Commissioner, Indiana Department of Environmental Management, Complainant
v.
Land Coast Insulation, Inc., Respondent.
2007 OEA 128 (05-A-E-3555)

OFFICIAL SHORT CITATION NAME: When referring to 2007 OEA 128, cite this case as ***IDEM v. Land Coast Insulation, Inc.,* 2007 OEA 128.**

TOPICS:
asbestos
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adequately wet
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hearsay
friable
regulated asbestos containing material
asbestos containing material
chain of custody
penalty
civil penalty policy

PRESIDING JUDGE:
Gibbs

PARTY REPRESENTATIVES:
Respondent: Mark Shere, Esq.
IDEM: Justin Barrett, Esq.

ORDER ISSUED:
July 24, 2007

INDEX CATEGORY:
Air

FURTHER CASE ACTIVITY:
[none]

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v.
Land Coast Insulation, Inc., Respondent.
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STATE OF INDIANA	)	BEFORE THE INDIANA OFFICE OF
	)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION	)	
IN THE MATTER OF:	)	
	)	
COMMISSIONER, INDIANA DEPARTMENT	)	
OF ENVIRONMENTAL MANAGEMENT	)	
	)	
Complainant	)	
	)	
v.	)	CAUSE NO. 05-A-E-3555
	)	
LAND COAST INSULATION, INC.	)	
	)	
Respondent	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court for the final hearing, held on April 18 and May 21, 2007, on Land Coast Insulation, Inc.'s Petition for Review and the Environmental Law Judge (ELJ), being duly advised and having considered the petitions, record of proceedings, and evidence presented at the hearing finds that judgment may be made upon the record, makes the following findings of fact and conclusions of law and enters the following Order:

Findings of Fact

1. Land Coast Insulation, Inc. ("Respondent," "Land Coast") operated an asbestos removal project at AE Staley North Plant ("Site") located at 2245 North Sagamore Parkway in Lafayette, Tippecanoe County, Indiana. *See* Complainant's Exhibit 2.

2. John Clevenger, Office of Air Quality ("OAQ") Inspector for IDEM, conducted an investigation of the Respondent's work at the Site on October 17, 2000. *See* Complainant's Exhibit 2.

3. Mr. Clevenger initiated his inspection as the result of an anonymous complaint made to the Indiana Department of Environmental Management ("IDEM") on October 17, 2000. *See* Complainant's Exhibit 1.

4. Mr. Clevenger arrived on the site and was met by Mr. Kevin Niebrugge, AE Staley Plant Manager. Mr. Clevenger stated to Mr. Niebrugge that he was there to perform an inspection of the asbestos abatement at the Site. Mr. Niebrugge informed Mr. Clevenger that the asbestos removal was done by Land Coast and that AE Staley's only contact with Land Coast was with Mr. Jack Fryman, who was not present during the inspection. Mr. Clevenger and Mr. Niebrugge were subsequently joined by Mr. Bob Lamb, Maintenance Supervisor for A.E. Staley. Mr. Lamb escorted Mr. Clevenger to the three trailers allegedly belonging to Land Coast.

5. Before entering the trailers, Mr. Clevenger was approached by Mr. Charles Hill and Mr. Michael Shockey, both employees of Land Coast. Mr. Clevenger asked them for their state asbestos worker licenses, and they replied that they did not have licenses, but have handled asbestos as part of their job at the Site. Neither Mr. Hill nor Mr. Shockey used respirators or protective clothing. Mr. Hill and Mr. Shockey informed Mr. Clevenger that Mr. Fryman was their boss. Mr. Clevenger then entered the trailer next to the Land Coast tool trailer.

6. Before entering the first trailer, Mr. Clevenger noted that there was not an asbestos danger sign posted on the door. Trailer #1 was neither locked nor secured in a way to prevent unauthorized access. Mr. Clevenger discovered a piece of suspect regulated asbestos-containing material ("RACM") just inside the doorway of the trailer. The debris was sampled and labeled sample number one. The material was dry to the touch with no appearance of water or moisture. Mr. Clevenger located twelve (12) full black bags, each with an asbestos warning label, one of which was not sealed. This bag contained approximately one (1) cubic foot of suspect RACM. Mr. Clevenger sampled and labeled the material as sample number two. Mr. Clevenger checked the remaining eleven (11) suspect RACM containing bags for wetness. He determined that they were not adequately wet based on the following facts: (1) the weight of the bag was not sufficient to indicate adequate water; (2) the bag did not feel cooler at the bottom indicating a lack of water; and (3) no standing water was felt at the bottom of the bag. There was no other suspect RACM found in the trailer.

7. Mr. Clevenger then entered the second trailer, which was also neither locked nor secured in a way to prevent unauthorized access. Trailer #2 did not have an asbestos danger sign posted. Inside, Mr. Clevenger found fifteen (15) clear bags containing approximately two (2) cubic feet of mag block type insulation. The bags did not contain asbestos warning labels. The bags were tested for adequate wetness. Mr. Clevenger determined that the suspect RACM inside the bags was not adequately wet based on the following facts: (1) the weight of the bag was not sufficient to indicate adequate water; (2) the bag did not feel cooler at the bottom indicating a lack of water; (3) no standing water was felt at the bottom of the bag; and (4) no standing water, droplets of water or condensation was observed inside the bag. Mr. Clevenger removed a sample and placed one of the bags into a glove bag which was sealed in order to take a sample. This sample was numbered sample number three. Mr. Clevenger then discovered suspect RACM on the floor of the trailer. The material was dry and there

was no appearance of water or moisture. The material was sampled and labeled sample number four.

8. Mr. Clevenger informed the A.E. Staley representatives, Mr. Lamb and Mr. Niebrugge, that the previously inspected trailers should be locked and that only licensed personnel should be allowed entry. Mr. Clevenger then asked the Land Coast representatives, Mr. Hill and Mr. Shockey, to post an asbestos warning sign on the door of each Land Coast trailer. Mr. Clevenger then informed Mr. Hill and Mr. Shockey that there were potential violations of asbestos regulations.

9. Mr. Clevenger was then informed by AE Staley representatives that Land Coast used a nearby dumpster. Mr. Clevenger then checked the closed top dumpster for suspect RACM material. Mr. Clevenger found the dumpster to be securely locked and labeled. Mr. Clevenger observed black bags stacked to the top through the observation port. Mr. Clevenger asked Mr. Niebrugge to unlock the dumpster. Mr. Niebrugge declined to cut the lock because he did not know who owned the dumpster. After receiving a call from Mr. Niebrugge on October 26, 2000 in which he indicated he had a key to the Land Coast dumpster, Mr. Clevenger returned to the Site on October 27, 2000 to inspect the dumpster. Mr. Clevenger found the dumpster to be two-thirds full of black RACM waste bags. Mr. Clevenger determined the bags to be adequately wet, sealed and labeled. Mr. Clevenger then returned to the trailers to confirm the materials within had not been tampered with. Mr. Clevenger took photographs of Land Coast company hard hats and asbestos equipment. Mr. Clevenger did not report any new violations during this return inspection.

10. All four of the suspect RACM samples taken were sent to Micro-Air, Inc. Micro Air is the company with whom IDEM contracts to perform analysis on suspect RACM samples. The analysis performed was in accordance with standard practices as established by the U.S. EPA. The analysis revealed that each of the four samples were regulated asbestos containing material. *See* Complainant's Exhibit 7.

11. Upon return to IDEM, Mr. Clevenger discovered that neither Land Coast nor Jack Fryman was currently licensed to handle asbestos. Furthermore, neither Mr. Hill nor Mr. Shockey was licensed to handle asbestos. Land Coast's license expired on August 6, 1999 and Land Coast had not submitted a renewal prior to October 17, 2000. Mr. Fryman's Project Supervisor license expired on September 1, 2000 and was not renewed prior to October 17, 2000. *See* Complainant's Exhibits 10 & 11.

12. Mr. Clevenger sent his Inspection Report to Land Coast on October 26, 2000. *See* Complainant's Exhibit 2.

13. On June 25, 2003, IDEM issued a Notice of Violation pursuant to Ind. Code § 13-30-3-3. *See* Complainant's Exhibit 15.

14. On November 29, 2004, IDEM amended its previously issued Notice of Violation to the Respondent by removing an alleged violation and correcting a rule citation. The Notices of Violation each contained an offer to enter into an Agreed Order containing actions required to correct the violations. IDEM and Respondent conducted a settlement conference on August 28, 2003. Respondent did not enter into an Agreed Order to resolve the violations. *See* Complainant's Exhibit 14.

15. On June 1, 2005, the Commissioner issued an Order requiring the Respondent to comply with 326 IAC 18-1 and 326 IAC 14-10, and to pay a civil penalty of $16, 750.

16. On June 17, 2005, the Respondent, by counsel, timely filed a Petition for Administrative Review pursuant to 315 IAC 1-3-2. This matter proceeded to hearing on April 18, 2007 and May 21, 2007.

Conclusions of Law

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to IC 4-21.5-7-3.

2. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.,* 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.;* I.C. 4-21.5-3-27(d). "*De novo* review" means that:

> all are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.

Grisell v. Consol. City of Indianapolis, 425 N.E.2d 247 (Ind. Ct. App. 1981).

3. OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Envtl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)(appeal of OEA review of NPDES permit); *see also,* IC § 4-21.5-3-14; IC § 4-32.5-3-27(d). OEA is authorized "to make a determination from the affidavits . . . pleadings or evidence." Ind. Code § 4-21.5-3-23(b). "Standard of proof generally has been described as a continuum with levels ranging from a "preponderance of the evidence test" to a "beyond a reasonable doubt" test. The "clear and convincing evidence" test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test." *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The "substantial evidence" standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *GasAmerica #47,* 2004 OEA 123, 129. *See also, Blue River Valley*, 2005 OEA 1, 11-12. *Objection to the Denial of Excess Liability Trust Fund Claim Marathon Point Service, ELF # 9810570/FID #1054, New Castle, Henry County, Indiana; Winimac Service, ELF #9609539/FID #14748,*

Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc. (04-F-J-3338), 2005 OEA 26, 41.

4. IDEM alleges that the Respondent violated 326 IAC 14-10-4(6)(A). The relevant portions of this regulation state:

> Each owner or operator of a demolition or renovation activity to whom this section applies according to section 1 of this rule, shall comply with the following emission control procedures:
> (6) For all RACM, including material that has been removed or stripped, the following requirements must be met:
> (A) Adequately wet the material and ensure that it remains wet until collected and contained or treated for disposal and is disposed of in accordance with 40 CFR 61.150* and 329 IAC 10-8 *[329 IAC 10-8 was repealed filed Jan. 9, 1998, 9:00 a.m.:21 IR 1733.]*

5. IDEM alleges that the Respondent violated 326 IAC 14-10-4(11). This regulation states:

> Each owner or operator of a demolition or renovation activity to whom this section applies according to section 1 of this rule, shall comply with the following emission control procedures:
> (11) For any RACM or suspect RACM, the following requirements must be met:
> (A) Any stripped, disturbed, or removed friable asbestos materials that are in a leak-tight wrapping and left at a facility or stored elsewhere prior to disposal must be securely stored in a manner that restricts access by unauthorized persons to the material. The material must be stored in locked containers, rooms, trucks, or trailers. Asbestos warning signs or labels must be prominently displayed on the door of the locked containers, rooms, trucks, or trailers. If such secure areas are not available, other security measures must be employed, including the use of barriers, security guards, or other measures approved by the department. Asbestos warning labels must be posted in all areas where asbestos is stored.
> (B) When an ongoing asbestos project is interrupted for any nonemergency situation, all RACM that was disturbed, stripped, or removed must be wetted and placed into leak-tight wrapping and stored in a manner consistent with clause (A). If the RACM that was stripped, disturbed, or removed is not, or cannot be, collected and placed into leak-tight wrapping and stored during the abatement interruption, a licensed Indiana worker or supervisor must remain at the job site to prevent unauthorized persons from entering the work area. Asbestos warning signs or labels must be posted on all entrances and exits to the work area.

6. IDEM alleges that the Respondent violated 326 IAC 18-1-3(a)(5). The pertinent portion of this regulation states:

> (a) No person shall conduct the following activities without licensing by the department:
> (5) Implement an asbestos project at a facility.

7. The Respondent first argues that IDEM has failed to present substantial evidence that the material observed by IDEM's inspector was asbestos containing material (ACM). In order to prove this fact, the IDEM relies on Mr. Clevenger's testimony and the analytical results from Micro Air Inc., Complainant's Exhibit #7, which indicates that the samples taken by Mr. Clevenger from the Site are ACM.[1] The Respondent points out that there are errors in Complainant's Exhibit #7. The descriptions of Samples Two and Three in this Exhibit do not match Mr. Clevenger's description of where he took each of these samples. Respondent argues that these errors render the IDEM's evidence so unreliable that the ELJ cannot find that any ACM was present at the site in either Trailer #1 or #2.

8. The Indiana Supreme Court, in *Troxell v. State*, 778 N.E.2d 811at 814 Ind. 2002 stated:

> To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition. *Cliver v. State*, 666 N.E.2d 59, 63 (Ind. 1996). However, the State need not establish a perfect chain of custody, and once the State "strongly suggests" the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility. *Wrinkles v. State*, 690 N.E.2d 1156, 1160 (Ind. 1997); *Jenkins v. State*, 627 N.E.2d 789, 793 (Ind. 1993) (noting that failure of FBI technician to testify did not create error). Moreover, there is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. *Wrinkles*, 690 N.E.2d at 1160; *Culver*, 727 N.E.2d at 1067. To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with. *Cliver*, 666 N.E.2d 59, 63.

9. The Respondent's conclusion that this error requires the ELJ to disregard the evidence presented that the material was ACM, is unsupported. The errors in Complainant's Exhibit #7 are not fatal to the IDEM's case. These errors merely go to the weight of the evidence. The error in the descriptions does not make this evidence so inherently unreliable that it cannot be used to support a finding that the material in the trailers was ACM. Mr. Clevenger testified as to sampling procedure he used. All of the samples were analyzed using the proper procedure and were identified as asbestos containing material. There is no evidence that these samples were switched with samples from another site. In addition, not all of the

[1] ACM, pursuant to Ind. Code § 13-11-2-11, is defined as material that contains more than 1% asbestos.

descriptions were in error. The descriptions of samples one and four are correct. Sample one was taken from Trailer #1 and showed the presence of ACM in this trailer. Similarly, sample four was taken from Trailer #2 and showed the presence of ACM in that trailer. The ELJ concludes that the IDEM presented substantial evidence that the material found at the Site is ACM.

10. The Respondent next argues that the ACM is not friable. Friable is defined in 326 IAC 14-10-2(18) as "Friable asbestos material. means any material containing more than one percent (1%) asbestos as determined using the method specified in 40 CFR 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy*, that, when dry, can be crumbled, pulverized, or reduced to powder either by hand pressure or mechanical forces reasonably expected to act on the material. If the asbestos content is less than ten percent (10%) as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM."

11. Mr. Clevenger took photographs of the material that he sampled in Trailer #1 and #2. These photographs show pieces of material rather than whole intact slabs of material. There is dust on the bag and the material has jagged edges indicating that it was broken from larger pieces. It is evident from the photographs that this material is friable. The Respondent's unconvincingly argues that the mag block material introduced at the hearing does not meet the definition of friable and since the mag block is so similar to the ACM at the Site, therefore, the ACM was not friable. As the ELJ did not examine any piece of the ACM found at the Site, the ELJ cannot conclude that the mag block is the same as the ACM at the Site. Even if it were the same, Mr. Fryman was able to break off a piece of the mag block at the hearing, thus demonstrating that it can be crumbled by hand pressure. The ELJ concludes that the material found in Trailer #1 was regulated asbestos containing material (RACM).

12. The ELJ concludes that there is substantial evidence that the Respondent violated 326 IAC 14-10-4(6)(A) and 326 IAC 14-10-4(11) in reference to Trailer #1. The Respondent produced no direct evidence to refute the observations made by Mr. Clevenger on the inspection dates. Mr. Jack Fryman's testimony was insufficient to rebut the evidence produced by the IDEM because he was not present at the time of the inspection nor did he have specific personal knowledge of the materials or conditions observed.

13. Mr. Clevenger's testimony as to what he observed is substantial evidence of the violations. He testified that (1) the weight of the bag was not sufficient to indicate adequate water; (2) the bag did not feel cooler at the bottom indicating a lack of water; and (3) no standing water was felt at the bottom of the bag. This is sufficient evidence to support a conclusion that the ACM was not adequately wet. The Respondent argues that the inspector's failure to follow the United States Environmental Protection Agency's guidance regarding various techniques to determine adequate wetness discredits Mr. Clevenger's testimony and observations. However, this is a guidance document and does not have the effect of law. Whether a person follows these guidelines goes to the weight of the evidence. Mr. Clevenger is a credible witness with many years of experience in inspecting asbestos removal projects.

14. In addition, the photographs do not reveal any evidence of moisture, especially the small piece found in Trailer #1 at the entrance to the trailer.

15. The ELJ concludes that the IDEM did not present substantial evidence that the Respondent violated 326 IAC 14-10-4(6)(A) and 326 IAC 14-10-4(11) in reference to Trailer #2. The only evidence that the IDEM could produce that Trailer #2, and the ACM found there, was owned and controlled by Land Coast was the hearsay presented by persons at the Site on the date of the inspection. Pursuant to Ind. Code § 4-21.5-3-26(a), hearsay is admissible, "However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence." In addition, Jack Fryman, an employee of Land Coast, testified that this trailer did not belong to nor was it controlled by Land Coast. The hearsay evidence does not constitute substantial evidence especially in light of the rebuttal evidence from Mr. Fryman.

16. The ELJ concludes that there is substantial evidence that neither Jack Fryman nor Land Coast were in possession of a valid license to perform asbestos removal work in violation of 326 IAC 18-1-3(a)(5).

17. However, there is insufficient evidence to support a conclusion that Mr. Hill or Mr. Shockey were performing asbestos removal work without a license. Mr. Clevenger did not observe them doing any work that would constitute asbestos removal work. The only evidence IDEM presented was hearsay evidence, that is, Mr. Hill's and Mr. Shockey's statements.

18. The IDEM used the Civil Penalty Policy[2] to determine the appropriate penalty in this matter. According to this policy, a civil penalty is calculated by "(1) determining a base civil penalty dependent on the severity and duration of the violation, (2) adjusting the penalty for special factors and circumstances, and (3) considering the economic benefit of noncompliance." The base civil penalty is calculated taking into account two factors: (1) the potential for harm and (2) the extent of deviation.

19. The policy states that the potential for harm may be determined by considering "the likelihood and degree of exposure of persons or the environment to pollution" or "the degree of adverse effect of noncompliance on statutory or regulatory purposes or procedures for implementing the program". There are several factors that may be considered in determining the likelihood of exposure. These are the toxicity and amount of the pollutant, the sensitivity of the human population or environment exposed to the pollutant, the amount of time exposure occurs and the size of the violator.

[2] IDEM's Civil Penalty Policy is a nonrule policy document, ID No. Enforcement 99-0002-NPD, originally adopted on April 5, 1999 in accordance with IC 13-14-1-11.5.

20. For the violations of 326 IAC 14-10-4(6)(A) and 326 IAC 14-10-4(11), the ELJ determines that the potential for harm is moderate. Asbestos is a Hazardous Air Pollutant according to 40 C.F.R. § 61.01 and a known carcinogen.[3] The amount found to be dry was much greater than nominal. Unlike the situation in *In the Matter of: Commissioner, Indiana Department of Environmental Management v. Great Barrier Insulation Co.,* 2005 OEA 57, the RACM in this case was found in an unsecured area in unlocked and unlabeled trailers. Although the amount was small, RACM was found where any worker could be exposed to it.

21. The second determination for the violations of 326 IAC 14-10-4(6)(A) and 326 IAC 14-10-4(11) is the extent of deviation. The amount of RACM found to be inadequately wet was small with respect to the amount of RACM observed to be abated by the Respondent at the Site. Therefore, the ELJ concludes that the extent of deviation was minor.

22. According to the Civil Penalty Policy, the range for a Moderate/Minor violation is $5,000-$7,500. This base value can be adjusted by aggravating or mitigating factors. The ELJ finds that there were not any aggravating or mitigating factors to consider or that the Respondent received any economic benefit. The Respondent is assessed a penalty of $5000 for the violation of 326 IAC 14-10-4(6)(A) and 326 IAC 14-10-4(11) in Trailer #1.

23. For the violation of 326 IAC 18-1-3(a)(5), the ELJ determines the potential for harm to be minor. This statute pertains only to license violations and not to the possible emission of pollutants.

24. For the violation of 326 IAC 18-1-3(a)(5), the ELJ determines the extent of deviation to be major. The Respondent implemented a project without a proper license. As the Respondent had been previously licensed in the State of Indiana, it cannot argue that it was not familiar with the requirement to have a license.

25. In the case of a Minor/Major violation, the penalty matrix range is $3,500-$5,000. The ELJ finds that there were not any aggravating or mitigating factors to consider or that the Respondent received any economic benefit. The Respondent is assessed a penalty of $3,500 for the violation of 326 IAC 18-1-3(a)(5).

26. The IDEM presented no evidence regarding why it chose to assess a penalty amount from the middle of the range. The penalty policy leaves this matter to the discretion of the enforcement case manager. The ELJ chooses to assess the minimum penalty as no reasons were given for assessing a higher penalty.

[3] The Respondent's attempts to introduce evidence diminishing the toxicity of asbestos were unsuccessful as this is a fact established by the applicable statutes and regulations. Even in the face of overwhelming evidence to the contrary, this ELJ does not have the authority to reach a conclusion contrary to the law.

27. The Respondent argues that the amount of time between the violation and the issuance of the CO should be considered. However, he does not present any evidence that this lapse of time has prejudiced the Respondent in any way. The mere passage of time is insufficient, without a showing of prejudice, to convince the ELJ that the Respondent should not be found in violation or that the penalty should be lowered.

Final Order

AND THE COURT, being duly advised, hereby **ORDERS, JUDGES AND DECREES** that the Respondent, Land Coast Insulation, Inc., is in violation of 326 IAC 14-10-4(6)(A), 326 IAC 14-10-4(11) and 326 IAC 18-1-3(a)(5) and is assessed a penalty of eight thousand, five hundred dollars ($8,500.00). This penalty shall be paid to the Environmental Management Special Fund in accordance with the directions contained by the Notice and Order of the Commissioner of the Indiana Department of Environmental Management.

You are hereby further notified that pursuant to provisions of IND. CODE § 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 24th day of July, 2007 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge