

**OBJECTION TO THE ISSUANCE OF  
PERMIT APPROVAL NO. 10118  
GARY BOARD OF PUBLIC WORKS  
GARY, LAKE COUNTY, INDIANA  
1997 OEA 068 OEA CAUSE NO.: 96-W-J-1619**

<b>Official Short Cite Name:</b>	<b>Gary Board of Public Works, 1997 OEA 068</b>
<b>OEA Cause No.:</b>	96-W-J-1619
<b>Topics/Keywords:</b>	IC 13-13-1-1 IC 4-21.5-7 327 IAC 3 327 IAC 3-1-2     
<b>Presiding ELJ:</b>	Wayne E. Penrod, Esq.
<b>Party Representatives:</b>	Melinda Shapiro, Esq. James B. Meyer, Esq. Patricia Dilts Moses Dilts Mr. & Mrs. Joe Petras Joanne Lowther
<b>Order Issued:</b>	September 30, 1997
<b>Index Category:</b>	Water
<b>Further Case Activity:</b>	

SEP 30 1997

STATE OF INDIANA )  
 )  
COUNTY OF MARION ) SS: BEFORE THE INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF: )  
 )  
OBJECTION TO THE ISSUANCE OF ) CAUSE NO. 96-W-J-1619  
PERMIT APPROVAL NO. 10118 )  
GARY BOARD OF PUBLIC WORKS )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF THE ENVIRONMENTAL LAW JUDGE**

**FINDINGS OF FACT**

1. The Respondent is the Indiana Department of Environmental Management ("IDEM"), a department of the State of Indiana created by Indiana Code ("IC") 13-13-1-1.
2. Petitioners Mr. and Mrs. Dilts, Mr. and Mrs. Petras and Mrs. JoAnne Lowther objected to the issuance of Construction Permit Approval No. 10118 permitting construction of a new sanitary sewer system and two new lift stations to be located on Lake Shore Drive from Union Street to Wells Street, in Gary, Indiana.
3. Pursuant to IC 4-21.5-7, the Indiana Office of Environmental Adjudication ("OEA") has jurisdiction over administrative appeals of decisions of the Commissioner of IDEM.
4. 327 Indiana Administrative Code ("IAC") Article 3 provides definitions, policies, procedures, and technical criteria for construction of water pollution treatment/control facilities.
5. "Water pollution treatment/control facility" is defined by 327 IAC 3-1-2 as "any equipment, device, unit, structure, etc., that is used to control, prevent, pretreat, or treat any discharge or threatened discharge of pollutants into any waters of the state of Indiana including surface and subsurface waters and public or private sewerage systems. It includes but is not limited to treatment facilities, combined sewers, sanitary sewers, disposal well systems, land application treatment facilities, and cyanide isolation facilities."
6. "Sanitary sewer" is defined by 327 IAC 3-1-2 as "a sewer that conveys liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions;

and to which storm, surface, and groundwaters are not intentionally allowed to enter."

7. The application, plans and specifications, and supporting documents for the above referenced project were certified by Lincoln Donaldson, P.E., and submitted to IDEM for review, on behalf of the Gary Sanitary District, on July 16, 1996, with additional information submitted on August 23, 1996.
8. The plans and specifications as submitted by the Gary Sanitary District were reviewed by Lewellyn Soliven, Environmental Engineer III, Facility Construction Section of the Office of Water Management ("OWM"), and were determined to meet Indiana's construction standards as defined in 327 IAC 3.
9. On October 3, 1996, IDEM issued a permit for construction of a new sanitary sewer system and two new lift stations to the Gary Board of Public Works. Permit Approval No. 10118 was issued under provisions of 327 IAC 3.
10. IDEM notified the potentially affected persons of the decision to grant this permit and the potentially affected persons were given an opportunity to appeal.<sup>1</sup> Petitioners Mr. and Mrs. Dilts and Mr. and Mrs. Petras filed appeals with the OEA.<sup>2</sup>
11. On December 17, 1996, a prehearing conference was held at OEA on this matter. At the prehearing, the parties agreed to attempt negotiations. Negotiations proved unsuccessful and on July 17, 1997 a status conference was held and a hearing schedule was established.
12. On August 1, 1997, in accordance with the schedule established by the Administrative Law Judge, IDEM filed a Motion for Summary Judgment with the OEA
13. In the Petitions for Administrative Review, issue 4.A., Petitioners state that:

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<sup>1</sup> At the prehearing conference, the Petitioners claimed that a Mrs. JoAnne Lowther should have, but did not, receive notice of issuance of Permit No. 10118. The Petitioners presented a letter from Mrs. Lowther, dated December 16, 1996 indicting her intent to "voice a formal protest." Mrs. Lowther's letter does not identify any environmental harm that will occur due to issuance of Permit No. 10118 or any technical deficiency in IDEM's review of that permit. The Petitioners indicated that Mrs. Lowther was aware of the prehearing conference but due to unavailability had asked them to submit the letter on her behalf. Mrs. Lowther participated in the July 17, 1997 status conference. If there was a deficiency in IDEM's notice, that deficiency has been cured by Mrs. Lowther's participation in the appeals process.

