

**In re: Objection to Denial of Excess Liability Trust Fund Claim, Frank Suverkrup,
Benzol Cleaning Company, Inc., Columbus, Bartholomew County, Indiana
2004 OEA 48 (04-F-J-3375)**

TOPICS:

dismissal
lack of jurisdiction
timeliness
petition for review

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Petitioner: Donn H. Wray, Esq., Glenn D. Bowman, Esq., Stewart & Irwin
IDEM: Robert Keene, Esq.

ORDER ISSUED:

June 17, 2004

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

[none]

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

IN THE MATTER OF:)	
)	
OBJECTION TO THE DENIAL OF)	
EXCESS LIABILITY TRUST FUND CLAIM)	CAUSE NO. 04-F-J-3375
FRANK SUVERKRUP)	
BENZOL CLEANING COMPANY, INC.)	
COLUMBUS, BARTHOLOMEW COUNTY)	

ORDER OF DISMISSAL

Please be notified that the Office of Environmental Adjudication (“OEA” or “Court”), hereby dismisses Cause No. 04-W-J-3375 from the OEA under Ind. Code §4-21.5, et seq., 315 IAC 1, and Ind. Tr. R. 12(B)(1), for lack of subject matter jurisdiction. The Environmental Law Judge hereby makes the following findings of fact and conclusions of law:

Findings of Fact

1. On May 7, 2004, the Indiana Department of Environmental Management (IDEM) sent a notice to Mr. Frank Suverkrup, via United States Mail, that he was not eligible to receive reimbursement from the Excess Liability Trust Fund.
2. Mr. Suverkrup filed his Petition for Administrative Review on June 28, 2004.

Conclusions of Law

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management and the parties to this controversy pursuant to Ind. Code §4-21.5-7, et seq.
2. 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.
3. IC §4-21.5-3-7 states that a Petition for Review must be filed within fifteen (15) days after the person is given notice of the order.

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4. IC §4-21.5-3-2(c) provides in pertinent part:
 - (c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:
 - (1) the person is personally served with the notice; or
 - (2) a notice for the person is deposited in the United States mail.
5. IC §4-21.5-3-2(e) provides that three (3) days shall be added to this deadline if service is by mail. A petition for administrative review of the IDEM's order must be filed within 18 days after the order is mailed. Therefore, the Petitioner had eighteen (18) days from May 7, 2004, the date of the letter and the presumed date of mailing, or until May 25, 2004, to file his Petition for Review.
6. The Petition for Review was not timely filed in this matter.

Final Order

IT IS THEREFORE ORDERED that the Petition for Review filed by the Petitioner is hereby **DISMISSED** for lack of subject matter jurisdiction by the Office of Environmental Adjudication.

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 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 17th day of June, 2004 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge