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REBECCA E. JAMES

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio, ex. Rel. Jim	*	
Petro, Ohio Attorney General,	*	Case No. 03 CV 805
Plaintiff,	*	
	*	
	*	
v.	*	JUDGE REEVE KELSEY
	*	
Maurer Mobile Home Court, Inc.,	*	Judgment Entry
Defendant.	*	
	*	

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This case was before the Court on May 11 and 12, 2006 for court trial to determine the appropriate civil penalty to be assessed pursuant to this court's order filed on February 14, 2006. In the February 14, 2006 order this court found that (1) the 1991 National Pollutant Discharge Elimination System ("NPDES") permit was validly issued to Maurer Mobile Home Court, Inc., ("MMHC"); (2) MMHC failed to obtain a permit to install the sludge ponds at its waste water treatment plant; (3) MMHC's emissions of effluents contained a concentration level of pollutants in excess of that allowed by its NPDES permit; (4) MMHC failed to submit monthly operational reports as required by its NPDES permit; and (5) MMHC failed to submit a sludge

management plan. Both the state and MMHC have submitted post trial briefs for the court's consideration.

From the exhibits and testimony, the court finds the following chronology of events:

1/24/91 - Mike Carson sent a letter to the Ohio EPA responding to a notice of violation letter received from the Ohio EPA.<sup>1</sup>

2/10/92 - Mike Carson sent a memorandum to James Maurer addressing the wastewater treatment plant's shortcomings. He also included recommendations for improvement. Mr. Carson noted a lack of sludge wasting facilities, chronic hydraulic overload, and short circuiting of the chlorine contact tank.<sup>2</sup> He recommended the construction of polishing ponds, a 10,000 gallon sludge wasting tank, and other improvements. He also stated he would be preparing a sludge management plan for MMHC to submit to the Ohio EPA.<sup>3</sup>

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<sup>1</sup> Exhibit 1. The Ohio EPA's notice of violation letter was not introduced into evidence.

<sup>2</sup> This was the same problem noted by Dr. Basel. See Transcript of proceedings, May 11 and 12, 2006, pp. II 87-92.

<sup>3</sup> Exhibit 12.

9/3/92 - Ohio EPA notified James Maurer that a permit to install was needed for the three ponds.<sup>4</sup>

9/8/92 - James Maurer notified Ohio EPA that a permit to install ("PTI") for three ponds would be submitted shortly.<sup>5</sup>

11/3/92 - A PTI for the three ponds was submitted to Ohio EPA.<sup>6</sup>

12/10/92 - Michael Carson sent a memo to James Maurer addressing Ohio EPA's concerns. The violations were attributable to equipment failures, difficulty controlling chlorine residual, and high rains.<sup>7</sup>

1/26/93 - MMHC's engineer, Harry Daugherty, submitted supplemental information to Ohio EPA.<sup>8</sup>

2/16/93 - Harry Daugherty testified, "[w]ell, on February 16<sup>th</sup> of '93, I got a phone call from Al Rupp of the EPA, and he said this was in regard to the Maurer Mobile Home, and he said do nothing until Al calls back; they need to put some more

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<sup>4</sup> Exhibit 29.

<sup>5</sup> Exhibit 30.

<sup>6</sup> Exhibits c and d.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit b.

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thought to this first." He further testified that he heard nothing further from the Ohio EPA.<sup>9</sup>

11/1/96 - Ohio EPA issued a report reflecting the Ohio EPA's findings from a September inspection of the facility. The Ohio EPA advised Mr. Maurer that (1) PTI for three ponds had not been received; (2) a sludge management plan needs to be submitted; (3) daily readings for flow, color, turbidity, odor, and temperature must be taken; and (4) renewal NPDES permit was not properly signed.<sup>10</sup>

5/2/97 - Mike Carson sent a memo to Jim Maurer with recommendations for upgrades to the wastewater treatment plant.<sup>11</sup>

10/9/97 - Attorney General sent a letter to MMHC regarding potential civil enforcement action due to failures to (1) submit a proper NPDES renewal application; (2) comply with current NPDES permit; (3) obtain a PTI for the three ponds; and (4) submit a sludge management plan.<sup>12</sup>

10/15/97 - James Maurer responded to Attorney General's letter stating that (1) he was unaware that the

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<sup>9</sup> Transcript of proceedings, May 11 and 12, 2006, p. IB 11-12.

<sup>10</sup> Exhibit 20. Ms. Wick conceded in her testimony that Mr. Carson was permitted to sign the NPDES renewal application.

<sup>11</sup> Exhibit 4.

<sup>12</sup> Exhibit e.

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renewal NPDES permit had not been issued and (2) "We \* \* \* contract the hauling away of the sludge with an EPA approved hauler." Mr. Maurer requested advice as to what might further be needed in response to the Attorney General's letter.<sup>13</sup>

1/27/98 - Michael Carson submitted to the Ohio EPA a report outlining MMHC's sludge management practices.<sup>14</sup>

10/9/98 - Mike Carson sent a memo to Jim Maurer regarding maintenance requirement by the wastewater treatment plant.

12/15/00 - Ohio EPA sent a letter to James Maurer regarding various violations of the conditions of the NPDES permit from July, 1999 through October, 2000. The letter requested a response from MMHC "within ten days of receipt" outlining "a description of the actions taken or proposed to prevent any further violations."<sup>15</sup>

12/27/00 - Michael Carson responded to Ohio EPA's letter of December 15, 2000. He cited new blower motors for the

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<sup>13</sup> Exhibit f. Mr. Maurer testified that Mr. Bergman never responded to this letter or to several telephone calls made to Mr. Bergman. Transcript of proceedings, May 11 and 12, 2006, pp. II 37-38.

<sup>14</sup> Exhibit g.

<sup>15</sup> Exhibit 24.

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biological treatment system. He also noted a rainwater infiltration problem.<sup>16</sup>

1/29/02 - Michael Carson advised Ohio EPA of MMHC's practice regarding sludge management.<sup>17</sup>

12/6/02 - Ohio EPA sent a letter to MMHC outlining violations of the conditions of the NPDES permit from January, 2001 through October, 2002. The letter requested a response from MMHC "within ten days of receipt" outlining "a description of the actions taken or proposed to prevent any further violations."<sup>18</sup>

8/13/03 - Ohio EPA sent a letter to James Maurer reviewing results of July 28, 2003 inspection of MMHC. The report states that (1) a new blower motor had been installed; (2) sand filters were plugged; and (3) improper bypass / overflow pipe had been installed in the sand filter.<sup>19</sup>

8/15/03 - James Maurer responded to Ohio EPA's letter of 8/13/03. Mr. Maurer stated that (1) the bypass / overflow pipe had been installed "years ago" at the suggestion of an EPA inspector; (2) he was unaware that his 1996 renewal NPDES permit

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<sup>16</sup> Exhibit 3.

<sup>17</sup> Exhibit 8.

<sup>18</sup> Exhibit 23.

<sup>19</sup> Exhibit 25.

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had not been properly signed; (3) he would sign permit and get it to Ohio EPA within 3 days. He also stated that Michael Carson told him the plant works "very well."<sup>20</sup>

2/5/04 - Ohio EPA sent a letter to James Maurer outlining permit violations during 2003. The letter requested a response from MMHC "within ten days of receipt" outlining "a description of the actions taken or proposed to prevent any further violations."<sup>21</sup>

2/9/04 - Michael Carson sent a letter to Ohio EPA. Mr. Carson represented that he thought that he did not have to report "E. Coli" and that remedial measures were taken on other violations.<sup>22</sup>

2/11/04 - James Maurer sent a fax transmission cover sheet indicating surprise that there were 13 violations during 2003 instead of just two.<sup>23</sup>

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<sup>20</sup> Exhibit 26. See Transcript of proceedings, May 11 and 12, 2006, pp. I 73-75. Ms. Wick concedes that Mr. Carson did have authority to sign the permit application, that an application signed by Mr. Maurer was received in 2003, and that the Ohio EPA has never acted on the application.

<sup>21</sup> Exhibit 21.

<sup>22</sup> Exhibit 22.

<sup>23</sup> Exhibit 22.

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In addition to the foregoing chronology, the following is a summary of the material testimony received at the hearing:

Elizabeth Wick, supervisor of the Ohio EPA's enforcement section in their Bowling Green office, testified that:

(1) the plant's major problem was rain infiltration; i.e., during heavy rains, rainwater would enter the sewer lines and flood the plant. She recommended either improving the lines to reduce the infiltration or increasing the plant's capacity;<sup>24</sup>

(2) she had inspected the MMHC sewer plant about five times over the last few years;<sup>25</sup>

(3) every time she conducted an inspection, the sand filters "have been full of water and overflowing;"<sup>26</sup>

(4) sludge removed from the sand filters was merely piled up on the ground adjacent to the sand filters;<sup>27</sup>

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<sup>24</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 32.

<sup>25</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 20.

<sup>26</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 21. Also see the testimony of Patricia Tebbe, another EPA official. Ms. Tebbe testified that over the last two and a half years, she had inspected the MMHC plant a half a dozen times and "[t]he wastewater treatment plant, the mechanical part of it seems to be operating fairly okay; but not great, but okay. One point of concern is there are sand filters after the mechanical part of the wastewater plant, and on every occasion except the very last one at least one of the sand filters was full to the point of overflowing." Transcript of proceedings, May 11 and 12, 2006, p. I 98.

<sup>27</sup> Transcript of proceedings, May 11 and 12, 2006, pp. I 42-43. See also the confirming testimony of Patricia Tebbe. Transcript of proceedings, May 11 and 12, 2006, p. I 100.

(5) this plant had a capacity for 30,000 gallons of sewage per day;

(6) based upon the number of housing units in MMHC, the EPA's design standards would require a plant with a capacity for 52,000 gallons per day.<sup>28</sup>

She also testified that the EPA had received an application for an as-built permit to install for the three ponds, but the ponds were too small and there was an inadequate clay liner.<sup>29</sup> There was no evidence presented that these flaws were ever communicated to MMHC. She conceded that the application had never been formally denied.<sup>30</sup>

Michael Carson discussed the big issues affecting the performance of the plant:

Number one issue would be the I&I, or inflow and infiltration. You get hydraulic overloaded after a large storm.

The second issue which has been sort of addressed is the ratio of organics into the plant to

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<sup>28</sup> Transcript of proceedings, May 11 and 12, 2006, pp. I 31-32.

<sup>29</sup> Transcript of proceedings, May 11 and 12, 2006, pp. I 40-41. But see Transcript of proceedings, May 11 and 12, 2006, pp. I 70-72. Ms. Wick conceded that she was unaware of whether anyone asked MMHC whether or not there was a clay liner to the ponds and that she was unaware of whether the sizing of the ponds met "green book" standards. Mr. Maurer testified that Ms. Wick's testimony was the first time he had learned that the EPA was concerned about the ponds' clay liner. Transcript of proceedings, May 11 and 12, 2006, p. II 23.

<sup>30</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 69. Ms. Wick testified, "The district office sent a recommendation down to Columbus for a denial of the permit to install, but I don't believe we ever found an actual denial document." She stated that she could not find any documentation of a formal denial.

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the amount of air pumped into the plant. You've got to maintain - Well, you have to have enough air to oxidize the organics coming in the sewage. If you don't have enough, treatment's not going to work properly.

The third issue would be lack of sludge wasting facilities, the organics that come in with the sewage. There's also inorganics that can't get oxidized and burned up, eventually build up in the system. If you don't get it out in a regular manner, it's going to leave the system some way. Usually goes out and plugs up the sand filters, and then gives me a big backache in cleaning it up. And it just doesn't promote a good steady state in the treatment system, the glow that's there. There were other - the electrical system out there is not the best.<sup>31</sup>

James Maurer testified that the overflow pipe in the sand filters had been installed fifteen to twenty years ago; that the EPA was fully aware of the pipe's existence; that the EPA had recommended that the pipe be installed; and that the EPA had never objected to the pipe.<sup>32</sup>

R.C. 6111.04(A)(1) prohibits anyone, without a permit, from placing sewage or sludge in a location where they cause pollution of any waters of the state.<sup>33</sup> Pursuant to this

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<sup>31</sup> Transcript of proceedings, May 11 and 12, 2006, pp. IB 70-71.

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<sup>32</sup> Transcript of proceedings, May 11 and 12, 2006, pp. II 33-36.

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<sup>33</sup> It is undisputed that the effluent from the MMHC wastewater treatment plant proceeds north in a pipe until it flows into an agricultural drainage tile. It then flows east a short distance to an enclosed storm drainage system that flows northward under state route 25. From there the effluent

requirement MMHC obtained a permit with an effective date of July 26, 1991.<sup>34</sup>

R.C. 6111.07 provides that no personal shall fail to perform a duty or violate any term or condition of a permit issued by the Ohio EPA. Each day of violation is a separate offense. Finally R.C. 6111.09(A) provides that any one who violates R.C. 6111.07 shall be liable for a civil penalty "of not more than ten thousand dollars per day of violation."

While the maximum civil penalty is \$10,000 per day, the actual civil penalty assessed is left to the "broad discretion" of this court with an "eye to the factual setting" giving rise to the case.<sup>35</sup> While the court does have broad discretion, the language of R.C. 6111.09(A) is mandatory. A civil penalty must be assessed.<sup>36</sup>

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Flows into the Grassy Creek Diversion Channel and finally into the Maumee River - waters of the state.

<sup>34</sup> The Ohio Environmental Protection Agency Authorization to Discharge under the National Pollutant Discharge Elimination System ("NPDES"), Permit No. 2PY00005\*BD is Exhibit 7.

<sup>35</sup> *State ex rel. Brown v. Dayton Malleable, Inc.*, (Apr. 21, 1981), Montgomery App. No. 6722. Both parties appealed this decision. The Ohio Supreme Court reversed the court of appeals determination regarding whether schedules of compliance could constitute a violation of the statute. Neither the state nor the violator sought to appeal the court of appeals methodology for the computation of the civil penalty. Unless specifically cited otherwise, references to the *Dayton Malleable* decision shall be to the court of appeals decision.

<sup>36</sup> *State of Ohio ex rel. v. Tri-State Group, Inc.*, Belmont App. No. 03 BE 61, 2004-Ohio-4441 at ¶103.

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*Dayton Malleable*<sup>37</sup> sets forth an analytical framework through which a court may exercise its broad discretion. First the court analyzes the following factors to determine the penalty: (1) the sum appropriate to redress the harm or risk of harm to public health or the environment; (2) the sum appropriate to remove the economic benefit gained or to be gained from delayed compliance; (3) the sum appropriate as a penalty for violator's degree of recalcitrance, defiance, or indifference to requirements of the law; and (4) the sum appropriate to recover unusual or extraordinary enforcement costs thrust upon the public.

From the amount so determined, the court next reduces the potential civil penalty by the following mitigation factors: (1) the sum, if any, to reflect any part of the non-compliance attributable to the government itself; and (2) the sum appropriate to reflect any part of the non-compliance caused by factors completely beyond violator's control (floods, fires, etc.)<sup>38</sup>

The final step is a consideration of the violator's financial condition or ability to pay. The civil penalty

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<sup>37</sup> *Dayton Malleable, Inc.*, supra. See also, *State ex rel. v. Tri-State Group, Inc.*, Belmont App. No. 03 BE 61, 2004-Ohio-4441 at ¶104.

<sup>38</sup> *Dayton Malleable, Inc.*, supra.

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assessed must be large enough to deter future violations but not so large as to send the violator into bankruptcy.<sup>39</sup>

Sum appropriate to redress the harm or risk of harm to public health or the environment.

Count One. This count alleges that MMHC failed to obtain a permit to install ("PTI") for (1) an overflow pipe in the sand filters, (2) a pipe from the influent flow splitter box to the effluent line of the clarifiers, and (3) three ponds.

While there was testimony to the effect that the overflow pipe in the sand filters was improper, there was no testimony that a PTI was required for its installation. The court finds credible the testimony of Mr. Maurer that the overflow pipe had been installed many years ago at the suggestion of an EPA official.<sup>40</sup>

There was no testimony regarding the pipe from the influent flow splitter box to the effluent line of the clarifiers.

MMHC failed to obtain a PTI for the construction of the three ponds. MMHC was notified of this failure on September

<sup>39</sup> *State ex rel. Brown v. Dayton Malleable, Inc.* (1982), 1 Ohio St.3d 151, 483 N.E.2d 120. See also *Tri-State Group, Inc.*, supra at ¶104, "the penalty must be large enough to hurt the offender."

<sup>40</sup> Exhibits w and x.

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3, 1992. An as-built PTI was submitted to the EPA on November 3, 1992. Therefore, MMHC was in violation for 61 days. As utilization of a properly constructed three pond system would have lessened the harm to public health or the environment, the court will find that a civil penalty of \$1 per day for a total civil penalty of \$61 is appropriate.

Count Two. The holder of an NPDES permit is required to submit monthly operating reports ("MORs"). MMHC did so.<sup>41</sup> Ms. Wick compared the MORs with MMHC's NPDES permit and compiled a roster of violations.<sup>42</sup> MMHC did not contest the accuracy of that roster of violations. A review of the MOR's indicates there are 1303 days in which violations incurred between January 1, 1997 and October 31, 2003 - the time period covered by the complaint.

The MORs reflect weekly measurements being taken. If a suspended solid, fecal coliform or CBOD<sub>5</sub> measurement exceeded the "seven day" limit, the court counted the violation as being seven days of violation. If the average of suspended solid, fecal coliform or CBOD<sub>5</sub> measurements taken in a month exceeded the more stringent "thirty day" limit, the court counted the

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<sup>41</sup> Exhibit 8.

<sup>42</sup> Exhibit 9.

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violation as being thirty days of violation. If a violation was not denominated as a 7 day or 30 day violation, it counted as one day. Therefore a violation of the chlorine residual or dissolved oxygen requirement counted as a one day violation. Similarly a failure to report odor, turbidity, flow, or e. coli counted as a violation of one day. For these latter items, there were no standards, the requirement was simply to report findings.

Based upon this methodology, the court finds the following days of violation:

Year	Days of Violation
1997	337
1998	283
1999	160
2000	243
2001	138
2002	114
2003	28
Total	1303

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Both Ms. Wick and Ms. Tebbe testified to the chronic overflowing of the sand filters and failure to keep the sand

filters well-maintained and clean.<sup>43</sup> The wastewater will overflow the sand filters and flood the adjoining farmland.<sup>44</sup> Mr. Carson advised Mr. Maurer in 1992 that the lack of sludge wasting or storage facilities would clog the sand filters.<sup>45</sup> He also noted the "solids washout" caused by "hydraulic overload," i.e., inflow and infiltration caused by rainwater. These are chronic problems that are referred to consistently that have not been corrected. The problems with the sand filters and the clogging of the sand filters causing effluent to spill onto adjoining farm land are not the subject of the complaint; however, they are indicative of MMHC's approach to patching problems with its wastewater treatment plant rather than undertaking significant capital expenditures to construct a sound plant.

In *Dayton Malleable*, the trial court noted that the waste effluent in excess of the permit requirements was not toxic; i.e., the wastewater would have little effect upon the quality of the water in the Ohio River. However, the court noted that if all dischargers of wastewater permitted such

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<sup>43</sup> Transcript of proceedings, May 11 and 12, 2006, pp. I 21, 41-45, and 100-105.

<sup>44</sup> Exhibits 37, 38, and 39. The complaint does not address this violation of MMHC's NPDES permit.

<sup>45</sup> Exhibit 12.

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effluent violations, there could be a substantial impact on the Ohio River. The *Dayton Malleable* court assessed a per day penalty of \$50 for violations occurring in 1977 and 1978.<sup>46</sup>

In *Tri-State Group*, the court imposed a penalty of \$85 per day for violations occurring from 1988 through 1997. In this case, the violations posed a grave danger to an aquifer that "is an excellent source of drinking water and is one of the most productive types of aquifers in the State of Ohio."<sup>47</sup>

In reaching a reasonable per day civil penalty, the court has reviewed each of the violations set forth in Exhibit 9. The court notes that many of the violations are minor; i.e., less than 20% in excess of the permitted amount. The court also notes that many of the reporting violations had no permit standard; i.e., MMHC was required to monitor and report on e. coli levels during the summer, but there was no level of e. coli beyond which there would be a violation.

In this case, MMHC has established, also, that its effluent beyond permit standards, by itself, would not adversely affect the Maumee River.<sup>48</sup> Taking into consideration inflation

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<sup>46</sup> *State ex rel. Brown v. Dayton Malleable, Inc.*, (Apr. 21, 1981), Montgomery App. No. 6722.

<sup>47</sup> *Tri-State Group*, supra at ¶3.

<sup>48</sup> See, generally, the testimony of Richard Basel, Transcript of proceedings, May 11 and 12, 2006, pp II 82-124. However, if all polluters

and the nature of the violations, the court finds that a reasonable and comparable penalty would be \$50 per day for a civil penalty of \$65,150.

Count Three. MMHC failed to submit a sludge management plan. Part I,C.2. of MMHC's NPDES permit states:

The permittee shall submit to the Northwest District Office of the Ohio EPA a substantially approvable Sludge Management Plan. This plan shall describe in detail the method or methods the entity intends to employ for the disposal or reuse of the sewage sludge generated by the facility. This plan shall also include an outline of all past and present sludge disposal practices.

A review of the chronology indicates that the Ohio EPA advised MMHC on November 1, 1996 and again on October 9, 1997 that MMHC needed to submit a sludge management plan. Mr. Maurer responded on October 15, 1997, "[w]e contract the hauling away of the sludge with an EPA approved hauler." Mr. Maurer, at this time, also requested advice as to what might further be needed to comply with the requirement of furnishing a sludge management plan. The Ohio EPA did not respond to Mr. Maurer's request.

