STATE of INDIANA

STREAM POLLUTION CONTROL BOARD

INDIANAPOLIS 46206

1330 West Michigan Street
633-5467

FINDINGS OF FACT AND RECOMMENDED ORDER
OF ROBERT G. GRANT, HEARING OFFICER
ON BEHALF OF THE STREAM POLLUTION CONTROL BOARD
OF THE STATE OF INDIANA

IN THE MATTER OF THE PETITION OF THE BOARD OF COMMISSIONERS OF ALLEN COUNTY, INDIANA, FOR THE ORGANIZATION OF A REGIONAL SEWAGE DISTRICT, PURSUANT TO IC 19-3-1.1, TO BE KNOWN AS THE "ALLEN COUNTY REGIONAL SEWAGE DISTRICT"	BEFORE THE STREAM POLLUTION CONTROL BOARD OF THE STATE OF INDIANA CAUSE NO. B-422

Upon receipt of the petition of the Board of Commissioners of Allen County, Indiana, for the establishment of a regional sewage district, pursuant to the provisions of IC 19-3-1.1, the Stream Pollution Control Board of the State of Indiana, pursuant to the provisions of IC 19-3-1.1-5, issued notice of hearing by publication in the Fort Wayne News-Sentinel on Wednesday, June 8, 1977, and on Wednesday, June 15, 1977.

The hearing was held on June 22, 1977, at 7:00 p.m., EST, in the City-County Council Chambers, Room 126, City-County Building, One Main Street, Fort Wayne, Indiana, with Robert G. Grant presiding as Hearing Officer.

On August 16, 1977, the Hearing Officer filed with the Stream Pollution Control Board of the State of Indiana his Findings of Fact and Recommended Order. Thereafter, objections were filed with the Stream Pollution Control Board of the State of Indiana on behalf of the City of Fort Wayne, Diversified Utilities, Inc., Sewage Utilities of Indiana, Inc., Clearwater Utilities, Inc., Maplewood Park Utilities, Heritage Lands, Inc., Aboite Corporation, TransAm Development Corporation, Jehl Brothers, Inc., LieChety and Associates, Inc., Amos and Elizabeth Zehr, Oren R. Sessions, Jessie Grabber, Jr., David Zehr, Joseph L. Zehr, and Thomas E. Zehr. A hearing on remonstrators' objections was held before the Stream Pollution Control Board of the State of Indiana on September 20, 1977, with the Board remanding the matter to the Hearing Officer. During the period of October, 1977, through July, 1978, the Hearing Officer and parties conducted prehearing conferences in an attempt to comprise those areas of objection. On August 17, 1978, the Hearing Officer received, from the Petitioners, an amendment to their petition,

specifically amending Paragraphs 4 A1 and 4 A2 of the original petition and, further, adding a new Subparagraph 4C. Thereafter, on September 8, 1978, the Hearing Officer issued Notice of Hearing and Prehearing Order pursuant to the provisions of IC 4-22-1. Further, pursuant to the provisions of IC 19-3-1.1-5, notice of hearing by publication was made in the Fort Wayne News-Sentinel on Wednesday, September 20, 1978, and on Wednesday, September 27, 1978.

Hearing was held on October 4, 1978, at 2:30 p.m., EST, in the City-County Council Chambers, Room 126, City-County Building, One Main Street, Fort Wayne, Indiana, with Robert G. Grant presiding as Hearing Officer.

SUMMARY OF TESTIMONY

Mr. William L. Sweet, P.E., Allen County Surveyor and Secretary of the Ad Hoc Committee for the formation of the District, testified that the intended purpose of the district was to serve residences and small businesses presently on septic systems that are not receiving sewage service from the City of Fort Wayne. He further testified that it was not the intent of the proposed district to compete with the City of Fort Wayne but, rather, to form an independent entity capable of representing those persons in need of sewer service. The proposed district would encompass all of Allen County with the exception of the following areas:

1. Those territories being served by the City Sewer Utility of the City of Fort Wayne.

2. New Haven Municipal Sewage Works.

3. Sewage Utility of the City of Woodburn.

4. Sewage Utility of the Town of Grabill.

5. Sewage Utility of the Town of Huntertown.

6. Sewage Utility of the Town of Monroeville and those territories previously approved by the Indiana Stream Pollution Control Board as planning areas or boundaries for the Leo-Cedarville Regional Sewer District, the Maysville Regional Sewer District and the Riverhaven Regional Sewer District.

Mr. Sweet further stated that it was not the intent of the proposed district to construct its own sewage treatment plant but, rather, to pump that effluent generated by its customers to the City of Fort Wayne Sewage Treatment Plant for treatment.

Mr. Vernon Brandt of the Ranchwood Civic Association testified in favor of the formation of the proposed regional sewer district in that the district would provide the legal entity capable of seeking funding and installing sewers to those areas of Allen County presently without sewage service. He testified that the Association has approximately 450 homes without sewer service. Further, on several occasions, the area has sought sewer service from the City of Fort Wayne but has been unable to secure same.

