OBJECTION TO THE ISSUANCE OF PERMIT APPROVAL NO. 13725 TOWN OF NEW WHITELAND JOHNSON COUNTY, INDIANA 2001 OEA 092 (00-W-J-2539)

Official Short Cite Name:	Town of New Whiteland, 2001 OEA 092		
OEA Cause No.:	00-W-J-2539		
Topics/Keywords:	IC 13-15-6-2		
	327 IAC 3-2-2		
	Sanitary Sewer construction permit		
	Ind. Tr. R. 12(B)(1) and (6)		
Presiding ELJ:	Wayne E. Penrod, CALJ		
Party Representatives:	Janice E. S. Lengel, Esq. for IDEM		
	Cynthia E. Music, Esq. for Permittee		
	J. Lee Robbins, Esq. for Permittee		
	Dennis and Bonnie Jo Shelton, pro se Petitioners		
Order Issued:	May 4, 2001		
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

42001

STATE OF INDIANA COUNTY OF MARION)))		ORE THE INDIANA OFFICE OF VIRONMENTAL ADJUDICATION
IN THE MATTER OF:)	
OBJECTION TO THE ISSUANCE OF)	CAUSE NO. 00-W-J-2539
PERMIT APPROVAL NO. 13725)	
TOWN OF NEW WHITELAND)	
NEW WHITELAND, INDIANA)	

FINAL ORDER GRANTING MOTION TO DISMISS

On September 8, 2000, Respondent, the Town of New Whiteland, filed a Motion to Dismiss which Motion was joined by the Indiana Department of Environmental Management. Oral Argument of said motion was heard on May 2, 2001. The Court having considered same now FINDS:

- 1. On March 20, 2000, Respondent filed an application for construction of a sanitary sewer system under 327 IN ADC §3-2-2, with additional information submitted on April 17, 2000.
- 2. On May 23, 2000, the Indiana Department of Environmental Management (hereinafter referred to as "IDEM") issued Permit Approval No. 13725 (hereinafter referred to as the "Permit") approving Respondent's application.
- 3. On June 7, 2000, Petitioners filed a request for administrative review (hereinafter referred to as "Petitioners' Request") with the Office of Environmental Adjudication (hereinafter referred to as the "OEA").
- 4. Petitioners in Petitioners' Request failed to state with particularity the reasons for the request for administrative review and the issues proposed for consideration at the adjudicatory hearing they were requesting or to identify terms and conditions that would be appropriate to satisfy the requirements of the laws and regulations governing sanitary sewer system construction permits, thereby failing to comply with Ind. Code §13-15-6-2.

- 5. On June 30, 2000, the OEA issued an order scheduling a pre-hearing conference for July 17, 2000 and ordering Petitioners to amend Petitioners' Request to comply with Ind. Code §13-15-6-2.
- 6. Following the pre-hearing conference held on July 17, 2000, the OEA issued an order on August 3, 2000, requiring Petitioners to amend Petitioners' Request by August 11, 2000 to comply with Ind. Code §13-15-6-2.
- 7. On August 10, 2000, Petitioners filed an amended request for administrative review with the OEA ("Petitioners' Amended Request"). Petitioners' Amended Request raised additional concerns of the Petitioners, but still did not comply with Ind. Code §13-15-6-2.
- 8. Petitioners in Petitioners' Request and Petitioners' Amended Request again failed to comply with Ind. Code 13-15-6-2. Additionally, Petitioners' in Petitioners' Request and Petitioners' Amended Request failed to identify any technical deficiencies in Respondent's permit application or with IDEM's review of Respondent's permit application.
- 9. Petitioners' in Petitioners' Request and Petitioners' Amended Request have failed to state facts demonstrating that they are or will imminently be aggrieved or adversely affected by IDEM's issuance of the Permit, thereby failing to comply with Ind. Code §4-21.5-3-7.
- 10. Respondent and IDEM's Motion to Dismiss is hereby GRANTED. The issuance of Permit Approval No. 13725 is upheld.
- 11. 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 Final Order is 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.

So ORDERED this day of May, 2001.

Wayne E. Penrod, Chief Administrative Law Judge