

**Objection to Issuance of New Source Construction to Part 70 Operating
Permit No. T143-28314-00019 and No. T025-27957-00015
Liberty Green Renewables Indiana, LLC
Scottsburg, Scott County and Milltown, Crawford County, Indiana
2011 OEA 156, (10-A-J-4399)**

OFFICIAL SHORT CITATION NAME: When referring to 2011 OEA 156 cite this case as
Liberty Green Renewables Indiana, LLC, 2011 OEA 156.

TOPICS:

dismissal
moot
biomass-to-electricity
permit termination

PRESIDING JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Timothy Junk, Esq.
Petitioners: David C. Van Gilder, Esq.; Van Gilder & Trzynka PC
Permittee: Kevin M. Toner, Esq., Tina M. Richards, Esq.; Baker & Daniels

ORDER ISSUED:

November 9, 2011

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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2. The Permittee applied to the Indiana Department of Environmental Management ("IDEM") for two air permits related to the construction and operation of two separate stationary electric power generation sources in two Indiana counties, Scott and Crawford. The Permittee elected to operate both facilities as synthetic minor sources pursuant to 326 IAC 2-2.
3. On July 2, 2010, IDEM issued Permit Number T-143-28314-00019 (the "Scott County Permit"), which applies to the power generation facility to be constructed in Scottsburg, Scott County, Indiana.
4. On August 6, 2010, Pat Berna, Malvina and Tom Craig, Susan and Cricket Jamison, Chris and Ruby Wakeman, Woodrow and Linda Fortner, Bill Hurley and Concerned Citizens of Scott County (hereafter collectively referred to as Petitioners) filed a Petition for Administrative Review. On October 7, 2010, the Petitioners filed an Amended Petition for Administrative Review. This matter was assigned Cause No. 10-A-J-4399.
5. On July 30, 2010, IDEM issued Permit Number T-025-27957-00015 (the "Crawford County Permit"), which applies to the power generation facility to be constructed in Milltown, Crawford County, Indiana.
6. On September 2, 2010, Gordon Smith, Mark and Debbie Woods, Linda and Rodney Jenkins, Patricia and Norris LaHue, Paul and Lisa Walerczak, Concerned Citizens of Crawford County, and North Milltown Landowners Association (hereafter collectively referred to as the Petitioners) filed a Petition for Administrative Review. This matter was assigned Cause No. 10-A-J-4409.
7. The petitions were consolidated under Cause No. 10-A-J-4399 on September 28, 2010.
8. On September 26, 2011, the Permittee requested termination of the Scott County and Crawford County Permits.
9. On October 5, 2011, IDEM confirmed that the Scott County and Crawford County Permits were terminated.
10. The Permittee filed its Motion to Dismiss Proceedings as Moot on October 7, 2011. The Petitioners did not file a response.
11. A status conference was scheduled for November 4, 2011. None of the parties appeared for the conference.

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12. On November 8, 2011, counsel for the Permittee informed the presiding Environmental Law Judge via electronic mail (a copy of which has been made a part of the Court's record) that the Petitioners did not oppose the motion to dismiss.

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication ("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.
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. "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). However, this Court "may decide an arguably moot case on its merits if it involves questions of great public interest." Id. "Cases that fit within this exception typically are those containing issues that are likely to recur." Id.
4. As the permits which are the subject of this appeal are no longer in effect, the OEA cannot render effective relief to the Petitioners. The Petitioners do not oppose the motion to dismiss and have not raised any issues of great public interest that would prevent this matter from being made moot. This matter should be dismissed as moot.

FINAL ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Liberty Green Renewables Indiana LLC's Motion to Dismiss is **GRANTED**.

You are hereby 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 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 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 9th day of November, 2011 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge