

**Objection to the Issuance of Permit Approval No. 12506**  
**Jennings Northwest Regional Sewer District**  
**2000 OEA 1 (99-W-J-2195)**

---

**TOPICS:**

sanitary sewer  
collection  
construction  
wastewater  
maintenance  
properly issued

**PRESIDING JUDGES:**

Lucas; Lasley

**PARTY REPRESENTATIVES:**

Petitioners: Richard Morin, *pro se*

Respondents: J. Christopher Janak, Esq.; Melinda Shapiro, Esq., Daniel McInerny, Esq.  
Bose McKinney & Evans

IDEM: Jay Rodia, Esq., Mary Ann Habeeb, Esq.

**ORDER ISSUED:**

January 11, 2000

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

Judicial review

---

**Objection to the Issuance of Permit Approval No. 12506  
Jennings Northwest Regional Sewer District  
2000 OEA 1 (99-W-J-2195)**

STATE OF INDIANA            )  
  )  
COUNTY OF MARION        )

SS: BEFORE THE INDIANA OFFICE OF  
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:                    )  
  )  
OBJECTION TO THE ISSUANCE OF        )  
PERMIT APPROVAL NO. 12506            )  
JENNINGS NORTHWEST REGIONAL        )  
SEWER DISTRICT                        )

CAUSE NO. 99-W-J-2195

**FINAL ORDER AFFIRMING RECOMMENDED ORDER**

This constitutes notice that on December 20, 1999, the Administrative Law Judge issued a Recommended Order in the above-captioned matter. None of the parties filed an appeal of the Recommended Order, and, therefore, the Recommended Order is **AFFIRMED** and incorporated herein by reference.

You are further notified that pursuant to Indiana Code 4-21.5-7-5, 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.

**IT IS SO ORDERED** in Indianapolis, Indiana this 11th day of January 2000.

Steve Lucas  
Special Environmental Law Judge

---

**Objection to the Issuance of Permit Approval No. 12506**  
**Jennings Northwest Regional Sewer District**  
**2000 OEA 1 (99-W-J-2195)**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER**

**I. Statement of the Case**

Issuance of Permit Approval No. 12506 (the "Permit") was appealed to the Office of Environmental Adjudication ("OEA") by the following entities or individuals: (1) the City of North Vernon (the City"), (2) the CSL Group, James J. Rupel and James B. Rupel (the "CSL Group"), (3) Thomas and Rochelle Stearns, (4) Mr. and Mrs. Ownbey, as individuals and on behalf of a citizens group known as People for a Choice, (5) Mr. Richard Morin and (6) Mr. Gregory Large. A stay hearing was conducted in this matter on April 28, 1999. At the stay hearing the City of North Vernon was represented by Ms. Corinne R. Finnerty, the CSL Group was represented by Mr. Philip B. McKiernan, People for a Choice (including Thomas and Rochelle Stearns and Mr. and Mrs. Ownbey) were represented by Mr. Dan A. Patterson, and Mr. Richard Morin proceeded *pro se*.<sup>1</sup> At the stay hearing each Petitioner was provided with an opportunity to submit evidence. At the conclusion of the Petitioners' evidence, the Respondents moved to dismiss the request for stay, which request was granted.

Following the stay hearing, the Administrative Law Judge ("ALJ") established a procedural schedule for further case administration. On September 9, 1999, a Final Order of Default was issued against People for a Choice for failure to comply with an August 13, 1999 Order Granting Motion to Compel and for failing to respond to an August 26, 1999 Proposed Order of Default. People for a Choice did not seek judicial review of the September 9, 1999 Final Order of Default. On October 28, 1999, the CSL Group, by counsel, filed a Motion for Leave to Withdraw Petition for Review, which motion was granted on November 3, 1999. On October 25, 1999, the Wastewater Board of the City voted to withdraw its Petition for Review in this cause, and on November 18, 1999, a Joint Withdrawal of Petitions for Administrative Review and Motion for Dismissal was filed by IDEM, the City and JNRU. Mr. Morin is the only Petitioner who elected to proceed to final hearing in this cause.

