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LORAIN COUNTY

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DONALD C. HOFFMANN

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

STATE OF OHIO, ex rel.	)	CASE NO. 94 CV 112834
BETTY D. MONTGOMERY	)	
ATTORNEY GENERAL OF OHIO	)	JUDGE LYNETT M. MCGOUGH
30 East Broad Street	)	
Columbus, Ohio 43215-3428	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
BOARD OF PUBLIC AFFAIRS	)	CONSENT ORDER
VILLAGE OF LaGRANGE	)	
	)	
Defendant.	)	

WHEREAS the Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Betty D. Montgomery (hereinafter "Plaintiff") and Defendant Board of Public Affairs, Village of LaGrange (hereinafter "LaGrange") having consented to the entry of this Order,

WHEREAS LaGrange having completed the improvements to its wastewater treatment plant described in the Municipal Compliance Plan submitted to Ohio EPA in June 1987,

WHEREAS the completed improvements as described in the Municipal Compliance Plan did not result in compliance with the terms and conditions of LaGrange's NPDES Permit,

WHEREAS LaGrange having undertaken additional improvements to its wastewater treatment plant which were completed subsequent to the filing of the Complaint in this action,

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 jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendant LaGrange under Chapter 6111. of the Ohio Revised Code, and venue is proper in this Court.

**II. PARTIES**

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them.

**III. SATISFACTION OF LAWSUIT**

3. Plaintiff alleges in its Complaint that Defendant LaGrange has operated its wastewater treatment plant and sewer system in such a manner as to result in violations of the discharge limitations and monitoring requirements of the NPDES Permit issued to it by the Director of Ohio EPA and in violation of the water pollution control laws of the State of Ohio. Although LaGrange denies any and all legal or equitable liability under Federal, State or local

law for the violations alleged in the Complaint, the parties have entered into this Consent Order in good faith to avoid expensive and protracted litigation. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant LaGrange for all claims under such laws alleged in the Complaint and for all violations noted in monthly operating reports received by Ohio EPA prior to the date of entry of this Order. Nothing in this Order shall be construed to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or in monthly operating reports received by Ohio EPA after the date of entry of this Order, including violations which occur after the filing of the Complaint.

#### **IV. PERMANENT INJUNCTION**

4. Defendant LaGrange is hereby enjoined and ordered to immediately comply with the terms and conditions of its currently effective NPDES Permit No. 3PB00061\*CD, and any renewals or modifications thereof. LaGrange is hereby enjoined and ordered to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

#### **V. CIVIL PENALTY**

5. Defendant LaGrange shall pay to the State of Ohio a civil penalty of nine thousand dollars (\$9,000.00). The penalty shall be paid by delivering to Matthew Sanders, Administrative Assistant, Environmental Enforcement Section of the Attorney General's office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five days from the date of entry of this Consent Order.

## VI. STIPULATED PENALTIES

6. In the event that Defendant LaGrange fails to meet any of the requirements of Paragraphs 4, 5 and 12 of this Consent Order, except for the final effluent limitations contained in its currently effective NPDES Permit No. 3PB00061\*CD, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule: for each day of each failure to meet a requirement, up to thirty days - \$500.00 per day per requirement not met; for each day of each failure to meet a requirement, from thirty-one to sixty days - \$1,000.00 per day per requirement not met; for each day of each failure to meet a requirement, from sixty-one to ninety days - \$2,000.00 per day per requirement not met; for each day of each failure to meet a requirement after ninety days - \$3,000.00 per day per requirement not met.

7. In the event that Defendant LaGrange fails to meet any applicable final effluent limitation in its currently effective NPDES Permit No. 3PB00061\*CD, the Defendant shall be liable for and shall pay a stipulated penalty according to the amounts listed in the following schedule:

<u>NUMBER OF VIOLATIONS OF SINGLE PARAMETER</u>	<u>PENALTY PER VIOLATION</u>
<u>Daily Maximum</u>	
1-30	\$400
31-60	800
61-90	1000
over 90	1500
<u>7-day Average</u>	
1-3	500
4-7	750

8-11	1000
12-16	1250
17-24	2000
over 24	3000

30-day Average

1-2	1000
3-4	1250
5-6	1500
7-8	2000
9-10	3500
over 10	5000

For purposes of calculating stipulated penalties pursuant to this Consent Order only, violation of a seven (7) day average effluent limitation shall constitute a single violation and violation of a thirty (30) day average effluent limitation shall constitute a single violation.

8. Any payment required to be made under the provisions of Paragraphs 6 or 7 of this Order shall be made by delivering to the same Matthew Sanders, identified in Paragraph 5, a certified check or checks for the appropriate amounts, within sixty days from the date of the failure to meet the requirements of this Consent Order, made payable to "Treasurer, State of Ohio."

**VII. POTENTIAL FORCE MAJEURE**

9. If any event occurs which causes or may cause a delay of, or a failure to meet, any requirement of this Consent Order, Defendant LaGrange shall notify the Ohio EPA, Northeast District Office, in writing within ten (10) days of the event, describing the requirement which will be delayed or not met, and describing in detail the occurrence causing the delay or failure, the precise cause or causes of the delay or failure, the measures taken and to be taken by Defendant to prevent or minimize any reoccurrence of the delay or failure, and the timetable

by which measures will be implemented to cure any delay or failure. Defendant will adopt all reasonable measures to avoid or minimize any reoccurrence of such delay or failure.

10. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that 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 limitation, 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 Defendant 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 that an enforcement action, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 9 shall render this Paragraph 10 void and of no force and effect as to the particular incidents involved and shall constitute a waiver of any right of Defendant to request an extension of its obligations under this Consent Order based on such incident. 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. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

#### **VIII. RETENTION OF JURISDICTION**

11. The Court will retain jurisdiction of this action for the purpose of making any order or decree which it deems appropriate to carry out this Consent Order.

#### **IX. COSTS**

12. Defendant LaGrange is hereby ordered to pay the court costs of this action accruing up through the date of this Consent Order only.

#### **X. TERMINATION OF STIPULATED PENALTIES**

13. The stipulated penalties provisions of Paragraphs 6 and 7 of this Consent Order may be terminated only after Defendant LaGrange has paid all penalties required by this Consent Order, and only after Defendant LaGrange has achieved and maintained compliance with all terms and conditions of its NPDES Permit No. 3PB00061\*CD and any renewals or modifications thereof for a period of twelve (12) consecutive months. For purposes of this Consent Order only, the parties agree that the twelve (12) consecutive month period shall begin on July 1, 1994. In the event LaGrange fails to comply with any term and/or condition of its NPDES Permit No. 3PB00061\*CD and any renewals or modifications thereof after July 1, 1994, and before termination of stipulated penalties under this section, the twelve consecutive month compliance period shall not begin again until LaGrange has demonstrated compliance. Termination of the provisions of Paragraphs 6 and 7 shall only be upon: 1) application by any party and by Order of the Court after the Court has made a determination that the requirements

of this Paragraph have been satisfied; or 2) upon the filing of a joint motion for termination by the Parties.

**XI. RESERVATION OF RIGHTS AND NON-WAIVER**

14. LaGrange does not waive any rights or remedies it has under federal or state laws or regulations to comment on, contest or seek any change in Federal or State laws, regulations or Permit requirements, to seek modification of its NPDES Permit or any laws or regulations, or to challenge any terms, conditions or effluent limitations in a subsequently-issued NPDES Permit or findings and orders.

15. Nothing in this Consent Order is to be construed to restrict or limit the right of LaGrange to raise any and all defenses available under its NPDES Permit.



16. This Consent Order does not limit or affect the rights of LaGrange, or the Plaintiff as against third parties, nor the rights of third parties.

Date: \_\_\_\_\_



\_\_\_\_\_  
JUDGE, COURT OF COMMON PLEAS  
LORAIN COUNTY

APPROVED:

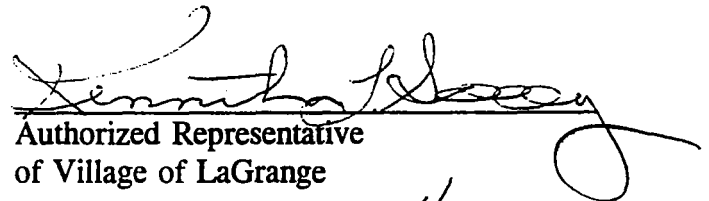
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ATTORNEY GENERAL OF OHIO



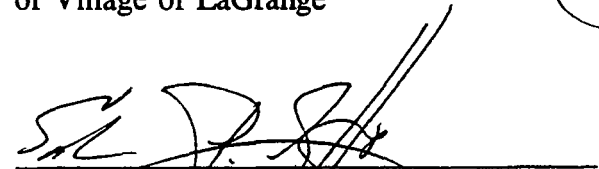
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Authorized Representative  
of Village of LaGrange



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Authorized Representative  
of Board of Public Affairs,  
Village of LaGrange