





**Objection to the Issuance Permit Approval No. 14658**  
**Bloor Woods, Boone County, Indiana**  
**2002 OEA 1 (01-W-J-2765)**

**FINDINGS OF FACT**

This is a Final Order issued pursuant to Indiana Code § 4-21.5-3-27. To the extent that any of the following Findings of Fact should be properly deemed Conclusions of Law or any Conclusions of Law should be properly deemed Findings of Fact, they shall be treated as such. The Chief Administrative Law Judge finds the following facts are undisputed:

1. The Indiana Department of Environmental Management (“IDEM”) issued a permit to Bloor Woods for the construction of a sanitary sewer, force main and lift station (the “Bloor Woods Lift Station”) as Permit Approval No. 14658 on July 16, 2001 (the “Permit”).
2. On July 26, 2001, Petitioner filed with the OEA a Petition for Review (the “Original Petition”) alleging that the Bloor Woods Lift Station will create an unpleasant odor and the proposed Bloor Woods subdivision did not conform to the existing neighborhood.
3. On August 8, 2001, the OEA issued an order scheduling a pre-hearing conference for September 14, 2001. The order included a list of the information required by IC § 13-1 5-6-2 to be included in a petition for review and instructed the Petitioner to immediately amend her Original Petition if it did not include the required information.
4. During the pre-hearing conference conducted on September 14, 2001, the presiding Special Administrative Law Judge advised the Petitioner that the OEA had no jurisdiction over any of the claims made in her Original Petition and advised that she should either amend or withdraw her Original Petition.
5. Following the pre-hearing conference held on September 14, 2001, the OEA issued a scheduling order which ordered: (1) that any amendments to Petitioner’s Original Petition to state claims within the jurisdiction of the OEA shall be filed with the Court on or before September 27, 2001; (2) that all dispositive motions shall be filed with the Court on or before October 12, 2001; (3) that all responses to dispositive motions shall be filed with the Court on or before October 19, 2001; and (4) that all replies shall be filed with the Court on or before October 26, 2001.
6. Petitioner filed an Amended Petition for Review with the OEA on or about September 17, 2001 (“Amended Petition”).
7. Petitioner’s Amended Petition no longer alleges that the Bloor Woods Lift Station will create an unpleasant odor or that the Bloor Woods subdivision does not conform with the existing neighborhood and instead now states:

“I [Petitioner] shall now base my appeal on my belief that the permit was issued without sufficient examination by IDEM and Zionsville operating authorities . . . .”

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Petitioner's Amended Petition listed three reasons for her belief which are summarized as follows:

- (1) The IDEM did not study the plans as thoroughly as should have been done;
  - (2) the potential leakage of methane gas from the hatches at the Bloor Woods Lift Station; and
  - (3) the Bloor Woods Lift Station's proximity to other unidentified properties and a school.
8. The Permit Approval No. 14658 was directed to the permit applicant, Bloor Woods, LLC.
  9. Neither Petitioner's Original Petition nor her Amended Petition attached a copy of the notice of the Permit in question or identified the person against whom administrative review is sought.
  10. Neither Petitioner's Original Petition nor her Amended Petition alleged that any statute or regulation was not complied with in the approval of Permit Approval No. 14658.
  11. Neither Petitioner's Original Petition nor her Amended Petition sets forth suggested permit terms or conditions which would be appropriate remedies for any alleged environmental concerns or technical deficiencies with Permit Approval No. 14658.
  12. Petitioner's Amended Petition did not include a statement regarding certificate of service.
  13. On October 11, 2001, Bloor Woods filed its Motion to Dismiss with the OEA.
  14. On October 13, 2001, Petitioner filed her Response to Bloor Woods' Motion to Dismiss with the OEA.
  15. Petitioner's Response included Exhibits B, C, and D.
  16. Petitioner's Response was not accompanied by an affidavit authenticating Exhibits B, C, and D.
  17. On October 24, 2001, Bloor Woods filed its Reply to Petitioner's Response with the OEA which included a Motion to Strike Petitioner's Exhibits B, C, and D.
  18. Petitioner did not respond to Bloor Woods Motion to Strike Exhibits B, C, and D.
  19. On March 11, 2002, Petitioner filed her Supplemental Response, which includes Exhibits E and F, with the OEA.
  20. Petitioner's Supplemental Response was not accompanied by an affidavit authenticating Exhibits E and F.

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21. On March 22, 2002, Bloor Woods filed its Motion to Strike Petitioner's Supplemental Response with the OEA.
22. Petitioner did not respond to Bloor Woods' Motion to Strike Petitioner's Supplemental Response.
23. Petitioner's Supplemental Response raises new allegations not raised in either her Original Petition, Amended Petition, or Petitioner's Response.
24. Petitioner's Supplemental Response was filed after the October 19, 2001 deadline ordered by the OEA for submitting responses to dispositive motions.

**CONCLUSIONS OF LAW**

25. Petitioner submitted Exhibits B, C, and D in her Response and Exhibits E and F in her Supplemental Response. No one with personal knowledge of Exhibits B, C, D, E and F has properly authenticated these Exhibits.
26. Bloor Woods moved to strike Petitioner's Exhibits B, C, and D due to lack of proper authentication. Bloor Woods' motion to strike Exhibits B, C, and D is well-taken and is hereby granted.
27. Bloor Woods moved to strike Petitioner's Supplemental Response, including Exhibits E and F, because it was filed after the October 19, 2001 ordered deadline for submitting responses to dispositive motions, it raised new allegations not raised in either Petitioner's Original Petition, Amended Petition or Petitioner's Response, and due to lack of authentication of Exhibits E and F. Bloor Woods motion to strike Petitioner's Supplemental Response, including Exhibits E and F, is well taken and is hereby granted.
28. Petitioner has not submitted any sworn testimony in this matter.
29. The applicable requirements which must be satisfied in a petition for review before the OEA are found in Indiana Code § 13-15-6-1 et seq., 315 Indiana Administrative Code, Article 1, and Indiana Code § 4-21.5-3-7.
30. Pursuant to 315 IAC 1-3-2(b)(3) and Indiana Code § 4-21.5-3-7(a)(1), a petition for review filed with the OEA must contain a statement demonstrating that the petitioner is one of the following: (A) a person to whom the order is directed; (B) a person aggrieved or adversely affected by the order; or (C) a person entitled to review under any law. Petitioner's Original Petition and Amended Petition both failed to make the foregoing demonstration.
31. Petitioner is not the person to whom Permit Approval No. 14658 is directed.

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32. Petitioner's Original Petition and her Amended Petition both fail to state facts demonstrating that Petitioner is or will imminently be aggrieved or adversely affected by IDEM's issuance of the Permit, thereby failing to comply with Ind. Code § 4-21.5-3-7 and 315 1-3-2(b)(3).
33. To possess standing to bring an action, the party bringing an action must "demonstrate a personal stake in the outcome of the lawsuit and must show that [s]he has sustained or was in immediate danger of sustaining some direct injury as a result of the conduct at issue." Schulz v. State, 731 N.E.2d 1041, 1044 (Ind. Ct. App. 2000). Petitioner has failed to make such a demonstration.
34. The Petitioner does not allege that any statute or regulation was not complied with in the approval of Permit Approval No. 14658. Even taking Petitioner's allegations as true, Petitioner does not allege any unlawful deficiency relating to the approval of Permit Approval No. 14658. Thus, Petitioner has failed to state a claim upon which the OEA may grant relief.
35. Pursuant to Indiana Code § 13-15-6-2 and 315 IAC 1-3-2(b)(4), a petition for review in a case involving the administrative review of a permit must identify with particularity the environmental concerns or technical deficiencies related to the permit approval and identify with particularity which permit terms and conditions would be appropriate to bring the permit into compliance with applicable law.
36. Petitioner's Amended Petition failed to identify any valid environmental concerns or technical deficiencies within the OEA's jurisdiction and provided no citation to any statute, regulation or permit term to support the allegations therein.
37. Petitioner's Amended Petition did not identify any permit terms or conditions which would be appropriate remedies for any alleged environmental concerns or technical deficiencies.
38. Pursuant to 315 IAC 1-3-2(c)(2), a petition for review before the OEA should identify the person against whom administrative review is sought. Petitioner's Amended Petition failed to identify the person against whom administrative review was sought.
39. Pursuant to 315 IAC 1-3-2(c)(3), a copy of the notice of the permit approval should be attached to a petition for review before the OEA. Neither Petitioner's Original Petition nor the Amended Petition included a copy of the notice of Permit Approval No. 14658.
40. The Petitioner's Amended Petition did not include a signed certificate of service as required by 315 IAC 1-3-3(b)(3).

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41. To the extent Petitioner's Amended Petition objects to the review process used by the Town of Zionsville or the proximity of the Bloor Woods Lift Station to surrounding properties, these objections exclusively involve local land use, zoning and sewer ordinances over which the IDEM has no authority and for which the OEA lacks subject matter jurisdiction.
42. Because Petitioner's Amended Petition dated September 17, 2001 did not raise the odor or conformance to the neighborhood issues raised in her Original Petition filed July 26, 2001, Petitioner has waived these two issues. In any event, the OEA does not have subject matter jurisdiction to hear the odor and conformance to neighborhood issues raised in Petitioner's Original Petition.
43. Where a petitioner fails to comply with mandatory statutory and regulatory requirements for bringing a petition before the OEA, the OEA lacks jurisdiction to hear the petition. Kaminsky v. Medical Licensing Bd. of Ind., 511 N.E.2d 492, 497 (Ind. Ct. App. 1987); In re Objection to the Issuance of Permit Approval No. 13725 Town of New Whiteland, Indiana, 00-W-J-2539 (Ind. Office of Env'tl. Adjudication May 4, 2001).
44. As a result of the aforementioned statutory and regulatory defects in Petitioner's Original and Amended Petitions, the OEA lacks subject matter jurisdiction to hear the Petitions.
45. A motion to dismiss is properly granted when the allegations of a pleading, taken as true, "present no possible set of facts upon which the complainant can recover." Mart v. Hess, 703 N.E.2d 190, 193 (Ind. Ct. App. 1998) (quoting Barth Electric Co. v. Traylor Bros., Inc., 553 N.E.2d 504, 505-06 (Ind. Ct. App. 1990)).
46. Bloor Woods' Motion to Dismiss is hereby GRANTED. The issuance of Permit Approval No. 14658 is upheld.

**FINAL ORDER**

Having considered Bloor Woods' Motion to Dismiss, Petitioner's Response and Supplemental Response, and Bloor Woods' Reply, Motion to Strike Petitioner's Exhibits B, C, and D and Motion to Strike Petitioner's Supplemental Response, including Exhibits E and F, the OEA hereby **GRANTS** Bloor Woods' Motion to Strike Petitioner's Exhibits B, C, and D from Petitioner's Response and Motion to Strike Petitioner's Supplemental Response, including Exhibits E and F, and **GRANTS** Bloor Woods' Motion to Dismiss.

**IT IS THEREFORE ORDERED** that Petitioner's Original Petition for Review and Amended Petition for Review are **DISMISSED**.

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You are further notified that pursuant to the provisions of Indiana Code § 4-21.5- 7-5, the Chief Administrative Law Judge, Wayne E. Penrod, of the Office of Environmental Adjudication serves as the ultimate authority in administrative reviews of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to judicial review consistent with the applicable provisions of Indiana Code 4-2 1.5. Pursuant to Indiana Code § 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.

DATED: May 1, 2002

WAYNE E. PENROD  
CHIEF ADMINISTRATIVE LAW JUDGE