The final hearing was conducted on November 18, 1999 and December 9, 1999. At the conclusion of the Petitioner's evidence, Respondents moved for a judgment on the evidence, which motion was granted.

**II. Issue**

The issue in this case is whether IDEM properly issued Permit Approval No. 12506 to JNRU.

---

<sup>1</sup> On or about March 23, 1999 Mr. Large provided notice that he did not intend to pursue the administrative appeal. Mr. Large did not attend or participate in the stay hearing or in any of the further proceedings associated with this matter.

**Objection to the Issuance of Permit Approval No. 12506**  
**Jennings Northwest Regional Sewer District**  
**2000 OEA 1 (99-W-J-2195)**

**III. Findings of Fact**

The Administrative Law Judge finds by a preponderance of the evidence the following facts:

1. On September 10, 1998, JNRU submitted an application, including plans and specifications and contract documents (the "Application"), to IDEM for construction of a low pressure sanitary sewer collection system. The Application was submitted, on behalf of JNRU, by Chaffee & Associates, Inc., and the plans and specifications were certified by Mr. Kevin R. Chaffee, P.E. Additional information was submitted on September 29, 1998, October 14, 1998, and on November 24, 1998. *See, Respondent's Exhibit 1A - 1C.*
2. On December 29, 1998, IDEM issued Permit Approval No. 12506 to JNRU authorizing construction of a low pressure sanitary sewer in Jennings County, Indiana.
3. The standards which IDEM utilizes in reviewing sanitary sewer collection system applications are set forth in 327 IAC 3.
4. The Recommended Standards for Wastewater Facilities (the "10 State Standards") is a guidance document. The 10 State Standards contemplate a type of sewer collection system known as a force main, but do not address pressure sewer systems.
5. The Application includes plans and specifications which indicate that JNRU's sewer collection system is sized to accommodate future flows.
6. The plans and specifications depict clean-outs which are to be utilized in maintaining the sewer collection system. In addition, the Application contains assurances from JNRU that in the event the system experiences low initial flows or problems with clogging for any other reason, JNRU will conduct appropriate system maintenance.
7. Even viewed in the light most favorable to Petitioner, the evidence showed only that some maintenance might be required on the sewer collection system. However, Petitioner's expert witness, Michael Meyer, admitted that such maintenance was addressed in the Application.

**IV. Conclusions of Law**

Based on the foregoing Findings of Fact, the Administrative Law Judge concludes as a matter of law that (1) permit Approval No. 12506 was properly issued pursuant to 327 IAC 3 *et seq.* and (2) Petitioner failed to carry his burden of establishing, by a preponderance of the evidence, that the permit should not have been issued.

**V. Recommended Order**

The Administrative Law Judge recommends that Permit Approval No. 12506 be **UPHELD**.

**Objection to the Issuance of Permit Approval No. 12506**  
**Jennings Northwest Regional Sewer District**  
**2000 OEA 1 (99-W-J-2195)**

**VI. Appeal Rights**

You are hereby notified that pursuant to § 4-21.5-3-29, you have the right to appeal the Recommended Order of the Administrative Law Judge. In order to do so, you must object in a writing that does the following:

- (1) specifies which portions of the Recommended Order you object to;
- (2) specifies which portions of the administrative record supports the objection(s); and
- (3) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days. Objections should be sent to:

Steven Lucas, Special Environmental Law Judge  
Office of Environmental Adjudication  
150 West Market Street, Suite 618  
Indianapolis, IN 46204

A final order disposing of the case or an order remanding the case to the administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

- (1) the date that the order was issued under § 4-21.5-3-27;
- (2) the receipt of briefs; or
- (3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

**IT IS SO ORDERED** in Indianapolis, Indiana this 20th day of December 1999.

Linda C. Lasley  
Administrative Law Judge