

**OBJECTION TO THE ISSUANCE OF VIOLATION LETTER #270125
ROSE ACRES FARMS, INC. - JENN ACRE PULLETS PLUS
2022 OEA 165, CAUSE NO. 22-A-E-5202**

Official Short Cite Name:	ROSE ACRES FARMS, 2022 OEA 165
OEA Cause No.:	22-A-E-5202
Topics/Keywords:	Air Demolition Notification violation Violation Letter appealed Motion to Dismiss re: subject matter jurisdiction Motion to Intervene Agency Action // Final Agency Action Formal Enforcement // Informal Enforcement Mootness doctrine I.C. § 5-14-3-4 I.C. § 5-14-3-4(a) I.C. § 5-14-3-4(b) I.C. § 13-14-2-2 I.C. § 13-18-10-1.4(c)(3)(B) I.C. § 13-18-10-1.4(c)(5) I.C. § 13-20-3-5 I.C. § 13-30-3 I.C. § 13-30-3-3 I.C. § 13-30-3(a) I.C. § 13-30-3(a) and (c) I.C. § 13-30-3-4 I.C. § 13-30-3-5(b) I.C. § 13-30-3-6 I.C. § 13-30-3-10 I.C. § 13-30-3-11 I.C. § 4-21.5 I.C. § 4-21.5-1-6 I.C. § 4-21.5-2-5 I.C. § 4-21.5-2-5(8) I.C. § 4-21.5-2-5(9) and (10) I.C. § 4-21.5-5-5 I.C. § 4-21.5-7 I.C. § 4-21.5-7-3(a)

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Topics/Keywords Cont.:	I.C. § 4-21.5-3-23
	I.C. § 4-21.5-3-7(a)(1)(A)
	315 IAC
	326 IAC 14-10-3(b)
Presiding ELJ:	LORI KYLE ENDRIS
Party Representatives:	JOSEPH A. MILLER, ESQ., PETITIONER
	KYLE BURNS, ESQ., IDEM
	BROOKE WERSTLER, ESQ., IDEM
Order Issued:	September 12, 2022
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INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary L. Davidsen, *Chief Environmental Law Judge*
Lori Kyle Endris, *Environmental Law Judge*
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STATE OF INDIANA)
)
COUNTY OF MARION)
)
IN THE MATTER OF:)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

CAUSE NO. 22-A-E-5202

OBJECTION TO THE ISSUANCE OF)
VIOLATION LETTER #270125)
ROSE ACRE FARMS, INC. -)
JENN ACRE PULLETS PLUS)
NORTH VERNON, JENNINGS COUNTY, INDIANA.)
_____)
Rose Acre Farms, Inc.,)
Petitioner,)
Indiana Dept of Environmental Management,)
Respondent.)

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

This matter came before the Office of Environmental Adjudication (Court or OEA) from the following pleadings: the July 15, 2022 Indiana Department of Environmental Management’s Motion to Dismiss, its July 20, 2022 Response to Petitioner’s Motion for Preliminary Injunction its August 4, 2022 Response in Opposition to Motion to Intervene, its August 15, 2022 Response in Opposition to Petitioner’s Brief on Jurisdiction, and its August 31, 2022 Reply in Support of its Motion to Dismiss; Rose Acre Farms, Inc.’s July 8, 2022 Amended Petition for Administrative Review, its July 15, 2022, Brief on Jurisdiction, its July 21, 2022 Response in Opposition to Motion to Dismiss, and its August 10, 2022 Support of Motion to Intervene; and the July 15, 2022 Indiana Pork Producers Association, Indiana Dairy Producers, Indiana State Poultry Association, Indiana Corn Growers Association, and Indiana Soybean Alliance’s Memo on Jurisdiction and Motion to Intervene. Having read and considered the pleadings, the presiding Environmental Law Judge (ELJ) makes the following Findings of Fact, Conclusions of Law and enters the Final Order:

FINDINGS OF FACT

1. The Indiana Department of Environmental Management’s (IDEM) enforcement process starts informally when IDEM compliance staff members provide technical guidance to resolve issues observed during a records review or inspection. As part of an informal resolution, IDEM may issue a Violation Letter (VL) or enforcement action letter. The individual/company is

apprised of the issue (here it was violating 327 IAC 14-10-3(b) by failing to notify IDEM of demolition) and asked to ensure they will come into compliance with Indiana's statutes and regulations.¹

A formal enforcement action, as delineated under Ind. Code § 13-30-3 *et seq.* (I.C.), *Investigation of Violations; Administrative Proceedings and Orders*,² begins when IDEM issues a Notice of Violation (NOV). I.C. § 13-30-3-3. A NOV informs a respondent that IDEM believes violations of environmental statutes and rules have occurred and formal enforcement has begun. A NOV usually contains an assessment of civil penalties and requires IDEM and the recipient(s) to enter into an Agreed Order (AO) to resolve the violation. I.C. § 13-30-3-3(a) and (c).

