

**Objection to the Issuance of Section 401 Water Quality Certification  
Cedar Creek Logjam Removal; Auburn, Dekalb County, Indiana.  
2003 OEA 27 (02-W-J-2896)**

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**TOPICS:**

Section 401 Water Quality  
logjam removal  
drag line  
bulldozer  
wetland  
motion to dismiss  
moot  
untimely filed  
public interest exception  
fundamental individual rights

**PRESIDING JUDGE:**

Biesecker

**PARTY REPRESENTATIVES:**

Petitioner: Jane H. Dustin  
Permittee: Derald D. Kruse  
IDEM: Anne M. Patterson

**ORDER ISSUED:**

May 12, 2003

**INDEX CATEGORY:**

Water

**FURTHER CASE HISTORY:**

[none]

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**Findings of Fact**

1. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.
2. IDEM approved the application of the DeKalb County Surveyor for a Section 401 Water Quality Certification on May 21, 2002. In its proposal, DeKalb would use a drag line and bulldozer to remove the logjams. The project would impact approximately 500 linear feet of Cedar Creek and .5 acres of wetland temporarily impacted.
3. The project has been completed. A photographic record shows that as of February 13, 2003, attested to by Bradley Blevins, the log jam had been removed. DeKalb's initial motion stated that as of July 2002, the logjam had been removed. Although this statement was not the subject of a sworn affidavit, it is not disputed by Petitioner that the project has been complete since that time.

**Conclusions of Law**

1. Under Indiana law a case is deemed moot when there is no effective relief that can be rendered to the parties by the court. *See A.D. v. State of Indiana*, 736 N.E. 2d 1274 (Ind. App. 2000).
2. The public interest exception to the mootness rule is a very narrow one, typically involving questions of fundamental individual rights. *In Re Lawrence*, 579 N.E.2d 32 (Ind. 1991); *R.A. v. State*, 770 N.E.2d 376 (Ind. App. 1994). Petitioner has alleged no facts that would place this case within that narrow exception. *See Stansberry v. Howard*, 775 N.E.2d 679 (Ind. 2002)

**Order Granting DeKalb's Motion**

After consideration of the petitions and arguments and based upon the foregoing Findings of Fact and Conclusions of Law, the Acting Chief Administrative Law Judge hereby GRANTS DeKalb's Motion to Dismiss. It is further ORDERED that the Petitioner's petition is **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 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 12th day of May, 20, 2003.

Annette Biesecker,  
Acting Chief Environmental Law Judge