

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

WILLIAM C. SCHNARRENBERGER, : ERAC No. 13-156722
: :
Appellant, : :
: :
v. : :
: :
SCOTT NALLY, DIRECTOR OF : :
ENVIRONMENTAL PROTECTION, : :
: :
and : :
: :
TERVITA, LLC, : :
: :
Appellees. : :

RULING ON APPELLEE DIRECTOR'S MOTION FOR
SUMMARY JUDGMENT

Rendered on July 31, 2013

William C. Schnarrenberger, pro se Appellant

Michael DeWine, Attorney General, *John F. Cayton* and
Julianna F. Bull for Appellee Scott Nally, Director of
Environmental Protection

Michael A. Cyphert and *Leslie G. Wolfe* for Appellee Tervita,
LLC

{¶1} This matter comes before the Environmental Review Appeals Commission (“Commission,” “ERAC”) upon a Notice of Appeal filed by Appellant William C. Schnarrenberger on February 19, 2013. Mr. Schnarrenberger challenges a 2013 construction and demolition debris (“C&DD”) license issued by Appellee Scott Nally, Director of Environmental Protection (“Director,” “Ohio EPA”), to Appellee

Tervita, LLC (“Tervita”) for a C&DD disposal facility located in Negley, Ohio (“Negley Facility”). Case File Item A.

{¶2} Before the Commission is the Director’s Motion for Summary Judgment filed May 6, 2013. The Commission has not received a response from Mr. Schnarrenberger. Case File Item V.

{¶3} Based upon the pleadings and the relevant statutes, regulations, and case law, the Commission issues the following Findings of Fact, Conclusions of Law, and Final Order GRANTING the Director’s Motion for Summary Judgment and ORDERING that the above-captioned appeal be DISMISSED.

FINDINGS OF FACT

{¶4} Appellant William C. Schnarrenberger resides in Columbiana County at 6253 Jimtown Road, East Palestine, Ohio 44413. Case File Item A.

{¶5} Appellee Tervita operates a C&DD disposal facility located at 7555 North Street, Negley, Ohio 44441. Case File Item H.

{¶6} On January 23, 2013, the Director issued a 2013 C&DD license to Tervita for its Negley Facility. Mr. Schnarrenberger timely filed a Notice of Appeal on February 19, 2013, raising the following three assignments of error:¹

1. The Director’s action in issuing the license was unreasonable and/or unlawful because the landfill is discharging contaminants and pollutants, including toxic and hazardous wastes, into the groundwater and surface waters in the vicinity of the landfill in violation of OAC 3745-1-05 of Ohio law.
2. The Director’s action in issuing the license was unreasonable and/or unlawful because the landfill is depleting the groundwater

¹ Appellant’s assignments of error and responses to requests for admissions, as set out in this Ruling, appear, in format and text, as they did in the original and amended notices of appeal.

beneath the landfill and also depleting the source water of numerous local springs in violation of OAC 3745-520 of Ohio law.

3. The Director's action in issuing the license was unreasonable and/or unlawful because its operation constitutes a public nuisance due to the emission of dust, smell and other air contaminants and heavy equipment noise on a continuing basis in violation of OAC 3745-27-01 of Ohio law.

Case File Item A.

{¶7} Pursuant to the Commission's order, Mr. Schnarrenberger filed an Amended Notice of Appeal on March 8, 2013. Mr. Schnarrenberger's Amended Notice of Appeal raises the following seven assignments of error:

1. The Directors action in issuing the 2013 license and permit is unreasonable and/or unlawful because the license and permit is likely to adversely affect the public health or safety or the environment in violation of Ohio Adm. The Directors Code 3745-400-15(c).
2. The Director's action in issuing the 2013 license and permit is unreasonable and/or unreasonable because the landfill has failed to accurately identify the nature or the site and the hydrology beneath the facility.
3. The Directors action in issuing the 2013 license and permit is unreasonable and/or unlawful because the Director's action fails to consider and prevent harm to the public and to the environment from the extensive mining activities that have occurred at the landfill site and the resulting potential for subsidence and failure of the landfill's engineering features.
4. The Director's action is issuing the 2013 license and permit is unreasonable and unlawful Because the Director's action fails to consider and comply with the applicable regulatory Requirement that the facility and its components be constructed on a surface able to bear the weight of the facility without allowing a failure to occur through settling.
5. The Director's action in issuing the 2013 license and permit is unreasonable and unlawful because the Director's action fails to address, consider, and prevent harm to the public health and safety and to the environment arising from the likelihood of water pollution through contamination of the groundwater beneath the

facility and the failure to adequately monitor for such contamination.

6. The Director's action in issuing the 2013 license modification is unreasonable and unlawful because the landfill is currently discharging contaminants and pollutants, including toxic and hazardous wastes ,into the groundwater and surface waters in the vicinity of the landfill in violation of Ohio law, including discharges contaminating Little Beaver Creek, a wild and scenic river.
7. The Director's action in issuing the 2013 license and permit is unreasonable and/or unlawful because the landfill is depleting the groundwater beneath the landfill and the source water of numerous local spring streams and thereby adversely affects the environment and neighboring Landowner's water rights.

Case File Item H.

{¶8} On March 26, 2013, counsel for the Director served Mr. Schnarrenberger with the Director's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission. Mr. Schnarrenberger responded to the Director's first set of discovery requests on April 25, 2013. The dispositive requests for admission relevant to this appeal, and Mr. Schnarrenberger's responses thereto, are set forth below:

REQUEST FOR ADMISSION NO. 2

Admit that during the period of time the Facility's 2012 annual license was in effect, the Facility operated in substantial compliance with the terms and conditions of its 2012 annual license and Ohio Administrative Code Chapter 3745-400.

Answer: Is Scott Nally claiming that the Facility was in compliance with the 2012 OAC 3745-400?

REQUEST FOR ADMISSION NO. 3

Admit that during the period of time the Facility's 2011 annual license was in effect, the Facility operated in substantial compliance with the terms and conditions of its 2011 annual license and Ohio Administrative Code Chapter 3745-400.

Answer: Is Scott Nally claiming that the Facility was in compliance with the 2011 OAC 3745-400?

REQUEST FOR ADMISSION NO. 4

Admit that during the period of time the Facility's 2010 annual license was in effect, the Facility operated in substantial compliance with the terms and conditions of its 2010 annual license and Ohio Administrative Code Chapter 3745-400.

Answer: Scott Nally please provide a notarized affidavit that the Facility for 2010 was in state and federal compliance.

Case File Item V.

{¶9} On May 6, 2013, the Director filed a Motion for Summary Judgment, arguing that Mr. Schnarrenberger's responses to the above requests for admission are not "specific denials" and should, therefore, be deemed admissions. The Director concludes that because Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Administrative Code ("Ohio Adm.Code") Chapter 3745-400, the Director is entitled to summary judgment. Case File Item V.

{¶10} The Director argues that Mr. Schnarrenberger's responses are not "specific denials," and therefore, they should be deemed admissions. Further, the Director argues that substantial compliance with Ohio Adm.Code Chapter 3745-400 is the relevant standard Ohio EPA must apply when evaluating a C&DD license application. The Director concludes that because Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400, there are no genuine issues of material fact relating to the lawfulness and reasonableness of the Director's issuance of the 2013 C&DD license. Therefore, the Director argues he is entitled to summary judgment affirming his issuance of the 2013 C&DD license. Case File Item V.

CONCLUSIONS OF LAW

I. Standard of Review

{¶11} Although not strictly bound by the Ohio Rules of Civil Procedure (“Civ.R.”), the Commission has historically applied the civil rules when appropriate to assist in resolution of appeals. *Meuhlfeld v. Boggs*, ERAC No. 356228 (Mar. 17, 2010).

{¶12} Civ.R. 56(C) states in pertinent part:

* * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, 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 * * *

{¶13} Thus, under Civ.R. 56, “[t]he moving party has the burden of showing that there is no genuine issue as to any material fact as to critical issues.” *Stockdale v. Baba*, 153 Ohio App.3d 712, 2003-Ohio-4366, 795 N.E.2d 727, at ¶23. However, “an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response * * * must set forth specific facts showing that there is a genuine issue for trial.” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 65 (1978). All doubts and evidence should be construed against the moving party, and “[s]ummary judgment may not be rendered unless it appears that reasonable minds can come to but one conclusion and that conclusion is adverse to the part[y] against whom [the] motion is made.” *Stockdale*, 2003-Ohio-4366, at ¶32.

{¶14} “If the moving party has satisfied its initial burden under Civ.R. 56(C), then the nonmoving party has a reciprocal burden * * * to set forth specific facts showing that there is a genuine issue for trial. If the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” *State*

v. Pryor, Franklin App. No. 07AP-90, 2007 Ohio 4275 (Aug. 21, 2007), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996).

II. Discussion

A. Director's First Set of Discovery Requests

{¶15} In his Motion for Summary Judgment, the Director argues that, pursuant to Ohio Adm.Code 3746-6-05, Requests for Admission Two, Three, and Four should be deemed admitted because Mr. Schnarrenberger failed to specifically deny the requests.

{¶16} Ohio Adm.Code 3746-6-05(B) governs requests for admission and provides in pertinent part as follows:

* * * The matter is admitted unless, within twenty-eight days after the service of the request, * * * the party to whom the request is directed serves upon the party requesting the admission a written answer or objection, signed by the party or by his attorney. * * * *The answer shall specifically admit or deny the matter* * * *.

(Emphasis added).

{¶17} Although the responding party need not use any particular words to satisfy the requirement that the response “specifically admit or deny the matter,” a response must be sufficient to provide notice to the party requesting the admission as to whether the request for admission is admitted or denied. See Ruling on Motion for Summary Judgment, *Herbert v. Nally*, ERAC Nos. 156519 & 13-156719 (July 31, 2013).

{¶18} Here, in response to Requests for Admission Two and Three, Mr. Schnarrenberger questions, “Is Scott Nally claiming that the Facility was in compliance with the * * * OAC 3745-400?” The Commission finds that this inquiry does not indicate whether Mr. Schnarrenberger admits or denies that the Negley Facility operated substantial compliance with Ohio Adm.Code Chapter 3745-400. Instead, it merely asks

for the Director's opinion on the matter. Accordingly, the Commission finds that Mr. Schnarrenberger's responses to Requests for Admission Two and Three do not satisfy the requirement that the response specifically admit or deny the matter.

{¶19} Similarly, in response to Request for Admission Four, Mr. Schnarrenberger's states, "Scott Nally please provide a notarized affidavit that the Facility for 2010 was in state and federal compliance." Again, this response fails to indicate whether Mr. Schnarrenberger admits or denies the request for admission. Thus, it does not satisfy the requirements of Ohio Adm.Code 3746-6-05(B).

{¶20} Having found that Mr. Schnarrenberger's responses to Requests for Admission Two, Three, and Four fail to satisfy the requirements of Ohio Adm.Code 3746-6-05, the Commission deems Requests for Admission Two, Three, and Four admitted. See *Lundberg v. Korleski*, ERAC No. 256453 (May 31, 2011).

B. Scope of the Director's Evaluation of C&DD License Applications

{¶21} The Commission will now address the Director's argument that because Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400, there are no genuine issues of material fact regarding the lawfulness and reasonableness of the Director's issuance of the 2013 C&DD license.

{¶22} Ohio Adm.Code 3745-37-03(C) sets forth the criteria for issuance of C&DD licenses and provides, in pertinent, part as follows:

(C) The licensing authority shall not issue a construction and demolition debris facility license unless:

- (1) All portions of the proposed facility meet the requirements contained in rule 3745-400-06 of the Administrative Code; and

(2) The applicant has operated the facility in substantial compliance with all applicable provisions of Chapter 3714. of the Revised Code and with Chapters 3745-400 and 3745-37 of the Administrative Code; and

(3) The owner or operator, who has previously or is currently responsible for the management or operation of one or more facilities licensed under Chapters 3714. or 3734. of the Revised Code, has managed or operated such facility in substantial compliance with applicable provisions of Chapters 3714., 3704., 3734., and 6111. of the Revised Code, and any rules and permits issued thereunder, and has maintained compliance with all applicable orders issued by the director, or from a board of health maintaining a program on the approved list, the environmental board of review, or courts having jurisdiction in accordance with Chapter 3746-13 of the Administrative Code, in the course of such previous or current management or operations.

{¶23} Under Ohio Adm.Code 3745-37-03(C)(2), substantial compliance with Ohio Adm.Code Chapter 3745-400 alone is not sufficient to establish the lawful issuance of a C&DD license. Instead, Ohio Adm.Code 3745-37-03(C)(2) requires the licensing authority to affirmatively find that the applicant has operated in substantial compliance with both Ohio Adm.Code Chapter 3745-37 and Ohio Revised Code (“R.C.”) Chapter 3714, in addition to having operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Accordingly, the Appellant’s admission of Director’s Requests for Admission Two, Three, and Four—which establish that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400—are not, in isolation, sufficient to conclusively establish that the Director’s issuance of the 2013 C&DD license is lawful and reasonable. The Director has established that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400, but has not established that it operated in substantial compliance with Ohio Adm.Code Chapter 3745-37 or R.C. Chapter 3714.

{¶24} Nonetheless, the Commission notes that several of Mr. Schnarrenberger's assignments of error are essentially based upon various provisions of Ohio Adm.Code Chapter 3745-400. Further, as discussed in greater detail below, Mr. Schnarrenberger alleges several assignments of error that claim violations outside of the scope of the Director's evaluation under Ohio Adm.Code 3745-37-03(C)(2). Thus, in the interest of judicial economy, the Commission will now examine Mr. Schnarrenberger's ten assignments of error.

C. Original Notice of Appeal

i. Assignment of Error 1

The Director's action in issuing the license was unreasonable and/or unlawful because the landfill is discharging contaminants and pollutants, including toxic and hazardous wastes, into the groundwater and surface waters in the vicinity of the landfill in violation of OAC 3745-1-05 of Ohio law.

{¶25} Mr. Schnarrenberger argues that the Director's issuance of the 2013 C&DD license is unlawful and/or unreasonable because the operation of the Negley Facility is polluting groundwater and surface water. To the extent Mr. Schnarrenberger asserts a violation of Ohio Adm.Code 3745-1-05, the Commission notes that Ohio Adm.Code Chapter 3745-1 is outside the scope of the Director's evaluation of a C&DD license application under Ohio Adm.Code 3745-37-03(C)(2). As discussed above, Ohio Adm.Code 3745-37-03(C)(2) merely requires the Director to consider substantial compliance with Ohio Adm.Code Chapter 3745-400, Ohio Adm.Code Chapter 3745-37, and Revised Code Chapter 3714.

{¶26} Further, the Commission recognizes that Ohio Adm.Code 3745-400-11(B)(16), which is within the scope of the Director's evaluation under Ohio Adm.Code 3745-37-03(C)(2), provides that the "owner or operator [of a C&DD disposal facility]

shall not cause water pollution.” As concluded above, however, Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Accordingly, Assignment of Error 1 is not well-taken.

ii. Assignment of Error 2

The Director’s action in issuing the license was unreasonable and/or unlawful because the landfill is depleting the groundwater beneath the landfill and also depleting the source water of numerous local springs in violation of OAC 3745-520 of Ohio law.

{¶27} Mr. Schnarrenberger argues that the operation of the Negley Facility is “depleting” the groundwater near the facility. Although the precise nature of this assignment of error is unclear, the Commission construes Assignment of Error 2 as asserting that the operation of the Negley Facility constitutes an unlawful “taking” under the Ohio and/or Federal Constitution. It is well-established that the Commission lacks jurisdiction to hear constitutional challenges. E.g., *Bohne v. Koncelik*, ERAC No. 225990 (Aug. 7, 2008). Accordingly, to the extent that Mr. Schnarrenberger advances a constitutional claim, Assignment of Error 2 is not well-taken.

{¶28} Furthermore, Ohio Adm.Code Chapter 3745-520 [Construction and Demolition Debris Facilities.] contains only one regulation, Ohio Adm.Code 3745-520-50 [Ground water monitoring fee.]. This regulation pertains exclusively to ground water monitoring fees and does not address ground or surface water depletion. Additionally, Ohio Adm. Code Chapter 3745-520 is outside the scope of the Director’s evaluation of a C&DD license application under Ohio Adm.Code 3745-37-03(C)(2), which requires the Director to determine whether a facility was operated in “substantial compliance” with Ohio Adm.Code Chapter 3745-400, Ohio Adm.Code Chapter 3745-37, and Revised Code (“R.C.”) Chapter 3714. The Director was not required to consider whether the Negley

Facility operated in “substantial compliance” with Ohio Adm.Code Chapter 3745-520 in evaluating Tervita’s 2013 C&DD license application. Thus, to the extent Mr. Schnarrenberger alleges a violation of Ohio Adm.Code Chapter 3745-520, Assignment of Error 2 is not well-taken.

iii. Assignment of Error 3

The Director’s action in issuing the license was unreasonable and/or unlawful because its operation constitutes a public nuisance due to the emission of dust, smell and other air contaminants and heavy equipment noise on a continuing basis in violation of OAC 3745-27-01 of Ohio law.

{¶29} As discussed above, the Director need only consider substantial compliance with Ohio Adm.Code Chapter 3745-400, Ohio Adm.Code Chapter 3745-37, and R.C. Chapter 3714 in evaluating a C&DD license application under Ohio Adm.Code 3745-37-03(C)(2). The code section cited by Mr. Schnarrenberger, Ohio Adm.Code 3745-27-01, is a list of definitional terms applicable to Ohio Adm.Code Chapter 3745-27 [Solid and Infectious Waste Regulations.]. Thus, substantial compliance with Ohio Adm.Code 3745-27-01 is outside the scope of such evaluation.

{¶30} The Commission acknowledges that Ohio Adm.Code 3745-400-11(B)(15) does prohibit a C&DD disposal facility from operating in a manner that constitutes a nuisance. As noted above, Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Accordingly, Assignment of Error 3 is not well-taken.

D. Amended Notice of Appeal

i. Assignment of Error 1

The Directors action in issuing the 2013 license and permit is unreasonable and/or unlawful because the license and permit is likely to adversely affect the public health or safety or the environment in violation of Ohio Adm. The Directors Code 3745-400-15(c).

{¶31} Mr. Schnarrenberger argues that the 2013 C&DD was unlawful and/or unreasonable because the Director previously granted an unlawful/unreasonable modification under Ohio Adm.Code 3745-400-15(c). Ohio Adm.Code 3745-400-15(c) relates to criteria for modification approval, and although this regulation does not appear to impose substantive restrictions on the *operation* of a C&DD disposal facility, the Commission notes that Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Thus, Assignment of Error 1 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

ii. Assignment of Error 2

The Director's action in issuing the 2013 license and permit is unreasonable and/or unreasonable because the landfill has failed to accurately identify the nature or the site and the hydrology beneath the facility.

{¶32} The Commission finds Mr. Schnarrenberger's Assignment of Error 2 in his Amended Notice of Appeal most closely aligns with Ohio Adm.Code 3745-400-09(C), which requires site characterization reports to include certain information about ground and surface water.² In essence, Mr. Schnarrenberger argues that the site characterization report included as a part of the 2013 C&DD license application failed to

² Ohio Adm.Code 3745-400-09 governs site characterization reports, which must be included as a component of a C&DD license application pursuant to Ohio Adm.Code 3745-37-02(E)(1) and 3745-400-07(A)(1).

meet the requirements of Ohio Adm.Code 3745-400-09(C) in that it failed to accurately characterize the hydrogeology beneath the facility. As discussed above, Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400 from 2010 through 2012. Accordingly, Assignment of Error 2 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

iii. Assignment of Error 3

The Directors action in issuing the 2013 license and permit is unreasonable and/or unlawful because the Director's action fails to consider and prevent harm to the public and to the environment from the extensive mining activities that have occurred at the landfill site and the resulting potential for subsidence and failure of the landfill's engineering features.

{¶33} Again, Mr. Schnarrenberger appears to argue that the site characterization report failed to meet the requirements Ohio Adm.Code 3745-400-09(C). Here, Mr. Schnarrenberger argues that report failed to identify mines located beneath the facility. As discussed above, Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Thus, Assignment of Error 3 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

iv. Assignment of Error 4

The Director's action is issuing the 2013 license and permit is unreasonable and unlawful Because the Director's action fails to consider and comply with the applicable regulatory Requirement that the facility and its components be constructed on a surface able to bear the weight of the facility without allowing a failure to occur through settling.

{¶34} Mr. Schnarrenberger again appears to argue that the site characterization report failed to meet the requirements Ohio Adm.Code 3745-400-09(C). As discussed above, Mr. Schnarrenberger is deemed to have admitted that the

Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400. Thus, Assignment of Error 4 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

v. *Assignment of Error 5*

The Director's action in issuing the 2013 license and permit is unreasonable and unlawful because the Director's action fails to address, consider, and prevent harm to the public health and safety and to the environment arising from the likelihood of water pollution through contamination of the groundwater beneath the facility and the failure to adequately monitor for such contamination.

{¶135} Here, Mr. Schnarrenberger appears to argue that the site characterization report and the groundwater monitoring system do not satisfy the requirements of Ohio Adm.Code 3745-400-09(C) and Ohio Adm.Code 3745-400-10, respectively. Regarding the alleged defect with the site characterization report, the Commission notes Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400, which includes the applicable regulations governing site characterization reports.

{¶136} Likewise, regarding the alleged defect with the groundwater monitoring system, Mr. Schnarrenberger's admission with respect to Ohio Adm.Code Chapter 3745-400 controls, as the pertinent regulations governing groundwater monitoring plans are contained within Ohio Adm.Code 3745-400-10. Accordingly, Assignment of Error 5 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

vi. *Assignment of Error 6*

The Director's action in issuing the 2013 license modification is unreasonable and unlawful because the landfill is currently discharging contaminants and pollutants, including toxic and hazardous wastes ,into the groundwater and surface waters in the vicinity of the landfill in violation of Ohio law, including discharges contaminating Little Beaver Creek, a wild and scenic river.

{¶37} Similar to Assignment of Error 1 in his original Notice of Appeal, Mr. Schnarrenberger argues that the Director's issuance of the 2013 C&DD license is unreasonable and/or unlawful because the Negley Facility is currently polluting surface and groundwater. The Commission recognizes that Ohio Adm.Code 3745-400-11(B)(16) prohibits the operation of a C&DD facility in manner that causes water pollution. As discussed above, however, Mr. Schnarrenberger is deemed to have admitted that the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400 from 2010 through 2012. Accordingly, Assignment of Error 6 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

vii. *Assignment of Error 7*

The Director's action in issuing the 2013 license and permit is unreasonable and/or unlawful because the landfill is depleting the groundwater beneath the landfill and the source water of numerous local spring streams and thereby adversely affects the environment and neighboring Landowner's water rights.

{¶38} Finally, similar to his Assignment of Error 2 in his original Notice of Appeal, Mr. Schnarrenberger argues, in essence, that the operation of the Negley Facility constitutes an unlawful "taking" under the Ohio and/or Federal Constitution. The Commission lacks jurisdiction to hear constitutional claims, and thus, Assignment of Error 7 in Mr. Schnarrenberger's Amended Notice of Appeal is not well-taken.

E. Conclusion

{¶39} Accordingly, the Commission finds that there are no genuine issues of material fact and that the Director is entitled to judgment as a matter of law. Mr. Schnarrenberger admits the Negley Facility operated in substantial compliance with Ohio Adm.Code Chapter 3745-400 and other alleged violations raised in Mr. Schnarrenberger's assignments of error either do not fall within the scope of the Director's evaluation of a C&DD license application or fall outside of the Commission's jurisdiction.

FINAL ORDER

{¶40} In light of the aforementioned, the Commission hereby GRANTS the Director’s Motion for Summary Judgment and ORDERS that the above-caption appeal be DISMISSED.

{¶41} In accordance with Ohio Adm.Code 3746-13-01, the Commission informs the parties of the following:

Any party adversely affected by an order of the commission may appeal to the court of appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. The party so appealing shall file with the commission a notice of appeal designating the order from which an appeal is being taken. A copy of such notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to the director or other statutory agency. Such notices shall be filed and mailed within thirty days after the date upon which appellant received notice from the commission of the issuance of the order. No appeal bond shall be required to make an appeal effective.

**The Environmental Review
Appeals Commission**

Entered into the Journal of the
Commission this _____ day
of July 2013.

Melissa M. Shilling, Chair

Shaun K. Petersen, Vice Chair

Michael G. Verich, Member

Copies Sent to:

WILLIAM C. SCHNARRENBERGER	[CERTIFIED MAIL]
SCOTT NALLY, DIRECTOR OF	[CERTIFIED MAIL]
ENVIRONMENTAL PROTECTION	
TERVITA, LLC	[CERTIFIED MAIL]
John F. Cayton, Esq.	
Julianna F. Bull, Esq.	
Michael A. Cyphert, Esq.	
Leslie G. Wolfe, Esq.	