

**OBJECTION TO THE MODIFICATION OF
 RELOCATION APPROVAL #R-103-6013-03292
 STONECO, INC.
 1997 OEA 026, OEA CAUSE NO.: 96-A-J-1561**

Official Short Cite Name:	Stoneco, Inc. Relocation, 1997 OEA 026
OEA Cause No.:	96-A-J-1561
Topics/Keywords:	Ind. Tr. Rule (12)(B)(1) mootness
Presiding ELJ:	Wayne E. Penrod
Party Representatives:	Loraine L. Seyfried, Esq. for IDEM Doug Rohrs and Jim Carmichael for Stoneco, Inc. Donald / Linda Dyer Petitioners
Order Issued:	31-Jul-97
Index Category:	Air
Further Case Activity:	



✓ in

JUL 31 1997

INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Wayne E. Penrod
Chief Administrative Law Judge

150 West Market Street
Suite 618
Indianapolis, IN 46204
Telephone 317-232-8591
Fax 317-233-0851

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:

OBJECTION TO MODIFICATION OF
#R-103-6013-03292
STONECO, INC.

)
)
)
)
)
)

CAUSE NO. 96-A-J-1561

FINAL ORDER GRANTING MOTION TO DISMISS

TO: Loraine L. Seyfried, Esq.
Office of Legal Counsel
Indiana Department of
Environmental Management
P.O. Box 6015
Indianapolis, IN 46206-6015

Doug Rohrs
Jim Carmichael
Stoneco, Inc.
P.O. Box 29A
Maumee, OH 43537

Donald L. Dyer
Linda S. Dyer
R.R. #5, Box 198
Peru, IN 46970

This constitutes notice that on March 12, 1997, a status conference was held in the above-referenced cause. On March 17, 1997, the Chief Administrative Law Judge issued an Order Regarding Scheduling and required all parties to file dispositional motions on or before June 27, 1997, all responses to dispositional motions on or before July 11, 1997, and all replies to responses to dispositional motions on or before July 25, 1997. Thereafter, on June 25, 1997, the Indiana Department of Environmental Management (IDEM), by counsel, filed a Motion to Dismiss, and on June 27, 1997, the Permittee, Stoneco, Inc. (Stoneco), by its Division Manager,

filed a Motion to Dismiss. To date, no responses have been filed by the Objectors.

The Chief Administrative Law Judge considered the Motions and finds as follows:

Findings of Fact and Conclusions of Law

1. The Office of Environmental Adjudication has jurisdiction over 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.
2. This is a Final Order issued pursuant to Ind.Code §4-21.5-3-27. 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. On July 18, 1996, the Office of Air Management (OAM) of the IDEM issued a relocation approval to Stoneco to operate the portable asphalt drum-mix plant at the Intersection of 200 West and 650 South in Bunkerhill, Indiana, in accordance with Operation Permit No. 99-06-91-0046.
4. On July 26, 1996, Objectors, Donald L. And Linda S. Dyer filed a petition for administrative review of the relocation approval.
5. Since the time of the filing, the portable asphalt drum-mix plant has moved from the relocation approval site.
6. The relocation approval issued by the OAM on July 18, 1996 and appealed by the Objectors is no longer effective because the plant has relocated from its approved site.¹ Indiana courts have held that “[w]hen the principle questions in issue have ceased to be matters of real controversy between the parties, when the court is unable to render effective relief upon an issue, and where absolutely no change in the status quo will result, the issues are deemed moot and the court will not retain jurisdiction to determine them.” Bremen Public Schools v. Varab, 496 N.E.2d 125, 127 (Ind.App. 1986).
7. The issues raised by the Dyers in their petition for administrative review are moot. As there is no matter of real controversy, the Office of Environmental Adjudication may not render relief, and no change in the status quo will result. Ind.R.Tr.Proc. 12(B)(1).

¹If Stoneco decided in the future to relocate its portable asphalt drum-mix plant to the same site involved in this mater, Stoneco would have to apply for a new relocation approval pursuant to 326 IAC 2-1-6(b). Objectors would then be given notice and an opportunity to appeal any new relocation approval granted by the OAM pursuant to IC 4-21.5-3-5.

Final Order

The IDEM's and the Stoneco's Motions to Dismiss are hereby GRANTED.

You are further notified that pursuant to the provisions of P.L. §41-1995, amending Ind.Code §4-21.5-7, which became effective July 1, 1995, 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 the applicable provisions of Ind.Code §4-21.5-5, 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.

Dated this 31ST day of July, 1997.

Wayne E. Penrod
Chief Administrative Law Judge

cc: Felicia R. George, Assistant Commissioner
Office of Air Management