

law, the Magistrate hereby renders the following decision in favor of Plaintiff, the State of Ohio, and against Defendant, Inland Products, Inc.

FINDINGS OF FACT

1. In the state of Ohio, storm water from industrial sites is regulated by the United States Environmental Protection Agency (U.S. EPA) and by the Ohio Environmental Protection Agency (Ohio EPA), because of the potential for the industrial activities to contaminate the storm water and thereby pollute the waters of the State of Ohio when the storm water leaves the industrial sites.

2. On August 1, 2000, the Director of the Ohio EPA issued a "General Permit Authorization to Discharge Storm Water Associated with Industrial Activity Under the National Pollutant Discharge Elimination System," NPDES Permit No. OHR000003 (2000 NPDES Permit). In the 2000 NPDES Permit, the Director stated:

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., hereafter referred to as "the Act"), and the Ohio Water Pollution Control Act (Ohio Revised Code Chapter 6111), discharges of storm water from industrial facilities, as defined in Part I.B of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA", to discharge from the outfalls at the sites and to the receiving waters identified in the applicant's Notice of Intent (NOI) on file with the Ohio EPA in accordance with the conditions specified in Parts I through IX of this permit.

Permit coverage is conditioned upon payment of applicable fees, submittal of a complete Notice of Intent, and written approval of coverage from the Director of Ohio EPA in accordance with Ohio Administrative Code Rule 3745-38-06.

3. Pursuant to the 2000 NPDES Permit, the Director of the Ohio EPA authorized the discharges of storm water from those industrial facilities to which the Director granted permit coverage. The 2000 NPDES Permit established the requirements for the covered industries, including requirements that the covered

industries have Storm Water Pollution Prevention Plans (SWP3s), and that they implement Best Management Practices (BMPs) to control the possible contamination of storm water runoff.

4. At all relevant times, Defendant, Inland Products, Inc. (Inland Products), owned and operated an animal rendering plant at 599 Frank Road in Columbus, Franklin County, Ohio. Oil and grease were byproducts of the rendering process.

5. While Inland Products was the owner and operator of the rendering plant, the company applied to the Director of the Ohio EPA for coverage under the 2000 NPDES Permit, and the Director granted such coverage, thereby authorizing the company to discharge storm water from its industrial facilities, provided it did so in accordance with the 2000 NPDES Permit.

6. A portion of the storm water from the Inland Products site flows into road ditches that are situated to the north and west of the site. The road ditches are part of a road drainage system that conveys storm water to a pond located just north of State Route 104. The pond was formed as a result of a gravel/sand quarry operation previously located at the site. The pond is separated from the Scioto River by sand and gravel. The pond drains into the sand and gravel and therefore has a hydrological connection to the Scioto River Buried Valley Sand and Gravel Aquifer (Aquifer) and to the Scioto River.

7. The Inland Products site sits upon highly permeable soils that overlay the Aquifer. Based upon data collected from two wells on the Inland Products site, the ground water, on average, lies fifteen (15) feet below the surface of the land at Well No. 247, and thirty-one (31) feet below the surface of the land at Well No. 258. The ground water under the site flows east and southeast to the Scioto River.

8. On August 15, 2002, Michael Dalton, an On-Scene Coordinator for the Ohio EPA's Division of Emergency and Remedial Response, visited the Inland Products site, in response to a report that there had been a spill of septic waste water at the site. While inspecting the site, Mr. Dalton discovered that a drainage swale, or channel, and pit had been dug at the southeast corner of the rendering plant. The drainage swale and pit were not naturally occurring formations of the land.

9. Mr. Dalton observed a stream of septic black water that was flowing across the surface of the ground, into the drainage swale, and then into the pit. The water in the pit, containing industrial waste, was draining into the ground. The water in the pit originated from the buildings at the plant and flowed across the ground, southward to the drainage swale. The drainage swale contained puddles of dark and odorous water, smelling primarily of hydrogen sulfide. Mr. Dalton observed numerous leaks of oil onto the ground, coming from tanks and containment areas on the site. He observed that, in general, the plant's grounds were saturated with oil. There were many uncovered 55-gallon drums around the site. The drums contained waste that was exposed to the elements.

10. Inland Products never applied to the Ohio EPA for a Permit-to-Install (PTI) for the drainage swale or pit, and Inland Products never received a PTI from the Ohio EPA for the drainage swale or pit.

11. Based upon Mr. Dalton's experience as a emergency responder for the State of Ohio, and based upon his knowledge of the geology and hydrology of the area in and around the rendering plant, he told Inland Products' vice president, David Baas, on August 15, 2002, that the water being directed to the pit was infiltrating the sand and gravel and would ultimately flow into the ground water and from there into the Scioto

River. Mr. Dalton told Mr. Baas that the water being directed to the pit by the drainage swale was contaminated by the water's contact with the spilled oil and grease on the site, and that the water being directed to the pit by the drainage swale was septic from bacterial action. Mr. Dalton told Mr. Baas that the discharge of that septic water to the ground water could cause an anaerobic (depleted of oxygen) condition to develop, which could lead to the ground water itself becoming septic. Mr. Dalton told Mr. Baas that correcting a ground water contamination problem was a very expensive undertaking. Mr. Bass told Mr. Dalton that he (Mr. Bass) was aware of the drainage swale and pit.

12. On January 5, 2005, Harry A. Kallipolitis, a Storm Water Coordinator/Environmental Specialist II for the Ohio EPA's Division of Surface Water, visited the Inland Products site. He did so because Al Bordelon, a consultant for Inland Products, had complained to the Ohio EPA that a City of Columbus sewer had backed up into the rendering plant.

13. On January 5, 2005, central Ohio had been experiencing heavy, wet weather for several days (a "significant precipitation event" in Mr. Kallipolitis's words), and the wet weather continued during Mr. Kallipolitis's visit to the Inland Products site. There was a great deal of standing water on the site, and a portion of that standing water was draining to the drainage swale and pit at the southeast corner of the rendering plant. The water in the pit was rapidly infiltrating the ground. As Mr. Kallipolitis described the scene, "It looked like a bathtub draining." The surface of the water in the pit contained a large quantity of oil, grease, and other debris.

14. On August 22, 2005, Christopher D. Bonner, an Emergency Response/SPCC [Spill Prevention Control and Countermeasure] Coordinator for the Ohio EPA's Division of Emergency and Remedial Response, visited the Inland Products

site. His primary reason for visiting the site was to conduct an SPCC Plan inspection on behalf of the U.S. EPA.

15. During Mr. Bonner's visit to the site on August 22, 2005, he observed oil leaking from containment areas onto the ground, and the ground outside of the plant's buildings was generally saturated with oil. Some of the oil was pooling on the site due to rainfall having caused the oil to float out of the ground. There were many 55-gallon open drums in outdoor areas of the plant; the drums contained waste materials, which were exposed to the elements.

16. On August 31 and September 1, 2005, Mr. Kallipolitis returned to the Inland Products site to inspect the rendering plant, for the purpose of assessing the company's compliance with the 2000 NPDES Permit.

17. On August 31 and September 1, 2005, Mr. Kallipolitis observed blood and animal parts that had spilled onto the ground from trucks at the site. Company employees were power-washing trucks and allowing the waste water to flow onto the ground. There were 55-gallon drums around the site, containing waste and oil that was exposed to the elements. There were areas around the site where oil and grease were being tracked out of buildings and where oil was leaking from oil tanks and secondary containment structures onto the ground. Most of the plant's grounds were saturated with oil and/or grease. Cooker blow-down water was being discharged onto the ground and was allowed to flow to the drainage swale and pit.

18. On August 31 and September 1, 2005, Mr. Kallipolitis observed that the water in the drainage swale and pit was black and appeared to be septic. He found that the conditions at the site demonstrated a lack of good housekeeping practices and other

BMPs (Best Management Practices) that the 2000 NPDES Permit required of Inland Products.

19. During Mr. Kallipolitis's September 1, 2005 visit to the Inland Products site, he was accompanied by the company's attorney, Craig Denmead, to whom Mr. Kallipolitis communicated his observations as described in paragraphs 17 and 18, above.

20. In a letter dated September 13, 2005, Mr. Kallipolitis communicated his observations to Inland Products and notified the company of the deficiencies he had observed at the site on August 31 and September 1, 2005, concerning the company's compliance with the 2000 NPDES Permit.

21. On October 10 and 11, 2005, Mr. Bonner returned to the Inland Products site and observed conditions that were similar to the conditions he had observed on August 22, 2005. In addition, he observed the man-made drainage swale at the south side of the rendering plant, which contained water.

22. On October 10 and 25, 2005, Mr. Kallipolitis returned to the Inland Products site and collected water samples from the drainage swale, for chemical analysis by the Ohio EPA. The conditions of the site on October 10 and 25, 2005, had not significantly changed from the conditions he had observed on August 31 and September 1, 2005.

23. The samples that Mr. Kallipolitis collected from the drainage swale on October 10 and 25, 2005 revealed elevated levels of ammonia on both days, levels that were much higher than would be expected in storm water. The analysis of the sample collected on October 25, 2005 indicated that there was oil and grease at a concentration of 340 mg./l. That level is significantly higher than would be expected in the discharge from a municipal waste water treatment plant, which is normally limited to oil and

grease discharges of 10 mg./l. or below. In other words, in October 2005, there were significant amounts of ammonia, oil, and grease in the water that Mr. Kallipolitis collected from the drainage swale. The ammonia, oil, and grease were washed into the pit, by way of the drainage swale, and from the pit, those substances infiltrated the ground water.

24. Considering the width and configuration of the drainage swale, the presence of bulldozer tracks near the drainage swale, the manner in which dirt had been bulldozed to the sides of the drainage swale, and the firsthand observations of Mr. Dalton, Mr. Kallipolitis, and Mr. Bonner, the Magistrate finds that Inland Products dug the drainage swale and pit on or before August 15, 2002, and that the company thereafter continued to maintain the drainage swale and pit until October 25, 2005. (See State's Exhibits 5-H, 6-U, 9-E, 9-F, 9-G, 15-E, 19 [Figures 1 -10], and 20-B, for illustrative photographs of the drainage swale and pit.)

25. The Ohio EPA discovered the drainage swale and pit on August 15, 2002.

26. On March 27, 2006, Inland Products sold the rendering plant to Sanamax. After the sale, Mr. Kallipolitis returned to the site, where he observed that the site was substantially cleaner than it had been in October 2005, and that it was better maintained than it had been in October 2005.

27. On August 14, 2007, at the request of the Director of the Ohio EPA, the Attorney General of Ohio commenced this civil action against Inland Products, to enforce Ohio's water-pollution-control laws, as set forth in R.C. Chapter 6111 and the rules adopted thereunder.

28. In its Complaint, the State of Ohio has asserted three claims against Inland Products: failure to obtain a permit to install the drainage swale and pit; violations of the 2000 NPDES Permit; and unpermitted discharge of pollution.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the claims asserted in the Complaint under R.C. Chapter 6111, and over the parties to this action. Venue is proper in this Court.

2. Revised Code 6111.01 provides:

§ 6111.01. Definitions

As used in this chapter:

(A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.

(B) "Sewage" means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.

(D) "Other wastes" means garbage, refuse, [PUT MISSING WORDS BACK IN***] lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste.

(G) "Disposal system" means a system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes and includes sewerage systems and treatment works.

(H) "Waters of the state" means 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, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

(I) "Person" means the state, any municipal corporation, any other political subdivision of the state, any person as defined in section 1.59 of the Revised Code, any interstate body created by compact, or the federal government or any department, agency, or instrumentality thereof.

3. Inland Products, as a corporation, was at all relevant times a "person" as defined by R.C. 1.59(C) and 6111.01(I), and Ohio Adm. Code 3745-33-01(Y) and 3745-38-01(O).

4. Revised Code 6111.07 provides:

§ 6111.07. Prohibitions; prosecution; injunction

(A) 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. Each day of violation is a separate offense.

(B) The attorney general, upon the written request of the director, shall prosecute any person who violates, or who fails to perform any duty imposed by, sections 6111.01 to 6111.08 of the Revised Code or who violates any order, rule, or condition of a permit issued or adopted by the director pursuant to those sections.

The attorney general, upon written request of the director, shall bring an action for an injunction against any person violating or threatening to violate this chapter or violating or threatening to violate any order, rule, or condition of a permit issued or adopted by the director pursuant to this chapter. ***

5. In a post-trial brief, Inland Products argued, for the first time in this litigation, that the Attorney General's receipt, of the Director's written request for an action for an injunction against a violator, is an element that the Attorney General must

prove to obtain an injunction under R.C. 611.07(B). The Magistrate does not agree. The sending of the request by the Director of the Ohio EPA, and the receipt of the request by the Attorney General, are non-discretionary, purely ministerial acts that do not constitute elements of the cause of action itself. See *State ex rel. Barber v. Rhodes* (1956), 165 Ohio St. 414, 421, and *Lynn v. Allied Corp.* (1987), 41 Ohio App. 3d 392, 397 (ministerial duties cannot form the basis for a cause of action). The Attorney General's receipt of the Director's written request is not an element that the Attorney General must prove to obtain an injunction under R.C. 611.07(B).

6. In 2002 and 2005, as observed by Ohio EPA employees Michael Dalton, Harry Kallipolitis, and Christopher Bonner, there was "industrial waste" and/or "other waste" as defined by R.C. 6111.01(C) and (D), on the ground at the Inland Products site. Specifically, there were animal parts and blood spilled onto the ground, oil and grease tracked out of buildings, oil leaking from oil tanks and secondary containment structures onto the ground, waste water from the power washing of trucks flowing onto the ground, cooker blow-down water being discharged upon the ground, waste and oil in the open 55-gallon drums in the exterior areas, and oil and/or grease that saturated the ground.

7. The ground water under the Inland Products site, and the water in the road ditches to the north and west of the site, are "waters of the state" as defined by R.C. 6111.01(H). They are waters of the state because they combine or effect a junction with the Scioto River Buried Valley Sand and Gravel Aquifer (Aquifer), which extends beyond the Inland Products site, and the Aquifer interacts with natural surface waters, including the Scioto River.

8. Former Ohio Adm. Code 3745-31-02, in effect from November 30, 2001 through October 16, 2003, provided that, "[N]o person shall cause, permit, or allow the installation of *** a new disposal system as defined in division (G) of section 6111.01 of the revised Code or cause, permit or allow the modification of *** a disposal system, *** without first obtaining a permit to install from the director." The permit to install (PTI) provisions are now set forth in Ohio Adm. Code Chapter 3745-42, with the specific language requiring a PTI for disposal systems now set forth in Ohio Adm. Code 3745-42-02(A)(1), effective October 17, 2003.

9. The drainage swale and pit on the Inland Products site constituted a "disposal system" as defined by R.C. 6111.01(G), from August 15, 2002 through October 25, 2005, because Inland Products constructed and/or modified the drainage swale and pit by mechanical means, and used them to collect and contain storm water that had been contaminated by "industrial waste" as defined by R.C. 6111.01(C) and "other wastes" as defined by R.C. 6111.01(D).

10. Inland Products never obtained a PTI from the Ohio EPA for its disposal system, in violation of Ohio Adm. Code 3745-31-02 and its successor rule, Ohio Adm. Code 3745-42-02(A)(1). Consequently, from August 15, 2002 through October 25, 2005, a period of 1,167 days, the company was in violation of R.C. 6111.07(A).

11. Part VI.A. of the 2000 NPDES Permit required Inland Products to comply with all of the conditions of the 2000 NPDES Permit. A violation of the 2000 NPDES Permit constitutes a violation of R.C. 6111.07(A).

12. Inland Products sought and was granted coverage under the 2000 NPDES Permit for its storm water discharges to waters of the state and was a permittee under

the 2000 NPDES Permit from August 15, 2002 until the company sold the rendering plant to Sanamax on March 27, 2006.

13. Part III of the 2000 NPDES Permit obligated Inland Products to implement appropriate measures and control practices, including best management practices (BMPs), at the rendering plant to reduce pollutants in the storm water discharges associated with the plant's industrial activities.

14. The condition of the Inland Products rendering plant and site, as observed by Ohio EPA employees in 2002 and 2005, demonstrated a lack of implementation of appropriate measures and/or control practices to reduce pollutants in the storm water discharges associated with the plant's industrial activities. Containment structures on the site were not maintained, which allowed industrial waste to be exposed to storm water. Practices at the site allowed storm water to be exposed to industrial waste, either left in open 55-gallon barrels, or cast upon the ground. When samples of the water from the drainage swale were tested by the Ohio EPA in October 2005, the results of the testing confirmed that water on the site was contaminated with industrial waste.

15. Inland Products failed to comply with the terms and conditions of Part III and Part VI(A) of the 2000 NPDES Permit, and therefore was in violation of R.C. 6111.07(A) from August 15, 2002 through October 25, 2005, constituting 1,167 days of violation.

16. Revised Code 6111.04(A) provides:

§ 6111.04. Acts of pollution prohibited; exceptions

(A) Both of the following apply except as otherwise provided in division (A) or (F) of this section:

(1) No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

(2) Such an action prohibited under division (A)(1) of this section is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code or if the person's application for renewal of such a permit is pending.

17. Inland Products, through its actions at the rendering plant and on the company's site, as described above, caused industrial waste and other wastes to be placed into the drainage swale and pit. As observed by Ohio EPA employees in 2002 and 2005, water containing industrial waste and other wastes infiltrated into the ground below the pit, into highly permeable soils, thereby allowing the contaminated water to enter the ground water, which constitutes "waters of the state" as defined by R.C. 6111.01(H). By its actions, Inland Products committed acts of pollution in violation of R.C. 6111.04, without a permit to engage in such conduct.

18. By violating R.C. 6111.04, Inland Products was in violation of R.C. 6111.07(A) from August 15, 2002 through October 25, 2005, which constituted 1,167 days of violations of R.C. 6111.07(A).

19. Revised Code 6111.09(A) provides that, "Any person who violates section 6111.07 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars per day of violation." Below this ceiling, the amount of penalty to be imposed rests in the informed discretion of the court. *State ex rel. Petro v. Maurer Mobile Home Court, Inc.*, Wood App. No. WD-06-053, 2007-Ohio-2262, at ¶54, discretionary appeal not allowed, *State ex rel. Dann v. Maurer Mobile Home Court, Inc.*, 2007-Ohio-5056.

20. When determining the appropriate amount of a civil penalty, the trial court should consider the following factors: (A) the harm or threat of harm posed to the environment by the person violating R.C. 6111.07; (B) the level of recalcitrance, defiance, or indifference demonstrated by the violator of the law; (C) the economic benefit gained by the violation; and (D) the extraordinary costs incurred in enforcement of R.C. 6111.07. *State ex rel. Petro v. Tri-State Group, Inc.*, Belmont App. No. 03 BE 61, 2004-Ohio-4441, at ¶104, appeal denied, 2005-Ohio-204. While making this determination, the trial court must remember that, because a civil penalty is an economic sanction designed to deter violations of R.C. Chapter 6111, the penalty must be large enough to hurt the offender. *Id.* It is the burden of the violator to show that the impact of a civil penalty would be ruinous or otherwise disabling. *State ex rel. Dann v. Meadowlake Corp.*, Stark App. No. 2006 CA 00252, 2007-Ohio-6798, at ¶66, discretionary appeal not allowed, 118 Ohio St. 3d 1409, 2008-Ohio-2340, certiorari denied, *Meadowlake Corp. v. Ohio ex rel. Rogers* (Jan. 12, 2009), 129 S. Ct. 899.

21. Inland Products, by its conduct, as described above, posed a significant threat of harm to the waters of the State of Ohio. The company demonstrated an outrageous level of recalcitrance, defiance, and indifference in its violations of Ohio law. Moreover, Inland Products presented no evidence that the impact of a civil penalty would be ruinous or otherwise disabling to its operations. These factors, therefore, weigh in favor of an enhanced civil penalty under R.C. 6111.09(A).

22. On the other hand, there was no evidence presented of the economic benefit gained by Inland Products by its violations of Ohio law, and there was no evidence presented of the extraordinary costs incurred in the State of Ohio's

enforcement of Ohio law against the company. These factors, therefore, do not weigh in favor of an enhanced civil penalty under R.C. 6111.09(A).

23. The State of Ohio has requested a civil penalty in the amount of \$100,000 against Inland Products. This amount is reasonable, in light of the fact that, under R.C. 6111.09(A), a fine of up to \$10,000 per day (or \$11,670,000 total) is permitted.

24. Revised Code 3745.31 provides:

§ 3745.31. Statute of limitations for civil or administrative penalties for violations of environmental laws

(A) As used in this section, "environmental law" means *** Chapters *** 6111. of the Revised Code; any rule adopted under those sections or chapters or adopted for the purpose of implementing those sections or chapters; and any applicable provisions of Chapter 3767. of the Revised Code when an environmentally related nuisance action is brought.

(B) (1) Except as provided in division (B)(2) of this section, any action under any environmental law for civil or administrative penalties of any kind brought by any agency or department of the state or by any other governmental authority charged with enforcing environmental laws shall be commenced within five years of the time when the agency, department, or governmental authority actually knew or was informed of the occurrence, omission, or facts on which the cause of action is based.

(2) If an agency, department, or governmental authority actually knew or was informed of an occurrence, omission, or facts on which a cause of action is based prior to the effective date of this section [July 23, 2002], the cause of action for civil or administrative penalties of any kind for the alleged violation shall be commenced not later than five years after the effective date of this section.

25. Revised Code 3745.31 establishes a five-year statute of limitations for claims for civil penalties pursuant to Ohio environmental laws, including R.C. Chapter 6111. The Ohio EPA actually knew of the facts on which its causes of action are based on August 15, 2002. This action was commenced on August 14, 2007, which was within five years of the operative date for the running of the statute of limitations. This action was therefore timely filed.

DECISION

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate's decision that:

1. Inland Products is permanently enjoined from violating R.C. Chapter 6111, any rules or orders promulgated thereunder, and the terms and conditions of any permits or plan approvals issued to Inland Products by the Director of the Ohio EPA.
2. Pursuant to R.C. 6111.09, Inland Products is ordered to pay to the State of Ohio a civil penalty of \$100,000.
3. Inland Products shall pay the costs of this action pursuant to Civ. R. 54(D).

Pamela Broer Browning 6/28/10
MAGISTRATE PAMELA BROER BROWNING

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION IN THE FOREGOING MAGISTRATE'S DECISION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

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