

**Objection to the Issuance of NPDES Permit No. IN 0002925,
Eli Lilly and Company, Hancock County
2001 OEA 86 (01-W-J-2717)**

TOPICS:

NPDES
standing
aggrieved
adversely affected
contiguous property
personal stake
actual injury
dismissal
IC 4-21.5-3-7(a)
threatened injury
legal interest

PRESIDING JUDGE:

Penrod

PARTY REPRESENTATIVES:

Petitioner: Rosemary Adams Huffman, *pro se*
Permittee/Respondent: Daniel McInerny, Esq.
Bose, McKinney & Evans LLP
IDEM: Janice Lengel, Esq.

ORDER ISSUED:

December 17, 2001

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

appealed: [Huffman v. IDEM](#), 49F12-0201-MI-000063 (Marion Super. Environ. 2002)
appealed: [Huffman v. IDEM](#), 788 N.E.2d 505 (Ind.Ct.App. 2003)
appealed: [Huffman v. OEA](#), 811 N.E.2d 806 (Ind. 2004)

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2001 OEA 86 (01-W-J-2717)**

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
SS: ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
OBJECTION TO THE ISSUANCE OF)
NPDES PERMIT NO. IN 0002925,)
ELI LILLY AND COMPANY,)
HANCOCK COUNTY)

Cause No. 01-W-J-2717

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, and
FINAL ORDER OF DISMISSAL**

Eli Lilly and Company ("Lilly"), by counsel, having filed its Motion to Dismiss, and Petitioner, Rosemary Adams Huffman (the "Petitioner") having filed her Petitioner's Response to Motion to Dismiss, and the Chief Administrative Law Judge ("CALJ") being duly advised, hereby issues the following Findings of Fact, Conclusions of Law and Final Order of Dismissal.

Findings of Fact

1. On or about March 29, 1991, Lilly submitted to the Indiana Department of Environmental Management ("IDEM") an application for renewal of its NPDES Permit No. IN0002925 (the "Permit").
2. On or about April 20, 2001, IDEM issued the renewed Permit.
3. On or about May 8, 2001, Rosemary Adams Huffman (the "Petitioner") filed a Petition for Administrative Review of the issuance of the Permit (the "Petition").
4. On August 27, 2001 a prehearing conference was conducted before the Office of Environmental Adjudication ("OEA"), with CALJ Penrod presiding.
5. During the prehearing conference, an issue arose as to whether the Petitioner had, or could establish, the requisite standing for filing a petition for administrative review of the Permit issuance. The basis for this issue was that the Petition stated that the Petitioner was representing herself only, that she resides in Indianapolis, and that her only interest in this matter was as a member of the public and because her family had residential property contiguous to the Lilly property. It appeared from the face of the Petition that the Petitioner did not have standing to invoke the subject matter jurisdiction of the OEA.

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6. At the Prehearing Conference, the Petitioner was provided with a deadline of September 14, 2001 to amend the Petition. The deadline to submit the amended petition was subsequently extended until October 1, 2001. On or about September 29, 2001, the Petitioner filed her Amended Petition for Administrative Review (the "Amended Petition") with the OEA.
7. On November 5, 2001, Lilly filed a Motion to Dismiss, arguing that the Petitioner lacked the requisite standing to bring her appeal. The Indiana Department of Environmental Management ("IDEM") concurred in this motion.
8. On or about December 1, 2001, the Petitioner filed her Petitioner's Response to Motion to Dismiss.
9. To qualify for administrative review of an agency order, such as the Permit at issue in this cause, a Petitioner must:

(1) States facts demonstrating that:

- (A) the petitioner is a person to whom the order is specifically is directed;
- (B) the petitioner is aggrieved or adversely affected by the order;
- (C) the petitioner is entitled to review under any law.

IC 4-21.5-3-7(a).

10. In Indiana, a plaintiff must establish standing to invoke a court's jurisdiction. The Indiana Supreme Court has established the interest which a party must demonstrate to invoke a court's jurisdiction:

In order to invoke a court's jurisdiction, a plaintiff must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a result of the conduct at issue.

Schloss v. City of Indianapolis, 553 N.E.2d 1204, 1206 (Ind. 1990).

11. The rules of standing, as established by Indiana case law, are applicable to administrative proceedings. Indiana Alcoholic Beverage Commission v. McShane, 170 Ind.App. 586, 596, 354 N.E.2d 259, 266 (Ind.Ct.App. 1976).
12. The rules of standing established under Indiana case law complement, rather than contradict, the provisions of IC 4-21.5-3-7(a). Indiana case law helps to clarify the facts a petitioner must demonstrate to establish that he or she is "aggrieved or adversely affected" by an agency order.

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13. The Permit at issue authorizes Eli Lilly and Company, Greenfield Laboratories, located in Greenfield, Indiana to discharge into the Leary Ditch subject to the terms of the renewed Permit.
14. The Petitioner resides in Indianapolis, Indiana. *See* Amended Petition, p. 1.
15. In her Amended Petition, the Petitioner states no facts demonstrating any threatened or actual injury as a result of the issuance of the Permit to Lilly. Therefore, the Petitioner has stated no facts demonstrating that she is personally aggrieved or adversely affected by the Permit issuance.
16. In her Amended Petition, the Petitioner states that her family has residential property, in which she has had a legal interest for several years, contiguous to the Lilly property. *See* Amended Petition, p. 2.
17. In her Response to Motion to Dismiss, the Petitioner states:

. . . the property adjacent to Lilly in which petitioner has a legal interest, has been owned since December 31, 1993, by Green Woods LLC, an Indiana liability company created December 8, 1993. DOS Inc. is an Indiana corporation created on December 8, 1993 which has owned one unit of Green Woods LLC since December 31, 1993. DOS, Inc. has been owned solely by Rosemary Adams Huffman since December 8, 1993. In addition, DOS, Inc. is the managing member of Green Woods LLC.

Petitioner's Response to Motion to Dismiss, p. 4.
18. Assuming the above statement to be true, two significant facts must be considered:
 - (a) The Petitioner is representing herself only in this proceeding. Neither Green Woods LLC nor DOS, Inc. are represented, nor are they parties, in this cause. *See* Amended Petition, p. 1; and
 - (b) In her Amended Petition, the Petitioner states no facts demonstrating any threatened or actual injury to the contiguous property as a result of the issuance of the Permit to Lilly. Therefore, the Petitioner states no facts demonstrating that she is aggrieved or adversely affected by the issuance of the Permit to Lilly as a result of her legal interest in the contiguous property.

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19. In its Motion to Dismiss, Lilly states that:

Based upon calculations performed by Lilly, the Lilly discharge point in Leary Ditch is approximately 2800 feet west and downstream from the nearest point on the Adams Property, and from the discharge point Leary Ditch continues to flow downstream away from the Adams Property. The plain fact is that Lilly's permitted discharge to Leary Ditch has no impact, adverse or otherwise, upon the Petitioner or the Adams Property. *See* Motion to Dismiss, p. 4.

The 'Adams Property' referenced above is the contiguous property to which the Petitioner claims a legal interest.

20. In neither her Amended Petition nor her Petitioner's Response to Motion to Dismiss does the Petitioner state any facts demonstrating that Lilly's discharge to Leary Ditch has any impact whatsoever upon the Petitioner personally, or upon the property in which she claims a legal interest.
21. The facts in *Hoosier Environmental Council v. RDI Caesar's River Boat Casino, LLC, and Department of Natural Resources*, 8 CADDNAR 48 (1998) are clearly distinguishable from the facts in this cause. The Caesar's petitioners utilized the natural resources alleged to be adversely affected by the permit at issue; the Petitioner in this cause has established no such nexus. The Caesar's decision is consistent with the legal concept that a petitioner must establish standing to petition for administrative review of an agency order. In Caesar's, the petitioners established such standing by demonstrating a threatened injury as a result of the permit issuance. Here, the Petitioner has made no such demonstration.

Conclusions of Law

1. The standing provisions of IC 4-21.5-3-7(a), and the standing requirements as set forth by the Indiana Supreme Court above, are applicable to this proceeding.
2. After being afforded a full and fair opportunity to amend her original Petition for Administrative Review, the Petitioner's Amended Petition for Administrative Review fails to state facts demonstrating that she is aggrieved or adversely affected by the issuance of the Permit to Lilly by IDEM, as required by IC 4-21.5-3-7(a).
3. The Petitioner lacks standing to petition for administrative review of the agency order at issue in this cause, thereby depriving the OEA of jurisdiction over this cause.

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Final Order

It is hereby ORDERED that the Petitioner's Amended Petition for Administrative Review be DISMISSED, with prejudice.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7-5, 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 is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to 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 17th day of December, 2001.

Wayne E. Penrod
Chief Administrative Law Judge