Part II,K. of the NPDES permit requires:

Not later than January 31 of each calendar year the permittee shall submit two (2) copies of a report summarizing the sludge disposal and/or reuse activities of the facility during the previous year.

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discharging into the state route 25 storm drainage system were granted the same leeway, the waters of the Maumee River could be significantly impacted.

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Mr. Carson complied with those requirements.<sup>49</sup> Both Mr. Maurer and Mr. Carson failed to describe the disposal plan for the sludge generated by the sand filters. Mr. Torok testified as to the disposal of MMHC's sludge from the initial settling tank and from the clarifiers. There was no evidence that this disposal harmed public health or the environment. Similarly, the disposal of the sludge generated by the sand filters was merely a dispersal of the sludge over the adjoining ground. While improper, the evidence presented suggested that this did not create any harm to public health or the environment.

MMHC failed to submit a sludge management plan. But the Ohio EPA was fully aware of MMHC's sludge management practices. And MMHC's sludge management practices caused no harm to public health or the environment. Therefore the court finds that a civil penalty of \$2 per day for this violation is appropriate. The court finds that the time covered by the complaint is January 1, 1997 through December 31, 2003. There were 2,556 days in that time period resulting in a civil penalty of \$5,112.

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<sup>49</sup> Exhibits g and s.

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Sum appropriate to remove the economic benefit gained or to be gained from delayed compliance.

Count One. MMHC received no economic benefit for its delay in submitting a PTI for the three pond system. In fact, MMHC expended funds for the construction of the system and has not been able to benefit from the system.

Count Two. Elizabeth Wick testified that the plant capacity should be increased from 30,000 gallons per day to 52,000 gallons per day. However, there was no evidence of the cost of such an improvement. Additionally, historic flow levels (without rainwater inflow and infiltration) did not indicate the necessity for an increase in capacity to 52,000 gallons. There was also testimony that MMHC should abandon its wastewater treatment plant and tap into a sanitary sewer line that runs down Brim Road. There was conflicting testimony about whether this hook up would be possible and the expense of the hookup.

There was testimony that MMHC should spend two to three thousand dollars for an ultraviolet disinfectant system to replace the chlorine system and another two to three thousand dollars to install a sludge wasting tank.<sup>50</sup>

<sup>50</sup> Transcript of proceedings, May 11 and 12, 2006, pp. II 43-44.

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Assuming that MMHC should have spent \$5,000 in 1997 to improve the plant, what would it have saved compared to spending the \$5,000 in 2006? Mr. Maurer testified that he could have borrowed the fund at 6.35% interest. Nine years of 6.35% interest on \$5,000 is about \$3,000. The court will add \$3,000 to the civil penalty.

Count Three. MMHC incurred no economic benefit arising out of its failure to submit a sludge management plan.

Sum appropriate as a penalty for violator's degree of recalcitrance, defiance, or indifference to requirements of the law.

Count One. MMHC submitted an as-built PTI to the EPA within 61 days of being notified that a PTI was required.

Count Two. The MMHC wastewater treatment plant was in rather continuous violation of its NPDES permit in 1997 and 1998. In 1999, 2000, and 2001 it began to show improvement. By 2003 and 2004, it was materially in compliance with only occasional violations.

Assistant Attorney General Andrew S. Bergman, on October 9, 1997 advised Mr. Maurer that MMHC has "failed to \* \* \* comply with the terms and conditions of your currently-expired

NPDES permit."<sup>51</sup> However, the Ohio EPA did not respond to Mr. Maurer's attempts to understand, specifically, what he should do.

Following Mr. Bergman's October 9, 1997 letter, the Ohio EPA did not cite or adversely comment on MMHC until December 15, 2000. The Ohio EPA's December 15th letter referenced in specific detail MMHC's permit violations with respect to its effluent.<sup>52</sup> Once Mr. Maurer received this report, he began to work more closely in communication with Michael Carson to bring the plant into compliance.<sup>53</sup>

The sand filters are chronically overflowing with effluent draining onto adjoining farmland. This condition is primarily caused by the lack of sludge wasting / storage facilities and by excessive inflow and infiltration of rainwater. MMHC has been aware of this problem since 1992.<sup>54</sup> While the three pond system may have been undertaken to address this problem, in part, MMHC has shown indifference in undertaking the improvements necessary to correct these

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<sup>51</sup> Exhibit e. The Ohio EPA has deemed MMHC to have been operating under the "currently-expired NPDES permit" from 1991 through today.

<sup>52</sup> Exhibit 24.

<sup>53</sup> See Exhibits s, 22, 3, and 26.

<sup>54</sup> Exhibit 12.

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conditions. However, the spilling of the effluent on adjoining farmland is not the subject of this complaint.

The record in this case does reflect a chronic indifference by MMHC from 1997 through 2000. It was not until December, 2000, that the Ohio EPA explicitly told MMHC to clean up its effluent. Thereafter, there is marked improvement in the plant's performance. The court finds there will be no additional civil penalty to reflect MMHC's recalcitrance, defiance, or indifference.

Count Three. Mr. Maurer, in 1997, told the Ohio EPA how MMHC disposed of its sludge and he requested advice as to how to proceed in submitting a sludge management plan. The Ohio EPA did not respond to his request. Therefore the court finds there was no recalcitrance or indifference on the part of MMHC.

Sum appropriate to recover unusual or extraordinary enforcement costs thrust upon the public.

As of 2003, just prior to the filing of the complaint, MMHC had submitted its PTI for the three pond system, was in material compliance with effluent standards, and had advised the Ohio EPA of its sludge management practices. Therefore the court finds there were no unusual or extraordinary enforcement costs thrust upon the public.

Sum, if any, to reflect any part of the non-compliance attributable to the government itself.

Count One. As noted above, MMHC submitted an as-built PTI within 61 days of being notified of the requirements and promptly submitted follow up data as requested. The Ohio EPA has not responded in writing to this application.

Count Two. Many of the violations related to the 30 day and 7 day discharge limitations for suspended solids. The primary function of the three pond system is to reduce suspended solids. Had the Ohio EPA worked cooperatively with MMHC to bring the three pond system into regulatory compliance, the three pond system would have lessened the violations of the suspended solids.

A review of the chronology shows that it was not until December 15, 2000 that the Ohio EPA first explicitly notified MMHC that it needed to bring its effluent into compliance with its NPDES permit. A review of the MORs similarly indicates that in 2001 and thereafter, there were substantial improvements in the wastewater treatment plant's effluent.

The court also notes the failure of the Ohio EPA to follow up after its October 9, 1997 letter to MMHC. Mr. Maurer testified that he attempted to contact Mr. Bergman on several

occasions to learn what he had to do. The court emphasizes that the burden is upon MMHC to comply with all the environmental laws applicable to its operation of its wastewater treatment plant. Nonetheless, the Ohio EPA could have been more helpful in guiding MMHC through the regulatory process.

Therefore, the court will reduce the daily civil penalty from \$50 to \$45 per day for an aggregate civil penalty of \$58,635.

Count Three. Mr. Maurer thought he had submitted a sludge management plan. Again, MMHC bears the primary responsibility for compliance with environmental laws. Here, the Ohio EPA could have been more helpful in guiding MMHC through the regulatory process. Therefore, the court will reduce the civil penalty by \$1 for each day of violation. Therefore, the civil penalty for Count Three is \$2,556.

Sum appropriate to reflect any part of the non-compliance caused by factors completely beyond violator's control.

Count One. Not applicable.

Count Two. There were a variety of single operational upsets that would knock the wastewater treatment plant out of compliance for a substantial period to time. However, these were generally due to equipment failures or the fail

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address rainfall inflow and infiltration problems. As such the court finds that these violations were not caused by factors completely beyond violator's control.<sup>55</sup>

Mr. Carson testified that an adjoining land owner deliberately blocked the effluent drainage line as the effluent was piped from the plant to the Route 25 storm drainage sewer line.<sup>56</sup> The court finds that the violations from February 1, 2002 through March 2, 2002 were caused by factors completely beyond the violator's control. Therefore, the number of days of violation will be reduced by 30 to 1273 days. The aggregate civil penalty is therefore \$57,285<sup>57</sup> plus \$3,000 for a total of \$60,285.

Count Three. Not applicable.

MMHC's ability to pay.

The Ohio EPA put into evidence MMHC's income tax returns for October 31, 2000, October 31, 2001, October 31, 2002, October 31, 2003, and October 31, 2004.<sup>58</sup> A review of those tax returns shows, on average, a taxable income in excess

<sup>55</sup> Transcript of proceedings, May 11 and 12, 2006, pp IB 77-89.

<sup>56</sup> Transcript of proceedings, May 11 and 12, 2006, pp. IB 110-113.

<sup>57</sup> \$45 x 1273 = \$57,285.

<sup>58</sup> Exhibit 15.

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of \$30,000 per year. However, the annual gross cash flow is in excess of \$250,000 per year.

Mr. Maurer testified he had a mortgage loan outstanding in the amount of \$960,000<sup>59</sup> with an interest rate of 6.35%.<sup>60</sup> However, a review of the October 31, 2004 tax return shows an outstanding mortgage note in the amount of \$291,180. This indebtedness is secured by real property having a book value of \$83,360. The tax return states that interest expense for the year ended October 31, 2004 was \$102,000 - a 33% interest rate. Even if the mortgage balance was \$960,000, that would yield an interest rate of 10.6%. When asked what he did with the over a million dollars that he had borrowed, Mr. Maurer could not recall.<sup>61</sup>

The court draws the inference from these financials that MMHC's shareholders are using the substantial cash flow generated by MMHC to fund other business enterprises. The court, therefore finds, that the civil penalty of \$62,902 will not bankrupt MMHC and will be sufficient punishment.

<sup>59</sup> Transcript of proceedings, May 11 and 12, 2006, p. II 74.

<sup>60</sup> Transcript of proceedings, May 11 and 12, 2006, p. II 5.

<sup>61</sup> Transcript of proceedings, May 11 and 12, 2006, p. II 72.

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There is a consensus that MMHC's wastewater treatment plant needs (1) a sludge holding / wasting tank,<sup>62</sup> (2) an ultraviolet disinfectant system,<sup>63</sup> and (3) improvements to address the inflow and infiltration by rainwater.<sup>64</sup> While there was little testimony or discussion in the briefs on the subject of MMHC's NPDES permit, the permit expired on July 23, 1996.<sup>65</sup> A renewal application was filed twice by MMHC; however, the Ohio EPA did not act upon the renewal application. The court expects the parties to work cooperatively to get an effective NPDES permit in place by December 31, 2006.

IT IS ORDERED that for the violations established in Count One of the complaint, Maurer Mobile Home Court, Inc., shall pay a civil penalty of \$61. Said civil penalty shall be paid on or before July 31, 2006.

IT IS ORDERED that for the violations established in Count Two of the complaint, Maurer Mobile Home Court, Inc., shall pay a civil penalty of \$60,285. Said civil penalty shall be paid on or before July 31, 2006.

<sup>62</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 32, and IB 71 and 108.

<sup>63</sup> Transcript of proceedings, May 11 and 12, 2006, p. I 32, and IB 76.

<sup>64</sup> Transcript of proceedings, May 11 and 12, 2006, pp. I 32-33, and IB 70.

<sup>65</sup> Exhibit 7.

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IT IS ORDERED that for the violations established in Count Three of the complaint, Maurer Mobile Home Court, Inc., shall pay a civil penalty of \$2,556. Said civil penalty shall be paid on or before July 31, 2006.

IT IS ORDERED that said civil penalties shall be paid to the state of Ohio as required by R.C. 6111.09(B).

IT IS ORDERED that the Ohio EPA shall, in writing, accept or reject, Maurer Mobile Home Court, Inc.'s, application for a permit to install the three pond system on or before September 30, 2006.

IT IS ORDERED that Maurer Mobile Home Court, Inc., shall submit to the appropriate office of the Ohio EPA a plan to construct sludge wasting / storage facilities, to construct an ultraviolet disinfectant system, and reasonably to eliminate rainwater inflow and infiltration together with any necessary applications for a permit to install as may be required to implement the plan. Said plan shall be submitted on or before December 31, 2006.

IT IS ORDERED that upon approval by the Ohio EPA of any of the foregoing permits to install, Maurer Mobile Home Court, Inc., shall promptly install said improvement.

IT IS ORDERED that Maurer Mobile Home Court, Inc., shall submit to the Northwest District Office of the Ohio EPA a

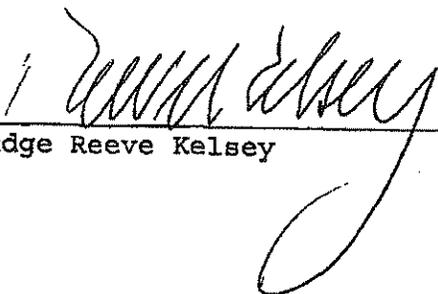
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substantially approvable Sludge Management Plan. This plan shall describe in detail the method or methods the entity intends to employ for the disposal or reuse of the sewage sludge generated by the facility. This plan shall also include an outline of all past and present sludge disposal practices. Said plan shall be submitted on or before September 30, 2006.

Costs charged to defendant.

  
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Judge Reeve Kelsey

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Clerk to furnish copy to counsel of  
record and unrepresented parties