

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT  
AGENDA

DATE: MONDAY, MAY 18, 2009  
PLACE: COUNCIL CHAMBERS  
TIME: 7:30 P.M.

THERE ARE NO PUBLIC HEARINGS TONIGHT

1. ROLL CALL
2. INVOCATION BY COUNCILMAN DONNIE PETERS
3. PLEDGE OF ALLEGIANCE
4. READING OF THE JOURNAL
5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA
6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 73 – 2009 *P* BY: COMMUNITY DEVELOPMENT COMMITTEE

**AN ORDINANCE** authorizing the Mayor of the City of Massillon, Ohio, to enter into an agreement with E.J. Hoffman Custom Cabinetry to provide an economic development "inducement grant" to assist the company in relocating and expanding its operations in Massillon, and declaring an emergency.

ORDINANCE NO. 74 – 2009 *D* BY: POLICE AND FIRE COMMITTEE

**AN ORDINANCE** directing the Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, to reject the recommendations of the Fact Finders Report of May 13, 2009, concerning the Massillon Firefighters Association, Local 251 union contract, and declaring an emergency.

ORDINANCE NO. 75 – 2009 *1st* BY: STREETS, HIGHWAYS, & TRAFFIC COMMITTEE

**AN ORDINANCE** authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with Dalene M. Pride to perform the Motor Vehicle License Audit for the City of Massillon, and declaring an emergency.

ORDINANCE NO. 76 – 2009 *P* BY: FINANCE COMMITTEE

**AN ORDINANCE** making certain appropriations from the unappropriated balance of the Economic Development Fund, Community Development Block Grant Program Fund and the Muni Motor Vehicle License Plate Fund, for the year ending December 31, 2009, and declaring an emergency.

RESOLUTION NO. 6 – 2009 *1st* BY: ENVIRONMENTAL COMMITTEE

**A RESOLUTION** authorizing the Mayor of the City of Massillon, Ohio, to file an application to the State of Ohio, to participate in the Clean Ohio Assistance Fund.

*Ord - 77 - 1st Reading*

**RESOLUTION NO. 7 – 2009**

**BY: ENVIRONMENTAL COMMITTEE**

**A RESOLUTION** authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a settlement agreement concerning the pending lawsuit entitled The City of Massillon, Ohio vs Infilco Degremont, Inc.

**RESOLUTION NO. 8 – 2009**

**BY: COMMITTEE OF THE WHOLE**

**A RESOLUTION** recognizing the Massillon Washington High School Choirs for their outstanding State Superior ratings for the last three years consecutively.

- 7. UNFINISHED BUSINESS
- 8. PETITIONS AND GENERAL COMMUNICATIONS
- 9. BILLS, ACCOUNTS AND CLAIMS
- 10. REPORTS FROM CITY OFFICIALS
  - A). POLICE CHIEF SUBMITS MONTHLY REPORT FOR APRIL 2009
  - B). TREASURER SUBMITS MONTHLY REPORT FOR APRIL 2009
  - C). FIRE CHIEF SUBMITS MONTHLY REPORT FOR APRIL 2009
  - D). INCOME TAX DEPARTMENT SUBMITS MONTHLY REPORT FOR APRIL 2009
  - E). WASTE DEPARTMENT SUBMITS MONTHLY REPORT FOR APRIL 2009
  - F). MAYOR'S MONTHLY REPORT FOR APRIL 2009
- 11. REPORTS OF COMMITTEES
- 12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS
- 13. CALL OF THE CALENDAR
- 14. THIRD READING ORDINANCES AND RESOLUTIONS

**ORDINANCE NO. 67 – 2009**

**BY: PUBLIC UTILITIES COMMITTEE**

**AN ORDINANCE** authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a Non-Surface Development Gas & Oil Lease with Range Resources Appalachia, LLC, and declaring an emergency.

- 15. SECOND READING ORDINANCES AND RESOLUTIONS
- 16. NEW AND MISCELLANEOUS BUSINESS
- 17. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA
- 18. ADJOURNMENT

**MARY BETH BAILEY - CLERK OF COUNCIL**



DATE MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

*Passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 73 - 2009

BY: COMMUNITY DEVELOPMENT COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into an agreement with E.J. Hoffman Custom Cabinetry to provide an economic development "inducement grant" to assist the company in relocating and expanding its operations in Massillon, and declaring an emergency.

WHEREAS, the City of Massillon carries out a variety of economic development programs designed to promote the creation and expansion of business and industry in the community; and

WHEREAS, E.J. Hoffman Custom Cabinetry desires to relocate and expand its operations located at 405 Erie Street South, and

WHEREAS, the City of Massillon proposed to assist E.J. Hoffman Custom Cabinetry in this relocation and expansion of its operations by providing an economic development "inducement grant", the purpose of which is to help offset the company's costs in relocating its operations to Massillon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT

Section 1:

This Council hereby authorizes the Mayor to enter into an agreement with E.J. Hoffman Custom Cabinetry providing an economic development "inducement grant", in a total amount not to exceed Five Thousand Dollars (\$5,000.00) for the purpose of assisting the company in relocating and expanding its operations in Massillon.

Section 2:

In return for this economic development grant assistance, E.J. Hoffman Custom Cabinetry, shall provide the City with information regarding the number of jobs that it has provided as a result of the company's relocation and expansion in Massillon.

DATE: MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

*defeated*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 74 - 2009

BY: POLICE AND FIRE COMMITTEE:

TITLE: AN ORDINANCE directing the Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, to reject the recommendations of the Fact Finders Report of May 13, 2009, concerning the Massillon Firefighters Association, Local 251 union contract, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to reject the recommendations of the Fact Finders Report of May 13, 2009, concerning the Massillon Firefighters Association, Local 251 union contract.

Section 2:

The Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, are hereby directed to reject the recommendations authorized to accept the Fact Finders Report of May 13, 2009, concerning the Massillon Firefighters Association, Local 251 union contract.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason to that by law, if the city wishes to reject the recommendations of the fact finder it must do so within 7 days of the report being sent, otherwise the report is deemed accepted. Provided it receives the affirmative vote of three-fifths of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, the report shall be deemed accepted.

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING BETWEEN:

City of Massillon, Ohio	)	
	)	Case No: 08-MED-08-0802
and	)	
	)	Fact-Finder: Colman R. Lalka
Massillon Professional Firefighters,	)	
IAFF Local 251	)	

HEARING

Date of Hearing: May 6, 2009

Location of Hearing: Massillon, Ohio

APPEARANCES AT HEARING

For the Employer:

Leslie Iams Kuntz, Esq.

For the Union:

Dennis Haines, Esq.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Fact-Finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.

4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(2). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work giving consideration to factors peculiar to the area and classification involved;



4117-9-05(K)(3). The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4117-9-05(K)(4). The lawful authority of the public employer;

4117-9-05(K)(5). Any stipulations of the parties;

4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

## BACKGROUND

The City of Massillon, Ohio has recognized the Massillon Professional Firefighters, IAFF Local 251 as the bargaining representative for certain employees of the City. The Bargaining Unit is duly certified by the State Employment Relations Board and had a Labor Agreement in effect that expired on November 9, 2008.

Formal bargaining between the Parties has been ongoing. When impasse was reached, the Parties requested the Fact-Finder convene a hearing, attain relevant facts, and prepare a report and recommendation in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. The hearing was convened on the date and at the place indicated above.

## MEDIATION

Prior to the commencement of the fact-finding hearing, mediation was conducted, and the Parties agreed the facts and documents discussed during Mediation were to serve as the foundation of this Fact-Finding Report.

## ISSUES AT IMPASSE AND RECOMMENDATIONS

It is the recommendation of the Fact-Finder that the language of the current Collective Bargaining Agreement be carried forward in the successor Agreement, except as follows:

Article 23, Staffing. The language of the current Article 23 will be carried forward, except the first sentence of Section 1 will be deleted.

Article 37, Entrance Rates. The proposal of the City is accepted. The language of Article 37 of the current Collective Bargaining Agreement is to be carried forward into the successor Agreement, with the following two exceptions:

Section 8 will be amended to read as follows:

- a. All Firefighter/Paramedic personnel of the Fire Department must maintain certification as

a State of Ohio Firefighter in accordance with the Ohio Revised Code throughout their employment with the City. It is required that all new employees hired on or after January 01, 1997 maintain certification as an EMT-P for fifteen (15) years from the date the employee is able to be used as such by the CITY to maintain employment. All Fire Department employees who are certified as EMT-Basic must maintain that certification throughout their employment with the City. After fifteen (15) full years, paramedic certification may be discontinued but EMT-Basic certification must be maintained. Employment will be terminated if certifications are not maintained.

- b. Every new employee shall be a probationary officer for three hundred sixty five (365) days and shall be governed under those rules.

A new Section 11 will read as follows:

The Union acknowledges the right of the City to provide EMS Transport.

Article 51. Duration. The duration of the successor Agreement will be November 10, 2008 through November 9, 2011.

Attachment 8. Wages. Annual wage increases commencing November 10, 2008 are to be 0%, 0%, and 4%.



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Colman R. Lalka, Fact-Finder

Dated: May 13, 2009  
Madison, Lake County, Ohio

DATE: MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

*107 Reading*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 75 - 2009

BY: STREETS, HIGHWAYS AND TRAFFIC COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with Dalene M. Pride to perform the Motor Vehicle License Audits for the City of Massillon, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to enter into an agreement with Dalene M. Pride to perform the Motor Vehicle License Audits for the City of Massillon.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized and directed to enter into an agreement with Dalene M. Pride to perform the Motor Vehicle License Audits. The cost for each incorrect motor vehicle license registration forward to the Bureau of Motor Vehicles for correction and adjustment is not to exceed Three Dollars and Fifteen Cents (\$3.15) for each correction.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and welfare of the community and for the additional reason that it is necessary that the agreement with Dalene M. Pride be signed so these audits can continue. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.



DATE: MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN GAMBER, PRESIDENT

COUNCIL CHAMBERS

*Passed*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO.76 – 2009

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the Economic Development Fund, Community Development Block Grant Program Fund and the Muni Motor Vehicle License Plate Fund, for the year ending December 31, 2009, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the Economic Development Fund, for the year ending December 31, 2009, the following:

\$5,000.00 to an account entitled "Services/Contracts" 1237.845.2392

Section 2:

There be and hereby is appropriated from the unappropriated balance of the Community Development Block Grant Program Fund, for the year ending December 31, 2009, the following:

\$3,200.00 to an account entitled "Target Area Street Improvements" 1203.845.2812

Section 3:

There be and hereby is appropriated from the unappropriated balance of the Muni Motor Vehicle License Plate Fund, for the year ending December 31, 2009, the following:

\$1,348.45 to an account entitled "Services/Contracts" 1206.405.2392

Section 4:

This Ordinance is hereby declared to be an emergency measure, for the efficient operation of the various departments of the City of Massillon and for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

DATE: MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

*104 pending*  
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 77 - 2009

BY: ENVIRONMENTAL COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to enter into the Settlement Agreement with Infilco Degremont, Inc., regarding the pending lawsuit concerning the construction and upgrade of the Wastewater Treatment Plant, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to enter into the Settlement Agreement with Infilco Degremont, Inc., regarding the pending lawsuit concerning the construction and upgrade of the Wastewater Treatment Plant.

Section 2:

The Mayor of the City of Massillon, Ohio, is hereby authorized and directed to enter into the Settlement Agreement with Infilco Degremont, Inc., regarding the pending lawsuit concerning the construction and upgrade of the Wastewater Treatment Plant. The terms of the agreement will be in substantially the form as attached hereto.

(ATTACHED EXHIBIT "A" HERETO)

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and welfare of the community and for the additional reason that it is necessary the issues concerning the litigation regarding the construction and upgrade of the Wastewater Treatment Plant be resolved so that the city can receive the settlement and the ABW filters be made functional. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009

ATTEST: \_\_\_\_\_

MARY BETH BAILEY, CLERK OF COUNCIL

\_\_\_\_\_  
GLENN E. GAMBER, PRESIDENT

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
FRANCIS H. CICCHINELLI, JR., MAYOR



## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Settlement Agreement") is made as of the date a copy executed by the Mayor of the City of Massillon, Ohio is delivered to Infilco, ("Effective Date") by and among **The City of Massillon, Ohio** ("Massillon") and **Infilco Degremont, Inc.**, f/k/a Ondeo Degremont, Inc. ("Infilco") and **Smith Environmental, Inc.** ("Smith") (Infilco and Smith are hereby collectively referred to as "Defendants").

**WHEREAS**, on or about December 18, 2001, Kokosing Construction Company, Inc. ("Kokosing") and Massillon entered into a construction agreement related to the project known as the Regional Waste Water Treatment Plant Upgrade 2000 in Massillon, Ohio (the "Project"); and

**WHEREAS**, on May 4, 1999, Massillon entered into an agreement with CTI Environmental, Inc. ("CTI") for the design and performance of civil and structural engineering services on the Project; and

**WHEREAS**, Kokosing entered into an agreement with Infilco in May of 2002 for Infilco to supply to Kokosing three automatic backwash filters ("ABW Filters") to be installed by Kokosing as part of the Project.;

**WHEREAS**, on January 25, 2008, Massillon instituted suit against Smith, Infilco and CTI, being Case No. 2008 CV 00445 pending in Stark County, Ohio ("Lawsuit"), alleging causes of action against the Defendants for breach of express warranty, breach of implied warranty for fitness for a particular purpose, breach of implied warranty of merchantability, breach of implied warranty in tort, negligent misrepresentation and, pursuant to an Amended Complaint, promissory estoppel; and

**WHEREAS**, Massillon has assigned any claims it has against CTI arising out of the May 4, 1999 agreement to Kokosing, which claims are proceeding, if at all, in arbitration between Kokosing and CTI. A copy of the assignment was provided to counsel for Infilco and Smith during the discovery phase of the Lawsuit; and

**WHEREAS**, Infilco and Smith assert that to the extent that the ABW Filters are not performing to the satisfaction of Massillon, such failure is a direct result of the treatment process at the Massillon Waste Water Treatment Plant and other characteristics of the effluent being provided to the ABW Filters and is not a result of any defects or failures of the ABW Filters; and

**WHEREAS**, Infilco and Smith have denied and continue to deny any and all liability for any of the claims or causes of actions asserted by Massillon, but desire to resolve this Lawsuit solely in an effort to mitigate the costs of defending the Lawsuit; and

**WHEREAS**, Infilco, Smith and Massillon wish to enter into this Settlement Agreement in order to resolve their respective disputes with one another without any admission of liability or responsibility on the part of any of the parties hereto;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, it is hereby agreed as follows:

1. The above paragraphs are fully incorporated by reference and are not mere recitals and are relied upon by the parties hereto as a mutual material part of this Settlement Agreement.
2. Within 90 days of the Effective Date, Infilco shall commence replacement of the porous plate underdrains on the three ABW Filters with porous aluminum oxide plates

that are no smaller than 7-inches by 11-inches in size. The aluminum oxide plates shall be of the type customarily used as underdrain plates in the filtration of biologically treated settled secondary effluent. The aluminum oxide plates shall have a nominal pore size of 1200 to 1300 microns and shall be in reasonably close conformity to the aluminum oxide plates tested in connection with the Lawsuit by Infilco in March 2009 using 2,500 gallons of secondary effluent from Massillon's wastewater treatment plant. Infilco shall also furnish recommended operations and maintenance procedures for the aluminum oxide plates, including chemical cleaning procedures.

3. Infilco shall also remove, replace and dispose of the media in each of the filters with sand and anthracite media meeting the following characteristics:

a. Silica Sand. The filter media shall be an 8-inch thick layer of high grade silica sand, complying with the Standard Specifications for Filtering Material (American Water Works Association [AWWA] Designation B100). The sand will be well graded, and material showing abnormal grading will be rejected. The particle size distribution will be determined by screening through standard U.S. Series sieves. The percent size will be determined from a plot of percentages of the material passing each sieve, against the rated opening of the sieve. The 10 percent size or effective size will be between 0.55 and 0.65 millimeters. The uniformity coefficient (ratio of 60 percent size to 10 percent size) will not exceed 1.50.

b. Anthracite. The upper layer shall be an 8-inch thick clean crushed type anthracite size number 1½ with an effective size of 0.85 to 0.95 millimeters. The uniformity coefficient shall not exceed 1.7.



During the replacement of the porous plate underdrain, Massillon shall divert the flow of water from the ABW Filter being renovated and shall work cooperatively and in good faith with Infilco to permit Infilco to accomplish the renovation in an effective and cost-efficient manner. Infilco shall be responsible for any and all damage it causes to Massillon's property during replacement of the above components of the ABW Filter.

3. Infilco shall provide a guarantee for the joints between the aluminum oxide plates in the form and with the terms and conditions set forth in the guarantee attached hereto as Exhibit A, which is specifically incorporated herein.

4. Within five (5) business days of the Effective Date, Infilco shall pay Massillon the sum of \$225,000.00.

5. Within five (5) business days of the Effective Date, Massillon shall file a dismissal of all claims in the Lawsuit against Infilco and Smith, with prejudice, pursuant to Ohio Civil Rule 41(A)(1)(a). Each party shall pay its costs due to the Clerk of Courts.

6. Massillon has not and shall not hereafter institute or prosecute any suit, arbitration, demand, counterclaim, cross-claim, action or claim of any type or nature against CTI, Kokosing or any other third-party arising out of or resulting from the sale, installation or operation of the ABW Filters at the Project.

7. In consideration of the promises and agreements provided for in this Settlement Agreement, Massillon hereby releases and forever discharges Smith and Infilco, and their respective heirs, representatives, successors, predecessors, parent companies, subsidiaries, affiliates, sister companies, divisions, beneficiaries, officers, directors, shareholders, members, employees, agents, subcontractors, attorneys, and insurers (collectively, "Releasees") from and against any and all claims, complaints, actions, causes

of action, suits, liabilities, obligations, promises, controversies, damages, losses, debts and expenses (including attorneys' fees and costs), and claims in law or equity of any nature whatsoever, known or unknown, suspected or unsuspected, that they now have or ever had: (i) that were or could have been asserted in the Lawsuit; or (ii) that arose out of or related to the matters, allegations or circumstances in the Lawsuit, including the sale, installation and/or operation of the ABW Filters. Smith and Infilco likewise release Massillon from and against any and all claims, complaints, actions, causes of action, suits, liabilities, obligations, promises, controversies, damages, losses, debts and expenses (including attorneys' fees and costs), and claims in law or equity of any nature whatsoever, known or unknown, suspected or unsuspected, that they now have or ever had that were or could have been asserted in the Lawsuit. The releases in this paragraph shall not apply to the rights and obligations of the parties to enforce the terms of this Settlement Agreement.

8. Massillon represents and warrants that none of the claims it has asserted against Infilco or Smith in the Lawsuit or which it could have asserted against Infilco or Smith in the Lawsuit have been assigned, transferred or otherwise conveyed to any other person or entity, and that such claims are fully and exclusively owned by Massillon.

9. This Settlement Agreement shall be binding upon and inure to the benefit of the agents, assigns, affiliates, parents, subsidiaries, directors, officers, members, employees, representatives, partners, shareholders, insurers, and attorneys of the parties to this Settlement Agreement.

10. This Settlement Agreement shall be governed by the laws of the State of Ohio and any action brought to enforce the terms of this Settlement Agreement shall be brought in the Court of Common Pleas for Stark County, Ohio.

11. The parties to this Settlement Agreement stipulate and agree that the settlement provided for herein is not and shall not be construed to be evidence of any admission by Infilco or Smith concerning the validity of any of the claims asserted by Massillon. Rather, Infilco and Smith have entered into this Settlement Agreement for the strict and sole purpose of resolving the matters relating to the Lawsuit.

12. This Settlement Agreement constitutes the full and entire agreement and understanding between the parties with respect to the subject matter hereof, and there are no agreements, representations or warranties except as specifically set forth herein. All prior settlement discussions, negotiations and demands of any kind are fully merged into this Settlement Agreement and are to be construed to be of no further force or effect, it being the intention of the parties that this Settlement Agreement shall serve as the sole and entire expression of their agreement and understanding. This Settlement Agreement may not be amended or modified except by a written document signed by the party against whom enforcement of such amendment or modification is sought.

13. None of the parties to this Settlement Agreement shall be considered to be the drafter of this Settlement Agreement or any provisions thereof, for the purpose of any statute, case law or rule of interpretation/construction that would or might cause any provision hereof to be construed against the drafter of this Settlement Agreement.

14. Each party to this Settlement Agreement represents and warrants that the person executing this Settlement Agreement on its behalf is duly authorized by each of them to do so.

15. This Settlement Agreement may be executed in one or more counterparts, each of which shall constitute a separate original agreement, and all of which taken



together shall constitute one agreement, binding on all parties hereto, notwithstanding the fact that not all parties have signed the same counterpart. The parties shall accept facsimile signatures to this Settlement Agreement and the same shall be valid as though it were an original.

IT IS AGREED.

MAYOR, CITY OF MASSILLON, OHIO

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

CITY ATTORNEY, CITY OF MASSILLON, OHIO

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

INFILCO DEGREMONT, INC.

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

SMITH ENVIRONMENTAL, INC.

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: MAY 18, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

*10T [Signature]*  
LEGISLATIVE DEPARTMENT

RESOLUTION NO. 6 - 2009

BY: ENVIRONMENTAL COMMITTEE

TITLE: A RESOLUTION authorizing the Mayor of the City of Massillon, Ohio, to file an application to the State of Ohio, to participate in the Clean Ohio Assistance Fund;

WHEREAS, the State of Ohio, Department of Development, provides financial assistance to local governments for the purpose of addressing local needs; and

WHEREAS, the City of Massillon, Ohio, desires to participate in the Program to receive financial assistance for the former Republic Steel site under the Clean Ohio Assistance Fund; and

WHEREAS, the Mayor of the City of Massillon, Ohio, has the authority to apply for financial assistance and to administer the amounts received from the State of Ohio, Department of Development, Clean Ohio Assistance Fund; and

WHEREAS, the Mayor of the City of Massillon, Ohio, must direct and authorize the city officials to act in connection with the application and to provide such additional information as may be required.

Now, therefore be it resolved by the Council of the City of Massillon, Ohio, and of all members thereof concurring:

Section 1:

That the Council of the City of Massillon, Ohio, authorizes Mayor Francis H. Cicchinelli, Jr. as the official representative of the City of Massillon, Ohio, application to participate in the State of Ohio, Department of Development, and provide all information and documentation required in said Application for State of Ohio, Department of Development, Clean Ohio Assistance Fund submission.

Section 2:

That the Council of the City of Massillon, Ohio, hereby approves filing an application for financial assistance under the Clean Ohio Assistance Fund.

Section 3:

That the Council of the City of Massillon, Ohio, hereby understands and agrees that participation in the Program will require compliance with program guidelines and assurances.

2<sup>nd</sup> page is the signature page

**Mary Beth**

**From:** "Perry Stergios" <pstergios@massillonohio.com>  
**To:** "Dave Hersher" <dave@davidhersher.com>; "Paul Manson" <pmanson@sssnet.com>; "Larry Slagle" <slaglelaw@ameritech.net>  
**Cc:** <mayor@massillonohio.com>; "Mary Beth" <council@massillonohio.com>  
**Sent:** Friday, May 15, 2009 9:25 AM  
**Subject:** treatment plant lawsuit

Gentleman- I am going to instruct Mary Beth to put an ordinance on the agenda for Monday authorizing the Mayor and/or the SSD and myself to enter into a settlement agreement with regard to the pending lawsuit on the issue with the filters at the wastewater treatment plant. I know Larry is in trial in Cleveland so I need the Mayor, Dave and Paul to authorize it but we have to do it.

It is very complex, but the bottom line is they are paying us \$225,000 in cash, and are removing, replacing, and repairing the tertiary filter joints and medium at their cost and expense, which we estimate to be 350 to 390K. We also get a five year guarantee.

Bottom line is they are paying to fix it, and we get back a good chunk of our attorney fees. We have spent over 325K so far and if we go to trial, the cost will keep rising, and winning the case does not entitle us to attorney fees, so we need to get this over now, because we always possibly could lose the trial and get nothing, and still have spent the money.

Or we could win the trial, but no guarantee as to how much a jury will award us in damages.

I would like to pass it on Monday.

Perry

Pericles G. Stergios  
 Massillon City Law Director  
 Two James Duncan Plaza  
 Massillon, OH 44646  
 Phone: (330) 830-1718  
 Fax: (330) 833-7144  
 email: [pstergios@massillonohio.com](mailto:pstergios@massillonohio.com)

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*Paul Manson gave his verbal approval 3/15/09  
 @ 11:15 Am. MBB.*

*Dave Hersher gave his approval in person 3/15/09  
 @ 1:45pm. MBB.*

5/15/2009