OBJECTION TO THE ISSUANCE OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

NPDES PERMIT NO. INRA10897

ERNST ROAD TREE CLEARING PROJECT IU HEALTH ROAD DEVELOPMENT

2023 OEA 018, OEA CAUSE NO.: 22-W-J-5229

Official Short Cite Name:	Ernst Rd, 2023 OEA 018
OEA Cause No.:	22-W-J-5229
Topics/Keywords:	IC 4-21.5
	IC 4-21.5-3-23
	IC 4-21.5-5-5
	IC 4-21.5-7-3
	IC 4-21.5-7-5
	315 IAC 1 et seq
	Mandatory requirements for petitions for administrative review
Presiding ELJ:	LORI KYLE ENDRIS
Party Representatives:	ANDREA MILLIMAN, PETITIONER
	JON VANATOR, PERMITTEE/RESPONDENT
	VALERIE TACHTIRIS, ESQ, RESPONDENT IDEM
Order Issued:	JANUARY 10, 2023
Index Category:	WATER
Further Case Activity:	



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary L. Davidsen, *Chief Environmental Law Judge* Lori Kyle Endris, *Environmental Law Judge* Sara C. Blainbridge, *Legal Administrator* INDIANA GOVERNMENT CENTER NORTH 100 NORTH SENATE AVENUE, SUITE N103 INDIANAPOLIS, INDIANA 46204-2273 FRONTDESK@OEA.IN.GOV (317) 233-0850

STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	
)	CAUSE NO.: 22-W-J-5229
IN THE MATTER OF:)	
)
OBJECTION TO THE ISSUANCE OF)
NATIONAL POLLUTANT DISCHARGE)
ELIMINATION SYSTEM (NPDES),)
NPDES PERMIT NO. INRA10897)
ERNST ROAD TREE CLEARING PROJECT)
IU HEALTH ROAD DEVELOPMENT)
FORT WAYNE, ALLEN COUNTY, INDIANA.)
)
Andrea Milliman,)
Petitioner,)
Indiana University Health East Central Region)
Permittee/Respondent,)
Indiana Dept of Environmental Management,)
Respondent.)

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

This matter comes before the Office of Environmental Adjudication (OEA or Court) on the Court's December 7, 2022 Proposed Order of Default. The presiding Environmental Law Judge makes the following findings of fact, conclusions of law and enters the Final Order.

FINDINGS OF FACT

- 1. On November 18, 2022, the Indiana Department of Environmental Management (IDEM) issued a Construction Stormwater Permit Summary Report Sufficiency Letter regarding Permit # INRA 10897 to Indiana University Health Road Development (Permittee/Respondent).
- 2. On December 2, 2022, the Court received a letter from Andrea Milliman (Petitioner) requesting administrative review of Permit # INRA 10897.
- 3. On December 7, 2022, the Court issued a Notice of Incomplete Filing, Order To Supplement the Petition and Notice of Proposed Order of Default. To comply with Ind. Code §

4-21.5, et seq., (I.C.) and 315 IAC 1, et seq., the Notices and Order ordered Petitioner to supplement her letter/Petition by

- Showing how she was aggrieved or adversely affected by IDEM's action;
- Sending a copy to all parties including IDEM and the permittee;
- Providing her complete address(es) and telephone number(s);
- Identifying the environmental concerns or technical deficiencies related to the action and the permit terms and conditions that the Petitioner contends would be appropriate to comply with the law applicable to the contested permit; and
- Clarifying whether the referenced co-workers were intended to become petitioners

on or before January 3, 2023.

4. On January 3, 2023, Petitioner sent an email expressing that she was aware that the deadline for submitting a petition for review was past. Petitioner did not respond to any of the Orders outlined in the Court's Proposed Order of Default.

CONCLUSIONS OF LAW

- 1. This is a Final Order issued pursuant to I.C. § 4-21.5-3-23. 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 the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.
- 3. The requirements to file a petition for administrative review are mandatory for a court to acquire jurisdiction where the review is sought from an administrative determination. *Cf. State v. Van Ulzen*, 456 N.E.2d 459, 464 (Ind. Ct. App. 1983). OEA's jurisdiction may not be invoked until the individual seeking review has complied with the statutorily prescribed procedures. *City of North Vernon v. Funkhouser*, 725 N.E.2d 898, 904 (Ind. Ct. App. 2000); *Wayne Metal Prods. Co. v. Indiana Dep't of Envtl Mgmt.*, 721 N.E.2d 316, 319 (Ind. Ct. App. 1991) *trans. denied* (Ind. 2000). Petitioner did not comply with the requirements.

FINAL ORDER

IT IS THEREFORE ORDERED Petitioner's Petition for Administrative Review is hereby DISMISSED. The Construction Stormwater Permit # INRA 10897 issued by IDEM on November 18, 2022 is hereby AFFIRMED.

You are further notified that pursuant to the provisions of I. C. § 4-21.5-7-5, OEA serves as the ultimate authority in the administrative review of decisions of the Commissioner of IDEM.

This is a Final Order subject to judicial review consistent with the applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 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 10th day of January, 2023 in Indianapolis, IN.

Hon. Lori Kyle Endris Environmental Law Judge