When a formal enforcement matter is not resolved through an AO, IDEM issues a Commissioner's Order (CO) pursuant to I.C. § 13-30-3-4, I.C. § 13-30-3-10 and I.C. § 13-30-3-11; it is IDEM's final action in its enforcement process. In the content of the CO, the alleged violator is informed they may administratively request review of the CO by filing a written request with OEA. I.C. § 13-30-3-5(b). At the point the CO is appealed, assuming all other statutory and regulatory requirements for filing a petition for administrative review have been met under I.C. § 4-21.5 and 315 IAC, OEA assumes subject matter jurisdiction pursuant to I.C. § 4-21.5-7-3(a).

2. On April 25, 2022, Ricky Smith, air compliance inspector for IDEM, received an internal referral from Chad Pittman, wastewater inspector, informing him that chicken houses at the Rose Acre Farms, Inc. --- Jenn Acre Pullets Plus (collectively Rose Acre or Petitioner), 1580 East U.S. Highway 50, North Vernon, Jennings County, Indiana (Site), had been demolished.

3. Prior to visiting the Site, the air compliance inspector checked IDEM's ACES database to determine whether a notification of demolition had been submitted. The inspector did not locate a notification.

4. On April 25, 2022, both inspectors conducted an inspection of Rose Acre. Petitioner's Petition for Administrative Review Exhibit (Pet. Ex.) A, p. 1. IDEM inspectors observed that four (4) chicken houses had been completely demolished and one (1) was partially demolished. *Id.*, p. 3. Demolition debris remained at the Site. Even though the four (4) chicken houses' debris had been shredded on site, the Inspectors did not observe any "disturbed suspect asbestos containing materials." *Id.*, p. 4.

5. On April 26, 2022, IDEM contacted Wes Spray, Environmental Affairs Rose Acre, and confirmed that Rose Acre was the demolition contractor at the Site. *Id.* Mr. Spray was unaware that the chicken houses were subject to Indiana's asbestos regulatory requirements. *Id.*, pp. 4 - 5. The air compliance inspector discussed the asbestos regulations and provided Mr. Spray a copy of the regulations and a list of licensed asbestos inspectors. *Id.*, p. 5.

¹ See <https://www.in.gov/idem/legal/enforcement/>.

² Statutorily, VLS do not fall under Administrative Proceedings and Orders.

6. On May 2, 2022, IDEM requested additional information from Mr. Spray regarding the on-site shredder. *Id.* Under the section “Inspection Findings” of the April 25, 2022 Inspection Report, the air inspector wrote Rose Acre “failed to the [sic] submit the required notice for the demolition of the five (5) chicken houses located at 1580 East U.S. Highway 50, North Vernon, Indiana, in violation of 326 IAC 14-10-3(b).” *Id.*

7. On May 19, 2022, IDEM emailed Rose Acre the Inspection Summary/Violation Letter and requested additional information regarding the shredder. In the cover letter, Rose Acre was informed that “[t]he Office of Air Quality will not take legal action at this time. However, any such violation(s) in the future may result in legal action being pursued.” Pet. Ex. A, p. 2.

8. On June 2, 2022, Petitioner filed a Petition for Administrative Review of Violation Letter #270125 (Petition). Petitioner claimed that the inspection was conducted in violation of I.C. § 13-14-2-2 because the inspectors did not present proper credentials. Petition, p. 2. Petitioner also averred the inspection was “done in direct violation of a memo regarding the highly pathogenic avian influenza outbreak. . . issued by Commissioner. . . Brian Rockensuess on February 10, 2022.” *Id.*

9. On Jun 23, 2022, IDEM representatives conducted a follow-up inspection. Petitioner’s Amended Petition for Administrative Review C, p. 1 (Amend. Pet. Ex.). IDEM inspectors observed “various debris piles. . . as well as a portion of one building” still standing at the site. *Id.*, p. 4. The inspectors again spoke with Mr. Spray who confirmed that Petitioner had not completed a demolition notification or the inspection of the materials/demolition of the remaining building. *Id.* Mr. Spray confirmed that additional demolition³ had occurred since the April 25, 2022 inspection. *Id.*

10. On June 30, 2022, a Prehearing Conference was held after which the presiding Chief EIJ served a Report of the Prehearing Conference and a Case Management Order establishing a dispositive motion schedule to address whether OEA has jurisdiction over the appeal.

