

STATE OF INDIANA)
) SS
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT

ROOM TWO, EAST CHICAGO

INDEPENDENCE HILL)
CONSERVANCY DISTRICT)
)
Plaintiff,)

Cause No: 45D02-0803-MI-00012

vs.)

INDIANA DEPARTMENT OF)
ENVIRONMENTAL)
MANAGEMENT, MERRILLVILLE)
CONSERVANCY DISTRICT, and)
GARY SANITARY DISTRICT)
)
Defendants.)

Filed in Open Court

JAN 20 2009


SUPERIOR COURT OF LAKE COUNTY
CIVIL DIVISION COURT ROOM 2

ORDER

This matter comes before the Court on January 8, 2009 for hearing on
Petitioner's Merits Brief for Judicial Review of Administrative Adjudication.

The Court having taken this matter under advisement now submits its
Findings of Fact and Conclusions of Law.

Findings of Fact

1. That the INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT issued a Construction Permit Approval Number 18509 to the
Independence Hill Conservancy District on March 1, 2007 for installation of
approximately 4850 L.F. 8-inch diameter and 1277 L.F. 10-inch diameter sanitary

DWS

gravity sewer to carry an average flow of 108,000 gpd from 156 2-bedroom apartments, 116 single family homes and a 25.24 acres commercial development.

2. That the MERRILLVILLE CONSERVANCY DISTRICT and the GARY SANITARY DISTRICT timely filed a petition for administrative review and stay of the aforesaid Permit on March 16, 2007, which was assigned to a OEA Cause Number 07-W-J-3894.

3. That the INDEPENDENCE HILL CONSERVANCY DISTRICT is a current conservancy district operating pursuant to Indiana Code 14-33 as a sanitary sewer service provider to an exclusive territory located in Lake County, Indiana; that the MERRILLVILLE CONSERVANCY DISTRICT is a conservancy district operating pursuant to Indiana Code 14-33 as a sanitary sewer service provider to an exclusive territory located in Lake County, Indiana; and, that the GARY SANITARY DISTRICT is operating as a sanitary sewer service provider to an exclusive territory located in Lake County, Indiana.

4. That the GARY SANITARY DISTRICT operates as a sanitary sewer service and collects all of the wastewater generated within its service territory and the wastewater received from the MERRILLVILLE CONSERVANCY DISTRICT and transports it to the GARY SANITARY DISTRICT wastewater treatment plant for treatment and discharge into Lake Michigan.

5. That the aforesaid Permit application included certifications by the INDEPENDENCE HILL CONSERVANCY DISTRICT pursuant to an agency

rule promulgated by the Water Pollution Control Board of Indiana, 327 IAC 3-6-4(c), but did not include certifications pursuant to the Rule by either the MERRILLVILLE CONSERVANCY DISTRICT or the GARY SANITARY DISTRICT.

6. That the aforesaid Permit was for an addition of the INDEPENDENCE HILL CONSERVANCY DISTRICT part of the regional sanitary sewer system, to be constructed entirely within the territory over which the INDEPENDENCE HILL CONSERVANCY DISTRICT has jurisdiction and to serve only property within the territory of which the INDEPENDENCE HILL CONSERVANCY DISTRICT has jurisdiction.

7. That the MERRILLVILLE CONSERVANCY DISTRICT and the GARY SANITARY DISTRICT'S position is that the required certifications are not only by the entity having jurisdiction over a proposed addition to a sanitary sewer system but also by any and all entities having jurisdiction over interconnected parts of the regional sanitary sewer system downstream from the proposed addition.

8. That OEA'S grant of Summary Judgment was that the issuance of the Construction Permit by the Indiana Department of Environmental Management required that there must be certification by all sanitary sewer systems having jurisdiction over interconnected parts of the regional sanitary sewer system downstream from the proposed addition.

Conclusions of Law

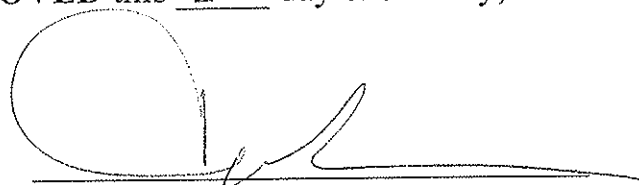
1. That OEA's grant of Summary Judgment was not arbitrary or capricious and that it was in accordance with State law.

2. That OEA's construction of the Rule requiring certification by any and all downstream districts even though no new work was to be done in those respective territories was not unreasonable and was in accord with the State law.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the ruling of the OEA is **affirmed**.

SO ORDERED AND APPROVED this 26th day of January, 2009.



HONORABLE CALVIN D. HAWKINS
SPECIAL JUDGE
LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM TWO

Clerk TR72D