# TOPICS:

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

## **PRESIDING JUDGE**:

Davidsen

## PARTY REPRESENTATIVES:

Permittee:Jennifer Johnson, pro sePetitioner:Marty Roan, pro seIDEM:Jacquelyn F. Moore, Esq.Other:Fire Station #44

## DATE ISSUED:

November 22, 2004

INDEX CATEGORY: Air

**FURTHER CASE ACTIVITY**: [none]

## 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)

STATE OF INDIANA )	BEFORE THE INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION )	
IN THE MATTER OF:	)
OBJECTION TO THE ISSUANCE OF	) CAUSE NO. 03-A-J-3254
VARIANCE FT-6560 FROM 326 IAC 4-2	1 )
TO BURN TREE WASTE	)
HAMILTON COUNTY, INDIANA.	)

## FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER GRANTING MOTION TO DISMISS PETITION FOR ADMINISTRATIVE REVIEW

Please be notified that Office of Environmental Adjudication ("OEA" or "Court") Cause No. 03-A-J-3254 is hereby dismissed from the OEA pursuant to the final dismissal of the petitioners for review of this action under Ind Tr. R. 12(b)(6) and 315 IAC 1, for failure to state a claim upon which relief can be granted. The Environmental Law Judge hereby makes the following findings of fact and conclusions of law:

# **Findings of Fact**

- On December 2, 2003, the Indiana Department of Environmental Management ("IDEM") mailed its approval of Variance FT-6560 from 326 IAC 4-1, approving Jennifer Johnson ("Permittee") to burn tree waste at 6167 East 122<sup>nd</sup> Street, Carmel, Hamilton County, Indiana, which approval is the subject matter of this case. The document containing approval further states that the approval expires on May 1, 2004.
- 2. On December 16, 2003, Marty Roan, filed a Petition for Administrative Review ("Petition"), objecting to the issuance of Variance FT-6560 to Permittee.
- 3. On December 18, 2003, the OEA ordered the Petition for Administrative Review set for Prehearing Conference and Stay Hearing on January 28, 2004, which Prehearing Conference was conducted as scheduled. Petitioner requested that the Stay Hearing not be conducted so that the parties could pursue settlement.
- 4. On January 28, 2994, the OEA ordered the parties to submit a Status Report on or before March 29, 2004. IDEM filed a March 29, 2004 Status Report, reflecting that the parties had agreed to an amended variance for burning when they met on January 28, 2004. On March 30, 2004, the OEA ordered the parties to file a Status Report on or before May 10, 2004.
- 5. On May 10, 2004, the Indiana Department of Environmental Management, ("IDEM"), by counsel, filed a Motion to Dismiss the above-captioned matter, asserting that the matter was now moot as the issued permit had expired on May 1, 2004. The OEA ordered the parties to respond by June 14, 2004, after which time the OEA would issue its ruling on IDEM's Motion to Dismiss based upon the Court's record as of June 14, 2004. No further pleadings were filed in this cause.

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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 as 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