

**Objection to Issuance of Sanitary Sewer Construction Permit Approval No. 20038**  
**City of Harrison**  
**West Harrison, Dearborn County, Indiana**  
**2011 OEA 152, (11-W-J-4501)**

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**OFFICIAL SHORT CITATION NAME:** When referring to 2011 OEA 152 cite this case as  
*City of Harrison, 2011 OEA 152.*

**TOPICS:**

dismissal

sewer

sanitary

relief

federal law

USDA

service area

territory

*City of North Vernon v. Jennings Northwest Regional Utilities*, 829 N.E.2d 1

Indiana Trial Rule 12(B)(6)

327 IAC 3-6-6

327 IAC 3

**PRESIDING JUDGE:**

Catherine Gibbs

**PARTY REPRESENTATIVES:**

IDEM: Sierra Alberts, Esq.

Petitioner: John Watson, Esq.

Permittee: Jim Leslie, City of Harrison

**ORDER ISSUED:**

October 26, 2011

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

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STATE OF INDIANA                     )  
   )  
COUNTY OF MARION                )

BEFORE THE INDIANA OFFICE OF  
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:                                    )  
   )  
OBJECTION TO THE ISSUANCE OF SANITARY        )  
SEWER CONSTRUCTION PERMIT                     )  
APPROVAL NO. 20038                                )  
CITY OF HARRISON                                    )  
WEST HARRISON, DEARBORN COUNTY, INDIANA    )  
\_\_\_\_\_  
Town of St. Leon,                                    )  
    Petitioner,                                        )  
City of Harrison,                                    )  
    Permittee/Respondent,                        )  
Indiana Department of Environmental Management,   )  
    Respondent                                        )

CAUSE NO. 11-W-J-4501

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

This matter came before the Office of Environmental Adjudication (the OEA or the Court) on the Indiana Department of Environmental Management's Motion to Dismiss. The Court, being duly advised and having read the Petition for Administrative Review, motion, brief, reply and record, now enters the following findings of fact, conclusions of law and final order.

**FINDINGS OF FACT**

1. On July 26, 2011, the Indiana Department of Environmental Management (IDEM) issued Approval No. 20038 (the Approval) to the City of Harrison (the City). The Approval authorizes the City to construct sanitary sewer improvements along the west lane of State Street from the intersection of Dair Street to approximately 1,065 feet north in the City of Harrison, Indiana.
2. On August 9, 2011, the Town of St. Leon (the Petitioner) filed its Petition for Administrative Review on Behalf of the Town of St. Leon and for Stay Pending Resolution of Appeal.
3. The Petitioner claims that the Approval was unlawfully issued. The grounds for this claim are as follows:
  - The Approval authorizes the construction of sanitary sewers in areas of Dearborn County, Indiana which are already served by the Town of St. Leon. This is an alleged violation of 7 U.S.C. 1926(b), which provides that no other entity may curtail or limit

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the service provided by an association which has received a Farmers Home Administration loan from the USDA<sup>1</sup> Rural Development.

- The City does not have authority to serve the area under *City of North Vernon v. Jennings Northwest Regional Utilities*, 829 N.E.2d 1 (Ind. 2005).
  - The Approval is at variance with Dearborn County Regional Sewer District's Water Quality Management Plan.
4. The Court ordered the parties to appear for a prehearing conference on September 6, 2011. All parties appeared by counsel on that date. The IDEM filed its Motion to Dismiss and requested a continuance of the stay hearing set for September 21, 2011. No party objected to a continuance of the stay. The presiding Environmental Law Judge (the ELJ) granted the motion and further issued a Case Management Order setting a deadline of October 6, 2011 for filing responses to the Motion to Dismiss.
  5. The Petitioner did not file a response to the Motion to Dismiss. The IDEM filed its reply in support of the motion to dismiss on October 17, 2011.

**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 I.C. § 4-21.5-7, *et seq.*
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. The IDEM has filed a motion to dismiss the Petitioner for its failure to state a claim upon which relief may be granted. This is essentially a motion to dismiss under Indiana Trial Rule 12(B)(6). "In reviewing a Rule 12(B)(6) motion, a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint. This Court views the pleadings in a light most favorable to the nonmoving party, and we draw every reasonable inference in favor of that party." *Huffman v. Indiana Office of Environmental Adjudication, et al.*, 811 N.E.2d 806, 813 (Ind. 2004).
4. To prevail on the merits of this case, the Petitioner must show that the applicable regulations for construction of sanitary sewers stated in 327 IAC 3 were not met in the Approval issued to the City. OEA reviews IDEM's decisions to determine whether IDEM acted in conformity with controlling statutes and regulations. *See, e.g., In re: Objection to Issuance of Section 401 Water Quality Certification COE ID No. 198800247 Conagra Soybean Processing Co.*, 1998 WL 918585, at \*3, OEA Cause No. 98-W-J-2052 (Nov. 12, 1988). Allegations that fail to raise any issue concerning compliance with controlling legal

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<sup>1</sup> United States Department of Agriculture

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requirements fail to state a valid claim. *In re: Objections to Issuance of Public Water Supply Construction Permit No. WS-2924 Issued to the City of Mishawaka, Indiana, 1989 WL 436899, at \*6, OEA Cause No. 89-W-J-241 (IDEM, Sept. 1, 1989).* IDEM is prohibited from expanding its requirements for such a Permit beyond those specified in 327 IAC 3.

5. The Approval merely finds that the specifications submitted by the City meet the technical standards for a sanitary sewer in 327 IAC 3. This rule does not require an applicant to verify the service area of the proposed sanitary sewer. The Petitioner has not made any allegations that the City has failed to comply with any of these requirements.
6. 327 IAC 3-6-6 states: “[a]ll required permits or exemptions from other federal, state and local units must be obtained prior to the commencement of construction of any sanitary sewer covered by this rule.” In addition, the Approval states, “[a]ll local permits shall be obtained before construction is begun on this project.” Approval, p. 2. It is clear that it is the City’s obligation to comply with all applicable laws and regulations. This Approval, in no way, authorizes the City to construct the sewer if it does not have the authority to service the area.
7. The Petitioner’s claims of error require that the OEA determine whether the City has encroached upon its territory. The OEA does not have the authority to determine who has the authority to service the disputed areas.
8. For the reasons stated above, the Petitioner has not stated any basis for revoking the Approval upon which the OEA can grant relief. The IDEM’s motion to dismiss should be granted.

**FINAL ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Petition for Administrative Review on Behalf of the Town of St. Leon and for Stay Pending Resolution of Appeal is **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. 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 26th day of October, 2011 in Indianapolis, IN.**

Hon. Catherine Gibbs  
Environmental Law Judge