<sup>2</sup> Petitions for Administrative Review were also filed by Mr. Omar Farag and Mr. Robert B. and Mrs. Ethelyn MacLeod. Neither Mr. Farag nor Mr. and Mrs. MacLeod appeared at either the prehearing conference or the status conference in this matter.

Location, as proposed, places this pumping station 50 feet from three houses, and 100 feet from four other homes.

Neither the Indiana Code nor the Indiana Administrative Code has established setback requirements for a pumping station. Hence, the IDEM has no jurisdiction over the location of a pumping station with respect to a home. Thus, the Office of Environmental Adjudication is without jurisdiction over this issue.

14. In the Petitions for Administrative Review, issue 4.B, Petitioners contend that:

In the event of an extended power failure, the pumping stations' proximity to seven houses, could put raw sewage into these basements. Overflow would drench the residents' property.

The pumping stations, as proposed, comply with the applicable "Recommended Standards for Wastewater Facilities" ("the 10-State Standards"). In the event that a pumping station fails, it must be equipped with an alarm system. The alarm system, as proposed by the Gary Board of Public Works, is a telemetry system and, meets or exceeds the recommendations in the 10-State Standards. In addition, the 10-State Standards recommend that a backup power source be available in case of emergencies. The Permittee has indicated that a portable generator is available and will be provided in the event it is necessary. The Permittee has met or exceeded IDEM's requirements with respect to Wastewater Pumping Stations.

15. In the Petitions for Administrative Review, issue 4.C, Petitioners suggest that the city will have difficulty accessing the pumping station. The 10-State Standards recommendations regarding accessibility are as follows: "the pumping station shall be readily accessible by maintenance vehicles during all weather conditions." The Gary Board of Public Works has demonstrated on their plans, as submitted, that an access road will be constructed that will enable emergency vehicles to access the pumping station. The pumping station is to be constructed underground and, from the surface, will resemble a "manhole."
16. In the Petitions for Administrative Review, issue 4.C, Petitioners claim that once the pumping station is constructed, the residents will not have access to the alley. The 10-State Standards recommend that "[t]he facility should be located off the traffic way of streets and alleys." The alley, which is owned by the City of Gary is not paved or graveled and is not "well-traveled." This is a local issue which IDEM does not have authority to regulate. Thus, the Office of Environmental Adjudication is without jurisdiction over this issue.
17. In the Petitions for Administrative Review, issue 4.D, Petitioners claim that Permit No. 10118 will impact the "appearance and esthetics" of the "residential area bordering Lake Michigan" as well as the property values in that area. IDEM does not have the authority

to regulate issues related to appearance, esthetics or property values. The OEA has subject matter jurisdiction in cases where a properly filed petition for review alleges that the decision of the Commissioner of IDEM has technical deficiencies and/or creates environmental hazards. Therefore, these issues are not within OEA's subject matter jurisdiction

18. The plans and specifications upon which this permit approval is based are certified by Licensed Professional Engineer Lincoln Donaldson, P.E. After a technical review of these plans and specifications, IDEM found that they satisfy the construction standards as defined in 327 Indiana Administrative Code ("IAC") 3.
19. Petitioner Patricia K. Dilts filed a Response to IDEM's Motion for Summary Judgment but, did not attach any affidavits to contradict the statements made in IDEM's Motion for Summary Judgment. None of the other Petitioners responded to IDEM's Motion for Summary Judgment.

#### CONCLUSIONS OF LAW

1. The facts support IDEM's decision to issue Permit Approval No. 10118.
2. The Gary Board of Public Works has complied with the provisions of 327 IAC 3.
3. Petitioner has failed to present any evidence indicating that Permit Approval No. 10118 has technical deficiencies and/or creates environmental hazards.
4. Petitioner has the burden of proving that IDEM acted arbitrarily, capriciously and not in accordance with law in issuing Permit Approval No. 10118.
6. Petitioners have failed to carry their burden of proof.
7. The law is with IDEM and against the Petitioner on all issues in this matter. Summary Judgment is entered in favor of IDEM on all issues as a matter of law.

#### FINAL ORDER

It is therefore found, that the Petitioner has failed to meet his burden of proof. The Petitions for Review are hereby DENIED and the decision to issue Permit Approval No. 10118 issued by IDEM on October 3, 1996 is hereby AFFIRMED.

You are further notified that pursuant to the provisions of S.E.A. 156 (P.L. 41-1995 amending IC 4-21.5-7) which became effective on July 1, 1995, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative reviews 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 IC 4-21.5. Pursuant to IC 4-21.5-5-5, 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 30<sup>th</sup> day of September, 1997.

  
Wayne B. Penrod, Chief  
Administrative Law Judge