OBJECTION TO THE ISSUANCE OF WASTEWATER LAND APPLICATION APPROVAL CONSTRUCTION PERMIT 531-01

HENRYVILLE MEMBERSHIP SANITATION CORPORATION

1996 OEA 0014, OEA CAUSE NO.: 95-W-J-1211

Official Short Cite Name:	Henryville Sanitation, 1996 OEA 014	
OEA Cause No.:	95-W-J-1211	
Topics/Keywords:	327 IAC 7-7-4	
	327 IAC 7-7-5	
	327 IAC 7-5-3	
	subject matter jurisdiction	
Dunaidin - Fl I.	Lori Kulo Fadrio	
Presiding ELJ:	Lori Kyle Endris	
Party Representatives:	Mary Wertz, Esq. for IDEM	
	Susan Williams, Esq.	
	Margaret Cravens, pro se	
Order Issued:	February 27, 1996	
Index Category:	Water	
Further Case Activity:		



Indiana Office of Environmental Adjudication

Wayne E. Penrod Chief Administrative Law Judge 150 West Market Street Suite 618 Indianapolis, IN 46204 Telephone 317-232-8591 Fax 317-233-0851

STATE OF INDIANA COUNTY OF MARION)) ss:)	BEFORE THE INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION
IN THE MATTER OF:)	
OBJECTIONS TO THE CONSTRUCTION PERMITHENRYVILLE MEMBERSISANITATION CORPORATION	r) HIP)	CAUSE NO. 95-W-J- <mark>1211</mark>

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS

TO: Mary Wertz, Esq.
Indiana Department of
Environmental Management
Office of Legal Counsel
100 N. Senate Avenue, 13th Floor
P.O. Box 6015
Indianapolis, IN 46206-6015

Margaret Cravens 607 North Francke Road Henryville, IN 47126 Susan Williams, Esq. Brown Todd & Heyburn 120 W. Spring St. #400 New Albany, IN 47150

This constitutes notice that on December 15, 1995, Henryville Membership Sanitation Corporation (Henryville), by counsel, filed a Motion to Dismiss, and on January 12, 1996, Henryville, by counsel, filed a Motion for Summary Judgment. Thereafter, on January 29, 1996, the Indiana Department of Environmental Management, by counsel, filed a Response to Henryville's Motion to Dismiss and Motion for Summary Judgment. Finally, on February 15, 1996, Objectors, by spokesperson, filed a Response to Motion for Summary Judgment.

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

1. The provisions of 327 IAC 7-7-4, 327 IAC 7-7-5, and 327 IAC 7-5-3 do not apply to the facility currently operated by Henryville or to the proposed expansion of that facility. These

Indiana Administrative Code provisions govern the location, construction, and maintenance of holding tanks and storage ponds that hold and store wastewater pumped from septic tanks, holding tanks, and sealed and privy vaults. The Henryville facility is a wastewater treatment facility; therefore, its treatment ponds are not regulated by these provisions.

- 2. Objectors, in their petition, further objected that Henryville:
 - a. Failed to obtain an easement.
 - b. Failed to comply with NPDES permit.
 - c. Failed to obtain approval for territorial expansion from the Indiana Utility Regulatory Commission.
 - d. Failed to service all customers in its original territory before servicing customers outside the original territory.
 - e. Created odors.

These objections do not fall within the subject matter jurisdiction of the Office of Environmental Adjudication.

IT IS THEREFORE ORDERED that Henryville's Motion for Summary Judgment is PARTIALLY GRANTED as to the Objectors' objections that are based on the applicability of the provisions of 327 IAC 7-7-4, 327 IAC 7-7-5, and 327 IAC 7-5-3, to the Henryville construction permit. Henryville's Motion to Dismiss is GRANTED as to all of the Objectors' remaining objections as this court lacks subject matter jurisdiction over those objections.

You are further notified that pursuant to provisions of S.E.A. 156 (P.L.41-1995 amending IC 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 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 26th day of February, 1996.

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Lori Kyle Endris

Environmental Law Judge