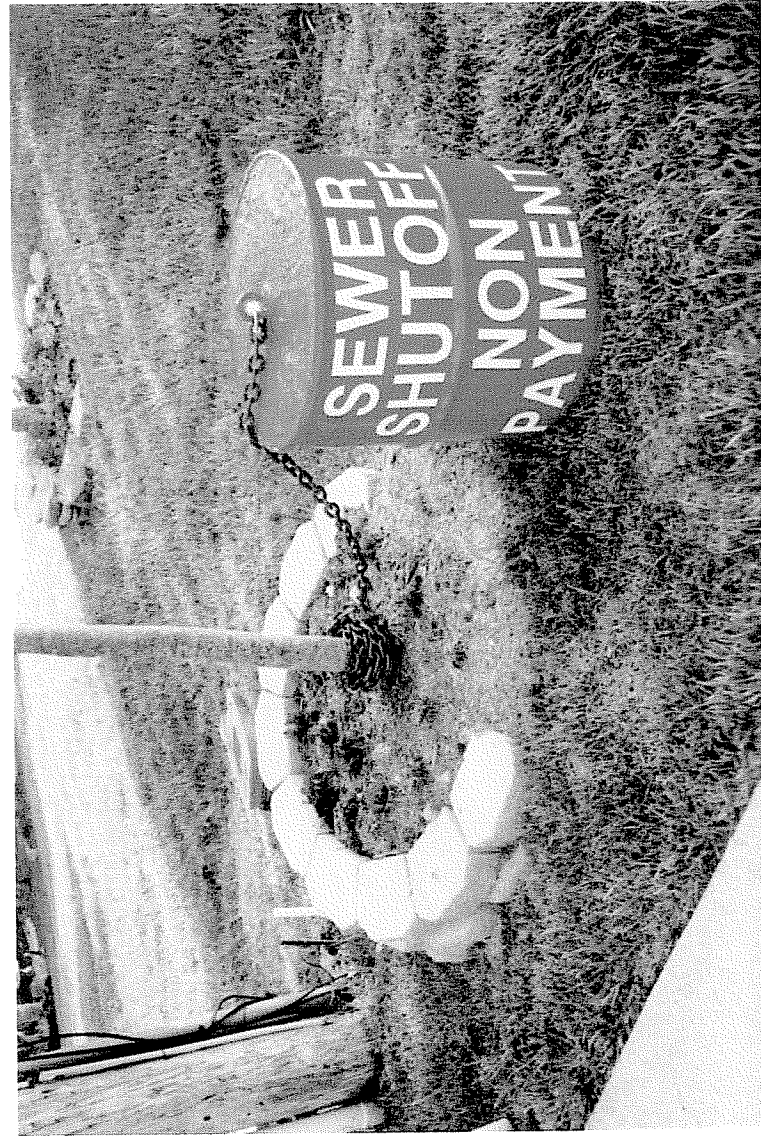
Ms Beth A. O'Donnell, Executive Director, Kentucky Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky, 40602.,

along with a copy mailed first class postage prepaid, to Mr. David E. Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204,

along with a true and correct copy of the same, first class postage prepaid, to James M. Mooney, Mooney, Mooney, & Mooney, 208 South Limestone, Lexington, KY 40508-2502



1



**SEWER
SHUTOFF**

**NON
PAYMENT**

2

SCOTT CIRCUIT COURT
CIVIL BRANCH
DIVISION NO. I
CIVIL ACTION NO. 05-CI-239

ENTERED
JUL 26 2005
KAREN BOEHM, CLERK
SCOTT CIRCUIT COURT

MARK S. SMITH

PLAINTIFF

vs.

JEROEN VAN DER GAAG

DEFENDANT

ORDER

This matter having been brought on for hearing on July 7, 2005 on Plaintiff's Motion to Compel Discovery, the Court having reviewed the record and having heard arguments of counsel and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. That Plaintiff's Motion to Compel shall be, and the same is hereby, SUSTAINED in part and DENIED in part, as follows:

2. With respect to Plaintiff's Motion to Compel the production of documents sought in Plaintiff's Requests for Production of Documents, the Court believes that Defendant's formal, written Responses to Requests for Production of Documents filed of record herein on June 21, 2005 comply with the requirements of CR 34. The Court further believes that it is not unduly burdensome or unreasonable for the production of such documents to take place at the offices of Defendant's counsel. Accordingly, the production and examination of documents responsive to Plaintiff's Requests for Production of Documents shall take place at the offices of Defendant's counsel in Lexington, Kentucky during regular business hours on a date and time mutually convenient to

counsel for the parties.

