

*Bachmann*

**FILED**  
**COMMON PLEAS COURT**  
**SEP 22 2008**

**IN THE COURT OF COMMON PLEAS  
GUERNSEY COUNTY, OHIO**

**GUERNSEY COUNTY, OHIO**  
Teresa A. Dankovic, Clerk of Court

STATE OF OHIO ex rel.  
NANCY H. ROGERS,  
ATTORNEY GENERAL OF OHIO,

CASE NO. 07 CV 243  
JUDGE ELLWOOD

Plaintiff,

v.

UTILITY OPERATORS CORP., et al.

Defendants.

**ORDER AND JOURNAL ENTRY**

This matter comes before the Court on the State of Ohio's Motion for Summary Judgment on Liability; Defendant Utility Operators Corporation's Memorandum in Response to the State's Motion for Summary Judgment; Defendant Edward A. Bischoff's Memorandum in Opposition to the State's Motion for Summary Judgment; and the State of Ohio's Reply to Utility Operators Corporation's Memorandum in Response and Edward A Bischoff's Memorandum in Opposition to the State's Motion for Summary Judgment on Liability.

The Court finds that genuine issues of material fact exist as to the personal liability of Edward A. Bischoff. Therefore, the Court denies summary judgment on the personal liability of Edward A. Bischoff at this time. A trial on Edward A. Bischoff's liability, and the appropriate injunctive relief and civil penalty for both Defendants will commence on October 27, 2008 at 10:00 a.m.

Defendant Utility Operators Corp. (“UOC”), however, does not oppose the State’s Motion and does not present any evidence in opposition to that motion. Plaintiff is hereby granted summary judgment on liability as to Defendant UOC pursuant to Civil Rule 56.

**I. Background**

UOC owned and/or operated the Rolling Hills Wastewater Treatment Plant (“WWTP”) located in Jackson Township, Guernsey County, Ohio during the dates set forth in the State’s complaint. UOC has been issued NPDES permits for the Rolling Hills WWTP. The Director issued NPDES permit no. 0PW00007\*ED, effective August 1, 1997 with an expiration date of July 28, 2002 to UOC. Affidavit of Jennifer Witte ¶9. The Director then issued renewal NPDES permit no. 0PW00007\*FD effective July 1, 2003 to UOC. Witte Aff. ¶9.

The Rolling Hills WWTP is an extended aeration sewage treatment plant designed to treat 100,000 gallons of wastewater per day. Witte Aff. ¶8. Domestic wastewater is collected from the Rolling Hills residential subdivision, Brook Elementary School, Meadowbrook Middle School, Meadowbrook High School, and some small commercial properties and transported to the WWTP for treatment. Witte Aff. ¶8. Treated effluent is discharged from outfall 001 into an unnamed tributary to Wills Creek. Witte Aff. ¶8.

**A. Ohio Water Pollution Control Law**

**1. General Prohibition Against Polluting Ohio’s Waterways**

Under Ohio law, discharging sewage, industrial waste or other waste to waters of the state, placing or causing to be placed sewage, industrial waste or other waste in a

location where they enter waters of the state, is prohibited unless the person holds a permit issued by the Director authorizing such discharge. R.C. 6111.04. “Waters of the state” is defined as “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial.” R.C. 6111.01(H). Revised Code 6111.04 further prohibits permit holders from discharging to waters of the state except in accordance with the discharge or effluent limitations imposed in their NPDES permit. Finally, R.C. 6111.07(A) provides that “no person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections.” Thus, the holder of a State issued permit can be liable for causing pollution to Ohio’s waterways.

## **2. National Pollutant Discharge Elimination System Permits**

NPDES permit nos. OPW00007\*ED and OPW00007\*FD were issued by Ohio EPA pursuant to R.C. 6111.03, 6111.04, and regulations adopted thereunder. The United States EPA has delegated administration of the NPDES permit program for discharges into waters of the state to the State of Ohio, and the Ohio EPA exercises this authority on behalf of the State of Ohio. Pursuant to R.C. 6111.03(J), the Director issues NPDES permits to persons who seek to discharge wastewater to waters of the state. Each NPDES permit contains certain general and specific conditions applicable to each individual discharger. NPDES permits impose specific effluent limitations on the materials being discharged from a permitted facility and entering waters of the state. These limits are selected to meet water quality standard limitations set forth in Ohio Administrative Code

("O.A.C.") 3745-1. Ohio Administrative Code 3745-33-03 provides that the conditions of an expired permit continue in force until the director acts on a timely renewal permit application.

### **3. Water Quality Rules Applicable To Surface Waters And NPDES Permits**

Ohio Administrative Code 3745-1-04 sets for general water quality criteria applicable to all surface waters of the state. The rules provides that to every extent practical and possible, surface waters of the state shall be free from: (1) suspended solids that enter the waters as a result of human activity and settle to form putrescent or objectionable sludge deposits; (2) materials producing color, odor and nuisance conditions; (3) substances that are harmful to human, animal or aquatic life; and (4) nutrients that create nuisance growth of aquatic weeds and algae. These requirements are reflected in Part III, ¶2 of NPDES permits. The permits provide that all effluent be free of: substances in amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits, or that will adversely affect aquatic life or water fowl; that will alter the natural color or odor of the receiving water to such degree as to create a nuisance; that either singly or in combination with other substances are toxic to human, animal, or aquatic life; that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly or constitute a nuisance in any other fashion.

### **4. The NPDES Permit Scheme For Self-Reporting Permit Compliance**

Ohio Administrative Code 3745-33-08(A)(3) and (A)(6) require that each NPDES permit includes terms which require the discharger that holds an NPDES permit to collect

samples of its effluent discharge, analyze the samples, and report to the Ohio EPA on its compliance with the permit to document the quality and quantity of the effluent leaving a facility. This reporting is done via Monthly Operating Reports (“MORs”), which are required to be submitted to Ohio EPA for each monthly reporting period during the life of the permit. These requirements are located in Part I. A. of NPDES permits. The NPDES permits require the MORs to be signed and certified in accordance with 40 C.F.R. 122.22(b) and (c). “In short, a discharger must report its own permit violations should they occur.” *Student Pub. Interest Research Group (“SPIRG”) v. Fritzsche, Dodge & Olcott* (D.N.J. 1984), 579 F.Supp. 1528, 1531; *SPIRG v. Fritzsche, Dodge & Olcott* (3<sup>rd</sup> Cir. 1985), 759 F.2d 1131 (aff’d on other grounds).

As discussed in *Natural Resources Defense Council v. Outboard Marine Corp.* (N.D. Ill. 1988), 692 F.Supp. 801, 819, the monthly self-reports submitted under an NPDES permit are admissions. In that case, the court held that “a permit holder’s statements in its [MORs] are conclusive and irrebuttable evidence that permit violations have occurred.” (Bracketed language added). Likewise, in *United States v. Hoboken*, (D.N.J. 1987), 675 F.Supp. 189, 192, the court held that “a defendant’s [MORs] constitute admissions regarding the levels of effluent that the defendant has discharged.” See also, *United States, et. al, v. Youngstown* (N.D. Ohio July 17, 2000), Case No 4:98 CV 2438, page 7, unreported; *SPIRG v. Tenneco Polymers* (D.N.J. 1985), 602 F.Supp. 1394, 1400; *SPIRG v. Fritzsche, Dodge & Olcott*, 579 F.Supp. 1528, 1538. Thus, where MORs reveal that a defendant has exceeded its NPDES permit limitations, permit violations are established. *Id.* Although a defendant has the burden to set forth facts to

dispute the State's claim, a defendant cannot produce evidence that could effectively rebut the data already submitted in its MORs.

Courts have also ruled that when a violation reported in an MOR involves a parameter measuring weekly or monthly averages, it would be reasonable that the days of violation can be counted to include each day of the period for which the violation occurred. *State ex rel., Petro v. Maurer Mobile Home Court Inc.* (2007), 2007 Ohio 2262, ¶¶ 69-70.

### **B. Strict Liability**

Environmental protection statutes have also long been recognized as strict liability laws designed to prohibit public welfare offenses. In *United States v. United States Steel Corp.* (N.D. Ind., 1970), 328 F. Supp. 354, 356, the court noted that “[t]he public is injured just as much by unintentional pollution as it is by deliberate pollution.” In *U.S. v. Liviola* (N.D. Ohio, 1985), 605 F. Supp. 96, the court found that federal hazardous waste laws, like other environmental statutes dealing with water or air pollution, imposed strict liability, and that Congress had made intent irrelevant to the question of civil penalties. *Id.* at 100.

Under Ohio law, environmental liability is also strict. See *e.g.*, *Professional Rental, Inc. v. Shelby Insurance Co.* (1991), 75 Ohio App. 3d 365, 376; *State of Ohio v. Gastown* (1975), 49 Ohio Misc. 29, 34; *State ex rel. Brown v. Dayton Malleable, Inc.* (Oct. 12, 1979), Montgomery C.P., Case No. 78-694, unreported. More specifically, when a statute requires that “no person shall” take some action, without any reference to degree of culpability, that statute indicates clearly the General Assembly's intent to impose strict liability. See, *State v. Cheraso* (1988), 43 Ohio App. 3d 221, 223; *State v.*

*Grimsley* (1982), 3 Ohio App. 3d 265.

The plain language of R.C. Chapter 6111 clearly expresses the intention of the General Assembly to make these statutes to be strict liability statutes. There is no requirement that violations be intentional, deliberate, knowing or purposeful. A fundamental principle of statutory construction is that where the language of a statute is clear and unambiguous, courts will not judicially modify the statute under the guise of interpretation. *Pully v. Malke* (1986), 25 Ohio St.3d 95, 96; *State of Ohio, ex rel. Brown v. Dayton Malleable* (1982), 1 Ohio St. 3d 151, 155. Moreover, courts will not create exceptions not found in the statute. *Siegried v. Everhart* (1936), 55 Ohio App. 351, 353; *Eggleston v. Harrison* (1900), 61 Ohio St. 397, 404. Therefore, R.C. Chapter 6111 imposes strict liability, and a defendant's degree of culpability is irrelevant.

## **II. Summary Judgment Standard**

The State is entitled to summary judgment if there are no genuine issues as to any material fact, and the State is entitled to judgment as a matter of law. Civ. Rule 56(C); *Dresher v. Burt* (1996), 75 Ohio St. 3d 280; *Harless v. Willis Day Warehouse Co.* (1978), 54 Ohio St. 2d 64. In a decision endorsed and followed by the Ohio Supreme Court, the United States Supreme Court expressed strong support for the use of summary judgment to identify and dispose of cases with no real factual dispute:

[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather \*\*\* designed "to secure the just, speedy and inexpensive determination of every action." \*\*\* Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.

*Dresher* at 302. Civ. R. 56(C) describes the standard upon which a court should grant a motion for summary judgment:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In interpreting Civ. R. 56(C), and Ohio case law, the lead opinion in *Dresher* discussed the differing burdens a motion for summary judgment places on the moving and nonmoving parties and held that:

a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden on informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims \*\*\*. [T]he moving party must be able to specifically point to some *evidence* of the type listed in Civ. R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims \*\*\* [I]f the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ. R. 56(E) to set forth specific facts showing that there is a genuine issue for trial \*\*\*. (emphasis in original).

*Dresher*, at 293. A “genuine” issue of fact exists only where there is “sufficient evidence favoring the nonmoving party to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 249, 106 S.Ct. 2505. If the evidence is “merely colorable” or “not sufficiently probative \*\*\* summary judgment may be granted.” *Id.* at 249-50. A “fact” set forth by the nonmoving party to defeat summary judgment is not “material” unless it will be “outcome determinative” under applicable law. *Id.* at 248.

### **III. Resolution of Liability**

Revised Code 6111.07(A) provides, *inter alia*, that no person who is the holder of

a permit issued under R.C. 6111.01 to 6111.08 shall violate any of the permit's terms and conditions. Revised Code 6111.04 prohibits any person to whom a permit is issued from causing pollution or placing or causing to be placed any sewage, industrial waste or other wastes in a location where they cause pollution of any "waters of the state" in excess of the permissive discharge limits of a valid NPDES permit.

**1. Count One – Unauthorized Discharges**

NPDES permit 0PW00007\*FD defines a bypass as "an intentional diversion of waste streams from any portion of the treatment facility." NPDES permit Part III, ¶1. Witte Aff. ¶34. The NPDES permit contains a general prohibition against bypassing. NPDES permit Part III, ¶11. Witte Aff. ¶34.

October 30, 2003, November 5, 2003, December 4, 2003, January 5, 2004, January 15, 2004, February 3, 2004, April 6, 2004, May 21, 2004, January 12, 2005, March 22, 2005, May 17, 2005, October 24, 2006, November 17, 2006, January 3, 2007, February 1, 2007, February 2, 2007, February 6, 2007, April 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 24, 2007 and May 30, 2007, UOC violated the prohibition against bypassing under Part III, ¶11 of NPDES permit 0PW00007\*FD, and R.C. 6111.07(A) and 6111.04 by diverting at least some, if not all, of its waste stream from portions of the treatment works at the WWTP. Witte Aff. ¶¶18-35; Affidavit of Joann Montgomery, ¶¶11; Affidavit of Dan Imhoff, ¶¶4-14; Affidavit of James A. Wing, ¶6. Therefore, the State is granted summary judgment for liability against UOC for **23** days of violation on Count One for violation of the NPDES permit and R.C. 6111.07 and 6111.04.

## **2. Count Two – Unpermitted Discharges**

NPDES permit 0PW00007\*FD, Part I, A, authorizes final effluent to be discharged from outfall 0PW00007001, a location defined in Part II, B as the unnamed tributary to Wills Creek. Witte Aff. ¶37.

On January 27, 2005, March 17, 2005, August 30, 2006, August 31, 2006, September 1, 2006, October 24, 2006, November 28, 2006, February 1, 2007, February 2, 2007, February 6, 2007, February 7, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25, 2007, May 29, 2007 and May 30, 2007, raw or partially treated sewage was discharged onto the ground and into the unnamed tributary from locations not authorized under NPDES permit 0PW00007\*FD. Witte Aff. ¶¶18-33, 36-38; Montgomery Aff. ¶¶11, 13; Wing Aff. ¶¶7-17; Imhoff Aff. ¶¶4-14; Affidavit of Randy Shepard, ¶¶5-12. Therefore, the State is granted summary judgment for liability against UOC for 22 days of violation on Count Two for violation of the NPDES permit and R.C. 6111.07 and R.C. 6111.04.

## **3. Count Three – Discharge Of Pollutants Causing Water Quality Violation**

Ohio Administrative Code 3745-1-04 requires that surface waters of the state shall be free from: (1) suspended solids that enter the waters as a result of human activity and settle to form putrescent or objectionable sludge deposits; (2) materials producing color, odor and nuisance conditions; (3) substances that are harmful to human, animal or aquatic life; and (4) nutrients that create nuisance growth of aquatic weeds and algae. Witte Aff. ¶41.

NPDES permit 0PW00007\*FD, Part III, ¶2, provides that all effluent be free of: (1) substances in amounts that will settle to form putrescent, or otherwise objectionable, sludge deposits, or that will adversely affect aquatic life or water fowl; (2) that will alter the natural color or odor of the receiving water to such degree as to create a nuisance; (3) that either singly or in combination with other substances are toxic to human, animal, or aquatic life; (4) that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly or constitute a nuisance in any other fashion. Witte Aff. ¶42.

On March 17, 2005, August 23, 2006, August 30, 2006, August 31 2006, September 1, 2006, October 24, 2006, November 28, 2006, February 1, 2007, February 2, 2007, February 6, 2007, February 7, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25, 2007, May 29, 2007 and May 30, 2007, UOC violated the prohibitions contained in O.A.C. 3745-1-04 by placing or causing to be placed into waters of the state: (1) suspended solids that enter the waters as a result of human activity and settle to form putrescent or objectionable sludge deposits; (2) materials producing color, odor and nuisance conditions; (3) substances that are harmful to human, animal or aquatic life; and (4) nutrients that create nuisance growth of aquatic weeds and algae. Witte Aff. ¶¶18-33, 41-43; Montgomery Aff. ¶¶4-18; Wing Aff. ¶¶8-17; Shepard Aff. ¶¶5-12; Imhoff Aff. ¶¶4-14.

Alternatively, on March 17, 2005, August 23, 2006, August 30, 2006, August 31 2006, September 1, 2006, October 24, 2006, November 28, 2006, February 1, 2007,

February 2, 2007, February 6, 2007, February 7, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25, 2007, May 29, 2007 and May 30, 2007, UOC violated the general effluent limitations contained in NPDES permit 0PW00007\*FD, Part III, ¶2, by placing or causing to be placed various materials, substances, and nutrients that were observed in the unnamed tributary to Wills Creek at or about the Rolling Hills' outfall which affect general water quality criteria and which have an adverse impact on human, animal, or aquatic life associated with raw or poorly treated sewage as a result of human activity. Witte Aff. ¶¶18-33, 41-43; Montgomery Aff. ¶¶4-18; Wing Aff. ¶¶8-17; Shepard Aff. ¶¶5-12; Imhoff Aff. ¶¶4-14. Therefore, the State is granted summary judgment for liability against UOC for 22 days of violation on Count Three for violation of the NPDES permit, R.C. 6111.07, and R.C. 6111.04.

#### **4. Count Four – Failure To Provide Noncompliance Notification**

NPDES permit 0PW00007\*FD requires a permittee to report to a toll free telephone number within twenty-four hours of discovery any noncompliance which may endanger health or the environment. NPDES permit Part III, ¶12. Witte Aff. ¶39. Unpermitted discharges where raw or partially treated sewage was discharged onto the ground and into the receiving stream may have created a danger to health or the environment. Witte Aff. ¶40.

On January 27, 2005, March 17, 2005, August 30, 2006, August 31, 2006, September 1, 2006, October 24, 2006, November 28, 2006, February 1, 2007, February 2, 2007, February 6, 2007, February 7, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25,

2007, May 29, 2007 and May 30, 2007, UOC violated Part III, ¶12 of NPDES permit OPW00007\*FD by failing to notify the Ohio EPA of NPDES permit noncompliance that may have created a danger to health or the environment. Witte Aff. Therefore, the State is granted summary judgment for liability against UOC for 22 days of violation on Count Four for violation of the NPDES permit and R.C. 6111.07.

**5. Count Five – Violation Of Effluent Limitations**

NPDES permits OPW00007\*ED and OPW00007\*FD require UOC to meet effluent limitations for specific pollutants. NPDES permits Part I, A. Witte Aff. ¶¶13.

From March 1, 2001 to July 12, 2007, UOC failed to meet certain effluent limitations as set forth in NPDES permits OPW00007\*ED and OPW00007\*FD. Exhibit A-3 to the Affidavit of Jennifer Witte, compiled based on a review of MORs in the Ohio EPA file, lists instances when effluent limitations were violated and comprises 3,195 days of violation. Witte Aff. ¶15. These were self-reported violations. These material admissions cannot now be questioned. *National Resources Defense Council*, 692 F.Supp. 801, 819. Therefore, the State is granted summary judgment for liability against UOC for 3,195 days of effluent violation on Count Five for violation of the NPDES Permits, R.C. 6111.07 and 6111.04.

**6. Count Six – Failure to Monitor and/or Report**

NPDES permits OPW00007\*ED and OPW00007\*FD require UOC to monitor specific pollutant parameters. NPDES permits Part I, A. Witte Aff. ¶14.

From January 1, 2001 to July 12, 2007, UOC failed to monitor certain parameters as set forth in NPDES permits OPW00007\*ED and OPW00007\*FD. Exhibit A-4 to the Affidavit of Jennifer Witte, compiled based on a review of MORs in the Ohio EPA file,

lists instances when monitoring requirements were violated and comprises **12,275** days of violation. Witte Aff. ¶15. These were self-reported violations. These material admissions cannot now be questioned. *National Resources Defense Council*, 692 F.Supp. 801, 819. Therefore, the State is granted summary judgment for liability against UOC for **12,275** days of monitoring violation on Count Six for violation of the NPDES Permits and R.C. 6111.07.

**7. Count Seven – Failure to Provide Class III State Certified Operator**

NPDES permit 0PW00007\*FD for the Rolling Hills WWTP requires that the wastewater treatment works be under the supervision of a Class III State certified operator as required by O.A.C. 3745-7-02. NPDES permits Part II, A. Witte Aff. ¶17.

From August 1, 2005 to May 31, 2007, the Rolling Hills WWTP was not under the supervision of a Class III State certified operator. Simpson Depo., pp. 7, 9; Bischoff Depo. 5/23/7, pp. 224-225. Therefore, the State is granted summary judgment for liability against UOC for **669** days of violation on Count Seven for violation of R.C. 6111.07, O.A.C. 3745-7-02, and the NPDES permit.

**8. Count Eight - Violation of Facility Operation and Quality Control**

NPDES permit 0PW00007\*FD, Part III, ¶3, for the Rolling Hills WWTP requires that all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and condition of the permit shall be maintained in good working order and operated as efficiently as possible. Witte Aff. ¶44. Back-up provisions must be installed and operated when necessary to achieve permit compliance. NPDES permit Part III, ¶3. Witte Aff. ¶44. The operation and efficiency

of the treatment and control facilities and the quantity and quality of the treated discharge must be effectively monitored, and maintenance must be properly carried out. NPDES permits Part III, ¶3. Witte Aff. ¶44.

On October 30, 2003, November 5, 2003, December 4, 2003, January 5, 2004, January 15, 2004, February 3, 2004, April 6, 2004, May 21, 2004, January 12, 2005, January 27, 2005, March 17, 2005, March 22, 2005, May 17, 2005, April 11, 2006, July 18, 2006, August 23, 2006, August 30, 2006, August 31, 2006, September 1, 2006, September 7, 2006, September 8, 2006, September 11, 2006, September 12, 2006, September 25, 2006, October 4, 2006, October 24, 2006, November 17, 2006, November 28, 2006, January 3, 2007, February 1, 2007, February 2, 2007, February 6, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25, 2007, May 29, 2007, and May 30, 2007, UOC failed to comply with the facility operation and quality control requirements in NPDES permit 0PW00007\*FD, Part III, ¶3. Witte Aff. ¶¶18-33, 44-45; Montgomery Aff. ¶¶4-18; Imhoff Aff. ¶¶4-14; Shepard Aff. ¶¶5-12; Wing Aff. ¶¶6-17. Therefore the State is granted summary judgment against UOC for 43 days of violation on Count Eight for violation of the NPDES permit and R.C. 6111.07.

#### **9. Count Nine – Failure to Mitigate**

NPDES permit 0PW00007\*FD for the Rolling Hills WWTP requires that the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. NPDES permit Part III, ¶14. Witte Aff. ¶46.

On October 30, 2003, November 5, 2003, December 4, 2003, January 5, 2004, January 15, 2004, February 3, 2004, April 6, 2004, May 21, 2004, January 27, 2005, March 17, 2005, March 22, 2005, May 17, 2005, August 23, 2006, August 30, 2006, August 31, 2006, September 1, 2006, October 24, 2006, November 17, 2006, November 28, 2006, January 3, 2007, February 1, 2007, February 2, 2007, February 6, 2007, March 27, 2007, May 9, 2007, May 10, 2007, May 18, 2007, May 21, 2007, May 22, 2007, May 23, 2007, May 24, 2007, May 25, 2007, May 29, 2007, and May 30, 2007, UOC violated NPDES permit OPW00007\*FD, Part III, ¶14, by failing to take all reasonable steps to minimize or prevent discharge in violation of the permit, which had a reasonable likelihood of adversely affecting human health or the environment. Witte Aff. ¶¶18-33, 46-47; Montgomery Aff. ¶¶4-18; Imhoff Aff. ¶¶4-14; Shepard Aff. ¶¶5-12; Wing Aff. ¶¶7-17. Therefore, the State is granted summary judgment against UOC for 34 days of violation on Count Nine for violation of the NPDES permit and R.C. 6111.07.

#### **IV. Conclusion**

The facts before the Court document violations of Ohio water pollution control law occurring at the Rolling Hills WWTP. Since R.C. Chapter 6111 imposes strict liability, the reasons why these violations may have occurred are immaterial. UOC is liable for these violations as the holder of the NPDES permits. The State's motion, supported by affidavits and deposition testimony, clearly demonstrates that NPDES permits were issued to UOC for the Rolling Hills WWTP and that the terms and conditions of those permits were in fact violated on hundreds of occasions. In its response, UOC has chosen not to oppose the State's motion and offers no evidence in opposition. There are no genuine issues of material fact as to the nine counts of R.C.

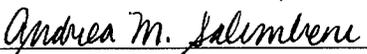


**CERTIFICATE OF SERVICE**

I certify that a copy of the Order and Journal Entry filed by the State of Ohio per the Court's September 8, 2008 Entry was served by U.S. Mail, postage prepaid, on September 19, 2008 upon:

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