11. On July 7, 2022, IDEM issued a second Inspection Summary/Violation Letter for the June 23, 2022 inspection. *Id.*, pp. 1 – 2. This VL noted Petitioner “failed to submit the required notice for the demolition of the five (5) chicken houses located at 1580 East U.S. Highway 50, North Vernon, Indiana, a violation of 326 IAC 14-10-3(b).” *Id.*, p. 1. The letter requested that an Indiana licensed asbestos inspector inspect the remaining structure and debris, a Notification of Demolition be submitted prior to any further demolition activities at the Site, a written explanation be submitted within fifteen (15) days of the date of the letter describing how Rose Acres can correct the alleged violation listed, and receipts from the disposal of materials already removed from the Site be submitted. *Id.* The letter also stated that “[t]he Office of Air Quality [would] not take legal action at this time. However, any such violation(s) in the future may result in legal action being pursued.” *Id.*, p. 2.

³ Via email, Mr. Spray informed the inspectors that since the initial inspection, “approximately one truss had been removed.”

12. On July 8, 2022, Petitioner filed an Amended Petition for Administrative Review which added the information regarding the second inspection and VL.

13. Only July 15, 2022,

- IDEM filed a Motion to Dismiss,
- Petitioner filed a Brief on Jurisdiction and a Motion and Affidavit for Preliminary Injunction, and
- Indiana Pork Producers Association, Indiana Dairy Producers, Indiana State Poultry Association, Indiana Corn Growers Association, and Indiana Soybean Alliance's filed a Motion to Intervene.

14. On July 20, 2022, IDEM filed its Response to Petitioner's Motion for Preliminary Injunction and a Motion Requesting Status Conference.

15. On July 21, 2022, Petitioner filed its Response in Opposition to IDEM's Motion to Dismiss. Neither Petitioner's claim that the inspection was conducted in violation of I.C. § 13-14-2-2 nor the inspection was done in direct violation of a memo regarding the pathogenic avian influence outbreak were addressed in Petitioner's Response.

16. On the same date, Petitioner filed a Motion to Withdraw Motion for Preliminary Injunction.

17. On August 4, 2022, IDEM filed its Response in Opposition to the Motion to Intervene.

18. On August 10, 2022, Petitioner filed its Support of Motion to Intervene.

19. On August 15, 2022, IDEM filed its Response in Opposition to Petitioner's Brief on Jurisdiction.

20. On August 19, 2022, OEA received an email from Petitioner stating,

Rose Acres does not intend on making any more filings in regard to the jurisdictional question related to this case. If that question is answered in Rose Acre's favor, we will then have more filings. If the ruling is not in Rose Acres favor then the matter will be closed.

21. On August 30, 2022, the presiding Chief ELJ entered an Order transferring jurisdiction of the Cause to ELJ Endris. On that same date, the now presiding ELJ entered an Order Granting Petitioner's Motion to Withdraw Motion for Preliminary Injunction.

CONCLUSIONS OF LAW

1. This is a Final Order issued pursuant to Ind. Code § 4-21.5-3-23 (I.C.). 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.

2. OEA has jurisdiction over agency actions of IDEM and the parties to this controversy per I.C. § 4-21.5-7-3(a) and § 4-21.5-3-7(a)(1)(A).

3. Every action has three jurisdictional elements: (1) jurisdiction of the subject matter; (2) jurisdiction of the person; and (3) jurisdiction of the particular case. *See Schafer v. Sellersburg Town Council*, 714 N.E.2d 212, 215 (Ind. Ct. App. 1999), *trans. denied*. "Subject matter jurisdiction is the power of a court to hear and determine the general class of cases to which the proceedings before it belong." *Musgrave v. State Bd. of Tax Comm'rs*, 658 N.E.2d 135, 138 (Ind. Tax Ct. 1995).

4. Ind. Trial Rule 12(B)(1) limits a court's jurisdiction to "those matters over which the legislature has determined that it may exert subject matter jurisdiction." *Alcoa, Inc. v. IDEM*, 2004 OEA 30, 33 (Apr. 30, 2004). Subject matter jurisdiction is the power of the court to hear and determine a case. *State Bd. Of Tax Comm'rs v. Ispat Inland, Inc.*, 784 N.E.2d 477, 480 (Ind. 2003). A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the Court's power to act. *Curry v. D.A.L.L. Anointed, Inc.*, 966 N.E.2d 91, 95 (Ind. Ct. App. 2012), *trans. denied*.

5. Where a petitioner fails to comply with mandatory statutory requirements for bringing a petition for administrative review before the OEA, the OEA lacks jurisdiction to hear the petition. *Kaminsky v. Medical Licensing Bd. Of Ind.*, 511 N.E.2d 492, 497 (Ind. Ct. App. 1987); *In re Objection to the Issuance of Permit Approval No. 13725 Town of New Whiteland, Indiana*, (2001 OEA 092). For OEA to have subject matter jurisdiction, Petitioner must prove that IDEM's issuance of the Violation Letter (VL) constitutes an "agency action" that is appealable, and the issuance is otherwise not exempt under the Administrative Orders and Procedures Act (AOPA), I.C. § 4-21.5 et seq.

6. Petitioner first contends "[t]here are two relevant statutes that must be reviewed to determine whether an agency's action is 'final' and therefore appealable." Pet. Brief, p. 1.

IC §4-21.5-1-6 states: '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.

The pertinent portion of IC §4-21.5-1-4 provides: 'Agency Action' means any of the following: ...(3) an agency's performance of, or failure to perform, any other duty, function or activity under this article.

Id., pp. 1 – 2. Exhaustion of remedies is a prerequisite for a “final agency action” to be eligible for judicial review not OEA administrative review. I.C. § 4-21.5-1-6 is not relevant to this administrative appeal, and Petitioner’s argument that “IDEM intended these [VLs] to be a final action regarding this violation”⁴ has no effect.

7. Citing *Huffman v. Indiana Office of Env’tl Adjudication*, 811 N.E.2d 806, 807 (Ind. 2004), Petitioner states, “[i]t is black letter law that whether the person is entitled to seek administrative review depends upon whether the person is ‘aggrieved or affected.’” *Id.* at 2. In *Huffman* the court addressed whether the petitioner had personal jurisdiction to file a petition for administrative review. The issue here is whether OEA has subject matter jurisdiction over the appeal of a VL, a question required to be answered before determining whether the person filing a petition for administrative review is aggrieved or affected.

8. Petitioner cites *Milco Dairy*, 2017 OEA 18, 26, to contend Rose Acre is entitled to seek administrative review because it is aggrieved or adversely affected by IDEM’s issuing the VL. Pet. Brief at 2. *Milco Dairy* involved a confined feeding operation permit appeal that reviewed I.C. § 13-18-10-1.4(c)(3)(B) and whether the responsible party properly disclosed certain former and pending actions that would constitute a substantial endangerment to human health or the environment. *Milco Dairy*, *supra*. Whether OEA had subject matter jurisdiction or the petitioner in *Milco Dairy* was a party aggrieved or adversely affected were not raised as issues in that case. None of the facts or issues addressed in *Milco* support Petitioner’s assertion that “[t]here can be no dispute that IDEM performed a ‘duty, function or action under this article’ when it issued the [VL].” Pet. Brief, p. 3.

9. Petitioner opines that because the VL “is placed in the publicly available Virtual File Cabinet (VFC). . . IDEM has **determined** that the receiver [sic] of the letter has violated the law.” Pet. Brief, p. 3. (Emphasis original). Petitioner claims, “[t]his public determination that the recipient of the letter has violated the law imposes upon the receiver [sic] of the VL detrimental publicity which negatively affects its reputation.” Pet. Brief, pp. 3 – 4. The VL is placed in the VFC because it is a public record under I.C. § 5-14-3-4 and not subject to an absolute exemption under I.C. § 5-14-3-4(a) or a discretionary exemption under I.C. § 5-14-3-4(b).

10. Petitioner contends “Rose Acres will be required to list this violation on all future Disclosure Statements required for permit applications.” Pet. Brief, p. 4. The disclosure of finally adjudicated or settled enforcement actions⁵ is limited to “the five (5) years that immediately precede the date of the application involving acts or omissions that constitute a material violation of federal or state environmental law and present a substantial

⁴ Pet. Brief, p. 5.

⁵ Finally adjudicated refers to a Commissioner’s Order that has been appealed through the Office of Environmental Adjudication in which the presiding Environmental Law Judge has issued findings of fact, conclusions of law and a final order. I.C. § 13-20-3-5; I.C. § 4-21.5-7. Settled enforcement actions refers to activities occurring after a Notice of Violation is issued and before OEA rules on the appeal of a Commissioner’s Order --- specifically that the parties have entered into an Agreed Order. I.C. § 13-30-3-3(a) and (c); I.C. § 13-30-3-6.

endangerment to human health or the environment.” I.C. § 13-18-10-1.4(c)(5). Whether Petitioner has to list this violation on all future disclosure statements for a future CFO permit is not relevant or related to whether the VL is an agency action under I.C. § 4-21.5 *et seq.*

11. Petitioner asserts

Rose Acres is in the process of updating several of its farm locations. In doing these updates Rose Acres will be tearing down old buildings and replacing them with new buildings. This action will bring Rose Acres in direct conflict with the Violation Letter where it states ‘...any such violation(s) in the future may result in legal action being pursued.’

Pet. Brief, p. 4. As long as Rose Acres complies with 326 IAC 14-10-3(b) and any other environmental statute or rule regulating “tearing down old buildings and replacing them with new buildings” the action(s) will not be in direct conflict with the VL. Petitioner’s assertion is without merit.

12. Petitioner argues “[t]here is no mechanism other than this appeal to address a violation letter.” Pet. Brief, p. 5. Had Petitioner submitted the notification required by 326 IAC 14-10-3(b), IDEM would not have issued the first VL. Had Petitioner produced the notification after receipt of the VL, IDEM, in all likelihood, would have withdrawn the VL. Had Petitioner submitted the notification prior to the second inspection, IDEM would not have issued the second VL. Petitioner’s argument is not relevant or related to whether the VL is appealable under AOPA.

13. Petitioner cites *Advantage Home Health Care*, 829 N.E.2d 499 (Ind. 2005) and posits, “[t]his case confirms Rose Acres['] position that it in fact did exhaust all administrative remedies available and therefore appeal of these letters is appropriate.” Pet. Response (Pet. Resp.), p. 2. In *Advantage Home Health Care*, ISDH conducted an inspection of a home health agency and recorded the inspection results on a standard form titled “Statement of Deficiencies and Plan of Correction.”⁶ *Id.* at 501. The form was submitted to the home health agency along with a letter summarizing the inspection results and requesting the agency submit a plan of correction. *Id.*

The Indiana Supreme Court considered whether *Advantage Home Health Care* failed to exhaust its administrative remedies by failing to administratively appeal the Indiana State Department of Health’s⁷ (ISDH) decision that its surveys did not constitute orders and were not subject to review under AOPA. *Id.* at 502. The Court found “[t]he Department's statement of deficiency represents little more than the initial summation of its investigation. The statements certainly do reach some conclusions in the sense that they represent the end product of the investigation, but they produce nothing that approaches a “formal agency mandate.” *Id.* at 504.

⁶ The Court also referred to these statements as “surveys.”

⁷ ISDH is now called the Indiana Department of Health.

Ultimately, the Court affirmed the trial court's ruling that Advantage Home Health Care failed to exhaust its administrative remedies and the surveys were exempted from AOPA pursuant to I.C. § 4-21.5-2-5(9) and (10).⁸ *Id.* at 502; 505. It is unclear why Petitioner posits that the case confirms Rose Acres' position that a VL is appealable. Petitioner's position is without merit.

14. Citing *Fugitive Dust Complaint No. 240966*, 2022 OEA 59 (Jan 13, 2022), IDEM contends the "letters are exempt from AOPA because they represent IDEM's decision not to proceed with formal enforcement." IDEM Mot. To Dismiss, p. 8. Petitioner contends, "[t]o claim, as IDEM does, the letters do not represent an "agency action" because they are exempt from AOPA because they are not taking a formal enforcement completely ignores the rest of AOPA." Pet. Resp., p. 4. Petitioner does not set forth the parts of "the rest of AOPA" to which it is referring.

In *Fugitive Dust*, the petitioners complained of fugitive dust originating from the road on which they resided. *Id.* at 61. After investigation, IDEM chose not to pursue formal enforcement against the county's highway department, but instead, issued the county's highway department an Inspection Report/Violation Letter. *Id.* Petitioners were notified, via email, of IDEM's decision not to pursue enforcement, and they appealed. *Id.* This Court found IDEM's choice not to initiate an enforcement action under I.C. § 13-30-3 is within the agency's discretion, is exempt under I.C. § 4-21.5-2-5(8) and thus is not appealable.

15. AOPA does not confer authority to OEA to review agency actions that are exempt under I.C. § 4-21.5-2-5. *DaveCo Farms, LLC*, 2009 OEA 53, 59 (June 25, 2009). I.C. § 4-21.5-2-5(8) exempts the agency's "decision to issue or not issue a complaint, summons, or similar accusation." Because the agency did not pursue formal enforcement, the inclusion of the language "the [OAQ] will not take legal action at this time" is the point of IDEM's issuing a VL, but it is not the only reason the VL is exempt under I.C. § 4-21.5-2-5(8).

When a statute is clear and unambiguous, a Court need not apply any rules of construction other than to require that words and phrases be taken in their plain, ordinary and usual sense. *Ind. BMV v. McClung*, 138 N.E.3d 303, 308 (citing *Poehlman v. Feferman*, 717 N.E.2d 578, 581 (Ind. 1999)). In the face of an ambiguous statute, Courts resort to the well-established rules of statutory construction, the most important of which is to determine, give effect to, and implement the intent of the legislature. *Id.* (citing *Crowel v. Marshall County Drainage Bd.*, 971 N.E.2d 638, 645 (Ind. 2012)). Courts read the sections of a statute together so that no part is rendered meaningless if it can be harmonized with the rest of the statute; in other words, the statute is read as a whole. *Id.* (citing *Indiana Dep't. of Public Welfare v. Payne*, 622 N.E.2d 461, 466 (Ind. 1993)). Courts do not presume that the legislature intended for language used in a

⁸ The two exemptions read as follows: (9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person; and (10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

statute to be applied illogically or in a way that brings about an unjust or absurd result. *Id.* (citing *State ex rel. Hatcher v. Lake Super. Ct., Rm. Three*, 500 N.E.2d 737, 739 (Ind. 1986)).

16. "Accusation" is defined as "a charge or claim that someone has done something illegal or wrong; a charge of wrongdoing."⁹ The wrongdoing here is Petitioner's violation¹⁰ of 326 IAC 14-10-3(b). Petitioner provides many examples of how IDEM's determination Petitioner violated 326 IAC 14-10-3(b) has caused Petitioner to be aggrieved and affected:

IDEM has publically [sic] stated that Rose Acres has violated the law directly affecting Rose Acres['] reputation, Rose Acres will be required to list these violations on future IDEM disclosure documents, IDEM may refuse future CFO permits due to these violations, and immediate planned improvements at various Indiana Rose Acres Farms will be directly affected by these notices of violations of the law.

Pet. Resp., pp. 4 – 5. IDEM's issuing the VL in which it determines Petitioner has violated an environmental regulation also supports that the VL's issuance is exempt under I.C. § 4-21.5-2-5(8). A VL may not be administratively appealed under AOPA.

17. Because the VL is exempt under I.C. § 4-21.5-2-5(8), OEA does not have jurisdiction over the case as a whole. *State Bd. Of Tax Comm'rs v. Ispat Inland, Inc., supra*. Whether a claim is ripe for review concerns the Court's subject matter jurisdiction. "Ripeness relates to the degree to which the defined issues in a case are based on actual facts rather than on abstract possibilities, and are capable of being adjudicated on an adequately developed record." *Indiana Dep't of Env'tl. Management v. Chemical Waste Management, Inc.*, 643 N.E.2d 331, 336 (Ind. 1994).

The Motion to Intervene filed by the Indiana Pork Producers Association, Indiana Dairy Producers, Indiana State Poultry Association, Indiana Corn Growers Association, and Indiana Soybean Alliance is not ripe for adjudication. *Cf. Wax 'N Works v. City of St. Paul*, 213 F.3d 1016, 1020 (8th Cir. 2000) (noting that district court should have dismissed claim pursuant to Fed. R. Civ. P. 12(b)(1) because the case was not ripe for adjudication).

FINAL ORDER

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Indiana Department of Environmental Management's Motion to Dismiss is **GRANTED**.

This is a Final Order, subject to judicial review consistent with applicable provisions of I.C. § 4-21.5 *et seq.* Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is

⁹ <https://www.merriam-webster.com/dictionary/accusation>.

¹⁰ <https://www.merriam-webster.com/dictionary/violation>.

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 12th day of September, 2022 in Indianapolis, IN.

Hon. Lori Kyle Endris
Environmental Law Judge
frontdesk@oea.IN.gov