

**Objection to the Issuance of Permit Approval No. WS-8346
Connersville Utilities, Fayette County, Indiana
2001 OEA 31 (01-W-J-2663)**

TOPICS:

stay
fluoridation
Motion to Dismiss for failure to state a claim upon which relief could be granted
lack of jurisdiction

PRESIDING JUDGE:

Lasley

PARTY REPRESENTATIVES:

Petitioners: Ola Jeleen Mullikin, E.M. Best, Estella Ailes, Marilyn Eggleston,
Lowell Eggleston, and Shirley McCoy,
Respondent: Phil Scaletta, Connersville Utilities
IDEM: Janice Lengel

ORDER ISSUED:

April 11, 2001

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

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2001 OEA 31 (01-W-J-2663)**

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
SS: ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
OBJECTION TO THE ISSUANCE OF)
PERMIT APPROVAL NO. WS-8346)
CONNERSVILLE UTILITIES)
FAYETTE COUNTY, INDIANA)

CAUSE NO. 01-W-J-2663

FINAL ORDER OF DISMISSAL

This constitutes notice that on March 8, 2001 a prehearing conference and stay hearing were scheduled in the above-captioned matter. The Petitioners appeared by Ola Jeleen Mullikin, E.M. Best, Estella Ailes, Marilyn Eggleston, Lowell Eggleston and Shirley McCoy. The Indiana Department of Environmental Management appeared by counsel, Janice Lengel and Connersville Utilities appeared by counsel, Phil Scaletta. At the prehearing conference, the parties agreed that the stay hearing would serve as their final hearing and that a final order should issue. After the hearing, counsel for Connersville Utilities requested a Motion to Dismiss for failure to state a claim upon which relief could be granted. The Environmental Law Judge, being duly advised, now concludes the following:

1. Several Petitioners presented credible evidence regarding the possible dangers of fluoridation in drinking water. The Water Pollution Control Board, however, has determined that fluoride may be added to a community water system:
 - (1) The following fluoride compounds: sodium fluoride, sodium silico fluoride, hydrofluosilicic acid and such other fluoride compounds as may be approved by the commissioner for such use, may be added to such water supplies providing the total content of fluoride ion (F-) after such addition does not exceed two (2.0) milligrams per liter (mg/l).

327 IAC 8-1-1(1).
2. The water supply construction permit issued to Connersville Utilities specifically incorporates the above limitation. *See* IDEM Exhibit 6, page 2.
3. Evidence presented by Petitioners indicate that currently the fluoride in the Connersville's water supply is .02 mg/l. *See* Mullikin Exhibit 5. Thus, the water supply is not currently in danger of exceeding the limitation expressed in 327 IAC 8-1-1.

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4. Additionally, the City of Connersville has enacted a resolution allowing for the fluoridation of the public water supply. See IDEM Exhibit 7. Any irregularities in enacting this resolution is a local matter and this office has no authority to grant relief on such issues.
5. The standard for granting a motion to dismiss as stated in Liberty Mutual Ins. Co. v. Blakesley, 568 N.E.2d 1052 (Ind.Ct.App.1991):

On appeal, we use the same standard of review as the trial court in determining the propriety of a judgment on the evidence. When the trial court considers a motion for judgment on the evidence, it must view the evidence in a light most favorable to the non-moving party. Judgment may be entered only if there is no substantial evidence or reasonable inferences to be drawn there from to support an essential element of the claim.

Id. at 1057. In this case, Petitioners did not present substantial evidence to overcome the regulatory limit for fluoride in water promulgated by the Water Pollution Control Board. In fact, Petitioners' intended inference cannot reasonably be drawn from the regulations. In other words, the harm alleged by Petitioners rests on conjecture and speculation and is not supported by the law. Thus, even when viewing the evidence in a light most favorable to the Petitioners, granting the Motion to Dismiss is appropriate.

You are further notified that pursuant to IC 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of IDEM. 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 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 April 2001.

Linda C. Lasley
Environmental Law Judge