3. With respect to Plaintiff's motion to compel Defendant to provide substantive responsive answers to certain Interrogatories, the Court finds that certain of Defendant's interrogatory answers should be supplemented and others need not be supplemented, as set forth in more detail hereinbelow. To the extent that supplementation is ordered, Defendant shall provide the supplemental information within ten (10) days from ~~July 7, 2005, or by July 17, 2005.~~ *entry of this order. RBJ*

a. With respect to Interrogatory No. 3, Defendant shall supplement his previous answer by providing responsive information with respect to his involvement or association with the group known as Mallard Point Neighbors.

b. With respect to Interrogatory No. 4, Defendant shall supplement his previous answer by identifying those individuals known to Defendant who have participated in or have been associated with the group known as Mallard Point Neighbors since inception, subject to the further provisions as set forth in paragraph 6 below.

c. With respect to Interrogatory No. 6, Defendant shall supplement his previous answer by identifying those individuals known to Defendant who created, maintained and/or otherwise operated or controlled the Yahoo group, and to the extent Defendant has knowledge of it, the identities of those who participated in and/or communicated through said Yahoo group, subject to the further provisions as set forth in paragraph 6 below..

d. With respect to Interrogatory Numbers 7, 8, and 9, it appears that the Defendant has already provide substantive responsive answers, and no further supplementation shall be required.

e. With respect to Interrogatory No. 19, Defendant shall supplement his previous

answer by also identifying those members of Mallard Point Owners Association, Inc., and/or participants in Mallard Point Neighbors who, to Defendant's knowledge, shared the opinion and/or who communicated to or in the presence of Defendant that they held the belief that Plaintiff Mark S. Smith has conducted shady business practices which should be exposed and challenged in some kind of appropriate action, either civil or criminal, subject to the further provisions as set forth in paragraph 6 below.

f. With respect to Interrogatory No. 21, Defendant shall supplement his previous answer by stating his own personal knowledge, if any, of the criminal violations with citations to applicable criminal statute(s), which Defendant believed Mark S. Smith had committed as of the date Exhibit "A" was finalized.

g. With respect to Interrogatory No. 22, Defendant shall supplement his previous answer by identifying the other individuals who, to Plaintiff's knowledge, may have had knowledge of the same or similar facts and/or who may have shared similar questions or opinions as Defendant, Mr. Clark, Ms. Goodman, Det. Wolf, Det. Stone and/or Commonwealth Attorney Gordon Shaw, and/or who may have communicated such facts and/or opinions to other third parties, subject to the further provisions as set forth in paragraph 6 below.

h. With respect to Interrogatory No. 23, Defendant shall supplement his previous answer by specifying the purpose Defendant hoped to achieve in communicating any allegation of criminal conduct on the part of Plaintiff to any law enforcement officials.

i. With respect to Interrogatory No. 26, Defendant shall supplement his previous answer by stating whether he had any business relationship with the principals and employees of English Paving Company, and, to the extent that Defendant has had any such business relationship,

describing and such business relationship.

4. With respect to Plaintiff's request that the Court set ground rules for Defendant's as yet unscheduled deposition, the Court believes that it is appropriate and therefore orders and directs, with respect to any depositions to be conducted herein by any party, that plain and unambiguous English words should be given their every day meaning by both counsel and the parties whose depositions are being taken. However, until such time as any such depositions have been taken and questions have been asked and objections have either been made thereto or answers have been provided thereto, the Court cannot determine in advance the propriety of any such question, objection or answer and will have to determine same at such time as any issues are properly brought to the Court's attention.

5. With respect to Plaintiff's Motion to grant Defendant an extension of thirty (30) days after receipt of substantive responses to Plaintiff's discovery requests to answer Defendant's discovery requests, the Court is of the opinion that under CR 26.04, the fact that one party is conducting discovery does not operate to delay discovery by any other party, and therefore denies said motion. Plaintiff shall timely serve and file his responses to Defendant's written discovery requests by the due date of July 27, 2005, unless the Court otherwise grants Plaintiff an extension of time to so respond upon motion based on other grounds than those specified in Plaintiff's June 28, 2005 motion.

6. Due to the issues and concerns raised by Defendant with respect to Plaintiff's claim being a Strategic Lawsuit Against Public Participation ("SLAPP suit") and further issues and concerns raised by Defendant with respect to the possibility of retaliation by Plaintiff against Defendant and other members of Mallard Point Owners' Association, Inc. and/or participants in the group known

as Mallard Point Neighbors, the Court further orders and directs that, pending further orders of this Court, the Plaintiff shall be prohibited from initiating any communications, verbal or written, with any such third parties with respect to the facts or issues of this lawsuit and shall further be prohibited, pending further orders of this Court, from asserting other legal claims against any such third parties with respect to the same facts, issues or claims asserted in this lawsuit. Provided, further, however, that (a) the foregoing prohibitions shall not be construed to limit in any way communications relating to the claims, facts, and/or issues in this lawsuit if such communications are initiated by any such third party to Plaintiff; and (b) the foregoing prohibitions shall not be construed so as to limit in any other way ^{business or social RBJ} communications initiated by Plaintiff to any such third parties to the extent that such communications ^{are not otherwise unlawful, RBJ} ~~involve and are limited to communications made in the ordinary and normal course of business of Mallard Point Owners' Association, Inc.~~

Dated: 7/22/05

Robt. B. Johnson
JUDGE, SCOTT CIRCUIT COURT

TO BE ENTERED:

Objections reviewed
Hon. Neil E. Duncliffe,
Attorney for Plaintiff

William C. Rambicure
Hon. William C. Rambicure,
Attorney for Defendant

CLERK'S CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Order has been served by mailing same, this the 26 day of July, 2005, to the following counsel of record:

Hon. Neil E. Duncliffe

107 North Hamilton Street
Georgetown, KY 40324

Hon. William C. Rambicure
RAMBICURE, MILLER & PISACANO, PSC
219 East High Street
PO Box 34188
Lexington, KY 40588-4188


Clerk, Scott Circuit Court