

**OBJECTION TO THE DENIAL OF
RENEWAL APPLICATION FOR WASTEWATER LAND APPLICATION
APPROVAL NO. 531-01
SNOW WHITE SERVICES, INC.
1996 OEA 001, OEA CAUSE NO.: 95-W-J-1377**

Official Short Cite Name:	Snow White Land App, 1996 OEA 001
OEA Cause No.:	95-W-J-1377
Topics/Keywords:	IC 13-7-8.8-1 IC 13-7-8.8-5 IC 13-7-10-2(e) 327 IAC 6-2-1(a) 327 IAC 7-2-3 327 IAC 7-5-1 327 IAC 7-6-2(a) 327 IAC 7-6-4 327 IAC 7-6-5 327 IAC 7-6-6 327 IAC 7-6-8 land application of wastewater marking boundaries / measuring separation distances
Presiding ELJ:	Wayne E. Penrod
Party Representatives:	Jodie L. Miner, Esq. for Snow White Services, Inc. Mary Wertz, Esq. for IDEM
Order Issued:	23-Jan-96
Index Category:	Water
Further Case Activity:	

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JAN 23 1996

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

IN THE MATTER OF:)	
)	
OBJECTION TO THE DENIAL OF)	
RENEWAL APPLICATION FOR)	
WASTEWATER LAND APPLICATION)	CAUSE NO. 95-W-J-1377
APPROVAL 531-01)	
SNOW WHITE SERVICES, INC.)	

**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) 13-7-2-11.
2. The Petitioner, Snow White Services, Inc. (Snow White), is licensed by the State of Indiana through IDEM to conduct wastewater management activities.
3. The Indiana Office of Environmental Adjudication has jurisdiction over administrative appeals of decisions of the Commissioner of IDEM. (S.E.A 156 [P.L. 41-1995 amending IC 4-21.5-7])
3. 327 Indiana Administrative Code (IAC) 7 governs the removal, record-keeping, transportation, storage, treatment, and disposal of wastewater from sewage disposal systems. 327 IAC 7 was promulgated under the authority of IC 13-7-8.8-5.
4. "Wastewater" is defined by IC 13-7-8.8-1 as "human excreta, water, scum, sludge, and sewage from sewage disposal systems, retained contents of wastewater holding tanks or portable sanitary units, grease, fats, and retained wastes from grease traps or interceptors, liquid borne wastes from ordinary living processes, and incidental or accidental seepage from sewage disposal systems".
5. "Wastewater management" is defined by IC 13-7-8.8-1 as including "the cleaning of sewage disposal systems and the transportation, storage, treatment, or disposal of wastewater".
6. Snow White is currently owned and operated by Bernard and Darcy Sanderson and is located in Lafayette, Indiana, Tippecanoe County. (Transcript p. 5)

7. The Sandersons bought Snow White in November of 1986. (Transcript p. 7)
8. Snow White's business consists of the following activities:
 - (a) Pumping and disposal of septic tank wastewater.
 - (b) Pumping and disposal of grease from restaurant grease traps.
 - (c) Pumping of anything liquid.
 - (c) Pumping of dry materials.
 - (d) Water blasting.
 - (e) Water jetting.
 - (f) Soda blasting.

(Transcript pp. 8, 157)

9. Snow White disposes of the septage and grease it pumps by land applying it to a portion of farmland owned by Alvin Pilotte (site). (Transcript p. 25) The site is located in the SW¼ of the NW¼ of Section 36, Township 22N, Range 4W in Tippecanoe County, Indiana. (Petitioner's Exhibit 8) The site approved for wastewater disposal is described in Respondent's Exhibit 11 and Petitioner's Exhibit 4. The site has been in use as a disposal site for wastewater and other waste products since the 1970's. (Transcript pp. 34,40)

10. A land application approval (approval), issued by IDEM, is required prior to the disposal of any waste product or wastewater by application upon or incorporation into the soil and the approval must be renewed each year. (327 IAC 6-2-1(a); 327 IAC 7-6-2(a))

11. On August 31, 1994, Snow White was authorized to conduct land application activities at the site under approval No. 94-5-KJK. The 1994 approval includes the following language:

This approval is subject to all conditions stated in 327 IAC 7-6-4 and the following:

1. That all separation distances cited in 327 IAC 7-6-6 be maintained.
2. That any holding tank, sealed vault, or privy waste be pretreated to significantly or further reduce pathogens as described in 327 IAC 7-5-1.
3. The usable portion of the land disposal site after separation distances and all of the restrictions are applied must be clearly delineated at its boundaries by flags or other obvious boundaries. All wastewater must be disposed of within this area.
4. The wastewater must be uniformly spread to prevent overlapping over the entire 30 acres of the wastewater disposal site. "Spot dumping" from stationary vehicles is not permitted. Additionally, wastewater application rates shall not exceed the following:
 - (a) 50,000 gallons per acre per year.
 - (b) 10,000 gallons per acre in any seven (7) day period.

