

**In re: Objection to the Issuance of Permit Approval No. T005-7301-00048  
Rightway Fasteners  
2004 OEA 36 (99-A-J-2273)**

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**TOPICS:**

air permit  
dismissal  
timeliness  
mootness  
renewal applications  
administrative extensions

**PRESIDING JUDGE:**

Gibbs

**PARTY REPRESENTATIVES:**

Permittee: Daniel P. McNerny, Esq., Bose McKinney & Evans LLP  
IDEM: April Schultheis, Esq.

**ORDER ISSUED:**

May 25, 2004

**INDEX CATEGORY:**

Air

**FURTHER CASE ACTIVITY:**

[none]

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intended this modification to eliminate its need for the Part 70 permit. These facts and/or issues are not relevant to this Motion to Dismiss.<sup>2</sup>

**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).
4. 326 IAC 2-7-4(1)(D), in pertinent part, states: “For purposes of a Party 70 permit renewal, a timely application is one that is submitted at least nine (9) months prior to the date of expiration of the sources’ existing permit.”
5. This Permit has expired and the Petitioner, by his own admission, did not file an application for renewal in time to receive an administrative extension of this Permit under 326 IAC 2-7-4(a)(1)(D). This Court does not have the authority to grant an administrative extension of this Permit or to modify the permit at issue in this matter.
6. As there is no effective relief that can be rendered to the parties by this Court, this matter is deemed moot.

**Final Order**

IT IS THEREFORE ORDERED that IDEM’s Motion to Dismiss is **GRANTED** and the Petition for Administrative Review filed by Petitioner, Rightway Fasteners, is hereby **DISMISSED**.

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

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<sup>2</sup> The Petitioner has requested that this Court note these facts. While this Court finds that the equitable issues raised by these facts are not relevant for purposes of determining whether the case is moot, the Court notes that it could certainly consider these facts, if presented as verifiable evidence, should an enforcement action against this permittee for violations based on the facts presented here come before this Court.

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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 25th day of May, 2004.

Catherine Gibbs  
Environmental Law Judge