# Objection to the Denial of Construction and Operating Permit Application No. FP-23-03, Greenview Recycling and Disposal Facility, Fountain County, Indiana 2009 OEA 21, (08-S-J-4159)

<u>OFFICIAL SHORT CITATION NAME</u>: When referring to 2009 OEA 21 cite this case as *Greenview Recycling and Disposal*, 2009 OEA 21.

### **TOPICS**:

jurisdiction protective filing dismissal trial court exclusive jurisdiction

### **PRESIDING ENVIRONMENTAL LAW JUDGE:**

Catherine Gibbs

### **PARTY REPRESENTATIVES:**

IDEM: Timothy Junk, Esq.

Petitioner: Donn H. Wray, Esq., Mickey J. Lee, Esq.; Stewart & Irwin, P.C.

### **ORDER ISSUED:**

March 24, 2009

### **INDEX CATEGORY:**

Land

### **FURTHER CASE ACTIVITY:**

[none]

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STATE OF INDIANA	) B	BEFORE THE INDIANA OFFICE OF
	) E	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION	)	
IN THE MATTER OF:		)
		)
OBJECTION TO DENIAL OF	CONSTRUCTION	)
AND OPERATING PERMIT	APPLICATION	)
NO. FP 23-03		) CAUSE NO. 08-S-J-4159
GREENVIEW RECYCLING	AND DISPOSAL FAC	ILITY )
FOUNTAIN COUNTY INDIA	ANA	)

#### FINAL ORDER OF DISMISSAL

This matter having come before the Court on NJK Farms, Inc.'s Status Report, filed on March 18, 2009, which pleading is a part of the Court's record;

The Court, having read the pleadings filed in this matter, **FINDS** and **CONCLUDES** as follows:

- 1. The Petitioner, NJK Farms, Inc. (hereinafter referred to as "NJK") filed its Petition for Administrative Review and Request for *Sua Sponte* Dismissal for Lack of Subject Matter Jurisdiction and Remand to IDEM or Request for Automatic Stay ("Protective Filing") on August 20, 2008 (the "Petition") objecting to a letter issued by the Indiana Department of Environmental Management (the IDEM) on August 8, 2008 (the "2008 Letter").
- 2. The Petition asked for review of the IDEM's 2008 Letter denying the construction/operating permit application (No. FP 23-03) for the Greenview Recycling and Disposal Facility. The IDEM admits that the 2008 Letter was a denial of the Permit Application No. FP 23-03 initially submitted to the IDEM on November 8, 1991.
- 3. The 2008 Letter is the subject of judicial review and a complaint for breach in Marion County Superior Court. On November 20, 2008, the Marion Superior Court, Civil Division, ruled that "the matter before it deals solely with the permit application for the Greenview Landfill filed November 8, 1991, and assigned number FP23-03, that the aforesaid application is the only application pertaining to the "Greenview Landfill" and that this Court is vested with exclusive jurisdiction to consider any proceedings incidental to this sole application pertaining to the "Greenview Landfill".
- 4. On March 18, 2009, NJK filed its Status Report informing this Court of the decision in Marion Superior Court and that the Petition was filed "under protest and for the purpose of protecting its rights and, as such, is a "Protective Filing" for administrative review". Further, NJK requested that the Office of Environmental Adjudication dismiss this matter upon finding that the 2008 Letter is a "legal nullity".

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5. The Court concludes that dismissal in this matter is proper because (1) NJK, as the Petitioner, after iterating that the Petition is a "protective filing" only, has requested a dismissal, and (2) the OEA does not have jurisdiction to consider this Petition for Review pursuant to the determination made in Marion County Superior Court, Civil Division. As the Court is without jurisdiction to hear this matter, it does not have the authority to make a determination regarding the legal status of the IDEM August 8, 2008 denial.

**THE COURT,** being duly advised **ORDERS** that this matter, pursuant to 315 IAC 1-3-7, is **DISMISSED**. All further proceedings are **VACATED**.

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. 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 24th day of March, 2009 in Indianapolis, IN.

Hon. Catherine Gibbs Environmental Law Judge