Objection to the Issuance of Final NPDES Permit No. IN0062031, Forest Green Wastewater Treatment Plant, Clark County, Indiana. 2008 OEA 67 (04-W-J-3318)

OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 67 cite this case as *Forest Green Wastewater*, 2008 OEA 67.

TOPICS:

mootness

permit

treatment plant

IC 4-21.4-3-27

IC 4-21.5-5-5

IC 4-21.5-7.5

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Petitioner: Rita Baldwin, Esq.
Intervener: J. David Agnew, Esq.

Respondent: Jay Snider

Petitioners: Michael Gillenwater, Esq. IDEM: Nancy Holloran, Esq.

ORDER ISSUED:

June 26, 2008

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

Objection to the Issuance of Final NPDES Permit No. IN0062031, Forest Green Wastewater Treatment Plant, Clark County, Indiana. 2008 OEA 67 (04-W-J-3318)

STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	Envincential transfer and the second of the
IN THE MATTER OF:)
OBJECTION TO THE ISSUANCE OF)
FINAL NPDES PERMIT NO. IN0062031)
FOREST GREEN WASTEWATER)
TREATMENT PLANT	
CLARK COUNTY, INDIANA)
) CAUSE NO. 04-W-J-3318
)
Ronald E. & Belinda Miller, et al.)
Petitioners)
Forest Green Wastewater Treatment Plant)
Lexus Real Estate Group, Inc.)
Permittee/Respondent)
Indiana Department of Environmental Manageme	ent)
Respondent)
PBI Bank, Inc.)
Intervenor)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court on the Indiana Department of Environmental Management's (the IDEM) Motion to Dismiss for Mootness, which pleading is a part of the Court's record; and the Court, being duly advised and having read the record, pleadings, and motion, enters the following findings of fact, conclusions of law and final order:

Findings of Fact

- 1. The IDEM issued a NPDES permit to the Lexus Real Estate Group to operate the Forest Green Wastewater Treatment Plant in Clark County, Indiana on March 30, 2004.
- 2. The Petitioners filed objections to the issuance of this permit in April of 2004.
- 3. The treatment plant was not constructed.
- 4. The Permittee/Respondent has not participated in this action since January 11, 2006, the date that Permittee/Respondent's attorney withdrew his appearance from this cause.
- 5. In 2007, PBI Bank, Inc. took ownership of the property on which the treatment plant would be located.

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- 6. The IDEM notified the Permittee/Respondent that it would terminate the permit effective 18 days from July 3, 2007, the mailing date of this letter.
- 7. Thereafter, PBI Bank, Inc. filed its petition for review of the termination. This was assigned Cause No. 07-W-J-3944.
- 8. This Court dismissed PBI Bank's objections in Cause No. 07-W-J-3944 on June 26, 2008.

Conclusions of Law

- 1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to IC 4-21.5-7, *et seq*.
- 2. This is a Final Order issued pursuant to IC 4-21.4-3-27. 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. "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, it is impossible for the Court to order any relief for the Petitioners as the permit has been terminated and PBI Bank's objections to the termination have been dismissed. Dismissal of this matter is appropriate.

FINAL ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Administrative Review filed by the Petitioners is hereby dismissed for mootness.

You are hereby further notified that pursuant to provisions of IC 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 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 this 26th day of June, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs Environmental Law Judge