

**In re: Objection to Issuance of Significant Source Modification T-039-176 16-0036,
Premier Fiberglass
2004 OEA 73 (04-A-J-3329)**

TOPICS:

fiberglass
air permits
burden of proof

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Permittee, *pro se*: Premier Fiberglass
Petitioners, *pro se*: T. Harold & Juanita Barwick, Dianne Luke
IDEM: Jacquelyn Moore, Esq.

ORDER ISSUED:

September 9, 2004

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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6. A prehearing conference was held on August 3, 2004. The Barwicks attended. No other Petitioner attended the conference. On August 5, 2004, a Notice of Proposed Default was issued to Dianne Luke. She responded to said Notice and the proposed default was set aside.
7. A hearing was held on September 3, 2004. The Barwicks, IDEM and Premier Fiberglass were present.
8. Ms. Luke failed to appear and informed the Court via telephone that she wished to withdraw her objections to the Permit.
9. The Barwicks complained of the odor of the styrene emissions from the Facility and questioned the procedure used to determine emissions. However, the Barwicks failed to present any evidence that proved that the Facility was not in compliance with the appropriate emissions limits established in the Permit. Nor did the Barwicks present any evidence that IDEM had failed to comply with any applicable law or regulation in issuing the permit renewal.
10. Premier Fiberglass (“Premier”) qualified Ms. Teri Schenk as an expert. Ms. Schenk presented evidence regarding the following facts and this Court finds as follows:
 - (a) Premier is in compliance with all applicable laws and regulations;
 - (b) Premier has changed its spray operations to non-atomized spray equipment that reduced its emissions.
 - (c) Premier properly notified the IDEM of this modification.
11. The IDEM presented evidence regarding the following facts and this Court finds as follows:
 - (a) There has been no change in Premier’s potential to emit since the Permit was initially issued.
 - (b) Numerous inspections of the Facility have failed to reveal any violations.
 - (c) Premier is in compliance with the monitoring and reporting requirements of the Permit.

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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 (“IDEM”) pursuant to Ind. Code § 4-21.5-7, et seq.
2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. 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. The Petitioners have the burden of proving, by a preponderance of the evidence, that the IDEM improperly issued the Permit to Premier.
4. The Barwicks failed to prove, by a preponderance of the evidence, that the IDEM either:
 - (1) had the authority to regulate odor or was required to consider odor in determining whether to issue the Permit, or
 - (2) improperly issued the Permit.

Order

IT IS THEREFORE ORDERED that the Petition for Administrative Review filed by T. Harold and Juanita Barwick is hereby **DENIED**, and permit # T-039-17616-00336 issued by IDEM on April 8, 2004 is hereby **AFFIRMED**.

IT IS FUTHER ORDERED the Petition for Administrative Review filed by Dianne Luke is hereby **DISMISSED**.

You are further advised that, pursuant to Indiana Code §4-21.5-5, this Final Order is subject to judicial review. Pursuant to Indiana Code §4-21.5-5, 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 9th day of September, 2004.

Hon. Catherine Gibbs
Environmental Law Judge