

Objection to the Denial of Excess Liability Trust Fund Claim No. 200710507/FID No. 13321,
Former B & D Rental Center, Inc. II, Indianapolis, Marion County, Indiana.
2008 OEA 31 (08-F-J-4077)

OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 31 cite this case as
B & D Rental Center, 2008 OEA 31.

TOPICS:

dismissal
AOPA
late
Petition for Review
timely
IC 4-21.5-3-2
IC 4-21.5-3-7

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Petitioner: Jennifer A. Bush, Bruce Bultman
IDEM: Steve Griffin, Esq.

ORDER ISSUED:

March 6, 2008

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

Judicial Review: *N & B Properties, LLC v. Commissioner, Indiana Department of Environmental Management*, Marion County, 49D01-0804-PL-015191.
No further information, please contact the county.

**Objection to the Denial of Excess Liability Trust Fund Claim No. 200710507/FID No. 13321,
Former B & D Rental Center, Inc. II, Indianapolis, Marion County, Indiana.
2008 OEA 31 (08-F-J-4077)**

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
OBJECTION TO THE DENIAL OF EXCESS)
LIABILITY TRUST FUND CLAIM)
NO. 200710507/FID NO. 13321)
FORMER B & D RENTAL CENTER, INC. II)
INDIANAPOLIS, MARION COUNTY, INDIANA)

CAUSE NO. 08-F-J-4077

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court on the Petition for Review filed on February 29, 2008, by the Petitioners, as stated above, which pleadings are part of the Court’s record and the Court, being duly advised, now, the following findings of fact, conclusions of law and final order:

Findings of Fact

1. The Office of Environmental Adjudication received a Petition for Review of the Indiana Department of Environmental Management’s denial of a request for reimbursement from the Excess Liability Trust Fund (ELTF) on February 29, 2008.
2. The Petitioner filed a response to the denial letter on February 26, 2008 with the Indiana Department of Environmental Management (the “IDEM”).
3. IDEM’s notice of its denial of reimbursement was dated February 6, 2008.

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”) and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, *et seq.*
2. This is a Final Order issued pursuant to IC 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. IC 13-23-9-4 provides that denials of ELTF reimbursement may appeal the denial to the Office of Environmental Adjudication under IC 4-21.5.
4. IC 4-21.5-3-7(a)(3)(A) 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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5. IC 4-21.5-3-2(e) provides that three (3) days shall be added to this deadline if service is by mail.
6. The Petitioner had eighteen (18) days from February 6, 2008, the date of the notice and the presumed date of mailing, until February 24, 2008, to file the Petition for Review.
7. IC 4-21.5-3-2 provides in pertinent part:
 - (a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:
 - (1) a Saturday;
 - (2) a Sunday;
 - (3) a legal holiday under a state statute; or
 - (4) a day that the office in which the act is to be done is closed during regular business hours.
8. Pursuant to IC 4-21.5-3-2, because February 24, 2008 is a Sunday, the Petition for Review should have been filed no later than February 25, 2008.
9. Even if the response filed with IDEM could be considered a Petition for Review, it was not filed in a timely manner.
10. The Petition for Review was not filed until February 29, 2008 and was not timely filed in this matter.

Final Order

IT IS THEREFORE ORDERED that the Petition for Review filed by Petitioner is hereby **DISMISSED**.

You are hereby further notified that pursuant to provisions of IC 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 6th day of March, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge