

**OBJECTION TO THE ISSUANCE OF PERMIT
APPROVAL NO. FP-43-01 RANSBOTTOM
LANDFILL KOSCIUSKO COUNTY, INDIANA
1998 OEA 047, OEA CAUSE NO. 98-S-J-2025**

Official Short Cite Name:	LAKE COUNTY C&D LANDFILL, 1998 OEA 047
OEA Cause No.	98-S-J-2025
Topics/Keywords:	Construction permit for construction/demolition landfill
	IC § 36-9-30-35
	IC § 13-7-13-3
	IC § 13-7-10-2
	IC § 13-7-10-5
	IC § 13-7-4
	IC § 13-15-3-6
	IC § 4-21.5-1-4
	329 IAC 1.5
	329 IAC 2
	329 IAC 10-13-2
	329 IAC 10-13-5
	329 IAC 10-20
	329 IAC 10-28
	329 IAC 10-33-1
	329 IAC 10-36
	329 IAC 10-39
Presiding ELJ:	LINDA LASLEY
Party Representatives:	MARGARET FELTON, ESQ., IDEM
	MARK A. LAROSE, ESQ.
	SUE A. SHADLEY, ESQ.
	JOHN PRATER, PETITIONER <i>pro se</i> .
	OMA JEAN BRADLEY, PETITIONER <i>pro se</i> .
Order Issued:	OCTOBER 29, 1998
Index Category:	SOLID WASTE
Further Case Activity:	

OCT 30 1998



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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

IN THE MATTER OF:)
)
OBJECTION TO THE ISSUANCE OF) CAUSE NO. 98-S-J-2025
PERMIT NO. FP 43-01)
RANSBOTTOM LANDFILL)
KOSCIUSKO COUNTY, INDIANA)

ORDER GRANTING MOTION TO DISMISS

This constitutes notice that on August 20, 1998, Intervenor, Packerton Land Company, LLC filed a Motion to Dismiss and Alternative Motion For Summary Judgment. On September 9, 1998, Respondent, Ransbottom Landfill also filed a Motion to Dismiss or In the Alternative for Summary Judgment. A pre-hearing conference was held on September 22, 1998 wherein Petitioners, Oma Jean Bradley and John Prater were ordered to respond to the Motions by October 23, 1998. Petitioners filed their Response on October 19, 1998. Packerton Land Company filed a Reply on October 21, 1998 and Ransbottom Landfill filed a Reply on October 23, 1998.

Issue:

Whether a landfill permit was correctly transferred from Dan Ransbottom to Packerton Land Company, LLC.

Findings of Fact:

1. Dan Ransbottom owned and operated the Ransbottom Landfill, located at the junction of CR 800 South and CR 300 East, near Packerton Indiana.¹
2. On March 12, 1998, Mr. Ransbottom sent the Indiana Department of Environmental Management (IDEM) a request for permit transfer. Mr. Ransbottom requested that the permit transfer from himself to Packerton Land Company. IDEM found that the request

¹ Letter to Jeffrey Kendall from IDEM dated April 30, 1998.

met all of the regulatory requirements and had no objection to the transfer.²

3. On November 26, 1997, IDEM received a permit renewal application from Packerton Land Company.³ As of the date of the pre-hearing conference, the permit had not been renewed.

4. Mrs. Bradley and Mr. Prater received notice of the permit transfer and timely requested administrative review.

Discussion:

IDEM approved the transfer of the Ransbottom Landfill permit from Dan Ransbottom to Packerton Land Company on April 30, 1998. Petitioners argue this transfer is an attempt to "circumvent" the permitting process and to avoid correcting problems in and around the landfill. Respondent and Intervenor counter with the fact that the transfer occurs by "operation of law" and, therefore, there is no agency action that the Petitioners can appeal. Furthermore, they assert that the transfer of the permit and the renewal of the permit are unrelated actions.

First, it is true that the transfer of a permit and the renewal of a permit are distinct from one another. For instance, after obtaining a permit, a permittee may transfer the permit to another for the remainder of the permit term. Then it would be up to the transferee to obtain a renewal of the permit. This case can be confusing because the permit transfer occurred at a time when the permit was nearing the time for renewal. Thus, it could appear as though the permit was being renewed by the transferee without having to meet all of the statutory and regulatory requirements. But that is not the case. The law regarding permit transfers states:

- (a) A permit may be transferred to a third person by the permittee without the need for a new permit or modification or revocation of the existing permit being required if:
 - (1) the permittee notifies the commissioner of the proposed transfer at least sixty (60) days before the proposed date of transfer on forms provided by the commissioner;
 - (2) a written contract between the permittee and the third person containing a specific date of transfer of permit responsibility is submitted to the commissioner;
 - (3) the transferee has not been convicted under IC 13-7-13-3 or IC 36-9-30-35;
 - (4) the commissioner has not revoked under IC 13-7-10-5 a permit to the transferee that was issued under:
 - (A) this article;

² Letter to Jeffrey Kendall from IDEM dated April 30, 1998.

³ Exhibit A, Reply Brief of Packerton Land Company, LLC In Support of Motion to Dismiss and Alternative Motion for Summary Judgment.

(B) 329 IAC 1.5, which was repealed in 1989; or

(C) 329 IAC 2, which was repealed in 1996;

(5) the third person is, at the time of the application or permit decision, in compliance with the Environmental Protection Acts and regulations promulgated thereunder, and does not have a history of repeated violations of the Acts or regulations or material permit conditions that evidence an inability or unwillingness to comply with requirements of this article or a facility permit;

(6) the transferee provides proof of financial responsibility under 329 IAC 10-39; and

(7) the transferee provides proof that it is, or will be, the owner of the real property, or provides proof of the applicant's agreement regarding the leasing of the property to the department.

(b) The transfer will be effective on the specific date of transfer provided by the permittee unless the commissioner notifies the permittee and the transferee that the transfer will be denied.

(c) Notwithstanding the transfer of a permit, a variance must not be transferred to another person.⁴

There is nothing to indicate, in either the Petitions for Administrative Review or in the Response to the Motion to Dismiss, that Mr. Ransbottom or Packerton Land Company did not fulfill the above regulatory requirements. In fact, IDEM found that the requirements had been met. Where Packerton Land Company and Ransbottom Landfill's argument goes wrong is in their assertion that the permit transfer does not amount to an agency action. An agency action is defined as:

(1) The whole or a part of an order.

(2) The failure to issue an order.

(3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.⁵

IDEM's act of reviewing the transfer application, finding that it met all of the requirements of 329 IAC 10-13-5, and not objecting to the transfer, can certainly be considered an "order," which is defined as "an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons." Thus, Petitioners had a right to appeal the transfer, however, the concerns raised in the Petitions for Administrative Review are better addressed during the permit renewal process. The procedure for renewing a permit is set out in 329 IAC 10-13-2:

⁴ 329 IAC 10-13-5

⁵ Ind. Code §4-21.5-1-4

(a) After the commissioner concludes that the renewal application is complete, the following is required:

(1) The commissioner shall comply with the procedural requirements of IC 13-7-10-2 and IC 13-7-10-2.5 for a renewal permit of a solid waste land disposal facility regulated under IC 13-7-4.

(2) The commissioner shall review the application to determine whether the facility or operation is in compliance with the plans and specifications in its existing permit. The commissioner may request clarification or supplementation of information submitted in support of the renewal application. The commissioner shall evaluate the facility's compliance record under:

(A) the operations requirements of 329 IAC 10-20, 329 IAC 10-28, or 329 IAC 10-36 as appropriate; and

(B) any prior or existing permit conditions.

(b) Subject the provisions of 329 IAC 10-11-1(c), after the provisions of subsection (a) have been accomplished and the commissioner determines that the facility is in compliance with the requirements of this article and the permit conditions, including any additions to or revisions of the conditions in the existing permit, the commissioner shall grant renewal of the permit.

Also on the subject of renewal, Indiana Code §13-15-3-6 provides:

(a) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for renewal or a new permit in accordance with rules of one (1) of the boards, the existing permit does not expire until a final determination on the application has been made by the department.

It follows that once Packerton Land Company received the permit from Mr. Ransbottom, it would be responsible for seeking a renewal. Since the renewal application was submitted timely in this case, Packerton Land Company could continue operating the landfill under the permit until IDEM either approved or denied the renewal application. As evidenced by the requirements set out above, the renewal applicant must be in compliance with statutes, regulations and permit conditions in order for IDEM to renew the permit. If IDEM determines that concerns like rodents, unauthorized dumping, drainage of wetlands and discharge from landfill drainage pipes are in violation of a statute, regulation or permit condition, then those items would have to be addressed before the permit could be renewed. Furthermore, IDEM must also give notice of the permit renewal, which would allow the Petitioners, if necessary, to appeal the renewal. Since there are no allegations that either Respondent or Intervenor failed to comply with the law regarding permit transfers, the transfer of the permit in this case must be upheld.

Conclusions of Law:

1. The permit transfer from Dan Ransbottom to Packerton Land Company, LLC met the requirements set out in 329 IAC 10-13-5.

2. A permit transfer does constitute an agency action under Ind. Code §4-21.5-1-4 and can be appealed to this office.

3. Packerton Land Company, LLC may continue to operate the Ransbottom Landfill, pursuant to Ind. Code §13-15-3-6, until IDEM makes a final determination on its renewal application.

Order

The Petitions for Administrative Review are hereby **DISMISSED**. IDEM is ordered to place Oma Jean Bradley and John Prater on the list of interested parties to receive notice of a final determination on Packerton Land Company's renewal application.

You are further notified that pursuant to IC 4-21.5-7-3, the Office of Environmental Adjudication serves as the Ultimate Authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This Final Order is 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 in Indianapolis, Indiana this 29th day of October 1998.

Linda C. Lasley
Environmental Law Judge