

Objection to Issuance of Final
Determination for the Former
Indiana Transportation Museum Site
2021 OEA 70

OFFICIAL SHORT CITATION NAME: When referring to 2021 OEA 70, cite this case as
Indiana Transportation Museum, 2021 OEA 70.

Topics:

Dismissal
coal combustion residuals (CCR)
agency action
I.C. §4-21.5-1-4
Final agency action
I.C. §4-21.5-1-6
I.C. § 4-21.5-1-9
Order
Aggrieved
Adversely affected
Huffman v. Indiana Office of Environmental Adjudication, et al. 811 N.E.2d 806

Presiding Environmental Law Judge: Catherine Gibbs

Party representatives:

IDEM: Timothy Junk
Petitioners: David Gillay, Mark Crandley
Permittee: Bradley Sugarman, Daniel McNerny

Order issued: June 16, 2021

Index category: Solid Waste

Further case activity:

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

IN THE MATTER OF:)

OBJECTION TO ISSUANCE OF FINAL)
 DETERMINATION FOR THE FORMER)
 INDIANA TRANSPORTATION MUSEUM SITE)
 NOBLESVILLE, HAMILTON COUNTY, INDIANA)

CAUSE NO. 21-S-J-5137

 Indiana Transportation Museum)
 Petitioner)
 City of Noblesville)
 Respondent)
 Indiana Department of Environmental Management)
 Respondent)

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

The Indiana Department of Environmental Management (IDEM) and the Respondent each filed a Motion to Dismiss. The presiding Environmental Law Judge (the ELJ) enters the following findings of fact, conclusions of law and final order.

Findings of Fact

1. On March 17, 2021, the Indiana Department of Environmental Management (IDEM) sent a letter (the Letter) to the City of Noblesville Parks Department regarding the property located at 825 Park Drive, Noblesville Indiana (the Site). The property was the location of the former Indiana Transportation Museum (ITM).

2. On March 30, 2021, the Indiana Transportation Museum (Petitioner) filed its Petition for Administrative Review and Adjudicatory Hearing and Request for Stay of Effectiveness of the Letter.

3. The City of Noblesville and the Noblesville Parks and Recreation Board (collectively, the City) filed a Petition for Intervention on April 13, 2021. The Petition for Intervention was granted on April 20, 2021.

4. The Letter was not addressed or copied to ITM.

5. The Letter states: “IDEM staff confirmed coal ash was disposed of at the Indiana Transportation Museum property. Our visual observations and several shallow pits dug

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during the March 3, 2021 visit indicated coal ash disposal extended further on the ITM property than previously delineated in the RWP. IDEM representatives agreed with the initial RWP recommendation to remove all coal ash from the property. Additionally, a closure-in place option for the coal ash material was discussed. Now that you have demonstrated that the coal ash is on-site, you must further delineate ash disposal limits on ITM property and submit a closure plan to our office for review and approval.”¹ Further, the Letter states: “The facility must submit a plan for removal or closure to IDEM within three months of receiving this letter.”²

6. The City and ITM are engaged in litigation in Hamilton County regarding ITM’s liability for conditions at the Site, including remediation of the CCR on the Site. A hearing was held in January. The City requested the court take judicial notice of the Letter. The Hamilton County Court granted ITM’s motion to strike the Letter from consideration on May 10, 2021.
7. IDEM filed its Motion to Dismiss Because IDEM’s March 17th Letter Was Not a “Final Agency Action” on April 20, 2021. The City filed its Motion to Dismiss on April 27, 2021. ITM filed its response on May 27, 2021. The City filed its reply on June 10, 2021.

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 I.C. § 4-21.5-7-3(a), the OEA is “established to review, under this article, agency actions of the department of environmental management . . .”
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. IDEM moves to dismiss this action because it contends the Letter is not a final agency action and the OEA does not have subject matter jurisdiction. “Final agency action” as defined by I.C. §4-21.5-1-6, means:

"Final agency action" means:

- (1) the entry of an order designated as a final order under this article; or
- (2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

¹ Exhibit 1, pg. 1, ITM’s Petition for Administrative Review, Adjudicatory Hearing and Request for Stay of Effectiveness, filed March 30, 2021.

² Exhibit 1, pg. 1, ITM’s Petition for Administrative Review, Adjudicatory Hearing and Request for Stay of Effectiveness, filed March 30, 2021.

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4. The Letter is not a final agency action as it clearly has not been designated as a final order nor does it dispose of all issues.
5. ITM argues that this matter should be dismissed as the Letter is not an “agency action” as defined by I.C. § 4-21.5-1-4. "Agency action" means any of the following:
 - (1) The whole or a part of an order.
 - (2) The failure to issue an order.
 - (3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.
6. Pursuant to I.C. § 4-21.5-1-9, "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.
7. The Letter summarizes the inspection conducted by IDEM. IDEM requests the City submit a work plan to address certain contamination at the Site and discusses the options available to the City. ITM labels the Letter as a “Final Determination”. The Letter does not contain any of the elements normally associated with an order. The Letter does not state the procedure for filing a petition for review nor does it indicate that sanctions will be imposed for failure to take the specified action.
8. IDEM’s administrative classification of the Letter as a permit on the VFC³ has no persuasive effect. The contents of the Letter are the sole basis for a determination of its status.
9. ITM objects to the statement that IDEM found coal ash on the Site. ITM is concerned about the effect this Letter will have in the Hamilton County litigation. But IDEM made no determination of who placed the ash on the Site or when this occurred. This might have been an issue in the Hamilton County litigation, but the Court struck the Letter from the record and it should have no impact on the final outcome.
10. This is not an order as it does not determine the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. It does not constitute an agency action. OEA does not have jurisdiction of this matter.
11. If the Letter were an agency action. ITM must also state sufficient facts to show that it is aggrieved or adversely affected. The Indiana Supreme Court held, in *Huffman v. Indiana Office of Environmental Adjudication, et al.* 811 N.E.2d 806 (Ind. 2004) that “whether a person is entitled to seek administrative review depends upon whether the person is “aggrieved or adversely affected” . . . and that the rules for determining whether the person has “standing” to file a lawsuit do not apply”. at 807. The Court went on to say

³ Virtual File Cabinet. This is IDEM’s public records database.

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that in order for a person to be “aggrieved or adversely affected”, they “must have suffered or be likely to suffer in the immediate future harm to a legal interest, be it pecuniary, property or personal interest.” at 810. In this case, ITM does not own the Site. It is not proposing to take any action to address whatever contamination might be present at the Site. ITM did not receive the Letter, nor was it copied. The Hamilton County Court is not considering the Letter in its decision regarding ITM’s liability at the Site. The Letter has no affect on ITM until such time as ITM’s liability for the conditions at the Site is determined. ITM is not aggrieved of adversely affected by the Letter.

Final Order

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Indiana Department of Environmental Management’s Motion to Dismiss is **GRANTED** and the City of Noblesville and the Noblesville Parks and Recreation Board’s Motion to Dismiss is **GRANTED**. Indiana Transportation Museum’s Petition for Administrative Review and Adjudicatory Hearing and Request for Stay of Effectiveness 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. § 4-21.5-5, *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 16th day of June 2021 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge