

IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

VILLAGE OF RIO GRANDE,

Defendant.

CASE NO. _____

JUDGE _____

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio by its Attorney General Lee Fisher (hereinafter "Plaintiff") and Defendant Village of Rio Grande (hereinafter "Rio Grande") having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of act 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 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. Defendant Rio Grande shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each general contractor provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has operated its wastewater treatment plant and sewer system in such a manner as to result in numerous violations of the water pollution laws of the State of Ohio and of the discharge limitations and monitoring requirements of the NPDES Permit issued by the Director of Ohio EPA. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims under such laws alleged in the Complaint. 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, including violations which occur after the filing of the Complaint.

IV. COMPLIANCE SCHEDULE

4. Defendant Rio Grande is hereby enjoined and ordered to immediately comply with the requirements of Chapter 6111 of the Ohio Revised Code, the regulations adopted under that Chapter and the terms and conditions of NPDES Permit No. OPB00035*CD and any renewals or modifications thereof, except for final effluent limitations set forth in said permit. Between the effective date of this Consent Order and November 30, 1994, Defendant is enjoined to comply with the interim effluent limitations set forth in Appendix "A" attached hereto. The interim effluent limitations contained in Appendix "A" do not constitute an NPDES permit or a modification of any existing permit. After November 30, 1994, Defendant Rio Grande is enjoined to meet the final effluent standards set forth in its NPDES permit No. OPB00035*CD and any renewals or modifications thereof. Rio Grande is hereby enjoined to properly operate and maintain its wastewater treatment plant and any associated equipment and structures.

V. CONSTRUCTION SCHEDULE

5. Defendant Rio Grande is enjoined and ordered to eliminate discharges from

overflows and bypasses from its sanitary sewer system and to complete construction of the improvements to its wastewater treatment plant described in the approved General Plan submitted to Ohio EPA on August 11, 1988 and to attain compliance with the final effluent limitations of NPDES permit No. OPB00035*CD and any modifications or renewals thereof in accordance with the following schedule:

<u>TASK</u>	<u>COMPLETION DATE</u>
(a) Initiation of Project Design Work	Completed
(b) Submittal of Approvable Plans and Specifications to Ohio EPA	Completed
(c) Advertisement of Building Bids	Completed
(d) Execution of Building Contracts	Completed
(e) Initiation of Construction	Completed
(f) Completion of construction of sufficient wetstream treatment facilities to ensure compliance with final effluent limits and the elimination of bypasses and overflows.	November 30, 1994
(g) Attain compliance with final effluent limitations, and eliminate overflows and bypasses.	November 30, 1994

Within seven (7) days from each completion date listed above, Defendant Rio Grande shall submit a written report stating whether or not Rio Grande has performed the action set forth therein to Ohio EPA's Southeast District Office.

This Consent Order does not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval for any such construction or modification shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or

regulations.

VI. CIVIL PENALTY

6. Defendant Rio Grande shall pay to the State of Ohio a civil penalty of Three Thousand Five Hundred (\$3,500.00). The penalty shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio" within forty-five (45) days from the date of entry of this Consent Order

VII. STIPULATED PENALTIES

7. In the event that Defendant Rio Grande fails to meet any of the requirements of this Consent Order set forth in Paragraphs 4, 5 (a), 5 (b), 5 (c), 5 (d), 5 (e) and 5 (f), including any scheduled milestone requirement, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

- (a) For each day of failure to meet a requirement, up to thirty (30) days - Two Hundred and Fifty Dollars (\$250.00) per day;
- (b) For each day of failure to meet a requirement, from thirty-one (31) to sixty (60) days - Five Hundred Dollars (\$500.00) per day;
- (c) For each day of failure to meet a requirement, from sixty-one (61) to ninety (90) days - One Thousand Dollars (\$1,000.00); and
- (d) For each day of failure to meet a requirement, over ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day.

8. In the event that Defendant Rio Grande fails to meet any of the requirements of this Consent Order set forth in Subparagraph 5(g), the Defendant shall immediately and automatically be liable for payment of a stipulated penalty of Three Thousand Dollars (\$3,000.00) per day of violation of said requirement. The Defendant shall be liable for an additional stipulated penalty of

One Thousand Dollars (\$1,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e. Four Thousand Dollars (\$4,000.00) per day of violation if the failure to comply continues for more than thirty (30) days, i.e. Four Thousand Dollars (\$4,000.00) per day of violation. In the event that failure to comply with the requirements of Subparagraph 5(g) continues more than sixty (60) days, Defendant shall be liable for an additional Two Thousand Dollars (\$2,000.00) per day of violation, i.e., Six Thousand Dollars (\$6,000.00) per day of violation.

