

**In the Matter of: Objection to the Issuance of
Permit Approval No. AW-5093, Fred Warner Farms
2002 OEA 27 (01-S-J-2779)**

TOPICS:

confined feeding
manure
concrete
earthen
soil
tile
pit
high water
AW- Non Rule Policy Guidelines
NRCS Soil Survey
specifications
seasonal
hazard
proposed construction
storage
depth
administrative hearing
containment
safeguards
pollution
finisher
IC 4-21.5-3-14
IC 13-18-10

PRESIDING JUDGE:

Penrod

PARTY REPRESENTATIVES:

Deborah E. Albright, Esq.; Nancy A. Holloran, Esq.; James Huffer

ORDER ISSUED:

December 10, 2002

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

[none]

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STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	

IN THE MATTER OF:)
)
OBJECTION TO THE ISSUANCE OF)
PERMIT APPROVAL NO. AW-5093) CAUSE NO. 01-S-J-2779
FRED WARNER FARMS)

FINDINGS OF FACT CONCLUSIONS OF LAW AND FINAL ORDER

On November 27, 2001, an amended Petition for Review was filed in this cause of action, as an appeal of the Indiana Department of Environmental Management (IDEM)'s approval of an application by Fred Warner Farms to modify an existing confined feeding facility. IDEM issued an approval to Fred Warner Farms for authorization to construct and operate a confined animal feeding operation in Miami County, Indiana under Approval Number AW-5093 on August 16, 2001.

On September 17, 2002, an administrative hearing was held in the above cause of action at the Office of Environmental Adjudication. The administrative hearing was a final hearing on the merits of the Confined Feeding Approval issued to Fred Warner Farms by the IDEM.

The Presiding Environmental Law Judge, Judge Wayne E. Penrod, having considered the evidence presented during the hearing, now makes the following Findings of Fact and Conclusions of Law.

Findings Of Fact

1. The Office of Environmental Adjudication has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management pursuant to Indiana Code § 4-21.5-7.
2. This is a Final Order issued pursuant to Ind. Code § 4-21.5-3-27. 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. On August 16, 2001, IDEM issued an approval to Fred Warner Farms for the proposed construction of two (2) grower/finisher buildings with concrete pits beneath slotted floors for storage of the liquid manure from 2,000 grower/finishers in each building. (Exhibit 2 and Transcript p. 22).
4. Fred Warner Farms is an existing confined feeding operation that consists of three previously approved buildings that currently contain 3500 finishing hogs. The application at issue here will increase the amount of animals by 4000. (Transcript p. 66).

**In the Matter of: Objection to the Issuance of
Permit Approval No. AW-5093, Fred Warner Farms
2002 OEA 27 (01-S-J-2779)**

5. As part of the application submitted to IDEM for the Confined Feeding Operation (CFO) Approval, Fred Warner Farms submitted an aerial photo indicating different types of soils present at the proposed construction site upon which the proposed CFO units are to be constructed. (Transcript pp. 13 and 14).
6. IDEM reviewed the surface and subsurface soils as indicated in the aerial photos and maps submitted as part of the CFO application at issue in this case. The review was conducted by referring to design standards that the USDA NRCS publishes. (Transcript p.13 and 14).
7. As part of the review process and final approval of the construction of the CFO units, IDEM placed a condition upon Fred Warner Farms that they handle manure in a manner that will not cause conditions, which threaten to pollute waters of the state. (Transcript p. 23).
8. Dennis Lasiter testified that handling manure to comply with the approval at issue here means that Fred Warner Farms must be cautious not to have any spills, they must maintain their waste storage structures so that they do not overflow, and they must be very judicious in handling manure so that it is not spilled or leaked. (Transcript p. 23)
9. As part of the CFO application review process in this case, the document entitled "AW-1 Nonrule Policy Guidelines" (AW-1) was utilized by IDEM. (Exhibit 3 and T. p.27)
10. The AW-1 states that soil borings must be included in CFO plans only if earthen structures are to be used. (Transcript p.27).
11. Fred Warner Farms does not have, nor do they intend to use, earthen structures. In the CFO approval at issue here, Fred Warner Farms is proposing to build two (2) concrete manure containment structures. (Exhibit 1 and 2).
12. IDEM considered the seasonal high water table by evaluating information from the USDA NRCS Soil Survey Book looking at the soils to a depth of 60". (Transcript p.28-29).
13. The construction pit for the proposed CFO units is only 3-4 feet (36-48") below the ground surface and soil books went to a depth of 60". The depth of 60" is significant enough to be below the base of the pit. (Transcript pp.28-29).
14. Dennis Lasiter testified that additional safeguards were not necessary where there is extensive sand and gravel. There are no special conditions in the approval that requires any groundwater monitoring or any secondary leak containment systems. (Transcript p.34).

**In the Matter of: Objection to the Issuance of
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2002 OEA 27 (01-S-J-2779)**

15. IDEM reviewed the Farmstead maps and plans submitted by Fred Warner Farms and placed a condition in the approval that stated that any field tiles encountered during construction of the waste storage structure must be redirected no less than 50 feet from the structure. (Transcript p. 37).
16. Field tiles not encountered during construction do not pose the same construction hazards and operational hazards that a tile would that were leading directly through a building pit. Tiles are commonly used around the bases of pits to remove seasonal high water tables. IDEM is not concerned about the leakage from concrete pits. (Transcript p.39).
17. In this case the field tile at issue is 30 feet from the pit. IDEM does not believe that the tile would pose a risk of conveying pollutants from the building and by not leading through the construction site, the tile does not pose the risk that IDEM intended as an approval condition to apply to. (Transcript p.39-40).
18. In regard to concrete specifications and plans, the approval requires that the proposed CFO units be constructed in accordance with the approved plans and specifications. (Transcript p.96).
19. Dr. Veenhuizen, as the design consultant for Fred Warner Farms, testified that the application followed IDEM's guidance as to the quality of the concrete. The application contained particular specifications concerning the proposed use of concrete, the quality of the concrete, the volume of the concrete, and the method in which it should be applied. (Transcript p.110).
20. In addition, as a supplement to the plans submitted in the application, Dr. Veenhuizen testified that he provided information that address questions of volume and dimensions of the tank design. (Transcript p.110).

Conclusions of Law

1. The Office of Environmental Adjudication has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management pursuant to Indiana Code § 4-21.5-7.
2. This is a Final Order issued pursuant to Indiana Code § 4-21.5-3-27. 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. Indiana Code 13-18-10 *et. seq.* governs IDEM's issuance of approvals for confined feeding operations. IDEM derives its ability to regulate confined feeding operations from those statues.
4. Pursuant to Indiana Code 4-21.5-3-14, Petitioner had the burden of persuasion and the burden of going forward in this matter.

**In the Matter of: Objection to the Issuance of
Permit Approval No. AW-5093, Fred Warner Farms
2002 OEA 27 (01-S-J-2779)**

5. Petitioner did not present any evidence that IDEM did not comply with Indiana Code 13-18-10 *et seq.* in issuing the approval.
6. Petitioner did not bring forth any evidence that any particular approval condition in the approval as issue here, Approval Number AW-5093, was contrary to law or even bad management practices.
7. IDEM adequately determined that the confined feeding operation of Fred Warner Farms as designed will not create a water pollution hazard or otherwise violate the statute or guidance document as administered by the agency.
8. Soil borings are not required to be taken when the proposed construction consists of building concrete structures, as Fred Warner Farms has proposed.
9. Sufficient information for determining the seasonal high water table was submitted by Fred Warner Farms and IDEM conducted an adequate review of the seasonal high water table.
10. The proposed CFO units for Fred Warner Farms were properly engineered as required account for the location of manure pits in contact with sand and gravel deposits beneath the surface layer of the soil.
11. There is no requirement that additional safeguards be designed for the proposed CFO units at issue in this case.
12. There is no requirement that the field tile located within 30 feet of the westernmost structure be located and sealed or removed.
13. The concrete specifications as submitted by Fred Warner Farms for the proposed CFO units were detailed enough to enable IDEM to make any determinations regarding approval conditions for the site.
14. There are no additional requirements in IC 13-18-10 or the AW-1 guidance document for dealing with excessively soft soils. IDEM imposed conditions in the CFO approval to mandate dealings with potential water pollution hazards.
15. Fred Warner Farms included sufficient information in the approval application concerning the change in grade near the proposed confinement units.
16. The Petitioner has failed to meet his burden of proof and persuasion, and therefore Approval Number AW-5093 should be upheld.

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ORDER

IT IS THEREFORE ORDERED THAT:

1. Confined Feeding Operation Approval Number AW-5093 is upheld.
2. Objector's Petition for Review is DENIED.

You are further notified that pursuant to provisions of S.E.A. 156 (P. L. 41-1995 amending IC 4-21.5-7), which became effective July 1, 1995, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review 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 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 of this notice is served.

Dated this day 10th of December 2002.

Wayne E. Penrod,
Chief Administrative Law Judge