- (c) 200,000 gallons over acre over the site lifetime.
- (d) 100 pounds per acre of nitrogen available for plant uptake annually.

5. Wastewater cannot be applied or allowed to drain closer than these minimum separation distances:

- (a) potable water supplies - 500 feet.
- (b) dwellings, places of business, or public gatherings - 600 feet.
- (c) property lines and easements - 100 feet.

6. Land application is prohibited when the moisture holding capacity of the soil is exceeded as a result of previous wastewater application or precipitation or when the wastewater cannot be evenly spread over the site.

(Petitioner's Exhibit 8)

12. On or about February 28, 1995, Snow White submitted a timely renewal Application for Wastewater Land Disposal Site Approval (application) to IDEM. (Petitioner's Exhibit 1) This application administratively extended the 1994 permit, which expired at midnight on February 28, 1995, until a determination by IDEM was made on the application. (IC 13-7-10-2(e))

13. 327 IAC 7-2-3 states: The commissioner will issue or renew a permit only after the receipt of a completed application and after it is determined that the applicant has the ability and adequate knowledge, equipment, and means of disposal to conduct wastewater management activities in a manner consistent with this article (327 IAC 7). Such determination may be made after facility and equipment inspections, and after review of the applicant's record in conducting wastewater management in compliance with this article (327 IAC 7).

14. On July 6, 1995, an annual inspection by Brian Daggy of the Office of Water Management of IDEM revealed numerous violations of 327 IAC 7. (Transcript 2¹ pp. 57-76)

15. On September 6, 1995, IDEM denied the application citing 327 IAC 7-2-3. The denial notice specifically stated:

Denial of your application is based on IDEM's determination that the applicant does not have the requisite ability, knowledge, equipment and/or means of disposal to conduct wastewater management in conformity with applicable rules as evidenced by the following noncompliance with 327 IAC 7.

Respondent did dispose of wastewater improperly and in violation of his Land Application Approval on property located SW¹/₄, NW¹/₄, Section 36, Township 22N,

¹Transcript 2 denotes the second volume of the transcript

Range 4W and owned by Alvin Pilotte. Pursuant to 327 IAC 7-5-7, 327 IAC 7-6-5, 327 IAC 7-6-6 and 327 IAC 7-6-8 the following violations were observed on July 6, 1995, during an annual site inspection:

- Disposal of wastewater on an unapproved site
- The approved site was not properly marked or posted with "No Trespassing" signs
- Improper application of wastewater or "Spot dumping" throughout the site
- Application within required separation distances
- Creation of nuisance conditions
- Ponding of wastewater on the surface of the site

The above listed conditions show a pattern of consistent and aggravated noncompliance with Rule 327 IAC 7 promulgated under the authority of IC 13-7-8.8-5.

(Petitioner's Exhibit 2)

16. On September 25, 1995, Snow White filed a Petition for Administrative Review (Petition) and a Petition for Stay of Effectiveness of the denial of its 1995 application for renewal of its wastewater land application approval.

17. In the Petition, Snow White (1) denied that it violated any of the regulations cited by IDEM in the manner alleged by IDEM; (2) stated that the land application activities at issue at all times were carried out in accordance with the applicable provisions of the statute and regulations; and (3) contended that the denial of its renewal application by IDEM was unfounded in fact and contrary to law and should be vacated.

18. On October 26, 1995, a prehearing conference was held. A stay hearing was not conducted at that time due to inadequate notice to Snow White. Instead, an expedited discovery schedule was agreed upon and a hearing on the merits of the Petition was scheduled to occur on November 16, 1995.

19. A two (2) day hearing on the merits of the Petition began on November 16, 1995, and concluded on December 1, 1995. During the hearing both Snow White and IDEM presented testimony from witnesses and entered exhibits into the record.

20. Darcy Sanderson (D. Sanderson) is the Secretary and Treasurer of Snow White. (Transcript p. 40)

21. D. Sanderson is the wife of Bernard Sanderson (B. Sanderson). (Transcript p. 5)

22. D. Sanderson handles the scheduling of work and some paperwork and is not familiar with the "technical side" of the Snow White business. (Transcript pp. 7, 8)

23. B. Sanderson manages the day to day operation of the business including its land application activities. (Transcript p. 102)
24. From late 1986 to September 1995, Snow White applied septage and grease to the site an average of four (4) times each week, over a ten (10) year period of time. (Transcript pp. 59, 60)
25. Snow White has disposed of between 200,000 and 328,000 gallons of grease and septage each year since the Sandersons have owned the business. (Transcript p. 60)
26. Prior to receiving the denial of the 1995 land application renewal permit, B. Sanderson had not been to the site since May, 1995. (Transcript p. 102) He was not on the site or on the Pilotte farm during the month of July, 1995. (Transcript p. 148)
27. In 1995, Snow White did not measure the separation distances, as contained in 327 IAC 7-6-6, from the dwelling or the well on the Pilotte farm and instead relied on the placement of crops to delineate the area in which septage and grease may be land applied. B. Sanderson stated that he neglected to measure the setbacks when the farmer of the Pilotte farm moved his crops. (Transcript pp. 78, 79, 103, 157)
28. During 1995, Snow White land applied septage approximately 360 feet from the residence on the Pilotte farm and within 500 feet of the well on the Pilotte farm. (Transcript pp. 86, 87, 104, 105, 145,)
29. No "No Trespassing" signs were posted on or near the site on July 6, 1995. (Transcript, pp. 55, 98)
30. Snow White failed to mark the boundaries of the site as required by 327 IAC 7-6-4(3). (Transcript pp. 134, 145)
31. Records from the Lafayette Wastewater Treatment Plant indicate that from December 20, 1993, until the denial of the 1995 renewal application, Snow White did not take any septage to the Lafayette treatment facility. (Transcript p. 115)
32. When the land was not conducive to land application, i.e. too wet, Snow White land applied septage along the access lane which forms the eastern boundary of the approved land application site. (Transcript pp. 73, 74)
33. Snow White employees have gotten stuck in the mud while land applying septage approximately three to four (3 to 4) times per year and have had to be towed out of the site by a tow truck. (Transcript p. 106)
34. Snow White land applied septage when the moisture holding capacity of the soil was exceeded in March and May of 1995. (Respondent's Exhibits Nos. 23,8, 25; Transcript 2 pp.

115-130)

35. In the late 1970's fly ash, protein and filtrate from A.E. Staley was disposed of on Pilotte farm. The protein and filtrate was dumped along the lane periodically. The fly ash was hauled in with single axles and 18-wheelers and dumped in a huge mound to the south of the approved land application site. The County Board of Health was not provided with a chemical analysis of these materials which were dumped on the Pilotte farm. (Transcript 2 pp. 7, 19-22)

36. This mound is approximately 20 to 30 feet in height, 75 to 100 feet in width, and 150 to 175 feet in length. (Transcript 2 pp. 7, 22, 74)

37. Because the ash mound is made of spent coal ash, it is highly permeable and absorbs moisture. (Transcript pp. 219, 220)

38. There is a stream 300 to 400 feet south of the ash mound. (Transcript 2 pp. 24, 29)

39. After the ash mound was in place, a dike was put around it to alleviate concerns some neighboring property owners had about the possibility that the fly ash may get into the stream. (Transcript 2 p. 30)

40. Snow White disposed of septage and grease on the mound on the south end of the Pilotte farm. This mound is clearly beyond the boundaries of the approved site and has never been approved for the disposal of wastewater. (Transcript pp. 79, 145-146, Transcript 2 pp. 73-76)

41. "Spot dumping" is not defined by the statutes or rules which regulate the land application of septage. Through the testimony of Daggy and Kavanaugh, it is understood to mean the over application of septage and/or grease in such a manner that causes the septage and/or grease to pool, pond or remain in a moist condition for more than 24 hours. Evidence that "Spot dumping" has occurred on a site includes: a concentrated area of septage and/or grease, solids in a thickness of several inches, killed vegetation, and eroded spots in the soil. (Transcript 2, pp. 61, 62, 69, 70, 172, 173; 327 IAC 7-6-5)

42. Snow White "spot dumped" septage and grease on the mound on the south end of the Pilotte farm. (Transcript p. 146, Transcript 2 pp. 73-76)

43. B. Sanderson testified that he observed grease, septage, plastic applicators, and plastic bags covering approximately one third of the ash mound at the south end of the Pilotte farm three weeks prior to the November 16, 1995 hearing. (Transcript pp. 91-93)

44. On the Pilotte farm, there is a swale at the end of the access road and around the ash mound. (Transcript 2 pp. 23-24)

45. An intermittent stream exists on the land application site. (Respondent's Exhibit 11,

Transcript 2 pp. 96-97)

46. B. Sanderson testified that it is his responsibility to ensure that land application is done correctly and that he has neglected his responsibilities. (Transcript p. 96)

47. B. Sanderson has never read the rules which regulate the land application of septage. (Transcript pp. 143, 144)

48. B. Sanderson is not knowledgeable of the regulations regarding the disposal of septage and grease onto a land application site. For instance, he did not believe that the land application regulations address the situation where the temperature of the soil is less than a certain degree or the ground is snowcovered. (Transcript pp. 142-143) He also incorrectly believed that it is a condition of the permit only, and not the regulations regarding land application, that septage may not be disposed of at the land application site when the ground is too wet. (Transcript pp. 73, 74)

49. Ken Kavanaugh (Kavanaugh) is an environmental scientist with the Indiana State Department of Health (ISDH). (Transcript p. 164)

50. Prior to Spring, 1995, the ISDH was responsible for licensing and approvals or denials of waste water management activities, including the inspection of land application sites used for the disposal of wastewater. (Transcript 2 p. 45)

51. Prior to Spring, 1995, Kavanaugh was responsible for the inspection and permitting of Snow White's land application site as it was in his assigned geographical area. (Transcript p. 169)

52. Kavanaugh periodically inspected the land application site located on the Pilotte farm from 1984 through January, 1993. (Transcript p. 169)

53. Kavanaugh observed evidence of grease disposal on the ash mound on March 1, 1989. (Transcript p. 181)

54. Four (4) photographs of the ash mound taken by Kavanaugh in March of 1989 document improper disposal, ponding of grease, and deposits of solids on the ash mound. (Transcript pp. 209-214; Respondent's Exhibits 1-4)

55. The ISDH files regarding wastewater management permits were transferred to IDEM when the program was transferred. (Transcript p. 204)

56. Kavanaugh stated that he would always conduct a site inspection before recommending an approval of a site for land application. (Transcript p. 207) However, Kavanaugh recommended the approval of the 1994 land application application without a site inspection. (Transcript pp. 207, 208)

57. Kavanaugh's January 12, 1993 and March 1, 1989 memorandums indicate Kavanaugh's belief that excessive or large amounts of material was spread along each side of the roadside. Kavanaugh stated that his concern was that it might have put that particular soil over the [loading] limits and that it would make it very difficult to sort out whether there was an over-application made or not. An additional concern was the ease of using the access road for such disposal may have led itself to over-applying. (Transcript p. 215)
58. Ronnie R. Noles (Noles) is Chief Environmental Specialist employed by the Tippecanoe County Department of Health. (Transcript 2 p. 5)
59. Noles has been familiar with the operations of Snow White Incorporated since 1972. He has worked with the two prior business owners, Mr. Cox and Mr. Barnes. (Transcript 2 pp. 5,6)
60. Mr. Noles testified that an unknown amount septage has been land applied to the Pilotte farm by the two previous owners of Snow White. (Transcript 2 pp. 34, 35)
61. Brian Daggy (Daggy) is employed by the Office of Water Management at IDEM as an Environmental Manager. He works in the Wastewater Management Program which is the licensing program for septage haulers and their land application sites. (Transcript 2 p. 44)
62. There are 337 septic haulers licensed to operate in the State of Indiana. Approximately 79 of those haulers have land application sites. (Transcript 2 p. 46)
63. When an application for a land application site is received by IDEM, it is reviewed for completeness, a site inspection is conducted, and the ISBH file is reviewed. (Transcript 2 pp. 47-50)
64. When Daggy reviewed the ISBH file on Snow White, he noted some problems (as noted in Petitioner's Exhibit 5 and Respondent's Exhibit 6) which did not concern him greatly at the time because it looked like they had all been addressed and he had no reason to believe they had not been corrected. (Transcript 2 pp. 50, 51)
65. The site which was to be used for land application in the 1994 permit is to the west side of the access road; past a trailer and some old farm buildings, and approximately 11 acres. The site was permitted to begin 600 feet from the mobile home and as detailed in Respondent's Exhibit 11. (Transcript 2 pp. 56-65)
66. During Daggy's July 6, 1995, site inspection, the following conditions were present:
- (a) The site was in oats.
 - (b) The access road formed the eastern boundary of the site.
 - (c) There is a general southern slope to the site away from the access road.
 - (d) Septage had been land applied 360 feet from the residence on the Pilotte farm.

- (e) Septage had been land applied approximately 330 or 335 feet from the well that is just south of the residence on the Pilotte farm.
- (f) There was evidence of spot dumping and over application both in the permitted area and north of the permitted area within the separation distances from the residence and the well. In these areas, it didn't appear that a spreader bar was used because there was a relatively concentrated narrow area of application approximately 3-4 feet wide
- (g) These concentrated narrow areas of application would continue for approximately 300 to 400 feet.
- (h) There were solids remaining that were several inches thick in certain areas.
- (i) Several areas of spot dumping occurred just west of the access lane.
- (j) Evidence of over- application from the lane existed where materials were sprayed onto to the field 25 to 30 feet off the lane.
- (l) There was no evidence of land application activities on the east side of the access road or to the north of the residence.
- (m) In spots, septage was in a moist condition after 24 hours from the date it was applied.
- (n) Spot dumping that had occurred recently and was still moist and spot dumping that occurred in the past was dried.
- (o) There were several spots along the lane where it looked like the trucks had pulled up, opened the valve, let at least a large portion of the load of septage drain out without moving the truck. This was evident in an area of approximately 5 feet by 10 feet.
- (p) Numerous loads of septage and grease were dumped on the ash mound which is south of the site.
- (q) There was the distinctive disagreeable odor of grease on the ash mound.
- (r) The area in which septage and grease were dumped on the ash mound was approximately 75-100 feet in width and 150-175 feet in length.
- (s) Some of the septage and grease on the ash mound was liquid and moist.

(Transcript 2 pp. 57-76)

67. Later in the day, Daggy and Paul Moore, IDEM environmental scientist, videotaped the area in order to document the violations observed. (Transcript 2 pp. 76, 77)

68. The videotape documents the following violations of the 1994 permit and the rules regulating the land application of septage and grease:

- (a) A substantial amount of grease and septage was dumped on the mound at the south end of the Pilotte farm. The mound is off the permitted land application site.
- (b) Spot dumping along the access lane occurred in places
- (c) Vegetation on the site has been burnt by the over-application of nitrogen.
- (d) Strong evidence exists that application along the access lane was a common occurrence due to the flattened vegetation, burnt vegetation, and pools of dried septage.
- (e) Spot dumping occurred on the site.
- (f) Snow White land applied septage within the 600 feet separation distance from the

residence.

(g) Snow White land applied septage within the 500 feet separation distance from the well.

(Respondent's Exhibit 12, Transcript pp. 104-105)

69. Nuisance conditions were created by Snow White due to the application of septage and grease on the ash mound, the spot dumping on septage on the site, the over-application of septage along the access lane, the lack of boundary markers, the application of septage within separation distances from the residence and well, and the lack of "No Trespassing" signs.

70. Snow White disposed of wastewater on an unapproved site.

71. Snow White's approved land application site was not properly marked with "No Trespassing" signs.

72. Improper application of wastewater or spot dumping occurred throughout the permitted land application site.

73. Snow White land applied wastewater in non-compliance with the required separation distances.

74. Snow White caused the ponding of wastewater on the surface of the site.

75. Snow White has demonstrated its inability to conduct the wastewater management activity of land application of wastewater in conformity with 327 IAC 7.

74. The person responsible for the management of Snow White's land application of septage and grease lacks adequate knowledge to conduct the wastewater management activity of land application in conformity with 327 IAC 7.

CONCLUSIONS OF LAW

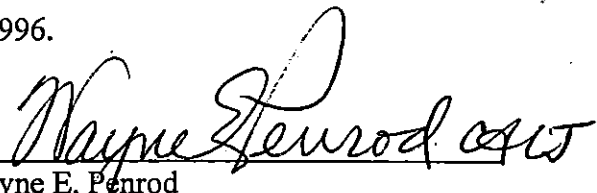
1. The facts support IDEM's decision to deny the renewal of Snow White's land application site.
2. Snow White lacks the requisite knowledge to conduct wastewater management activities, specifically land application of wastewater, in conformance with 327 IAC 7.
3. Snow White has demonstrated its inability to conduct wastewater management activities, specifically the land application of wastewater, in conformance with 327 IAC 7.
4. Snow White has the burden of proving that IDEM acted arbitrarily and capriciously and not in accordance with the law in denying the renewal application for land application approval made by Snow White.
5. Snow White has failed to carry its burden of proof.

FINAL ORDER

It is therefore found that the Petitioner has failed to meet its burden of proof. The Petition for Review is hereby DENIED and the Notice of Denial issued by IDEM on September 6, 1995, 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 22nd day of January, 1996.



Wayne E. Penrod
Chief Environmental Law Judge

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
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CAUSE NO. 95-W-J-1377

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on counsel of record by First Class United States Mail, postage paid, this 22nd day of January, 1996.

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Wayne E. Penrod, Chief
Administrative Law Judge