

**OBJECTION TO THE ISSUANCE OF
PERMIT APPROVAL NO. 4199
HILLTOP POULTRY FARM
DUBOIS COUNTY, INDIANA
1997 OEA 001, OEA CAUSE NO.: 96-W-J-1608**

Official Short Cite Name: Hilltop Poultry Permit 4199, 1997 OEA 001

OEA Cause No.: 96-W-J-1608

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IC 4-21.5-3-7(a)(1)
IC 4-21.5-3-23(b)

Presiding ELJ: Lori Kyle Endris

Party Representatives: Melinda Shapiro, Esq. for IDEM
William J. Kaiser, Jr., Esq.
Thomas H. Birk, Esq.

Order Issued: January 21, 1997

Index Category: Solid waste // Water

Further Case Activity:

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INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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Chief Administrative Law Judge

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STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)

OBJECTION TO THE ISSUANCE OF)
PERMIT APPROVAL NO. 4199)
HILLTOP POULTRY FARM)
DUBOIS COUNTY)

CAUSE NO. 96-W-J-1608

FINAL ORDER GRANTING IDEM'S MOTION FOR SUMMARY JUDGMENT

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This constitutes notice that on or about June 8, 1993, James Schwenk of Hilltop Poultry Farm (Hilltop) submitted an application to the Land Use Group now operating within the Office of Solid and Hazardous waste Management for approval of a waste treatment/control facility for a turkey operation to be located in Dubois County. On September 25, 1996, Objectors Victor and Janet Pfaff (Objectors), by counsel, filed a Petition for Administrative Review. Thereafter, on November 18, 1996, a prehearing conference was held. On January 9, 1997, the Indiana Department of Environmental Management (IDEM), by counsel, filed a Motion for Summary Judgment. On January 10, 1997, Objectors, by counsel, filed a Motion for Summary Judgment and a Motion for Telephone Hearing on Motion for Summary Judgment. On January 16, 1997, the IDEM, by counsel, filed a Response.

The Environmental Law Judge considered the Motions and the Response and hereby finds the following:

Findings of Fact and Conclusions of Law:

1. The Office of Environmental Adjudication has jurisdiction over decisions of the Commissioner of the Indiana Department of Environmental Management (IDEM) pursuant to Ind.Code §4-21.5-7.
2. This is a Final Order issued pursuant to Ind.Code §4-21.5-3-27.
3. Ind.Code §4-21.5-3-23(b) provides in pertinent part that "[t]he judgment [on a motion for summary judgment] shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law."
4. Ind.Code §4-21.5-3-7(a)(1) requires that a person's petition for review must "state facts demonstrating that the petitioner is a person to whom the order is specifically directed, the petitioner is aggrieved or adversely affected by the order or the petitioner is entitled to review under any law."
5. Ind.Code §13-18-10, the Confined Feeding Control Law, prescribes the requirements for application and approval for confined feeding operations.
6. Objectors fail to allege technical deficiencies of the approval or environmental hazards created by the issuance of the approval. Objectors' only objection addresses the number of acres available to Hilltop for land application of the manure. Objectors entered into a private agreement with Hilltop, which limits the number of available acres. Objectors, in their Petition for Administrative Review, stated,

In essence, Hilltop Poultry agreed to not spread manure or any other organic animal waste in the watershed for the Pfaffs' pond. On information and belief, the watershed consists of approximately 40 to 50 acres. Therefore, the Settlement Agreement reduces the acreage which Hilltop Poultry claimed is available for manure spreading from approximately 200 acres to approximately 150 to 160 acres.

Petition for Administrative Review at 4. Objectors, in their Petition, also requested for the following relief:

- 1) The Pfaffs pray that IDEM take jurisdiction of this petition and review A.W. Approval No. 4199;

- 2) The Pfaff's pray that IDEM recognize the existence of the Settlement agreement between the Pfaff's and Hilltop Poultry particularly the restrictions on Hilltop Poultry's right to spread manure;
- 3) The Pfaff's pray that IDEM amend A.W. Approval No. 4199 by reducing the acreage available to Hilltop Poultry for spreading manure by the number of acres in the Pfaff's' pond's watershed which are located on Hilltop Poultry's real property;
- 4) The Pfaff's pray that Hilltop Poultry be admonished for its failure to report the Settlement Agreement to IDEM and appropriately amend its application filed in 1993; and
- 5) The Pfaff's pray for all other just and proper relief.

Petition for Administrative Review at 4-5.

7. The IDEM does not have authority over private agreements and therefore cannot enforce the private agreement between the Objectors and Hilltop. Even assuming, *arguendo*, that the IDEM could consider the private agreement, the available acreage for spreading exceeds that which is recommended by the IDEM.

Final Order

Objectors' Motion for Summary Judgment and Motion for Telephone Hearing on Motion for Summary Judgment is hereby DENIED. The IDEM's Motion for Summary Judgment is hereby GRANTED. The issuance of A.W. Approval No. 4199 to Hilltop Poultry Farm is hereby UPHeld.

You are further notified that pursuant to the provisions of P.L §41-1995, amending Ind.Code §4-21.5-7, which became effective July 1, 1995, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to judicial review consistent with the applicable provisions of Ind.Code §4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

Dated this 21st day of January, 1997.

Lori Kyle Endris
Environmental Law Judge

cc: Bruce Palin, Acting, Assistant Commissioner
Office of Solid and Hazardous Waste Management