Mr. Henry P. Wehrenberg, Chairman of the Fort Wayne Board of Public Works, testified that the City was in favor of the formation of the proposed Allen County Regional Sewage District. However, the City felt that the boundaries of the district should exclude those areas within Fort Wayne's seven- and fifteen-year proposed planning areas. He testified that the City has in the past extended and is presently extending sewer service into Allen County. It was Mr. Wehrenberg's opinion that within the seven- and fifteen-year planning areas of the City of Fort Wayne, the City could, more economically and in a more orderly fashion, provide sewer service for those areas than the proposed district.

Mr. Sam Fogel, Attorney for the Town of Grabill, testified that not only the Grabill Sewage Service Area should be excluded from the district but also the Town of Grabill's planning area. The exclusion of such planning area from the proposed Allen County Regional Sewage District would permit the Town to serve the planning area in the same fashion that adjacent regional sewer districts serve their areas. Further, part of the planning area of the Town of Grabill is within the logical area of annexation for the Town in future years.

Mr. David B. Keller testified and submitted a written memorandum on behalf of the investor-owned utilities within the proposed boundaries of the Allen County Regional Sewage District. Mr. Keller did not object to the formation of a proposed district, however, it is his opinion that such private utilities should be excluded from the district because such utilities fall within the jurisdiction of the Indiana Public Service Commission and inclusion of such utilities within the proposed regional sewer district would subject those utilities to ordinances and regulations adopted by the District relating to maintenance and operation. (IC 19-3-1.1-5.2)

Thomas E. Ruzzo, Allen County Attorney, testified and submitted a written memorandum in which it is his opinion that exclusion of the seven- and fifteen-year planning areas of the City of Fort Wayne from the Allen County Regional Sewage District may tend to create a vacuum for citizens of those areas which might prevent those residents from obtaining sewer services. He testified in support of the amendments to the petition which would provide flexible boundaries for the district, thus encouraging sewer services within such areas. With respect to the

Town of Grabill, Mr. Ruzzo believes that a provision for flexible boundaries, based upon an entity's ability to serve a given area, would be in the best interests of those persons for so as long as that expansion on the part of Grabill does not extend beyond those four sections of the Grabill planning area. With regard to the position of the investor-owned utilities in which the utilities assert that sole and exclusive jurisdiction of such utilities lies with the Public Service Commission, Mr. Ruzzo, on behalf of the Petitioner, asserts that the later amendment of IC 19-3-1.1 supercedes those Acts (IC 8-1-2-1, et seq.) which relate to the exclusive jurisdiction of the Public Service Commission.

Mr. Joe N. VanValer testified and submitted a written memorandum on behalf of Heritage Lands, Inc., Aboite Corporation, TransAm Development Corporation, Jehl Brothers, Inc., LieChety and Associates, Inc., Amos and Elizabeth Zehr, Oren R. Sessions, Jessie Graber, Jr., David Zehr, Joseph L. Zehr and Thomas E. Zehr. The remonstrators expressed concern that the Petitioner's amendment to the petition, specifically Paragraph 4C, may result in the entire territory of the district being dedicated to a bond issue; the proceeds of which would result in the construction of treatment or distribution systems that would serve only a small portion of that area within the district. If such occurred, then the intent and purpose of the amendment would be defeated. Secondly, Mr. VanValer points out that, since the original filing of the petition in this matter, substantial development has occurred within and without the sewer service area of the City of Fort Wayne and the service areas of those investor-owned utilities. Said areas specifically identified by remonstrator's filing dated July 6, 1977.

Written comments were received by the Hearing Officer from private citizens, environmental organizations, civic associations and homeowners associations; the vast majority of which supported the concept of a regional sewer district for the reason that many developed areas both in and out of the sewer service area of the City of Fort Wayne are without sanitary sewers.

FINDINGS OF FACT

1. That the Board of Commissioners of Allen County, Indiana, filed a petition with the Indiana Stream Pollution Control Board for an order establishing a regional sewer district to be known as the "Allen County Regional Sewage District", pursuant to IC 19-3-1.1.

2. That the Stream Pollution Control Board of the State of Indiana, at its meeting of May 17, 1977, by motion made, duly seconded and unanimously passed, determined that a sufficient petition had been filed, in accordance with IC 19-3-1.1, and appointed Robert G. Grant as Hearing Officer.

3. The notice of public hearing was published on Wednesday, June 8, 1977, and Wednesday, June 22, 1977, in the Fort Wayne News-Sentinel.

4. That a public hearing on said petition was held on June 22, 1977, in the City-County Council Chambers, Room 126, City-County Building, One Main Street, Fort Wayne, Indiana.

5. That on August 16, 1977, the Hearing Officer filed, with the Stream Pollution Control Board of the State of Indiana, his Findings of Fact and Recommended Order.

6. That on September 20, 1977, the Stream Pollution Control Board of the State of Indiana conducted a hearing on the Objections to the Hearing Officer's Findings of Fact and Recommended Order, and remanded this matter to the Hearing Officer.

7. That on September 8, 1978, the Hearing Officer issued Notice of Hearing, pursuant to the provisions of IC 4-22-1, and, pursuant to the provisions of IC 19-3-1.1-5, Notice of Hearing by publication made in the Fort Wayne News-Sentinel, on Wednesday, September 20, 1978, and on Wednesday 27, 1978.

8. That a public hearing on said petition was held on October 4, 1978, in the City-County Council Chambers,. Room 126, City-County Building, One Main Street, Fort Wayne, Indiana.

9. That the name of the proposed district is the "Allen County Regional Sewage District" with its principal office to be located at the City-County Building, 1 Main Street, Fort Wayne, Indiana.

10. That the purpose to be accomplished by said district shall be to provide for the sewage collection and disposal of same to promote the public health, safety, and welfare.

11. That the area to be served by the district contains no political subdivision having the economic capabilities for the collection, treatment, and disposal of sewage.

12. That there is no outstanding indebtedness for the proposed district and the proposed district appears economically feasible.

13. That the territory to be included in the district is all of Allen County, except the following described areas:

A. Territories currently being serviced by the following:

(1) The city sewer utility of the City of Fort Wayne. Provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area annexed to the City of Fort Wayne, or (b) any area subsequently serviced by the City Sewer Utility of the City of Fort Wayne; and, provided, further, it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and agreement of the City of Fort Wayne, Indiana, and/or City Sewer Utility of the City of Fort Wayne, Indiana, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities, or indebtedness created by virtue of contracts or bonds for that construction or financing of sewers serving that area.

(2) The New Haven municipal sewage works provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area finally annexed to the City of New Haven, or (b) any area subsequently serviced by the New Haven municipal sewage works; and, provided, further, it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and the agreement of the City of New Haven, Indiana, and/or the New Haven municipal sewage works, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities, or indebtedness created by virtue of contracts or bonds for the construction or financing of sewers serving that area.

(3) Sewage utility of the City of Woodburn.

(4) Sewage utility of the Town of Grabill, provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area finally annexed to the Town of Grabill, or (b) any area subsequently served by the sewage utility of the Town of Grabill; and provided, further, that it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and agreement of the Town of Grabill, Indiana, and/or the sewage utility of the Town of Grabill, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities or indebtedness created by virtue of contracts or bonds for the construction or financing of sewers serving that area.

(5) The sewage utility of the Town of Huntertown.

(6) Sewage utility of the Town of Monroeville.

B. The territories previously approved by the Indiana Stream Pollution Control Board as planning areas or boundaries for:

(1) Leo-Cedarville Regional Sewer District.

(2) Maysville Regional Sewer District.

(3) Riverhaven Regional Sewer District.

C. Provided, however, that it is understood and intended that the boundary of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds has not been authorized by the proper body of the district or the construction of sewers, upon the petition of the owner of any real estate within the district, which petition includes an agreement by any sewage treatment facility which has been excluded from the Allen County Regional Sewer District accepting the sewage generated, or to be generated, from such area.

Recommendations of the Hearing Officer:

1. That a Regional Sewer District to be known as the "Allen County Regional Sewer District" be organized as an independent political entity of the State of Indiana and as a body corporate and political.

2. That the purpose to be accomplished by said district is to provide for the collection and disposal of sewage.

3. That the territory included in the district will consist of all of Allen County, Indiana, except the following described areas:

   A. Territories currently being serviced by the following:

      (1) The city sewer utility of the City of Fort Wayne. Provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area annexed to the City of Fort Wayne, or (b) any area subsequently serviced by the City Sewer Utility of the City of Fort Wayne; and, provided, further, it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and agreement of the City of Fort Wayne, Indiana, and/or City Sewer Utility of the City of Fort Wayne, Indiana, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities, or indebtedness created by virtue of contracts or bonds for that construction or financing of sewers serving that area.

      (2) The New Haven municipal sewage works provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within

the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area finally annexed to the City of New Haven, or (b) any area subsequently serviced by the New Haven municipal sewage works; and, provided, further, it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and the agreement of the City of New Haven, Indiana, and/or the New Haven municipal sewage works, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities, or indebtedness created by virtue of contracts or bonds for the construction or financing of sewers serving that area.

(3) Sewage utility of the City of Woodburn.

(4) Sewage utility of the Town of Grabill, provided, however, that it is understood and intended that the boundry of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds have not been authorized by the proper body of the district for the construction of sewers, (a) any area finally annexed to the Town of Grabill, or (b) any area subsequently served by the sewage utility of the Town of Grabill; and provided, further, that it is understood and intended that the boundry of the Allen County Regional Sewage District may be changed upon the petition and agreement of the Town of Grabill, Indiana, and/or the sewage utility of the Town of Grabill, to exclude areas that are then served by the district, upon the execution of an agreement agreeing to assume any and all charges, liabilities or indebtedness created by virtue of contracts or bonds for the construction or financing of sewers serving that area.

(5) The sewage utility of the Town of Huntertown.

(6) Sewage utility of the Town of Monroeville.

B. The territories previously approved by the Indiana Stream Pollution Control Board as planning areas or boundaries for:

(1) Leo-Cedarville Regional Sewer District.

(2) Maysville Regional Sewer District.

(3) Riverhaven Regional Sewer District.

C. Provided, however, that it is understood and intended that the boundary of the Allen County Regional Sewage District will, in the future, automatically be changed to exclude, as to any area within the district which is at that time not actually served by the district or any area not under contract for construction of sewers or for any area for which the sale of bonds has not been authorized by the proper body of the district or the construction of sewers, upon the petition of the owner of any real estate within the district, which petition includes an agreement by any sewage treatment facility which has been excluded from the Allen County Regional Sewer District accepting the sewage generated, or to be generated, from such area.

