

**In Re: Objection to the Issuance of Variance FT-6560 from 326 IAC 4-1
to Burn Tree Waste, Hamilton County, Indiana
2004 OEA 131 (03-A-J-3254)**

TOPICS:

burn
variance
motion to dismiss
12(B)(6)
expire

PRESIDING JUDGE:

Davidsen

PARTY REPRESENTATIVES:

Permittee: Jennifer Johnson, *pro se*
Petitioner: Marty Roan, *pro se*
IDEM: Jacquelyn F. Moore, Esq.
Other: Fire Station #44

DATE ISSUED:

November 22, 2004

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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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 Ind. Code § 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. “When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed.” *Travelers Indem. Co. v. P.R. Mallory & Co.*, 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, expiration of the permit has eliminated the matter in controversy, and has effectively resolved the case. The Court has no relief available to grant after the permit has expired. Ms. Roan’s Petition for Administrative Review must therefore be dismissed.

Final Order

IT IS THEREFORE ORDERED that the Petition for Administrative Review filed by Petitioner Marty Roan is hereby dismissed as the cause is now moot; the permit in controversy has expired and is no longer in effect.

You are hereby further notified that pursuant to provisions of Indiana Code § 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 22nd day of November, 2004 in Indianapolis, IN.

Hon. Mary L. Davidsen
Chief Environmental Law Judge