9. Any payment required to be made under the provisions of paragraphs 7 or 8 of this Order shall be made by delivering to Plaintiff's counsel a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio."

VIII. POTENTIAL FORCE MAJEURE

10. In any action 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 limitation, acts of God, unusually severe weather conditions, strikes, acts of war or civil disturbances, or orders of any regulatory agency. Changes in the cost of compliance do not constitute a force majeure. While Plaintiff does not agree that such a defense exists, it is, however, agreed upon by the parties that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time to adjudicate the existence of such a defense is at the time 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. 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.

IX. 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.

X. COSTS

12. Defendant Rio Grande is hereby ordered to pay the costs of this action.

JUDGE, COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

DATE

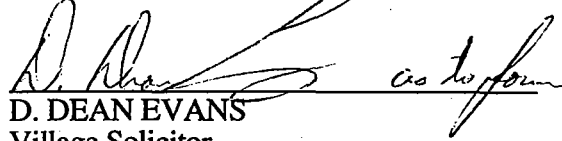
APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO



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VILLAGE OF RIO GRANDE


DONALD B. WOTHE, JR., Mayor
D. DEAN EVANS
Village Solicitor
P.O. Box 409
Gallipolis, Ohio 45631

APPENDIX A

1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL OPB00035001:

<u>Effluent Characteristic</u>		<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>			
		Concentration		Loading*		Meas. Freq.	Sample Type		
Reporting Code	Units	Other Units (specify)	Parameter	30 day	7 day			30 day	7 day
00010	°C		Temperature	-	-	-	-	Daily	Grab
00530	mg/l		Suspended Solids						
			(summer)	20	30	13.3	19.9	2/week	Comp.
			(winter)	30	45	19.9	29.8	2/week	Comp.
00556	mg/l		O & G	-	-	-	-	1/Qtr.	Grab
00610	mg/l		Ammonia (N)	-	-	-	-	1/2 weeks	Comp.
31616	Count /100 ml		Fecal Coliform (summer only)	-	-	-	-	1/week	Grab
50050	MGD		Flow	-	-	-	-	Daily	Cont.
								24 Hr.	Total
80082	mg/l		CBOD ₅						
			(summer)	15	23	9.9	15.2	2/week	Comp.
			(winter)	25	40	16.6	26.5	2/week	Comp.

2. The pH (Reporting Code 00400) shall not be less than 6.5 S.U. nor greater than 9.0 S.U. and shall be monitored daily by grab sample.
3. If the entity uses chlorine for effluent disinfection, the Chlorine Residual (Reporting Code 50060) shall be maintained at a level not to exceed 0.5 mg/l and shall be monitored daily by grab sample (summer only).
4. The Dissolved Oxygen (Reporting Code 00300) shall be monitored daily by grab sample.

* The average effluent loading limitations are established using the following flow value: 0.175 MGD

5. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS FOR OUTFALL 0PB00035001
(cont.):

<u>Effluent Characteristic</u>		<u>Discharge Limitations</u>				<u>Monitoring Requirements</u>		
<u>Reporting Code</u>	<u>Units</u>	<u>Parameter</u>	<u>Concentration</u>		<u>Loading</u>		<u>Meas. Freq.</u>	<u>Sample Type</u>
			<u>Other Units (specify)</u>	<u>30 day</u>	<u>7 day</u>	<u>30 day</u>		
01127	ug/l	Cadmium, Total	-	-	-	-	2/Year	Comp.
01034	ug/l	Chrom., Total	-	-	-	-	2/Year	Comp.
01042	ug/l	Copper, Total	-	-	-	-	2/Year	Comp.
01051	ug/l	Lead, Total	-	-	-	-	2/Year	Comp.
01067	ug/l	Nickel, Total	-	-	-	-	2/Year	Comp.
01092	ug/l	Zinc, Total	-	-	-	-	2/Year	Comp.
01220	ug/l	Chromium (Hex.)	-	-	-	-	2/Year	Grab
71900	ug/l	Mercury, Total	-	-	-	-	2/Year	Comp.