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in NPDES Permit No. OPV00007*FD.

3. Count Three: Defendants exceeded seven-day effluent concentration limitations for Ammonia Nitrogen, Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids and Fecal Coliform as set forth in NPDES Permit No. OPV00007*FD.

4. Count Four: Defendants exceeded the seven-day effluent loading limitations for Carbonaceous Biochemical Oxygen Demand and Ammonia Nitrogen, as set forth in NPDES Permit No. OPV00007*FD.

5. Count Five: Defendants failed to meet or exceeded the daily effluent concentration limitations for Dissolved Oxygen and Total Chlorine Residual, as set forth in NPDES Permit No. OPV00007*FD.

6. Count Six: Defendants failed to comply with monitoring and reporting requirements of NPDES Permit No. OPV00007*FD.

7. County Seven: Defendants failed to submit a renewal application for NPDES Permit No. OPV00007*FD.

8. Count Eight: Defendants created a public nuisance by discharging sewage into waters of the state without a permit.

9. Count Nine: Defendants failed to employ a Class I certified operator to oversee operation of WWTP.

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On April 13, 2009, the Defendants filed their answer in which they denied counts 1 through 8 for lack of information and admitted the allegations in Count 9.

On September 7, 2010, the Plaintiff filed its motion for summary judgment on the issue of liability with supplementation and amendment on September 13 and 16. The Defendants have not answered.

Summary judgment is appropriate when the movant demonstrates (1) that there is no genuine issue of material fact, (2) that he, she, or it is entitled to judgment as a matter of law, and (3) that reasonable minds construing the evidence most strongly in the non-movant's favor could only conclude adversely to the non-movant. See Civ.R. 56(C); Schwartz v. Bank One, Portsmouth, N.A. (1992), 84 Ohio App. 3d 806, 809.

In addition to these principles, the Supreme Court of Ohio has stated that "[a] motion for summary judgment forces the nonmoving party to produce evidence on any issue for which that party bears the burden of production at trial. (Celotex v. Catrett [1986], 477 U.S. 317, approved and followed.) " Wing v. Anchor Media, Ltd. Of Texas (1991), 59 Ohio St. 3d 108, paragraph three of the syllabus; see, also, Mitseff v. Wheeler (1988), 38 Ohio St. 3d 112.

In its motion, the Plaintiff stated that on or about

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May 7, 2010, it sent its request for admissions, interrogatories and request for production of documents to the Defendants by electronic mail and by regular mail. (Motion, exh. 3 & 4) The Plaintiff represents that the Defendants have never responded to its request for admissions. (Motion, pp. 11-12) The Court finds that the requests are deemed admitted pursuant to Civ.R. 36(A) and the cases cited by the Plaintiff. (Motion, pp. 11-12)

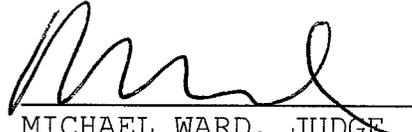
The Court has considered the Plaintiff's motion, the Civ.R. 36(A) admissions, the affidavit of EPA Environmental Specialist II Abbot Stevenson and the applicable law. In construing the evidence most strongly in the Defendants' favor, the Court finds that there are no genuine issues as to material facts and that reasonable minds can only conclude that the Defendants violated Revised Code Chapter 6111 as alleged for a total of four thousand eight hundred thirty nine (4,839) days.

Accordingly, the Court finds as a matter of law that the Plaintiff is entitled to judgment on the issue of liability against the Defendants as alleged in the complaint.

The Court shall determine the appropriate specific injunctive relief and civil penalties at the November 19, 2010, bench trial.

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IT IS SO ORDERED.


MICHAEL WARD, JUDGE
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