In Re: Objection to Final Order of Commissioner of Indiana Department of Environmental Management, Mexico Community Regional Sewer District, Miami County, Indiana 2004 OEA 45 (04-W-J-3365)

TOPICS:

dismissal regional sewer district subject matter jurisdiction

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES

Petitioners, pro se: Robert G. Novale, John J. Leedy, Melvin D. and Linda S. Spear,

Shirley J. Smiley, Terry R. Smiley, Michael A. Miser, Penny Hall, Ken and Katrina Chester, William R. Stern, James A. Alwine,

Bertha F. Alwine, Karen Cadwallader, Leila Ferguson, Jean Barfell,

Arthur Williams, Danny & Virginia See

Permittee, pro se: Mexico Community Regional Sewer District

IDEM: Kathleen Mills, Esq.

ORDER ISSUED:

June 16, 2004

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

In Re: Objection to Final Order of Commissioner of Indiana Department of Environmental Management, Mexico Community Regional Sewer District, Miami County, Indiana 2004 OEA 45 (04-W-J-3365)

STATE OF INDIANA) B	EFORE THE INDIANA OFFICE OF
) El	NVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	
IN THE MATTER OF:)	
)	
OBJECTION TO FINAL ORDER OF	F)	
COMMISSIONER OF INDIANA)	
DEPARTMENT OF ENVIRONMEN	TAL)	
MANAGEMENT)	CAUSE NO. 04-W-J-3365
MEXICO COMMUNITY REGIONA	L)	
SEWER DISTRICT)	
MIAMI COUNTY INDIANA	ý	

NOTICE OF DISMISSAL

Please be notified that the Office of Environmental Adjudication ("OEA" or "Court"), on its own motion, hereby dismisses Cause No. 04-W-J-3365 from the OEA under Ind. Code §4-21.5, et seq., 315 IAC 1, and Ind. Tr. R. 12(B)(1), for lack of subject matter jurisdiction. The Environmental Law Judge hereby makes the following findings of fact and conclusions of law:

Findings of Fact

- 1. On May 17, 2004, pursuant to IC §13-26-2-10, the Commissioner of the Indiana Department of Environmental Management (IDEM) signed the final Order creating the Mexico Community Regional Sewer District based upon the Findings of Fact and Recommended Order of the hearing officer in this matter.
- 2. On June 8, 2004, Shirley Smiley filed correspondence requesting an appeal of this Order with this Court. On June 12, 2004, Penny Hall, Ken & Katrina Chester, Robert G. Novale, John J. Leedy, Melvin D. and Linda S. Spear, Michael A. Miser, William R. Stern, James A. Alwine, Bertha F. Alwine, and Karen Cadwallader also filed correspondence requesting an appeal of this Order. On June 14, 2004, Jean Barfell, Leila Ferguson, Danny and Virginia See, and Arthur Williams filed correspondence requesting an appeal of this Order.

In Re: Objection to Final Order of Commissioner of Indiana Department of Environmental Management, Mexico Community Regional Sewer District, Miami County, Indiana 2004 OEA 45 (04-W-J-3365)

Conclusions of Law

- 1. The Office of Environmental Adjudication ("OEA") ordinarily has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code §4-21.5-7, et seq.
- 2. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
- 3. IC §13-26-2-11 states "An order for the establishment of a district is subject to review as provided in IC §4-21.5-5."
- 4. Pursuant to IC §13-26-2-11, OEA does not have subject matter jurisdiction of an appeal of an order for the establishment of a regional sewer district. OEA has no subject matter jurisdiction over the requests for appeal filed by the Petitioners, Shirley Smiley, Penny Hall, Ken and Katrina Chester, Robert G. Novale, John J. Leedy, Melvin D. and Linda S. Spear, Michael A. Miser, William R. Stern, James A. Alwine, Bertha F. Alwine, Karen Cadwallader, Jean Barfell, Leila Ferguson, Danny and Virginia See, and Arthur Williams. The Petitioners must file a verified Petition for Judicial Review in the appropriate trial court. This matter must therefore be dismissed.

Final Order

IT IS THEREFORE ORDERED that the Office of Environmental Adjudication hereby **DISMISSES** the requests for appeal filed by the Petitioners for lack of subject matter jurisdiction. All previous Orders issued by this Court are hereby **VACATED**.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the 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 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.

IT IS SO ORDERED this 16th day of June, 2004 in Indianapolis, IN.

Hon. Catherine Gibbs Environmental Law Judge