



April 23, 2013

Hemmelgarn & Sons, Inc.
Ronald Gross
PO Box 169
3763 Philothea Road
Coldwater, OH 45828

CERTIFIED MAIL

9171082133393715018808

RE: Final Findings and Orders and Final classification of Hemmelgarn & Sons PWS
ID OH5437812

Dear Mr. Gross:

I have enclosed a certified copy of the journalized Director's Final Findings and Orders and a final classification regarding the above referenced facility. These documents are final actions of the Director and will be public noticed as required by Rule 3745-47-07(A) of the Ohio Administrative Code.

You are hereby notified that these actions of the Director are final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Richard Cordray," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

In accordance with paragraph 4 of the settlement agreement you entered on February 25, 2013, you were required to submit a copy of your samples results to Jack Schwartz of our NWDO Office. Mr. Schwartz has retired therefore all correspondence should be directed to Jill Schiefer.

If you have any questions concerning compliance with these Orders, please feel free to contact me at (614) 728-1216.

Sincerely,



Andrew Barienbrock
Environmental Supervisor
Operator Certification Unit

Enclosures

cc: Ellen Gerber, Environmental Manager, DDAGW-NWDO (w/enclosures)
Kim Rhoads, Legal (w/enclosures)
W. Samuel Wilson, Esq. (w/enclosures)
Summer Plantz (w/enclosures) – AGO
Hearing Clerk
File

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

OHIO E.P.A.

BEFORE THE

Dm of Cassler

APR 17 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

Date: 4-17-13

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Case No. 12-DW-07-1

HEMMELGARN & SONS, INC.,

DIRECTOR'S FINAL FINDINGS AND ORDERS

Respondent.

Pursuant to Chapter 6109., sections 119.09 et seq. of the Ohio Revised Code, and the rules of the Ohio Environmental Protection Agency, the Director of Environmental Protection hereby makes the following Findings and issues the following Orders:

FINDINGS

1. Respondent Hemmelgarn and Sons, Inc. ("Hemmelgarn") operates a non-transient, non-community public water system ("PWS") OH5437812 with a population of 80 people at its egg processing facility located at 3763 Philothea Road, Coldwater, Mercer County, Ohio.
2. On February 2, 2006, Hemmelgarn and Sons submitted Revised Plans for installation of treatment equipment as part of the PWS at the facility.
3. On July 6, 2006, Ohio Environmental Protection Agency ("Ohio EPA") issued an approval of Revised Plans.
4. The July 6, 2006, Plan Approval and Revised Plans provide for the installation of treatment for iron, manganese and arsenic.
5. Ohio Administrative Code ("O.A.C.") 3745-7-03(B)(4) provides that a non-transient non-community public water system with a design flow of less than 2.5 million gallons per day that treats for a chemical contaminant with a Maximum Contaminant Level ("MCL") is a Class 1 PWS.
6. The MCL for arsenic is .010 mg/l. See O.A.C. 3745-81-11(B).
7. On June 1, 2012, the Director of the Ohio EPA ("Director") issued a Proposed Reclassification of PWS OH5437812 that proposed to reclassify Hemmelgarn's PWS from a Class A PWS to a Class I PWS.
8. By letter dated June 29, 2012, Hemmelgarn requested an adjudication hearing regarding the Director's June 1, 2012 proposed reclassification.

9. The parties have engaged in settlement discussions and on March 7, 2013, the parties filed a "Joint Stipulation and Settlement Agreement."
10. The Settlement Agreement states in pertinent part as follows:
 1. The Director's June 1, 2012 Proposed Reclassification of Respondent Hemmelgarn's Public Water System shall be issued as a final action. ...
 3. Respondent Hemmelgarn agrees to collect samples of its raw water and analyze the samples for arsenic in accordance with Ohio Adm. Code 3745-81-27. ... A representative of Ohio EPA's Northwest District Office ("NWDO") shall be present during collection and splitting of each sample. ...
 5. At the end of the 12 months of raw water sampling, in the event the monthly sampling reveals that arsenic levels in the raw water are below 10 µg/l as an annual average, Ohio EPA agrees to reclassify the public water system as Class A. In the event the monthly sampling reveals that arsenic levels in the raw water are at or above 10 µg/l as an annual average, Respondent shall comply with the requirements of Ohio Administrative Code 3745-7-03 and employ a Class 1 operator to be at the Hemmelgarn facility at least 3 days per week for a minimum of 1.5 hours per week, no later than fifteen months following the Director's issuance of the Final Reclassification. ...
 6. ... If the Director rejects the Parties' recommendations contained in this Joint Stipulation and Settlement Agreement and does not issue the Final Reclassification consistent with this Joint Stipulation and Settlement Agreement, this Joint Stipulation and Settlement Agreement is a nullity and shall be void and of no force or effect, and the withdraw [sic] of the request for an adjudication hearing submitted by Respondent shall be void and of no force or effect.
 7. In the event that there is a change in the Ohio Administrative Code Rules applicable to the Hemmelgarn facility following the Director's issuance of the Final Reclassification of PWS OH5437812, such rules will control and the Hemmelgarn facility may be reclassified in accordance with such rules.
 8. Except as provided in this Joint Stipulation and Settlement Agreement, Ohio EPA reserves the right to take whatever lawful action is necessary under Ohio Revised Code Chapter 6109, and the rules promulgated thereunder, or any other applicable law, to ensure compliance with all applicable environmental laws. Except as provided in this Joint Stipulation and Settlement Agreement, Respondent Hemmelgarn reserves all rights to defend, object to, appeal, or challenge any other action by Ohio EPA. ..."
11. On March 25, 2013, Respondent filed a letter withdrawing its request for adjudication hearing in this case.

12. In light of the settlement agreement between the parties and the withdrawal of Hemmelgarn's request for an adjudication hearing, there remain no unresolved issues of law or fact requiring an adjudication hearing in this matter. Therefore, Ohio EPA Case No. 12-DW-07-1 is moot and should be dismissed.
13. In light of the settlement agreement between the parties and the withdrawal of Hemmelgarn's request for an adjudication hearing, a final action reclassifying Hemmelgarn's Public Water System (PWS OH5437812) as a Class I Public Water System should be issued.
14. No adjudication hearing has been held in this matter.
15. The Hearing Officer assigned to this case has filed a Report and Recommendation recommending that the Director dismiss Ohio EPA Case No. 12-DW-07-1 and that the Director order the Ohio EPA Division of Drinking and Groundwater to prepare and take the necessary action to have issued to Hemmelgarn a final order reclassifying Hemmelgarn's Public Water System (PWS OH5437812) as a Class I Public Water System.
16. No objection to the Hearing Officer's recommendations has been filed.
17. The recommendations of the Hearing Officer are lawful and reasonable, and are hereby adopted.

ORDERS

1. Effective upon the issuance of a final order reclassifying Respondent Hemmelgarn's Public Water System as a Class I Public Water System, Ohio EPA Case No. 12-DW-07-1 is dismissed.
2. The Ohio EPA Division of Drinking and Groundwater shall prepare and take the necessary action to have issued to Respondent Hemmelgarn a final order reclassifying Hemmelgarn's Public Water System (PWS OH5437812) as a Class I Public Water System.

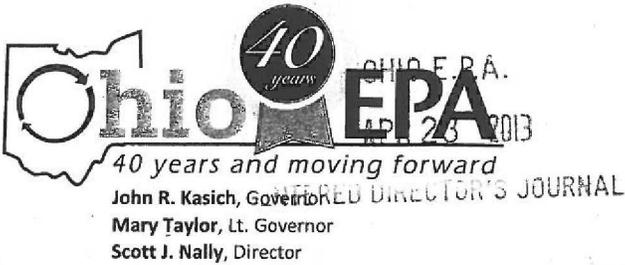
IT IS SO ORDERED:



SCOTT J. NALLY
Director

APR 17 2013

Date



Issuance Date: APR 23 2013

APR 23 2013

Hemmelgarn & Sons, Inc.
Dave Koesters
P.O. Box 169
3763 Philothea Road
Coldwater, OH 45828

RE: Mercer County
Hemmelgarn & Sons, Inc. PWS
Reclassification
NTNC GWP
PWS ID: OH5437812

Dear Mr. Koesters:

Pursuant to your settlement agreement with the Ohio EPA this letter will serve as final reclassification of your PWS from a Class A to a Class 1 system. A sanitary survey by staff from our Northwest District Office determined your system is a non-transient non-community PWS with a population of 80 people. The PWS is a ground water system that has installed treatment for a chemical contaminant with a maximum contaminant level (MCL). Plan approval dated July 6, 2006 includes the installation of treatment for arsenic, hardness, and iron. Arsenic is a chemical contaminant with an MCL. Ohio Administrative Code (OAC) Rule 3745-7-03(B)(4) specifies a non-transient non-community public water system with a design flow of less than 2.5 MGD that treats for a chemical contaminant with an MCL is a Class 1 PWS. Therefore, pursuant to OAC Rule 3745-7-03(B)(4), I am reclassifying your facility as a Class 1 PWS. A certificate of classification is attached to this action.

Pursuant to OAC Rule 3745-7-02(A)(1), your facility is required to have an operator of record certified at or above the level of the facility who is responsible for the technical operation of the facility. In accordance with OAC Rule 3745-7-03(C) your operator of record must be physically present at the PWS for 3 days per week for a minimum of 1.5 hours per week.

In accordance with OAC Rule 3745-7-03(B)(1)(c) you have up to 12 months to meet the new staffing requirements discussed above. Once you have selected an appropriately certified operator, please fill out the enclosed Operator of Record Documentation form and return it to the address at the top of the form.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 4-23-13

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Ohio Treasurer Josh Mandel," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

If you should have any questions regarding this classification, please feel free to contact **Andrew Barienbrock** at (614) 728-1216.

Sincerely,



Scott J. Nally
Director

Enclosures

cc: NWDO, DDAGW
Operations File