

BEFORE THE
ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

PATRIOT WATER TREATMENT, LLC,	:	CASE NO. ERAC 156477
	:	
and	:	
	:	
CITY OF WARREN,	:	CASE NO. ERAC 786501
	:	
Appellants,	:	
	:	
v.	:	<u>DIRECTOR'S DETERMINATION OF</u>
	:	<u>UNLAWFUL PERMIT ISSUANCE AND</u>
CHRIS KORLESKI, DIRECTOR OF	:	<u>REQUEST FOR REMAND</u>
ENVIRONMENTAL PROTECTION,	:	
	:	
Appellee.	:	

Upon further review of the permits issued in the above-captioned appeals, Appellee Director of Environmental Protection has determined that the issuance of the permits was unlawful.

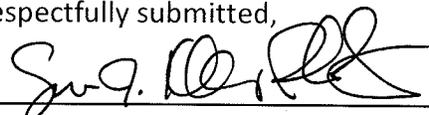
The permits at issue in these appeals involve the treatment and disposal of brine wastewater from oil and gas production operations. See, *Patriot Water Treatment v. Korleski*, Case No. ERAC 156477, Notice of Appeal, ¶13; and *City of Warren, Ohio v. Korleski*, Case No. ERAC 786501, Notice of Appeal, ¶16.a. See also, R.C. 1509.01(AA), which defines “production operations” to include well stimulation, which includes hydraulic fracturing operations and waste disposal; and R.C. 1509.01(U), which defines “brine” as “all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas”

Revised Code 1509.22(C) specifically states that brine may *only* be disposed of by one of the following three methods: (1) underground injection; (2) surface application on roads for

dust control and ice; or (3) any other method approved by the Chief of the Division of Oil and Gas Resources Management for testing or implementing a new technology or method of disposal. R.C. 1509.02, as amended by 129 Amd. Sub. H.B. 153, § 101.01, eff. Sept. 29, 2011 and R.C. 1509.22. Disposal of brine wastewater through a wastewater treatment plant and discharge to waters of the state is not an authorized method of disposal under R.C. 1509.22(C), unless and until the Chief of the Division of Oil and Gas Resources Management approves this technology. At this time, no such approval has been given. Therefore, the Director's issuance of the Permit to Install to Patriot and Permit Modification to Warren were unlawful because they authorize the disposal of brine wastewater in a manner that is not authorized by Ohio law.

Based on the foregoing, there is an independent legal defect in the issuance of the permits and there is no further reason for the Commission to consider these appeals. Appellee Director respectfully requests the Commission remand the permits to the Director for further action consistent with Ohio law. A proposed Order remanding the Permits to the Director is attached.

Respectfully submitted,



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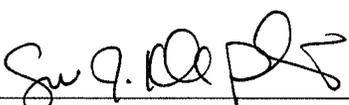
Counsel for Appellee

Director of Environmental Protection

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Director's Determination of Unlawful Permit Issuance and Request for Remand** was served by electronic and regular U.S. Mail, postage prepaid, on this the 1st day of November 2011, upon the following:

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Counsel for Appellee
Director of Environmental Protection

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ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO**

PATRIOT WATER TREATMENT, LLC,	:	CASE NO. ERAC 156477
and	:	
CITY OF WARREN,	:	CASE NO. ERAC 786501
Appellants,	:	
v.	:	
CHRIS KORLESKI, DIRECTOR OF ENVIRONMENTAL PROTECTION,	:	
Appellee.	:	

DECISION

Rendered _____

April R. Bott, Esq. and Sarah L. Herbert, Esq., for Appellants Patriot Water Treatment, LLC and City of Warren

Mike DeWine, Attorney General, Janean R. Weber, Esq. and Summer J. Koladin Plantz, Esq., for Appellee Director of Environmental Protection

_____, Commissioner

This matter comes before the Environmental Review Appeals Commission ("ERAC," "Commission") upon the Notices of Appeal filed by Appellants challenging the Director of Environmental Protection's ("Director") final action issuing a Permit to Install to Appellant Patriot Water Treatment, LLC ("Patriot") and a National Pollutant Discharge Elimination System ("NPDES") Permit Modification to the City of Warren ("Warren").

The Commission has before it the Director's Determination of Unlawful Permit Issuance and Request for Remand, filed on November 1, 2011.

FINAL ORDER

Upon consideration of the pleadings, relevant statutes, and regulations, the Commission hereby finds that the Director's actions in the above-captioned appeals were unlawful and hereby vacates the permits issued to Appellants and remands these matters back to the Director for further action consistent with Ohio law.

The Commission, in accordance with Ohio Adm. Code 3746-13-01 informs the parties that:

Any party adversely affected by an order of the commission may appeal to the Court of Appeals for Franklin County, or if the appeal arises from an alleged violation of law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. The party to 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 November, 2011.

Lisa L. Eschlemann, Chair

Melissa M. Schilling, Vice-Chair

Shaun K. Petersen, Member

COPIES SENT TO:

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