4. That the district be governed by a board of trustees consisting of seven voting members, each of whom shall be a registered voter in Allen County, and four non-voting, ex-officio members and all as follows:

A. Three (3) voting members shall be appointed by the Allen County Board of Commissioners for a three-year term and with the initial appointments staggered so as an appointment will be annual thereafter; two voting members shall be appointed by the Mayor of the City of Fort Wayne, each for a four-year term, and with one initial appointment for a term of two-years, one voting member shall be a member or designee from the a two-year term; one voting member shall be a member or designee from the Fort Wayne-Allen

County Board of Health who shall be appointed for a two-year term; the term of any voting member shall expire on the first day of January in the year in which the term is to expire.

B. Trustees appointed by the Board of Commissioners shall each be a freeholder and resident within the district and one shall be appointed from each of the Commissioners' districts in Allen County.

C. The non-voting ex-officio members shall be considered technical advisors to the Board of Trustees and shall be the Allen County Surveyor for his elected term of office; and three others, the Chief engineer of the Fort Wayne Water Pollution Control Engineering Department, a designee from the Fort Wayne-Allen County Board of Health, and a designee or member from the Allen County Plan Commission, all of whom shall serve at the pleasure of the designating Board or Commission.

5. That the Board of Trustees shall provide sufficient bond for all officers, trustees or employees who have any power to dispense funds of the district. Said bond, as a minimum, shall be in an amount equal to, plus ten percent of, those funds anticipated to be received by the district during the fiscal year of the district, divided by six (6), which amounts shall be determined annually by the Board of Trustees.

6. That, within nine (9) months from the date of this Order, the Allen County Regional Sewer District shall file with the Stream Pollution Control Board of the State of Indiana, a detailed plan for the construction and operation of the district's facilities, pursuant to the provisions of IC 19-3-1.1-5(a).

Dated at Indianapolis, Indiana, this 5 day of December, 1978.

Respectfully submitted,

Robert G. Grant

Robert G. Grant
Hearing Officer

8-18-77

STATE OF INDIANA

INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street
633-5467

CERTIFIED MAIL

STATE OF INDIANA)
COUNTY OF MARION) SS:

BEFORE THE STREAM POLLUTION CONTROL BOARD OF THE STATE OF INDIANA

IN THE MATTER OF THE PETITION)
OF THE BOARD OF COMMISSIONERS OF)
ALLEN COUNTY FOR THE ORGANIZATION)
OF A REGIONAL SEWER DISTRICT IN) CAUSE NO. B-422
AND FOR THE COUNTY OF ALLEN, STATE)
OF INDIANA, PURSUANT TO IC 19-3-1.1)

NOTICE OF FILING OF FINDINGS OF FACT AND RECOMMENDED ORDER

TO: Mr. William L. Sweet
Allen County Surveyor
One Main Street, 6th Floor
Fort Wayne, Indiana 46802

You are hereby notified that on the 16th day of August, 1977, Robert G. Grant, Hearing Officer in the above cause, has presented to and has filed with the Stream Pollution Control Board of the State of Indiana the complete record of the proceedings heretofore held before him on the above cause including Findings of Fact, other than the transcript of the oral testimony, together with his Recommended Order.

A copy of said Findings of Fact and Recommended Order is enclosed and made a part of this notice.

You are further notified, as provided by Indiana Code 4-22-1-12, that any interested and affected person may, within ten (10) days after receipt of notice, file with the Stream Pollution Control Board of the State of Indiana, at the office of its Technical Secretary, Indiana State Board of Health Building, 1330 West Michigan Street, Indianapolis, Indiana 46206, objections to the entry of such order.

Dated at Indianapolis, Indiana, this 18th day of August, 1977.

Oral H. Hert
Technical Secretary

Enclosure
cc: Hearing Commissioner
John N. Pichon, Jr.
Joe Van Valer, Attorney

STATE OF INDIANA

STREAM POLLUTION CONTROL BOARD

INDIANAPOLIS 46206

1330 West Michigan Street
633-5467

FINDINGS OF FACT AND RECOMMENDED ORDER OF
ROBERT G. GRANT, HEARING OFFICER, ON BEHALF OF THE
STREAM POLLUTION CONTROL BOARD OF THE STATE OF INDIANA

IN THE MATTER OF:
THE PETITION OF THE BOARD OF)
COMMISSIONERS OF ALLEN COUNTY FOR)
THE ORGANIZATION OF A REGIONAL)
SEWAGE DISTRICT IN AND FOR THE)
COUNTY OF ALLEN, STATE OF INDIANA,) CAUSE NO. B-422
PURSUANT TO IC 19-3-1.1)

Upon receipt of the petition of the Board of Commissioners of Allen County, Indiana, for the establishment of a regional sewage district, pursuant to the provisions of IC 19-3-1.1, the Stream Pollution Control Board of the State of Indiana, pursuant to the provisions of IC 19-3-1.1-5, issued a notice of hearing by publication in the Fort Wayne News-Sentinel on Wednesday, June 8, 1977, and Wednesday, June 15, 1977.

Hearing was held on June 22, 1977, at 7:00 p.m., in the City-Council Chambers, Room 126, City-County Building, One Main Street, Fort Wayne, Indiana, Robert G. Grant, Hearing Officer.

SUMMARY OF TESTIMONY

Mr. William L. Sweet, P.E., Allen County surveyor and Secretary of the Ad Hoc Committee for the formation of the District, testified that the Regional Sewer District Concept was originally proposed by Harry Scott, former Allen County Attorney. In order to provide maximum participation in the decision making process leading up to filing the petition, Mr. Sweet testified that, although the petition was submitted in the name of the County Commissioners, all members of the County Council also expressed their approval by signing the petition. Mr. Sweet stated that it was not the intent of the proposed district to duplicate any existing facilities but, rather, to supplement those facilities. Further, the district has no intention, at this time, of developing or constructing its own sewage treatment plant. The district proposes to pump that affluent generated by its customers to the City of Fort Wayne Sewage Treatment Plant. He stated that the proposed territory of the district would be all of Allen County with the exception of the city sewer utility of the City of Fort Wayne, the New Haven Municipal Sewage Works, the sewage utility of the City of Woodburn, the sewage utility of the Town of Grabill, the sewage utility of the Town of Huntertown, the sewage utility of the Town of Monroeville, and those territories within Allen County previously approved by the Stream Pollution Control Board as boundaries for the Leo-Cedarville Regional Sewer District, the Maysville Regional Sewer District, and the Riverhaven Regional Sewer District. He stated that such a district would

encompass all of Allen County which is not presently within an actual or proposed sewage service area. Mr. Sweet stated, that although the proposed district would encompass territory presently being served by Diversified Utilities Corporation, it is not the intent or the desire of the proposed district to have a conflict with such utility but to work with the utility in order to provide maximum sewage service to the residents of Allen County.

Mr. Henry Wehrenberg, Chairman of the Board of Works of the City of Fort Wayne, proposed that certain areas of the proposed Allen County Regional Sewage District be excluded from said district. The City of Fort Wayne is in the process of the annexation of a number of areas in adjacent townships, all of which are in the City's 1990 service area as delineated in the Fort Wayne facilities plan. Further, that the City of Fort Wayne is presently negotiating with a private utility for the purchase of its assets. It is also the Board's position that the taps onto those interceptors previously constructed by the City of Fort Wayne should remain under the jurisdiction of the City, instead of the proposed sewer district.

Mr. Theodore J. F. Goeglein, spokesman for Goeglein Subdivision, testified that there have been numerous problems with the existing private sewage utility; specifically, that the utility is unable to adequately treat the sewage its receives and that the utility allegedly has dumped raw sewage on land and in the St. Mary's River instead of trucking it to the Fort Wayne Sewage Treatment Plant. For these reasons, he stated that a Regional Sewer District would be more responsive than a private utility to the needs of the citizens.

Richard W. Kees, Allen County Councilman, testified that he felt Allen County needs a county system to cover the more populous areas. He also stated that he had signed a petition as a councilman although he was concerned that any sewage treatment plan might involve going outside of Allen County boundaries, thus depriving the County Commissioners of their local control. He stressed the importance of having assurances that any funds expended would be spent within Allen County.

Paul W. Amstutz, Trustee, Milan Township, Allen County, Indiana, testified that he was concerned that rural farmers would be required to pay for the district when, in fact, they were receiving no direct services. He further questioned the proposed district's ability to float bond issues without taxing authority.

The hearing officer responded that those persons residing in the district who did not receive service would not be required to pay money to the district for nonexistent services.

Mr. Thomas E. Ruzzo, County Attorney, testified in response to Mr. Wehrenberg's proposal to delete certain areas from the proposed district due to the City's proposed annexation of those areas and the proposed purchase of a private sewage utility. Mr. Ruzzo stated that, although areas may be contemplated to be annexed, the contemplation

of such action and the eventual annexation is too speculative to count on. Further, Mr. Ruzzo pointed out that there are many areas within the boundaries of the City of Fort Wayne that do not have sewers and he questioned the ability of the City to provide sewage service in areas not yet within the City's limits.

Mr. Elden J. Vosburgh testified that he is a resident of St. Joseph Township, Allen County, and that, for several years, the City has intended to annex the area in which he resides however, such plans have yet to be acted upon. Mr. Vosburgh suggested that if the City feels they are capable of serving areas within the proposed district more expeditiously than the district, then the City should be given that opportunity contingent upon a timetable for establishing service and, if such service is not forthcoming, that territory should revert back to the proposed Allen County Regional Sewer District.

Woodrow Wilson testified as to his concern about the vagueness in the methods to be used in providing the necessary local share of the financing of the project and the ability to raise such funds locally.

Gloria J. Goeglein, Member of the Common Council, testified that the petitioners have no intent to build or develop their own sewage treatment plant but, rather, to pump any sewage generated to the City of Fort Wayne. She further testified that there was a great need in St. Joseph Township for sewage services. Mrs. Goeglein further testified that her experiences with Diversified Utilities lead her to believe that if any of the Diversified Utilities' service areas were excluded from the district, those persons being served by Diversified would continue to receive inadequate service and the environment would consequently suffer.

WRITTEN COMMENTS

Written comments were received from Ethyl R. Bloch, Member, Water Quality Committee, Indiana Division, Isaak Walton League of America, endorsing the proposed county-wide regional sewage district, that the district could "...conquer the gross pollution from the many septic systems in the soil of Allen County that are incapable of sustaining most kinds of individual sewer systems." Further, that such a district would be a more equitable solution for the public than allowing the continuation of private utilities who cannot mandate sewer hookups and have to charge more expensive rates than a county-wide district. Enclosed with Mrs. Bloch's comments was an editoral opinion from the Fort Wayne Journal Gazette endorsing the Allen County Regional Sewer District as proposed without deletion of those areas proposed to be annexed by the city or those areas presently being served by private utilities.

Written comments were received from Ronald L. Bonar, P.E., former City Engineer and Member of the Board of Works. Mr. Bonar commented that it was obvious that there was a major split in the proposals of city and county government. He felt that before the district could be formed and have any chance at success, this division must be closed and some agreement reached. He stated that the Fort

Wayne Sewage Plant and the St. Joe interceptor were both designed and constructed with regionalization in mind, therefore, rendering unrealistic any proposal that the county establish their own treatment facility. Mr. Bonar further suggested that a map and legal description be prepared delineating the boundaries of the proposed district to prevent any misunderstanding as to intent. Mr. Bonar further suggested incorporation in the district of the Riverhaven, Maysville, and Leo-Cedarville sewer districts. Also, he favored the appropriation of additional private utility systems into the regional sewer district because of the need to improve their existing systems and to expand their treatment facilities.

Written comments were received from Mr. Harold Jackson, New Haven, Indiana, expressing concern that the existing sludge pits at the Fort Wayne Sewage Treatment Plant would be inadequate to handle any additional sewage flow.

REMONSTRATORS

Diversified Utilities, Inc., Sewage Utilities of Indiana, Inc., Clearwater Utilities, Inc., and Maplewood Park Utilities have filed written objections alleging that their respective sewer service areas should not be included in the proposed Allen County Regional Sewer District. Reasons for the objections were:

1. All of the aforementioned private utilities are rendering sewage disposal and treatment service to certain areas in Allen County pursuant to Certificates of Territorial Authority issued by the Public Service Commission of Indiana.

2. Clearwater Utilities, Inc., Sewage Utilities of Indiana, Inc., and Utility Development Corporation, parent company and soul share holder of Maplewood Park Utilities, Inc., are parties to certain organization proceedings, pursuant to Chapter X of the Federal Bankruptcy Act, presently pending in the United States District Court for the northern district of Indiana, Fort Wayne Division.

3. The objecting private utilities submit that the need for sewage service, as alleged, and the petitioner's petition does not exist within the areas covered by the said utilities' certificates of territorial authority.

4. Certain territory proposed to be included in the Allen County Regional Sewer District is overly extensive in light of the "need" described in the petition and in light of the fact that it includes certain areas which the objecting private utilities have duly been authorized by the Public Service Commission of Indiana to render sanitary sewage disposal service and to further develop sanitary sewage disposal service throughout the area.

5. The objecting private utilities are currently serving large portions of the areas included in their certificates of territorial authority and they are more readily able to service the remaining portions as the need may arise.

6. The objecting private utilities site IC 19-3-1.1-52 which relates to private sewage disposal companies within the territory of a regional sewer district. The objecting private utilities further note that said statute exempts said utilities from the ordinances and regulations of the district until such time as their systems may be required to connect to the overall sewage system of the district. The objecting private utilities, therefore, state that there was no need, at this time, to include said areas of the objecting private utilities within the proposed Allen County Regional Sewer District.

7. The objecting private utilities allege that inclusion of their service area within the district would be in violation of IC 8-1-2-89(b) which states, in part, "that such operation be under the control, regulation and supervision of the Public Service Commission of Indiana and such sewage disposal companies shall not be subject to regulation by any municipality or county government or metropolitan regulatory body, or any branch or subdivisions thereof or substitute therefore in the form of special service districts." For the above-stated reasons, the objecting private utilities object to inclusion within the proposed Allen County Regional Sewer District.

Objections were also received from Heritage Lands, Inc., Aboite Corporation, Trans Am Development Corporation, Jehl Brothers, Inc., Liechety and Associates, Inc., Amos and Elizabeth Zehr, Oren R. Sessions, Jesse Graber, Jr., David L. Zehr, Joseph L. Zehr, Thomas E. Jehl, all title holders to real estate located within the territory which is sought to be included within the boundaries of the proposed regional sewer district.

The objectors request exclusion from the proposed sewer district for the following reasons:

1. There is no serious health hazard existing now or created in the geographical area of which the objectors are title holders.

2. That the real estate to which the objectors hold title is located within the City of Fort Wayne's sewage treatment area or within a certificate of territorial authority held by a private sewage treatment facility.

3. Real estate in which the objectors hold title is in the final plat-approved stage of development without standing commitments with the City of Fort Wayne and independent contractors for the construction of approximately one mile off-site sewer main.

4. Real estate owned by the objectors, comprising approximately 40 acres in St. Joseph Township bounded on the east by Maplecrest

and located slightly north of State Street, is already sewered and connected to the Fort Wayne sewage treatment facility.

5. Real estate of the objectors, comprising approximately 10 acres in St. Joseph Township fronting on Trier Road east of Lahneyer Road, is within the certificate of territorial authority of Embalco, is fully plotted, and the necessary sewer lines are underground and completed for delivery of sewage to Embalco facility.

6. Real estate owned by the objectors, comprising approximately 75 acres in St. Joseph County intersected by Long Road running north and south and bounded on the north by Parent Road and on the south by Shordon, has received final plat approval and is under construction. It is within a certificate of territorial authority of a private facility under Embalco and there is an outstanding agreement with Embalco for the treatment of the sewage to be generated.

7. Real estate owned by the objectors, comprising approximately 750 acres in Aboite Township bounded on the north by Covington Road, on the south by Liberty Mills Road and U.S. Highway 24 and on the east by Interstate Highway 69, excepting therefrom approximately 450 lots which have been platted and sold on the north of said real estate, is within an Embalco certificate of territorial authority and there is an existing agreement with that Embalco private utility. Six thousand feet of sewer main has been installed from the Embalco plant on the south of the real estate to the north which is approximately 5/8 of the way through the entire length of the property. All other mains and distribution lines are in place and are engineered for delivery to the Embalco plant.

8. That all of the area herein referenced is now or has been the subject of considerable study and planning by the City of Fort Wayne or a private facility operating under a certificate of territorial authority which plans or operations are capable of making preparation much more rapidly then could be done by a not-yet-formed sewer district.

9. That paragraph No. 3A of the Board of County Commissioners' petition does not apply to any of the real estate referenced herein since there are no people residing on said real estate who use on-site private sewage disposal systems and, therefore, do not discharge any pollutive effluent into the counties waterways. Furthermore, no use of on-site private sewage disposal is contemplated for said real estate so no threat now exists, or will exist in the future, to the public health, safety and welfare.

10. That paragraph 3C of the Commissioners' petition does not apply to the herein-referenced real estate since the collection, disposal and treatment of all sewage now generated, or proposed to be generated, is being provided by the City of Fort Wayne.

11. That paragraph 3E of the Commissioners' petition would not apply to the herein referenced real estate. The methods of collection and disposal and sewage described therein do not exist in the objectors referenced real estate.

12. Delays could be reasonably anticipated in securing additional approvals necessary for the to-be-formed sewage district. Such delays could cause the objectors undue hardship. Further, such delays would deprive the objectors of the highest and best use of their real estate for the period of delay. Such deprivation would constitute the taking of the real estate without just compensation during the period of delay.

13. The reasons for the establishment of a sewage district as set forth in the Commissioners' petition does not exist in the herein-referenced real estate and, therefore, there is no basis for the establishment of a sewage district to include the above-referenced real estate.

For the above-cited reasons, the aforementioned objectors object to inclusion of the above-referenced real estate within the boundaries of the proposed sewage district.

DISCUSSION

Although the objecting private utilities state that they are better suited to serve the needs of those persons situated within their respective service areas, the Hearing Officer received testimony that the private utilities were not, in fact, rendering all the service desired by those persons. Further, the Hearing Officer takes notice of official U.S. EPA and Indiana Stream Pollution Control Board policy of encouraging regionalization and discouraging fragmented service areas and small treatment plants in favor of larger more cost-effective regional sewage treatment plants.

The objecting private utilities site IC 8-1-2-89(b), as authority denying jurisdiction over such utilities by all local governmental units, subdivisions thereof, or special service districts. However, remonstrators must concede that the same section provides: "That all functions, powers, and duties of the State Board of Health and Stream Pollution Control Board shall remain uneffective by this section." Thus, the Stream Pollution Control Board's authority for including such territory in a regional sewer district is clear subject to the provisions IC 19-3-1.1, et seq.

The objecting private utilities correctly site IC 19-3-1.1-5.2, which exempts private utilities from the regulations of a regional sewer district until connection is made to the sewage system of the district. In that inclusion of such territory within the proposed Allen County regional sewer district will not immediately effect the operations, status or service contracts of those private utilities, should such territories be included in the district.

At the hearing and in written comments received by the Hearing Officer, frequent reference was made to the fact that the City of Fort Wayne and various private utilities planned to expand their services to treat sewage generated by residents within their respective sewage service areas. However, the Hearing Office has not received evidence relating to when such service is to be rendered. In that such future service is speculative at this point in time, such arguments have been discounted. Conversely, objectors, Heritage Lands, Inc., Aboite Corporation, Trans Am Development Corporation, Jehl Brothers, Inc., Liechty and Associates, Amos and Elizabeth Zehr, Oran R. Sessions, Jesse Graber, Jr., David L. Zehr, Joseph L. Zerh, Thomas P. Jehl, and title holders to forty acres in St. Joseph Township bounded on the east by Maple Crest and located slightly north of State Street allege said area is already sewered and connected to the Fort Wayne sewage treatment facility. Accordingly, the Hearing Officer rules that such areas should be excluded from the proposed Allen County Regional Sewage District.

FINDINGS OF FACT

1. That the Board of Commissioners of Allen County, Indiana, filed a petition with the Indiana Stream Pollution Control Board for an order establishing a regional sewer district pursuant to IC 19-3-1.1.

2. That the Stream Pollution Control Board of the State of Indiana, at its meeting on May 17, 1977, by motion made, seconded and unanimously passed, determined that a sufficient petition had been filed in accordance with IC 19-3-1.1, and appointed Robert G. Grant as Hearing Officer.

3. The notice of public hearing was published on Wednesday, June 8, 1977, and on Wednesday, June 22, 1977, in the Fort Wayne News-Sentinel.

4. That a public hearing on said petition was held on June 22, 1977, in the City-Council Chambers, Room 126, City-County Building, 1 Main Street, Fort Wayne, Indiana.

5. That the name of the proposed district is the "Allen County Regional Sewer District" with its principal office to be located at the City-County Building, 1 Main Street, Fort Wayne, Allen County, Indiana.

6. That the purpose to be accomplished by said district shall be to provide for sewage collection and disposal to promote the public health, safety and welfare.

7. That the area to be served by the district contains no political subdivision having the economic capabilities for the collection, treatment and disposal of sewage.

8. That there is no outstanding indebtedness for the proposed district.

9. That the proposed project appears economically feasible.

10. That the territory to be included in the district is all of Allen County, except the following described areas:

    a. Territories currently being serviced by the following:

        1. The city sewer utility of the City of Fort Wayne; including forty (40) acres in St. Joseph Township, bounded on the east by Maplecrest and located slightly north of State Street which area is already sewered and connected to the Ft. Wayne sewage treatment facility;

        2. New Haven municipal sewage works;

        3. Sewage utility of the City of Woodburn;

        4. Sewage utility of the Town of Grabill;

        5. Sewage utility of the Town of Huntertown;

        6. Sewage utility of the Town of Monroeville;

    b. The territories previously approved by the Indiana Stream Pollution Control Board as planning areas or boundries for:

        1. Leo-Cedarville Regional Sewer District,

        2. Maysville Regional Sewer District;

        3. Riverhaven Regional Sewage District.

Recommendations of the Hearing Officer:

1. A regional sewer district to be known as the "Allen County Regional Sewer District" be organized as an independent political entity of the State of Indiana, and as a body corporate and political.

2. That the purpose to be accomplished by said district is to provide for the collection and disposal of sewage.

3. That the territory included in the district will consist of all of Allen County, Indiana, except the following described areas:

    a. Territories currently serviced by the following:

        1. The city sewer utility of the City of Fort Wayne; including forty (40) acres in St. Joseph Township, bounded on the east by Maplecrest and located slightly north of State Street which area is already sewered and connected to the Fort Wayne sewage treatment facility.

        2. New Haven municipal sewage works;

        3. Sewage utility of the City of Woodburn;

4. Sewage utility of the Town of Grabill;

5. Sewage utility of the Town of Huntertown;

6. Sewage utility of the Town of Monroeville.

b. The territories previously approved by the Indiana Stream Pollution Control Board as planning areas or boundries for:

1. Leo-Cedarville Regional Sewer District;

2. Maysville Regional Sewer District;

3. Riverhaven Regional Sewer District;

4. That the district be governed by a Board of Trustees consisting of seven voting members, each of whom shall be a registered voter in Allen County, and four non-voting ex-officio members and all as follows:

a. Three (3) voting members shall be appointed by the Allen County Board of Commissioners, each for a three (3) year term, and with the initial appointments staggered so an appointment will be annual thereafter; two voting members shall be appointed by the Mayor of the City of Fort Wayne, each for a four (4) year term, and with one initial appointment for a term of two (2) years; one voting member shall be a member or designate from the Allen County Council who shall be appointed for a two (2) year term; one voting member shall be a member or designate from the Fort Wayne-Allen County Board of Health who shall be appointed for a two (2) year term; the term of any voting member shall expire on the first date of January of the year in which the term is to expire.

b. Trustees appointed by the Board of Commissioners shall each be a free holder and resident within the district, and be appointed one from each of the Commissioner' districts in Allen County.

c. The non-voting ex-officio members shall be considered technical advisors to the Board of Trustees and shall be the Allen County Surveyor, for his elected term of office; and three (3) others, the chief engineer of the Fort Wayne Water Pollution Control Engineering Department, a designate from the Fort Wayne-Allen County Board of Health, and a designate or member from the Allen County Plan Commmission, all of whom shall serve at the pleasure of the designee.

5. That the Board of Trustees shall provide sufficient bond for all officers, trustees or employees who have any power to dispense funds of the district. Said bond, as a minimum, shall be in an amount equal to, plus ten percent (10%) of, those funds anticipated to be received by the district during a fiscal year of the district, divided by six (6), which amounts shall be determined annually by the Board of Trustees.

6. That within nine (9) months from the date of this Order, the Allen County Regional Sewage District shall file with the Stream Pollution Control Board of the State of Indiana, a detailed plan for the construction and operation of the district's facilities pursuant to the provisions of IC 19-3-1.1-5(a).

Dated at Indianapolis, Indiana this 16th day of August, 1977.

Respectfully submitted,

Robert G. Grant

Robert G. Grant
Hearing Officer