

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

OFFICIAL SHORT CITATION NAME: When referring to 2021 OEA 45, cite this case as *Riverview Amendment*, 2021 OEA 45.

Topics:

Summary judgment

Extension of time

Construction

Coronavirus

Declaration of Public Health Emergency

US EPA Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2)

326 IAC 2-2-8(a)(1)

NRDC v. POET Biorefining-North Manchester, LLC, 15 N.E.3d 555, 563

326 IAC 2-7-11

326 IAC 2-1.1-6(a)

COVID-19 pandemic

I.C. §13-14-1-5

Presiding Environmental Law Judge: Catherine Gibbs

Party representatives:

IDEM: Kyle Burns, Clark Kirkman

Petitioners: Kathryn Watson

Permittee: Donald Snemis, Terri Czajka, Amy Berg

Order issued: May 19, 2021

Index category: Air

Further case activity:

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

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

IN THE MATTER OF:)	
)	
OBJECTION TO THE ISSUANCE OF)	
PERMIT AMENDMENT)	CAUSE NO. 20-A-J-5123
NO. 147-43258-00065)	
RIVERVIEW ENERGY CORPORATION)	
DALE, SPENCER COUNTY, INDIANA)	
_____)	
Southwestern Indiana Citizens for Quality of Life)	
Inc., and Valley Watch, Inc.,)	
Petitioners,)	
Riverview Energy Corporation,)	
Permittee/Respondent,)	
Indiana Department of Environmental Management))	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER**

The parties filed motions for summary judgment on January 29, 2021. The presiding Environmental Law Judge (the ELJ), having read the motions, responses and replies and examined the evidence, now enters the following findings of fact, conclusions of law and order:

Findings of Fact

1. On June 11, 2019, the Indiana Department of Environmental Management (IDEM) issued Prevention of Significant Deterioration/New Source Construction and Part 70 Operating Permit No. T147-39554-00065 (the Permit) to Riverview Energy Corporation (Riverview). The Permit allows the construction of a direct coal hydrogenation refinery to covert coal to liquid fuels at 4704 East 2000 North, Dale, Spencer County, Indiana (the Facility).
2. Petitioners, Southwestern Indiana Citizens for Quality of Life, Inc. and Valley Watch, Inc., timely filed their Petition for Review on July 9, 2019. This matter was assigned Cause No. 19-A-J-5073.
3. Petitioners did not request a stay of effectiveness, therefore no order staying the effectiveness of the Permit was issued.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

4. Findings of Fact, Conclusions of Law and Final Order was issued December 18, 2020 entering judgment for IDEM and Riverview.
5. On March 6, 2020, Governor Eric Holcomb issued a Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak. This Declaration has been extended and currently remains in effect.
6. On September 1, 2020, Riverview Energy Corporation (Riverview) submitted a request to IDEM for an extension of time in which to commence construction of the Facility (the Application). Riverview cited the following two (2) reasons for the request.
 - 1) Earth Justice Petition for Administrative Review: In line with the "ongoing litigation" covenant of the EPA guidelines, on July 10, 2019, Earth Justice filed with the Office of Environmental Adjudication ("OEA") a petition for administrative review on behalf of Southwestern Indiana Citizens for Quality of Life, Inc. and Valley Watch, Inc. The petition makes the far-reaching claim that the permit No. 147-39554-00065 issued by IDEM to REC is invalid and unlawful through the assertion of six different counts. The significance of Earth Justice's action has had a direct and negative impact on REC's development activities and schedule to reach commencement of construction as originally anticipated, due to uncertainties generated by such a legal action. The process has taken so far 13 months out of the allocated 18 months to start construction. A summary of main litigation events is outlined hereunder:

The petition for administrative review was filed on July 9, 2019, and Environmental Law Judge Gibbs held a 3½ day evidentiary hearing between August 3 and 6, 2020. Post-hearing briefing and proposed findings of fact and conclusions of law are due on September 30, 2020, and Judge Gibbs indicated that she may issue a decision approximately 90 days later. During the little over one-year period between July 9, 2019 and August 3, 2020, extensive factual and expert discovery was undertaken by all parties, numerous motions (including a motion to dismiss based on standing, a motion for summary judgment on Count 1, and a motion for summary judgment on Counts 2-6) were fully briefed and detailed rulings were entered, and numerous other contested issues were brought before Judge Gibbs. REC notes that the hearing had originally been scheduled to begin on June 29, 2020, and that hearing was continued in response to Earth Justice's Motion to Continue.
 - 2) Covid-19 Pandemic: In line with the "natural disasters" covenant of the EPA guidelines, in or about March 2020, the entire country social, work, and economic activities came to a halt due to the worst pandemic the world has known since the Spanish flu in 1918. At that time Governor Holcomb, in a responsible way to protect the people of Indiana from the widespread infection that could overwhelm the Indiana healthcare system, issued an executive order that deemed only essential businesses and

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

services could be conducted with the public. As of today, over 5 million people have been infected and close to 185,000 people have lost their lives in the US alone. Across the country, workers have been quarantined and ordered to work from home, offices have been shut-down, court proceedings postponed, leisure and business travels curtailed among other drastic measures. The economic impact has been enormous on the country as a whole. Many companies, including REC, have been hampered in their ability to conduct their business as efficiently and productively as they did prior to the pandemic. REC's dealings with its engineering firms, bankers, lawyers, and consultants have been severely impeded. Recovery has been slow and the impacts of the pandemic continue to be felt today and will be felt for many months to come.

Please note of the combined and aggravating effect the pandemic (covenant No. 2) has had on covenant No. 1 (ongoing litigation).

7. Riverview cites to the United States Environmental Protection Agency (US EPA) guidance¹ in support of its request.
8. On September 29, 2020, the Indiana Department of Environmental Management (IDEM) issued an administrative amendment to Riverview Energy Corporation's Permit No. 147-43258-00065 extending the deadline to begin construction until June 10, 2022 (the Amendment). The notice provided that the following amendments would be made to the Permit:

IDEM OAQ[] considered the information provided by Riverview Energy Corporation for the extension request. After careful evaluation of all the information presented in this request, IDEM determined that a satisfactory showing was made to justify an additional eighteen (18) month extension for the project without the need for substantive changes to the existing construction approval. . . .

Pursuant to 326 IAC 2-7-11(a), the permit is hereby administratively amended as follows with the deleted language as ~~strikeouts~~ and new language **bolded**:

- (1) For a permit issued under the provisions of 326 IAC 2-2 (Prevention of Significant Deterioration (PSD)), approval to construct is subject the [sic] provision of 326 IAC 2-2-8(a). Condition B.2 – Revocation of Permits 4 has been further amended to clarify the construction authorization under 326 IAC 2-2-8.

The entire permit has been revised as follows:

¹ IDEM Motion for Summary Judgment, IDEM Exhibit 2, US EPA Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), Stephen D. Page, Director, Office of Air Quality Planning and Standards, January 31, 2014 hereafter referred to as “the EPA Guidance”.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

...

B.2 Revocation of Permits [326 IAC 2-2-8]

Pursuant to 326 IAC 2-2-8(a)(1), this permit to construct shall expire if construction is not commenced ~~within eighteen (18) months after receipt of this approval~~ **on or before June 10, 2022** or if construction is discontinued for a period of eighteen (18) months or more.

9. IDEM did not hold a public meeting or provide an opportunity for public comment regarding the Amendment.
10. IDEM has previously issued administrative amendments for extensions of time. *See* Indiana Gasification on June 26, 2014²; St Joseph Energy Center on April 1, 2014³; Ohio Valley Resources on March 3, 2015⁴; and Midwest Fertilizer on September 25, 2015⁵. In each instance, the facilities relied on the EPA Guidance. In each instance, IDEM granted the requests for an extension of time and classified the extensions as administrative amendments. Further, no public comment periods were held and IDEM did not perform a BACT⁶ analysis before issuing the administrative amendments.
11. Petitioners, Southwestern Indiana Citizens for Quality of Life, Inc. and Valley Watch, Inc. filed their Petition for Review of the Amendment on October 13, 2020.
12. Petitioners allege that the Amendment granting the extension of time was improperly granted for the following reasons:
 - Count I: 326 IAC 2-7-11(a) does not allow IDEM to make an administrative amendment to extend the term of the Permit.
 - Count II: As a Part 70 Permit, IDEM failed to comply with the requirements for public notice.
 - Count III: IDEM failed to adequately justify the amendment.
 - Count IV: Riverview failed to show that the pending administrative litigation was a valid reason for the amendment.
 - Count V: Riverview failed to show that the COVID-19 pandemic was a valid reason for the amendment.
 - Count VI: IDEM failed to reevaluate the BACT determination.
13. On January 29, 2021, IDEM filed its Motion for Summary Judgment; Riverview filed its Joinder in IDEM's Motion for Summary Judgment and Supporting Memorandum; and Petitioners filed their Motion for Partial Summary Judgment on Counts I-III.

² IDEM's Motion for Summary Judgment, Exhibits 3 and 4, filed January 29, 2021.

³ IDEM's Motion for Summary Judgment, Exhibits 5 and 6, filed January 29, 2021.

⁴ IDEM's Motion for Summary Judgment, Exhibits 9 and 10, filed January 29, 2021.

⁵ IDEM's Motion for Summary Judgment, Exhibits 7 and 8, filed January 29, 2021.

⁶ Best available control technology

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

14. On April 1, 2021⁷, Riverview filed its Opposition to Petitioners' Motion for Partial Summary Judgment; IDEM filed its Response to Petitioners' Motion for Partial Summary Judgment; and Petitioners filed their Response to Indiana Department of Environmental Management's Motion for Summary Judgment.
15. On April 16, 2021, IDEM filed its Reply in Support of Its Motion for Summary Judgment; Petitioners filed their Reply to Indiana Department of Environmental Management and Riverview's Responses to Petitioners' Motion for Partial Summary Judgment; and Riverview filed its Reply in Support of Motion for Summary Judgment.

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. 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. This office must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.*; I.C. 4-21.5-3-27(d). "*De novo* review" means that "all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings. *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).
4. The OEA and IDEM, as state agencies, only have the authority to take those actions that are granted by the law. "An agency, however, may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law." *Lee Alan Bryant Health Care Facilities, Inc. v. Hamilton*, 788 N.E.2d 495, 500 (Ind. Ct. App. 2003). IDEM can only determine whether a permit should be issued by applying the relevant statutes and regulations and may only consider those factors specified in the applicable regulations in deciding whether to issue a permit.
5. As the ultimate authority for the IDEM, the OEA's authority is limited by statute (I.C. §4-21.5-7-3) to determining whether the IDEM decision complies with the applicable statutes and regulations. OEA is an impartial litigation forum, not a body which formulates or advises as to public policy or regulatory content.
6. The OEA shall consider a motion for summary judgment "as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana

⁷ There were discovery disputes which delayed the deadline for filing responses.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

Rules of Trial Procedure.” I.C. § 4-21.5-3-23. Ind. Trial Rule 56 states, “The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” The moving party bears the burden of establishing that summary judgment is appropriate. All facts and inferences must be construed in favor of the non-movant. *Gibson v. Evansville Vanderburgh Building Commission, et al.*, 725 N.E.2d 949 (Ind. Ct. App. 2000).

7. Petitioners have moved for summary judgment on Counts I-III of its petition. IDEM moved for summary judgment on all counts. Riverview joined in IDEM’s motion.
8. Under 326 IAC 2-2-8(a), Permittee is obligated to begin construction within eighteen (18) months of permit issuance. The rule provides:

(1) Approval to construct, under section 2(b) of this rule, shall become invalid if construction:

- (A) is not commenced within eighteen (18) months after receipt of the approval;
- (B) is discontinued for a period of eighteen (18) months or more; or
- (C) is not completed within a reasonable time.

The commissioner may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

9. IDEM approved the extension pursuant to the authority of 326 IAC 2-2-8(a). IDEM classified the extension as an administrative amendment pursuant to 326 IAC 2-7-11(a)(7), which states: (a) An administrative permit amendment is a Part 70 permit revision that does any of the following:

...

- (7) Revises descriptive information where the revision will not trigger a new applicable requirement or violate a permit term.

10. 326 IAC 2-2-8(a) provides that IDEM may grant an extension of time to begin construction upon a “satisfactory showing” that such an extension is justified. The term “satisfactory showing” is not defined. As such, the court must look to the rules of statutory construction to determine the meaning.

11. When construing a statute or regulation, the ELJ must apply certain rules of statutory construction. “The cardinal rule of statutory construction is to ascertain the intent of the legislature by giving effect to the ordinary and plain meaning of the language used.” *Bourbon Mini-Mart, Inc. v. Commissioner, Indiana Department of Environmental Management*, 806 N.E.2d 14, 20 (Ind. Ct. App. 2004). Further, “If a statute is subject to interpretation, our main objectives are to determine, effect, and implement the intent of

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

the legislature in such a manner so as to prevent absurdity and hardship and to favor public convenience.” *State v. Evans*, 790 N.E.2d 558, 560 (Ind. App., 2003).

12. If a court determines that the statute or rule is ambiguous, it may look to the agency’s interpretation for evidence of the legislative intent. The Indiana Supreme Court, in *Shell Oil v. Meyer*, 705 N.E.2d 962, 976 (Ind. 1998) held, “However, administrative interpretation may provide a guide to legislative intent. “A long adhered to administrative interpretation dating from the legislative enactment, with no subsequent change having been made in the statute involved, raises a presumption of legislative acquiescence which is strongly persuasive upon the courts.” *Board of Sch. Trustees v. Marion Teachers Ass’n*, 530 N.E.2d 309, 311 (Ind. Ct. App. 1988); accord *Baker v. Compton*, 247 Ind. 39, 42, 211 N.E.2d 162, 164 (1965).”
13. “Additionally, this court has observed that not every bit of agency policy needs to be placed in a published rule, where there is no legislative requirement to do so. See *Gorka v. Sullivan*, 671 N.E.2d 122, 129 (Ind. Ct. App. 1996), trans. denied (Medicaid reimbursement rates need not be published as rules).” *Dennistar Environmental Inc. v. Ind. Dept. of Env’tl. Mgmt.*, 741 N.E.2d 1284, 1288 (Ind. Ct. App. 2001).
14. Petitioners allege that IDEM did not have the authority to extend the deadline for construction. Their argument appears to rest on the allegation that IDEM does not cite 328 IAC 2-2-8 in that portion of the Amendment where IDEM states the basis for granting the extension. However, there are references to this rule in the revised language. Further, the rule is clear and unambiguous that IDEM has the authority to extend the time for construction.
15. However, this does not resolve the question of whether IDEM properly classified the time extension as an administrative permit amendment under 326 IAC 2-7-11(a)(7), which defines an administrative permit amendment as “descriptive information where the revision will not trigger a new applicable requirement or violate a permit term”. Petitioners allege that this classification was improper and that IDEM was required to give the public an opportunity to comment on the Amendment and cites to I.C. §13-14-1-5 and 326 IAC 2-1.1-6(a).
16. I.C. §13-14-1-5 states: “The department shall develop and implement a program of public awareness and participation to assure maximum citizen involvement in the evolution and continuation of the environmental programs of the state.”
17. 326 IAC 2-1.1-6(a) states:
 - (a) Registrations, permits, modification approvals, and operating permit revisions issued under this article are subject to the following public notice requirements, except as otherwise required in this article. The commissioner shall notify the public of the opportunity to comment on the proposed approval or denial of the registration, permit, modification approval, or operating permit revision as follows:

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

...

(b) The following approvals and operating permit revisions are not subject to the public notice requirements of this section:

...

(3) Administrative amendments under 326 IAC 2-7-11 and 326 IAC 2-8-10.

...

18. It is clear that the extension does not violate a permit term. It is also clear from the plain language of the rule that an extension of time does not trigger a new applicable requirement as that term is defined by 326 IAC 2-7-1. The IDEM properly classified the Amendment as an administrative amendment issued under 326 IAC 2-7-11 and is not subject to the public notice requirements of 326 IAC 2-1.1-6(a). This is consistent with the EPA Guidance which explains why public notice is not necessary:

In the absence of controlling regulations, the EPA views the modification of a PSD permit to include material changes to substantive terms and conditions that govern the construction and operation of the source. We do not interpret the term “modify” in this context to include the decision to issue an administrative amendment to extend the deadline for commencing construction under the PSD permit without reconsideration or amendment of the substantive conditions of the permit. Therefore, the EPA has determined that permit extension actions that would simply extend the deadline for commencing construction without reconsideration or amendment of the substantive conditions of the permit are not subject to the procedures in Part 124. We also believe that a public notice-and comment period for a permit extension request would generally be unnecessary where no re-analysis of substantive PSD permit conditions and terms (such as BACT, air quality impact analysis, or PSD increment analysis) would be conducted, as would likely be the case for a first permit extension request.⁸

19. Petitioners further allege that IDEM failed to identify ascertainable standards for its decision.

20. Riverview relies on the EPA Guidance in support of its decision to grant the extension of time. There is no question that the EPA Guidance is not legally binding. However, the argument that the Guidance is not applicable is problematic.

21. Just because it is not legally binding, does not mean that IDEM cannot use the Guidance as its interpretation so long as it does so consistently and openly. The EPA Guidance “encourage[s] permitting authorities with SIP-approved PSD programs that incorporate the 40 CFR 52.21(r)(2) provision by reference or that implement a provision similar to 40

⁸ IDEM Motion for Summary Judgment, IDEM Exhibit 2, US EPA Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), Stephen D. Page, Director, Office of Air Quality Planning and Standards, January 31, 2014, pg. 8.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

CFR 52.21(r)(2) to apply this policy or a policy that is similar to that included in this memorandum.” 326 IAC 2-2-8(a) is substantially similar to 40 CFR 52.21(r)(2).

22. The EPA Guidance is publicly available. IDEM has used the Guidance in the past to justify similar extensions to other facilities. While not legally binding, IDEM may use the EPA Guidance as its interpretation of the term “satisfactory showing” because it has done so in a consistent and open manner.
23. The use of the Guidance does not translate to the improper promulgation of a rule. There is no question that not every guidance used by IDEM needs to be promulgated as a rule. As the Indiana Supreme Court observed, “Requiring the Clean Air Act and SIPs to contain each and every rule, definition, interpretation, and administrative construction would turn a framework into a hide-bound behemoth of legal provisions addressing all manner of minutia that would require years to modify for even the most basic of reasons.” *NRDC v. POET Biorefining-North Manchester, LLC*, 15 N.E.3d 555, 563 (Ind. 2014).
24. Petitioners also contest whether Riverview provided sufficient basis for the extension. Riverview cited two reasons: (1) the administrative proceeding⁹ and (2) the COVID-19 pandemic.
25. The EPA Guidance specifically states that litigation and natural disasters are sufficient justification for the first extension of time. The Guidance states:

In accordance with 40 CFR 52.21(r)(2), a permittee’s first PSD permit extension request should include a detailed justification of why the source cannot commence construction within the 18-month deadline. For example, relevant factors for this justification could include ongoing litigation over the PSD permit, natural disasters that directly affect the facility, significant or unusual economic impediments (including inability to secure financial resources necessary to commence construction) and/or delays in obtaining other required permits. Furthermore, the EPA believes that in order to give meaning to the extension provision in 40 CFR 52.21(r)(2), review or redo of substantive permit analyses such as BACT, air quality impacts analysis (AQIA) or PSD increment consumption analyses should generally not be necessary for a first permit extension request.¹⁰

26. There is no question of fact that the Permit was the subject of hotly contested litigation, the outcome of which was uncertain as both sides had merit. The effectiveness of the Permit was not stayed. This matter was not concluded until after the deadline for

⁹ See Finding of Fact 2 above.

¹⁰ IDEM Motion for Summary Judgment, IDEM Exhibit 2, US EPA Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), Stephen D. Page, Director, Office of Air Quality Planning and Standards, January 31, 2014, pg. 5.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

construction to commence. There is no question that the litigation would have a severe impact on the financing and planning of a new facility. As Mr. Merle mentioned in his deposition, “Again, when there is a challenge to a permit that creates enough uncertainty that you do not know whether or not you can legally begin work on the project until that challenge is completed, it has an impact on all development activities.”¹¹ The EPA Guidance also recognized the impact litigation could have on the construction schedule for a facility.

27. Further, there is no question of fact that the COVID-19 pandemic had a severe impact upon the normal course of business throughout Indiana, the United States, and the world over the last year. Indiana Governor Holcomb issued an executive order declaring the pandemic to be a public health emergency that has been extended continuously over the last year.¹² It is obvious that there was an enormous impact on the practical and financial development of the Facility.
28. There is no question that the reasons given by Riverview are legitimate. However, Petitioners assert that IDEM failed to adequately determine whether these events genuinely impacted Riverview’s ability to construct the facility. However, as explained above, the impacts that the litigation and pandemic would have on planning, financing, and constructing a facility of this size are obvious and requiring an investigation into the exact ways the impact could be measured is pointless.
29. Lastly, Petitioners argue that IDEM should require a new BACT analysis. The EPA Guidance addresses this issue. The Guidance states “Furthermore, the EPA believes that in order to give meaning to the extension provision in 40 CFR 52.21(r)(2), review or redo of substantive permit analyses such as BACT, air quality impacts analysis (AQIA) or PSD increment consumption analyses should generally not be necessary for a first permit extension request.”¹³ There is no statutory or regulatory basis to require this analysis.
30. Petitioners have failed to provide sufficient evidence to create a genuine issue of material fact in this matter. Summary judgment is appropriate.

Final Order

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of the Indiana Department of Environmental Management and Riverview Energy Corporation. The Petition for Review is dismissed. All further proceedings are vacated.

You are further notified that pursuant to provisions of I.C. § 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 I.C. § 4-21.5-

¹¹ Petitioner’s Exhibit C, Deposition of Gregory Merle, pg. 43, lines 10-15.

¹² See Finding of Fact 5.

¹³ US EPA Guidance, pg. 5.

Objection to the Issuance of Permit
Amendment No. 147-43258-00065
Riverview Energy Corporation
2021 OEA 45 (20-A-J-5123)

5, *et seq.* Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of a Final Order is timely only if filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 19th day of May 2021 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge