**Objection to the Issuance of Construction Application for Sanitary Sewer Approval No.19508, Shipshewana Lake Collection System Shipshewana, LaGrange County, Indiana 2010 OEA 55, (09-W-J-4305)**

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**OFFICIAL SHORT CITATION NAME:** When referring to 2010 OEA 55, cite this case as ***Shipshewana Lake Collection System*, 2010 OEA 55.**

**TOPICS:**
summary judgment
sanitary sewer
wastewater
collection system
setback
treatment
pretreatment
hydrogen sulfide gas
certification
capacity
average daily flow rate
alternative technical standards
local permit
moot
notice
lack of notice
water pollution treatment/control facility
Huffman
Musol

**PRESIDING JUDGE:**
Catherine Gibbs

**PARTY REPRESENTATIVES:**
IDEM: Nancy Holloran, Esq.
Petitioners: Dianne and Robert Fiedler, Kay and Dennis Martin, Veronica and Michael Victor
Permittee: John Gastineau, Esq.; Eberhard & Gastineau, PC

**ORDER ISSUED**:
May 5, 2010

**INDEX CATEGORY:**
Water

**FURTHER CASE ACTIVITY:**
Judicial Review

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| STATE OF INDIANA | ) | BEFORE THE INDIANA OFFICE OF |
| | ) | ENVIRONMENTAL ADJUDICATION |
| COUNTY OF MARION | ) | |
| | | |
| IN THE MATTER OF: | ) | |
| | ) | |
| OBJECTION TO ISSUANCE OF CONSTRUCTION | ) | |
| PERMIT APPLICATION FOR SANITARY SEWER | ) | |
| PERMIT APPROVAL NO. 19508 | ) | |
| SHIPSHEWANA LAKE COLLECTION SYSTEM | ) | |
| SHIPSHEWANA, LaGRANGE COUNTY, INDIANA | ) | |
| _____ | ) | CAUSE NO. 09-W-J-4305 |
| Dianne & Robert Fiedler, Kay & Dennis Martin, | ) | |
| Steve Schrock, *et al.*, | ) | |
| Petitioners, | ) | |
| LaGrange County Regional Utility District, | ) | |
| Permittee/Respondent, | ) | |
| Indiana Department of Environmental Management, | ) | |
| Respondent | ) | |

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court on the LaGrange County Regional Utility District's (the District) Motion for Summary Judgment, the Indiana Department of Environmental Management's Motion for Summary Judgment and the Petitioners' Dispositive Motion for Summary Judgment Seeking Revocation of Permit 19508, which pleadings are parts of the Court's record; and the Court, being duly advised and having read the pleadings, petition, motion, response, reply and evidence now enters the following findings of fact, conclusions of law and final order:

### Statement of the Case

1. Between August 21, 2009 and September 3, 2009, the Office of Environmental Adjudication (the OEA or the Court) received petitions for administrative review of the issuance of Approval No. 19508 to the District by the Indiana Department of Environmental Management (the IDEM).

2. On October 21, 2009, the District filed its Motion to Dismiss Persons as Petitioners. The Court granted the motion to dismiss the following Petitioners: Mervin Miller, Steve Slaven, Steven Fanning, Michael C. Merritt, Raymond Howard, Bruce Nenna, Dawn Dunlap, John Powalowski, Sue Powalowski, Erin Burke, Jack C. Thomas, Elmma Yoder, Joe Yoder, Molly Wiard, Joseph Schlabach, and Norma Easterday. The Court denied the motion to dismiss Lavon Schlabach and Mark Easterday.

3. The District filed its Motion for Summary Judgment on January 27, 2010. Thereafter, it filed its Response to Petitioners' Dispositive Motion for Summary Judgment on March 4, 2010 and its Reply to Petitioners' Response to the District's Motion for Summary Judgment on March 17, 2010.

4. The Petitioners filed their Dispositive Motion for Summary Judgment Seeking Revocation of Permit 19508 on January 29, 2010. The Petitioners filed their Response to Respondent the LaGrange County Regional Utility District's Numerous Motions Seeking Summary Judgment; and their Response to Respondent the Indiana Department of Environmental Management's Motion for Summary Judgment on March 2, 1010. Their Reply to Respondent LaGrange County Regional Utility District's Response, Including Supplemental Motions, to Petitioners' Dispositive Motion for Summary Judgment was filed on March 17, 2010.

5. The IDEM filed its Motion for Summary Judgment on January 29, 2010. The department filed its Reply to Motion for Summary Judgment on March 17, 2010.

## Statement of the Issues

1. Was the Permit properly issued?
2. Was notice to all affected parties given?

## FINDINGS OF FACT

1. On August 18, 2009, the Indiana Department of Environmental Management (the IDEM) issued Approval No. 19508 (the Approval) to the LaGrange County Regional Utility District (the District) authorizing the construction of a sanitary sewer around Shipshewana Lake (the Project).

2. Between August 31, 2009 and September 3, 2009, the Office of Environmental Adjudication (the OEA or Court) received many petitions for review of the Approval. The Petitions for Review were consolidated under Cause Number 09-W-J-4305. The parties consented to allowing the following individuals to represent all of the Petitioners: Diane and Robert Fiedler; Kay and Dennis Martin; and Veronica and Michael Victor.

3. The Petitioners filed an Amended Petition for Administrative Review on December 23, 2009.

4. The Project consists of the construction of a sanitary sewer collection system around Shipshewana Lake. The collection system will connect with the Town of Shipshewana's (the "Town") collection system. The collected wastewater will be treated at the Town of Shipshewana's treatment plant before being discharged.

5. The permit application was submitted to the IDEM on June 22, 2009. The application includes several documents which certify certain facts. These documents were signed on various dates, the earliest of which was January 20, 2009. Between January 20, 2009 and June 22, 2009, the design of the Project had not changed in a significant way in terms of: the system's hydraulics; the flows the system was designed to handle; or the flows that would go into the Town of Shipshewana's collection system.

6. The District admits that portions of the collection system were located within ten (10) feet of Shipshewana Lake, as originally proposed and approved. After being informed of this fact by the Petitioners, the District obtained permission from the LaGrange county highway department to move the sewer into the right-of-way for County Road 900 West. The new location would be more than ten feet from the lake. On or about February 9, 2010, the District submitted revised plans for these specific portions of the system to the IDEM. On February 27, 2010, the IDEM approved the revisions and further found that the revisions did not constitute a significant or material change in the Permit and therefore, did not require a modification to the Permit.

7. The Project includes the construction of a chemical feed and metering station (the Station). The Station is located on the east side of County Road 850 W near the intersection of County Road 260 N. The location of the Station was moved approximately 60 feet north of the originally proposed location. This was the only change made to the proposed plans between January 2009 and June 2009, when the application was submitted to IDEM.

8. The Station has 2 purposes: (1) to measure the flow of wastewater; and (2) to inject the wastewater with a chemical named Musol MPOX Active (Musol) prior to being discharged into the Town of Shipshewana's collection system. The purpose of the chemical treatment is to control odor and reduce corrosion. The chemical is automatically added as the wastewater flows through the Station. The wastewater flows through approximately 1300 feet of pipe to a lift station owned and operated by the Town of Shipshewana. From this point, the combined wastewater flows to the Town's wastewater treatment plant, is treated and discharged.

9. The chemical added at the Station does not render the wastewater safe for discharge into waters of the State. Sewage releases hydrogen sulfide gas[1], which has a rotten egg smell. The Musol reduces this odor and the corrosivity of the gas. The Musol does not act to neutralize or change the nature of the wastewater; it does not serve to make the wastewater any more appropriate for discharge into the waters of the State. There is no change in BOD[2], TSS[3], ammonia, or phosphorus[4].

[1] The ELJ was unable to find a statute or regulation which requires the monitoring of or imposes effluent limitations on hydrogen sulfide gas. The testimony at the hearing made it clear that the addition of the Musol MPOX Active was a voluntary action to which the District and the Town agreed.
[2] Biological oxygen demand
[3] Total suspended solids
[4] Constituents for which NPDES permits commonly require either monitoring or impose effluent limits.

## CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.

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. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.*; I.C. § 4-21.5-3-27(d). "*De novo* review" means that, "all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings. *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).

4. The OEA may enter judgment for a party if it finds that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to judgment as a matter of law." I.C. § 4-21.5-3-23. The moving party bears the burden of establishing that summary judgment is appropriate. All facts and inferences must be construed in favor of the non-movant. *Gibson v. Evansville Vanderburgh Building Commission, et al*., 725 N.E.2d 949 (Ind. Ct. App. 2000).

5. When the moving party sets out a *prima facie* case in support of the summary judgment, the burden shifts to the non-movant to establish a factual issue. "A factual issue is said to be "genuine" if a trier of fact is required to resolve the opposing parties differing versions of the underlying facts." *York v. Union Carbide Corp*., 586 N.E.2d 861 (Ind. Ct. App. 1992) at 864. "A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue." *Laudig v. Marion County Bd. of Voters Registration*, 585 N.E.2d 700 (Ind. Ct. App. 1992) at 703-704. Further, the Indiana Tax Court in *Allied Collection Service Inc. v. Ind. Dept. of State Revenue* (Cause No. 49T10-0608-TA-76, December 22, 2008) stated, "If there is any doubt when ruling on a motion (or motions) for summary judgment as to what conclusion the Court could reach, the Court will conclude that summary judgment is improper, given that it is neither a substitute for trial nor a means for resolving factual disputes or conflicting inferences following from undisputed facts. *See Owens Corning Fiberglass Corp. v. Cobb*, 754 N.E.2d 905, 909 (Ind. 2001) (citations omitted)."

6. Mere assertions of opinions or conclusions of law will not suffice to create a genuine issue of material fact to preclude summary judgment. *Sanchez v. Hamara*, 534 N.E.2d 756, 759 (Ind. Ct. App. 1989)(citing *McMahan v. Snap On Tool Corp.*, 478 N.E.2d 116, 122 (Ind. Ct. App. 1985)). Further, "Summary judgment must be denied if the resolution hinges upon state of mind, credibility of the witnesses, or the weight of the testimony. *Best Homes, Inc. v. Rainwater*, 714 N.E.2d 702 (Ind. Ct. App. 1999) at 706.

**The materials submitted in support of the Permit were sufficient to support issuance of the Permit.**

7. The issue in this matter is not whether the application was approvable when it was filed with the IDEM but whether the application was approvable on the date that the Permit was issued. The IDEM has the authority to review the application and ask for additional information prior to approving a permit. 327 IAC 3-2-2-(e)(7). The IDEM properly considered all of the material submitted in support of the Permit including the material that was submitted in response to IDEM's notices that the application was deficient. The mere fact that the supporting documents were signed on various dates prior to the submission of the application is not sufficient to support a conclusion that the application was deficient. The Petitioners must prove more than just that the materials were signed on different dates; the Petitioners must prove that the information contained in the materials was false or inaccurate; that the signatories knew that the information was false or inaccurate; or that the information was otherwise insufficient to support the issuance of the Permit. In this case, the Petitioners must show that the information, upon which the capacity certifications were based, changed between the date the certification was signed and the date that the application was submitted to the IDEM.

8. The Petitioners argue that the fact that the certifications were dated as early as January of 2009 mandates a finding that the certifications were faulty. Specifically, the Petitioners cite to 327 IAC 3-6-11 which states that the flow rate requirements must be determined in accordance with this section. This rule further states that an applicant *may* use a general average daily flow rate value of 310 gpd[5]/single family homes to determine flow rate requirements. However, 327 IAC 3-6-32 provides that alternative technical standards may be approved by the Commissioner. In this case, the District used an alternate average daily flow rate of 150 gpd/single family home and requested permission to use this figure in accordance with 327 IAC 3-6-32. The Petitioners argue that by using an alternate average daily flow rate without first having obtained permission to do so, the District knew that the certifications did not meet the rule requirements and were false. However, this interpretation of the rule is not supported by the rule language. The use of the word "may" in 327 IAC 3-6-11 and the provision allowing for the approval of alternative technical standards at 327 IAC 3-6-32 allow an applicant to include an alternative standard at the same time as requesting permission to do so. The rule language does not support the Petitioners' contention that the District was required to use the 310 gpd flow rate and that the use of any other flow rate

[5] Gallons per day

mandates a finding that the District knew that the certifications were false. Therefore, as there is no issue of material fact, summary judgment in favor of the District is appropriate.

9. The Petitioners further argue that the plans for the sewer are faulty because the sewer will be constructed within fifty (50) feet of drinking water wells, pursuant to 327 IAC 3-6-9(d)(3). This issue was not raised in either the original Petition for Review or the Amended Petition for Review so it is not properly before the Court. However, for expediency's sake, the Court will address it. The drinking water wells in question are individual wells, not "public water system drinking water wells" as defined by I.C § 13-2-11-177.3[6]. The Petitioners have not presented sufficient evidence that the drinking water wells are public water system drinking water wells and subject to this requirement. Summary judgment in favor of the District is appropriate.

10. In, *In the Matter of: Objections to Issuance of Solid Waste Facility Permit 46-09, Great Lakes Transfer Station, La Porte County*, (05-S-J-3632; 05-S-J-3655), 2006 OEA 24, 32, the petitioners sought to have a permit to build a solid waste permit invalidated because the permittee had not acquired all of the necessary local and state permits. Chief Environmental Law Judge Mary L. Davidsen ruled that the rules governing the permitting process did not require the permittee to obtain those permits prior to applying for the solid waste permit. Chief ELJ Davidsen wrote that "The permit does not allow or give Great Lakes authority or permission to ignore local rules or regulations, nor influence local decision-making bodies." This conclusion was upheld in *Bd. Of Commissioners of LaPorte County, et al. v. Great Lakes Transfer*, 888 N.E.2d 784 (Ind. Ct. App. 2008).

11. Further, I.C. § 13-15-3-5(b) provides that "a person to which a permit has been issued may not start the construction, installation, operation, or modification of a facility, equipment, or a device until the person has obtained any approval required by any (1) county; (2) city; or (3) town; in which the facility, equipment, or device is located." In addition, 327 IAC 3-2-2(d) states, "Construction shall not commence until all necessary state approvals and permits are obtained." Also, 327 IAC 3-6-6(b) states, "(b) All required permits or exemptions from other federal, state, and local units must be obtained prior to the commencement Indiana Administrative Code Page 15 of construction of any sanitary sewer covered by this rule."

12. In addition, the Permit itself indicates that all local permits/approvals must be obtained before construction begins.[7]

[6] This statute references the definition contained in 42 U.S.C. 300f which defines a public water system as a "system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals."

[7] Exhibit F, introduced into evidence at hearing held on October 28, 2009, Permit Approval No. 19508, issued August 18, 2009, page 3 of 6, Part I, Specific Conditions and Limitations to the Construction Permit, paragraph 1.

13. Each of these rules requires that a permittee have all necessary permits and approvals before it can begin construction. The rules do not require that the permits and approvals be obtained prior to applying for the construction permit. Therefore, summary judgment in favor of the District is appropriate.

14. The Petitioners allege that the construction plans are not in compliance with the rules. Specifically, they allege that the plans are not in compliance with 327 IAC 3-6-10(a). This rule states "(a) Sanitary sewers and lift stations shall be separated from existing or proposed water bodies by ten (10) feet horizontally measured from the outside edge of the sanitary sewer to the edge of the water line at normal pool elevation."

15. The District has admitted that the sewers, as originally designed, are within 10 feet of Shipshewana Lake. There are no exceptions to this rule; therefore, if left uncorrected, the Permit would have to be remanded to the IDEM to correct this deficiency. However, the District has revised its plans and submitted them to the IDEM. The IDEM has approved the revisions and determined that the revisions do not constitute a "significant or material" change requiring the submission of an amended permit application[8].

16. The Petitioners argue that I.C. § 13-15-7-1 requires that the IDEM issue a modified permit. This statute provides that the Commissioner of the IDEM *may* revoke or modify a permit under certain circumstances. The use of the word "may" grants the Commissioner discretion in this matter. The revisions made by the District were relatively simple and there were no changes in the nature or volume of wastewater or to the collection system, such as size, materials, or entrance or exit points. In this instance, the Petitioners have not provided sufficient evidence to prove that the Commissioner abused his discretion.

17. This issue is moot as the approved revisions have corrected the noncompliance. "When a dispositive issue in a case has been resolved in such as way as to render it unnecessary to decide the question involved, the case will be dismissed." *Travelers Indem. Co. v. P.R. Mallory & Co*., 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, as the District has corrected the problem and the IDEM did not abuse its discretion in approving the corrections, this issue is moot.

18. The Petitioners have failed to present sufficient evidence to show that the Project, as revised, does not comply with 327 IAC 3-6-10(a). Therefore, summary judgment in favor of the District is appropriate.

[8] Exhibit F, page 5 of 6, Part II, General Conditions, paragraph 1.

19. The Petitioners argue that the Station is a "water pollution treatment/control facility" and, as such, the District was required to have a separate permit for the construction of the Station. 327 IAC 3-1-2(24) defines "Water pollution treatment/control facility" as "any equipment, device, unit, or structure at a site 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 public or private sewerage systems."

20. It is clear that the Station is a structure at a site that discharges into a public sewer system (the Town of Shipshewana). Therefore, the question is whether the Station is "used to control, prevent, pretreat or treat" any discharge.

21. The Station clearly does not control or prevent any discharge. The wastewater flows through the pipes contained in an underground vault below the structure and is not accumulated. There is no discharge from the Station.

22. The question is whether the Station "pretreats" or "treats" the sewage. I.C. § 13-11-2-239 defines "treatment" as follows:

> "Treatment", for purposes of environmental management laws, when used in connection with a waste that is determined to be hazardous waste under I.C. § 13-22-2-3, means any method, technique, or process designed to change the physical, chemical, or biological character or composition of the waste so as to:
>
> (1) neutralize the waste;
> (2) make the waste:
>  (A) nonhazardous or less hazardous;
>  (B) safer to transport, store, or dispose of;
>  (C) amenable to recovery or storage; or
>  (D) reduced in volume; or
> (3) recover energy or material resources from the waste.

23. The evidence established that the Musol acts to neutralize the hydrogen sulfide gas in order to reduce the odor and the corrosive effects of the gas on the pipes. While the Musol acts to neutralize the gas, there was no evidence that it changes the composition of the wastewater itself. It does not (1) neutralize the wastewater; (2) make the wastewater nonhazardous or less hazardous, safer to transport, store or dispose of or reduce volume; or (3) recovers energy or material resources from the wastewater. The Petitioners did not present sufficient evidence that the addition of the Musol "treats" the sewage.

24. "Pretreat" is not defined in either the regulations or the statutes. However, in the context of the rules promulgated by the Water Pollution Control Board, pretreatment is used in reference to pretreatment programs run by publicly owned treatment works (POTW). The purposes of the pretreatment program are set out in 327 IAC 5-16-1 as follows:

    (1) To prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with the use or disposal of municipal sludge.
    (2) To prevent the introduction of pollutants into a POTW that will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works.
    (3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

25. The addition of the Musol to the wastewater does not serve any of the purposes for the pretreatment programs. The Town, the operator of the POTW, has consented to the use of the Musol. The Petitioners have not established that hydrogen sulfide is a "pollutant" or that it would interfere with the operation of the Town's POTW; that it would not be effectively treated at the POTW; or that it improves opportunities to recycle or reclaim any of the wastewater. The Petitioners did not present sufficient evidence that the addition of the Musol "pretreats" the sewage.

26. The Station is not a "water pollution treatment/control facility". The Petitioners have failed to show that the District was not in compliance with the applicable regulatory requirements. Summary judgment in favor of the District on this issue is appropriate.

**Failure to give notice to all affected parties does not constitute valid grounds to invalidate Permit.**

27. The Petitioners further aver that the District's failure to give notice to all affected parties requires that the Permit be revoked. The rule that sets out the requirements for notice is 327 IAC 3-2-2. The pertinent portion of this rule, 327 IAC 3-2-2(e)(6) states:

    (6) All applications for construction permits must include a signed and dated form as provided by the commissioner for the identification of affected persons as determined by I.C. § 4-21.5-3-5(b). One (1) prepared mailing label for each potentially affected person shall be provided by the applicant for mailing notice of the permit when issued. Each mailing label shall include the name, address, and zip code of the potentially affected person and shall show on the topmost line of the label a mail code designated by the commissioner.

28. The Indiana Supreme Court held, in *Huffman v. Indiana Office of Environmental Adjudication, et al.*, 811 N.E.2d 806 (Ind. 2004) that "whether a person is entitled to seek administrative review depends upon whether the person is "aggrieved or adversely affected". at 807. The Court went on to say that in order for a person to be "aggrieved or adversely affected", they "must have suffered or be likely to suffer in the immediate future harm to a legal interest, be it pecuniary, property or personal interest." at 810. The Court further interpreted the language of I.C. § 4-21.5-3-7 as not allowing administrative review based upon a generalized concern as a member of the public. A person, therefore, may not seek administrative review of an alleged injury done to another person.

29. An aggrieved individual, one who was not able to timely file a petition for review due to the lack of notice, has suffered an injury for which this office can grant relief. However that is not the case here. None of the Petitioners have alleged that they have been personally harmed by the District's failure to give them notice. Those Petitioners that did not receive notice, but were able to file a timely petition for review, have sustained no injury. Because they have suffered no injury, they have failed to state a ground upon which relief may be granted.

30. Further, proof of lack of notice does not constitute sufficient evidence that the permit application did not meet the technical standards. If a person did not receive notice, the appropriate remedy would be to allow that person additional time in which to file a petition for review. The Petitioners have failed to provide statutory authority or sufficient evidence to support their argument that a failure to provide notice constitutes grounds for invalidating the permit.

**Capacity certification letters are not required from other agencies.**

31. The Petitioners allege that the District erred in not obtaining capacity certification letters from various agencies, other than those local agencies with the authority to construct and operate the collection systems through which the wastewater flows. The crux of the argument is that every agency that can exercise jurisdiction over the Project must provide capacity certification pursuant to 327 IAC 3-6-4.

32. 327 IAC 3-6-4 states, "The authorized representative of the town, city, sanitary district, or any entity that has jurisdiction *over the proposed collection system* must sign and date the application and issue the following certification". The certification requires the representative certify that the collection system meets certain standards which could only be done by someone who has knowledge of the actual collection system.

33. The same rules that govern construction of statutes also govern construction of rules. *Miller Brewing Co. v. Bartholomew County Beverage Cos., Inc.*, 674 N.E.2d 193 (Ind. Ct. App. 1996). Therefore, when construing a regulation, the Court must apply the rules of statutory construction. One of these rules is, "If a statute is subject to interpretation, our main objectives are to determine, effect, and implement the intent of the legislature in such a manner so as to prevent absurdity and hardship and to favor public convenience." *State v. Evans*, 790 N.E.2d 558, 560 (Ind. Ct. App. 2003).

34. There are other agencies that have some authority over different aspects of the Project. However, none of these agencies have or could be expected to have the detailed knowledge necessary to certify to the facts required by the rule. Nor would any of these agencies have any legal authority over the operation or construction of the collection system.

35. This conclusion is consistent with *Underwood Plaza*, 2008 OEA 76 and *Independence Hill Conservancy District*, 2007 OEA 164. Both of these cases involved parties who claimed jurisdiction over the collection system. In *Independence Hill,* the OEA found that the owner/operators of the downstream collection system to which the new collection system would be connected had jurisdiction over the collection system and must supply a capacity certification. Chief ELJ Davidsen stated "The determination of the extent of a collection system depends on the path for wastewater collection and discharge sought in a particular application." *Independence Hill Conservancy District*, 2007 OEA 164 at 172. In *Underwood Plaza*, the ELJ applied this conclusion and found that the owner/operator of an upstream collection system did not have any jurisdiction over the new collection system and capacity certification was not required.[9] In this case, it is clear that the only entity that has jurisdiction over the collection system is the Town of Shipshewana. The Town has provided the proper certification.

36. The Petitioners have failed to submit sufficient evidence to show that there is a genuine issue of material fact

## FINAL ORDER

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the LaGrange County Regional Utility District's Motion for Summary Judgment is **GRANTED** and the Petition for Review filed by the Petitioners is hereby **DISMISSED.**

You are hereby further notified that pursuant to provisions of I.C. § 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 I.C. § 4-21.5.

[9] The Petitioners cite to Conclusion of Law #9 in support of their contention that this ELJ has found that other entities with jurisdiction must exist. However, the Petitioners read more into this than was meant. The fact that the Court did not preclude the possibility that there were other entities that may have jurisdiction does not mean that such entities actually exist.

Pursuant to I.C. § 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 5th day of May, 2010 in Indianapolis, IN.**

Hon. Catherine Gibbs
Environmental Law Judge