

**Objections to the Issuance of Permit Approval No. FP 43-01
Packerton Land Company, Inc, Kosciusko County, Indiana.
2000 OEA 6 (99-W-J-2302)**

TOPICS:

summary judgment
solid waste
renewal permit
continued operation
landfill
parent company
convicted
crime
permit revoked
Notice of Violation
compliance
Environmental Protection Acts
regulations
permit conditions
previous owner
burden
legal basis
329 IAC 10-11-1 (c)
disqualifying conditions

PRESIDING JUDGE:

Penrod

PARTY REPRESENTATIVES:

Petitioner: John Prater
Permittee: Sue A. Shadley, Esq.; John A. Moriarty, Esq.
IDEM: Janice Lengel, Esq.

ORDER ISSUED:

January 25, 2000

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

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4. The petitioners admit that neither Packerton nor its parent company Allied Waste Industries, Inc. (“Allied”) have ever been convicted of a crime, had a permit revoked, or been served with a Notice of Violation. Packerton provided evidence that it has never been convicted of a crime, has never had its previous permit revoked, is in compliance with the Environmental Protection Acts (“Acts”) and regulations, and that it does not have a history of repeated violations of the Acts, regulations or permit conditions.
5. The petitioners admit that all the violations which are the subject of the petition were caused by a previous owner named Dan Ransbottom, and not Packerton. It is the Petitioners position that IDEM and Liberty Waste, Inc.¹ (“Liberty”) should be held accountable for the violations committed by Dan Ransbottom.
6. The petitioners state the purpose of their petitions is for the Office of Environmental Adjudication to:
 - (1) order Dan Ransbottom to buy the landfill from Packerton,
 - (2) to order Dan Ransbottom to immediately close the landfill, and
 - (3) to prohibit all companies from operating the landfill.

II. CONCLUSIONS OF LAW

1. The petitioners, as the parties appealing IDEM’ s decision, bear the burden of demonstrating the invalidity of IDEM’s action. See Natural Resources Commission v. AMAX Coal Co., 638 N.E.2d 418, 423 (Ind. 1994). The petitioners do not meet this burden because they do not allege a legal basis for denial of the permit in their petitions.
2. The relevant regulation 329 IAC 10-11-1(c) specifies the only bases upon which the Commissioner may deny a permit application. 329 IAC 10-11-1(c) states:

The commissioner may deny a permit application, including a renewal permit, or place conditions on a permit for the following:

 - (1) The applicant has been convicted of a crime under IC 13-30-6 or IC 36-9-30-35.
 - (2) The commissioner, under IC 13-15-7, has revoked the applicants previous permit to operate under:
 - (A) this article
 - (B) 329 IAC 2, which was repealed in 1989; or
 - (C) 329 IAC 1.5, which was repealed in 1996.
 - (3) The applicant is, at the time of the application or permit decision, not in compliance with the Environmental Protection Acts or regulations promulgated there under, or has a history of repeated violations of the Acts or regulations or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit.

¹ Liberty Waste, Inc is the parent company of Packerton, which in turn is wholly owned by Allied Waste Industries.

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329 IAC 10-11-1(c). For IDEM's decision to be held invalid, the petitioners must demonstrate that Packerton, as the applicant for this renewal permit, is ineligible due to one of the three disqualifying conditions specified in 329 IAC 10-11-1(c). The petitioners do not allege any of the three disqualifying conditions contained in 329 IAC 10-11-1(c).

3. The purpose of summary judgment is to terminate litigation for which there can be no factual dispute and which can be determined as a matter of law. City of New Haven v. Chemical Waste Management of Indiana, 701 N.E.2d 912, 921 (Ind. App. 1998). In this case the facts are not disputed and therefore the case is appropriate for summary judgment. The petitioners have not alleged any set of facts which can justify the denial of the renewal permit and therefore Packerton's Motion for Summary Judgment should be granted as a matter of law.

III. ORDER

It is now ORDERED that Packerton's Motion for Summary Judgment is GRANTED. There are no disputed issues of material fact. Packerton's Motion should be granted as a matter of law. It is further ordered that IDEM's decision to issue the solid waste renewal permit FP 43-01 ("permit") to Packerton for the operation of the Ransbottom landfill was correct as a matter of law. IDEM's decision to issue the permit is affirmed.

You are further notified that pursuant to IC 4-21.5-7-3, 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 4-21.5-5. Pursuant to IC 4-21.5-5, 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 25th day of January, 2000

Wayne E. Penrod
Environmental Law Judge