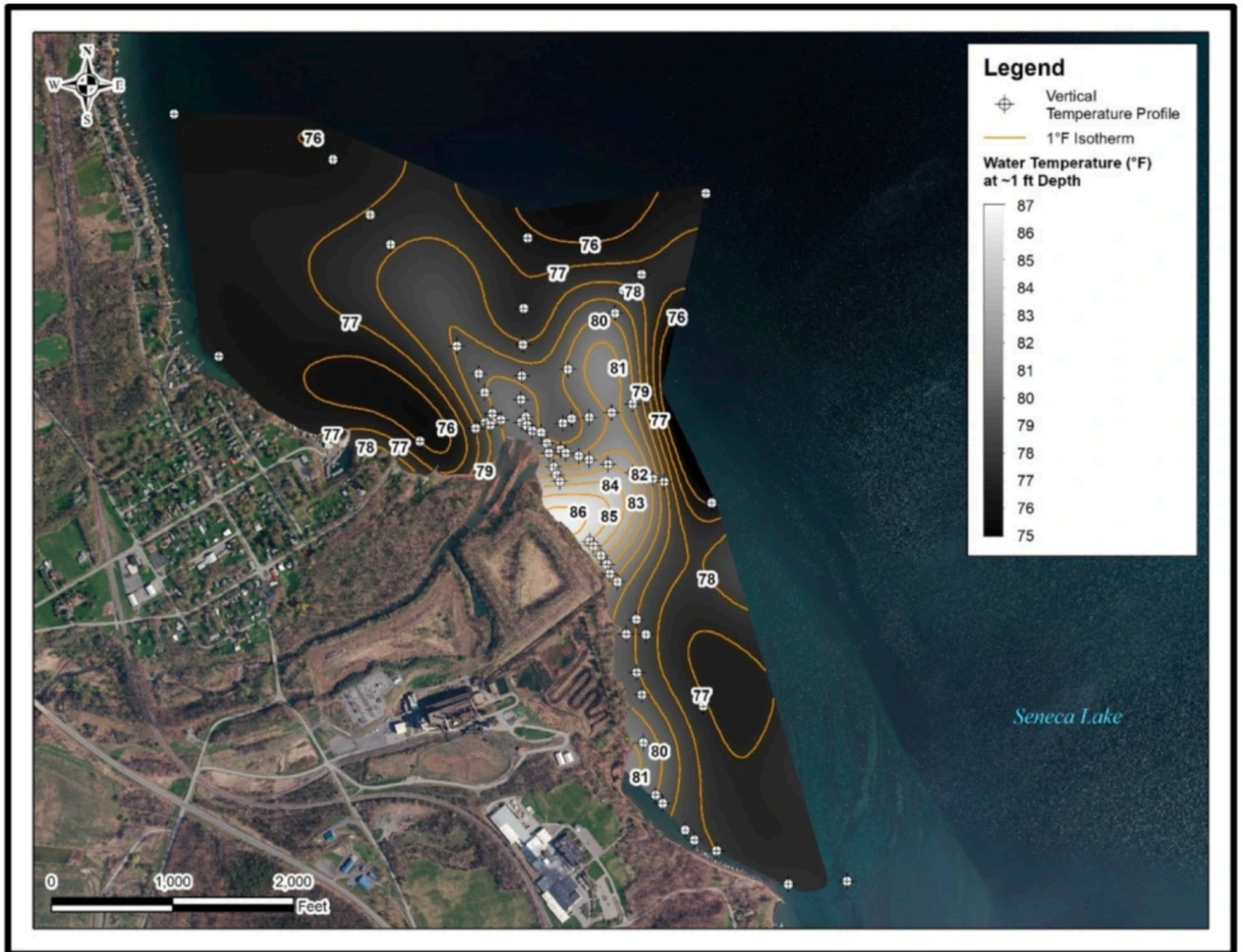


Water Front- Peter Mantius

Environmental politics in New York's Finger Lakes

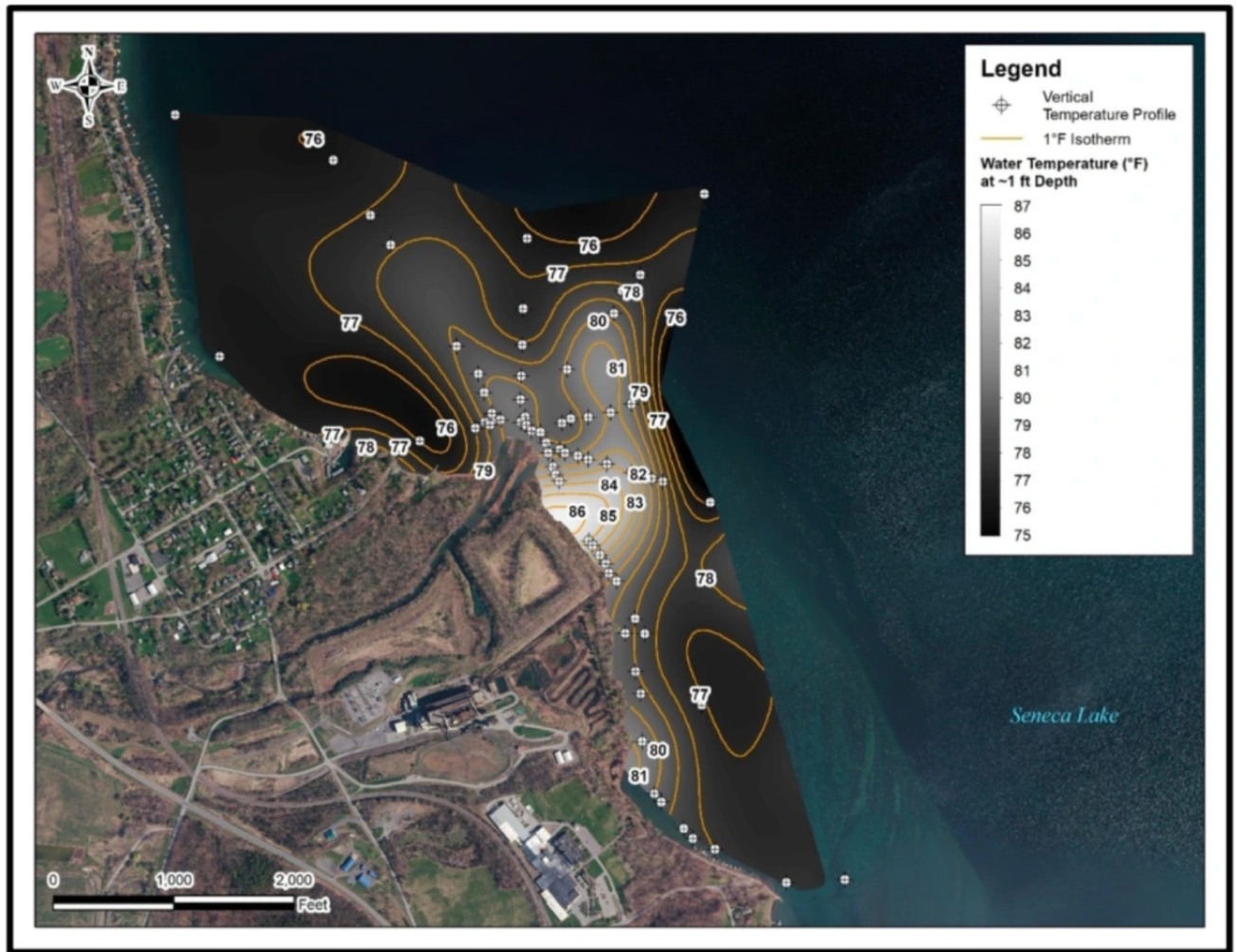
Greenidge Never Filed Water Discharge Reports Required Under Federal Law; U.S. Judge to Decide Whether That's OK

[Peter Mantius](#) / [July 19, 2023](#)[July 19, 2023](#) / [Uncategorized](#)



ROCHESTER, July 19, 2023 — A federal judge said Tuesday she expects to rule soon on a lawsuit challenging the legality of Greenidge Generation's massive warm water discharges into Seneca Lake.

The case



Tests on Aug. 13, 2021 found water temperatures as high as 86F immediately south of the Keuka Outlet in Dresden. That was 10F warmer than ambient lake temperatures that day and 7F more than state rules allow. But Greenidge obtained a waiver.

(<https://waterfrontonline.files.wordpress.com/2023/07/earthjusticecomplaint.pdf>) tests how far polluters are allowed to stray from explicit federal rules that enforce the 1972 Clean Water Act (<https://www.epa.gov/laws-regulations/summary-clean-water-act>).

Greenidge operates an electric generating plant in Dresden that powers a Bitcoin mining operation. To cool its generating equipment, the plant withdraws tens of millions of gallons of lake water daily and then discharges it — at much higher temperatures — into Keuka Outlet, which immediately flows back into Seneca Lake.

In January, a trio of environmental groups sued the company to try to halt those discharges, which threaten aquatic life protected by the Clean Water Act. Noting that Greenidge's state discharge permit expired last year, they allege that the company's application to renew it was legally insufficient because it omitted federally required analyses of impacts on aquatic life.



U.S. District Judge Elizabeth A. Wolford

But lawyers for Greenidge have countered that the state Department of Environmental Conservation in a March 2022 email deemed the company's renewal application "timely and sufficient."

(<https://waterfrontonline.files.wordpress.com/2023/07/greenidgefiling.pdf>) Under state law, when a renewal application is accepted, the expired permit may be administratively extended indefinitely.

During oral arguments in Rochester Tuesday, Yvonne Hennessey (<https://waterfrontonline.files.wordpress.com/2023/07/hennesseyaffadavit.pdf>) argued that Greenidge's sole obligation is to follow state law because the U.S. Environmental Protection Agency has delegated to the DEC the authority to enforce federal law.

"This is an issue of state law," Hennessey said.

U.S. District Court Judge Elizabeth A. Wolford appeared to accept that point when she said federal regulations are "subsumed into state law" and that state law "becomes the law the permittee must comply with."

GREENIDGE
 **GENERATION**

Wolford, who was appointed by former President Barack Obama and is chief judge for the Western District of New



Yvonne Hennessey

York, said the “most factually analogous” case law “supports the defendants.”

She repeatedly pressed attorneys for the plaintiffs to explain why they didn't challenge the DEC's apparent failure to enforce federal law. Perhaps they might have challenged the EPA's delegation of authority to the state.

The judge also acknowledged Hennessey's point that overturning the Greenidge renewal permit could cast a shadow over “hundreds” of other state permits the DEC might have treated in a similar manner.

But that potential disruption must be weighed against the potentially crippling impact of ruling in favor of Greenidge, argued Michael Youhana, an attorney for the plaintiffs.

“If (Greenidge's legal theory) is upheld,” Youhana said, “then a state employee in any state could simply inform an applicant that they can ignore the federal requirements of the EPA. That would gut the Clean Water Act.”



Youhana, an attorney at Earthjustice, represents Seneca Lake Guardian, Sierra Club and Committee to Preserve the Finger Lakes. The three environmental groups lost several state court cases challenging Greenidge's state air and water permits before turning to federal court, where they filed a “citizens suit” — an action authorized by Congress to help enforce the Clean Water Act.



Before it enacted that law, Congress had determined that power plant cooling water structures were wreaking havoc on aquatic life. Artificially warmed water causes much of the damage.

While New York State has since limited artificial warming of state waters to 3 degrees Fahrenheit, Greenidge has violated that regulation by a wide margin.

For example, tests on August 13, 2021 (<https://waterfrontonline.blog/2022/10/07/greenidges-warm-water-discharges-heated-seneca-lake-beyond-state-limits-but-dec-wavier-excuses-violations/>) found Seneca lake water temperatures as high as 86F degrees immediately south of the Keuka Outlet — 10F degrees higher than ambient lake temperatures that day, and 7F degrees higher than the state limit.

The DEC has granted Greenidge a waiver from its warm water regulations.

EPA rules (<https://www.law.cornell.edu/cfr/text/40/122.21>) governing the Clean Water Act require dischargers like Greenidge to file detailed reports every five years on “biological organisms in the vicinity of the cooling water intake structure” and related topics. Greenidge does not dispute that it did not include any such reports in its renewal application that was accepted by the DEC.

“Tolerating this conduct would set a dangerous precedent,” inviting other facility operators throughout New York to follow Greenidge’s example, lawyers for Riverkeeper



(<https://waterfrontonline.files.wordpress.com/2023/07/riverkeeper.pdf>) wrote in an amicus curiae brief supporting the plaintiffs.

The DEC lacks sufficient staff to promptly review all of the hundreds of discharge permit renewal applications that it routinely receives. The state Legislature solved this problem by allowing the agency to extend a permit indefinitely without any technical analysis as long as the discharger has filed a renewal application deemed sufficient.

Those detailed technical analyses — which could highlight the applicant’s failure to comply with EPA rules on submitting biological analyses — are regularly delayed for years.

The DEC has a list of which discharge permits deserve top priority. Last year, Greenidge ranked No. 255 on the list — nearly guaranteeing a multi-year wait. This year the agency decided dozens of other permit renewals were more urgent. It dropped Greenidge to No. 432 (https://www.dec.ny.gov/docs/water_pdf/ebpsranking2023.pdf).

“It is one thing for the agency to cause the delay,” Riverkeeper said in its amicus brief. “It is entirely different for the applicant to game the system by failing to submit necessary information and wait months or even years for the agency to catch the omission, during which time the facility continues to pollute free of any agency review.”

Furthermore, the required federal reports are public,



and they play a vital role in community participation in environmental protection — a key goal of the law. Omitting them cheats the public, Riverkeeper argued.

At the start of Tuesday's oral argument, Wolford asked plaintiff and defense attorneys about the status of another Greenidge permit: its Title V air emissions permit that covers greenhouse gas

Environmental groups believe the Clean Water Act suffered a major setback (<https://waterfrontonline.blog/2023/05/26/supreme-court-rolls-back-protections-for-wetlands-in-broad-ruling-that-favors-farmers-developers-polluting-industries/>) in May when the U.S. Supreme Court restricted the definition of protected wetlands.

emissions.

Hennessey explained that the case is “pending ... with no final determination.”

Last summer the DEC denied Greenidge's application to renew the air permit because the company had not shown compliance with the state's 2019 climate law. But the company promptly appealed the ruling within the DEC under a process that typically takes years to resolve.

Meanwhile, the plant has been free to continue emitting greenhouse gases as if it had an updated permit. Although Greenidge's Bitcoin mining activity continues, the company has been struggling financially (<https://waterfrontonline.blog/2023/06/22/a-flare-for-survival-greenidges-bitcoin-operation-powers-on-despite-air-permit-denial-key-resignations-financial-woes/>).

At the close of the oral arguments, Wolford said no one should presume from her questions and statements that she is inclined to rule one way or the other on the water discharge permit case.

“I'll get you a decision as soon as possible,” she said in closing.

Published by Peter Mantius

I am a journalist who lives in Watkins Glen, NY. I write about the environment and politics on my website, [Waterfrontonline.blog](https://waterfrontonline.blog). For more detail on my background, see the "Peter's Bio" section on that site. [View all posts by Peter Mantius](#)

2 Comments

1.

Ellen L Campbell says:[July 19, 2023 at 5:20 pm](#)

Yet another example of the DEC as a completely ineffective agency producing nothing but legal fees for the attorneys and failing miserably to protect our environment. And here we are entering this climate crises with no tools – no weapons to battle the corporate bullies who fail to acknowledge it and pretend to be friends and town advocates. It's crying shame to NYS has sunk this low. It makes me sad and yes a bit afraid of where we are and where we are going.

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2.

eddiegould says:[July 19, 2023 at 7:20 pm](#)

It is the nature of capitalism(love of money); competition does not create a better product.

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