

Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.

---

Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)

---

**OFFICIAL SHORT CITATION NAME:** When referring to 2007 OEA 82, cite this case as  
*Crooked Lake, 2007 OEA 82.*

**TOPICS:**

final hearing	aquatic plants
§ 401 Water Quality Certification	floating and riparian vegetation
seawall	navigable waters
shoreline	non-tidal waters
erosion	wetland
No Wake Zone	area of special concern
Department of Natural Resources	property loss
DNR	monetary loss
Army, Corps of Engineers	surface waters
§404 dredge and fill permit	Great Lakes basin
sketch	327 IAC 2-1.5-8(b)(1)
reference points	IC § 13-18-23-1
margin of error	

**PRESIDING JUDGE:**

Dauidsen

**PARTY REPRESENTATIVES:**

Petitioner: Michele T. Anderson, *pro se*  
IDEM: Lori Kyle Endris, Esq.

**ORDER ISSUED:**

June 15, 2007

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

---



**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

2. The site of Ms. Anderson's § 401 application is 40 Lane 298A Crooked Lake, Angola, Steuben County, Indiana, northwest of the CR 400 West Bridge, which bridge divides the Second and Third Basins of Crooked Lake. Although evidence was presented that the February 1, 2006 Joint Public Notice by IDEM and the U.S. Army, Corps of Engineers ("COE") incorrectly described and sketched the application's location in the Second Basin, instead of in the Third Basin, evidence presented before the OEA relied upon the correct, Third Basin, location. The Joint Public Notice stated the project's proposed activity, including the extent and location of discharge.
3. Crooked Lake is within the St. Joseph watershed which flows into Lake Michigan. Crooked Lake is therefore within the Great Lakes system.
4. Ms. Anderson's property and shoreline is directly adjacent to a "No Wake Zone" on Crooked Lake.
5. On April 18, 2006, IDEM issued to Ms. Anderson a Denial of § 401 Water Quality Certification for Projection Seawall: Crooked Lake, IDEM ID # 2005-576-76-RDC-A ("2006 denial") for the stated reason that the "application has failed to demonstrate that the proposed discharge and the associated impacts to aquatic resources are necessary."
6. On May 1, 2006, Petitioner timely appealed IDEM's denial of Ms. Anderson's § 401 application; Ms. Anderson's appeal was assigned OEA cause number 06-W-J-3714, and is the subject of this Final Order.
7. Prior to its 2006 denial, IDEM had issued a denial for a similar project to Ms. Anderson. On October 24, 2002, IDEM issued to Ms. Anderson a Denial of Section 401 Water Quality Certification for Project Seawall: Crooked Lake, IDEM ID # 2002-509-76-LPR-A ("2002 denial").
8. On September 13, 2005, Ms. Anderson filed her Petition for Administrative Review of IDEM's October 24, 2002 denial. Ms. Anderson's appeal was assigned OEA cause number 05-W-J-3596.
9. The seawall addressed in the 2002 denial was in the same location and similar to the seawall proposed in this case. The reason cited by IDEM for its October 24, 2002 denial was that "erosion is minimal as the shoreline is protected by the existing stone wall and by the wetland vegetation within the lake."
10. On December 22, 2006, OEA issued a Final Order dismissing cause number 05-W-J-3596, finding that Ms. Anderson's Petition for Administrative Review was not timely filed as required in Ind. Code § 4-21.5-3-7 and IC § 13-15-6-1.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

11. Prior to IDEM's 2006 denial, an Indiana Department of Natural Resources' ("DNR") permit to construct an "angled concrete seawall with glacial stone" was approved under IC § 14-26-2, *et seq.*, and 312 IAC 11, *et seq.*, by the Natural Resources Commission ("NRC") on August 26, 2005. Ms. Anderson contended that since DNR and the NRC had approved this project, that her project should therefore receive a § 401 water quality certification.
12. Prior to IDEM's 2006 denial, in 1998, the channel was widened under the bridge between the Second and Third Basins, per permits issued by COE, IDEM and DNR. Per undisputed testimony presented in Ms. Anderson's case in chief, the channel was dredged in 1998 to increase its depth to four (4) feet and widened to forty (40) feet on either side of the channel.
13. Concerning her 2005 § 401 application in this cause, Ms. Anderson applied to the COE for a §404 dredge and fill permit; the COE issued its Joint Public Notice on February 1, 2006.
14. Ms. Anderson's 2005 § 401 application was supported by claims of shoreline erosion. To support her erosion claims, Ms. Anderson utilized two (2) DNR sketches, one drawn by "R. Kennedy" in 2002, and a sketch which Ms. Anderson testified was drawn by Joe Mapes in 2005.
15. IDEM's review of this application, along with multiple prior reviews of other applications, was conducted by James Robb, Office of Water Quality. Mr. Robb graduated from Indiana University with a major in environmental science. Mr. Robb's determination for IDEM was based upon Ms. Anderson's application and information she submitted, along with field notations from IDEM staff who visited the site prior to her application. Mr. Robb did not visit the site, but he believed that Ms. Anderson's application contained sufficient information, therefore he reviewed the application, including the sketches.
16. Ms. Anderson testified that when DNR completed the 2005 sketch, it estimated where the 2002 sketch placed the shoreline, and the shoreline was represented by a pink flag in the water.
17. In comparing the sketches, they did not contain the same reference points, each sketch contained a disclaimer that reference points were approximate, and the 2002 sketch contained a disclaimer stating that the orientation is approximate. The 2002 and 2005 sketches did not have the same orientation. Very few of the measurements depicted on the sketches are of the same points.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

18. Both sketches purport to use the scale of one (1) inch equaling thirty (30) feet, and have a one (1) foot margin of error, per Ms. Anderson's witness, Michael Neyer, P.E. Mr. Neyer testified that he was a long-term DNR Division of Water employee, and has served as Director for the DNR Division of Water for several years. Mr. Neyer visited the site on Ms. Anderson's property. The sketches depict Ms. Anderson's home, the dimensions of which Ms. Anderson testified had remained constant. The house depicted in the 2005 sketch is significantly smaller than the house depicted in the 2002 sketch.
19. Mr. Neyer observed some aquatic plants, and saw some erosion on the site when he was there in 2004, but not in 2002, but he could offer no further comparison as to the rate of erosion. Some rocks had been displaced into the water. Mr. Neyer offered no opinion about the effect of wave action upon shoreline erosion, and specifically indicated that he had no expertise on the topic.
20. Per Mr. Neyer, boat traffic which violated the "no boat wake" zone would be subject to control by law enforcement authorities.
21. Prior to issuing its 2006 § 401 denial, IDEM and Ms. Anderson communicated about their differing interpretations of the amount of erosion occurring at the site. Ms. Anderson's September 8, 2005 correspondence to IDEM referenced specified measurements. A review of the sketches, and application of the one-foot margin of error identified by Mr. Neyer shows that specific measurements among the two sketches deviate by no more than two (2) feet.
22. Given the one-foot margin of error identified by Mr. Neyer, the line labeled forty-three feet (43') in the 2002 sketch represents a real distance from the house to a fixed point on the shoreline of between forty-two feet (42') and forty-four feet (44'). The corresponding line labeled forty-one and one-half feet (41.5') in the 2005 sketch represents a real distance of between forty and one-half feet (40.5') and forty-two and one-half feet (42.5'). A comparison of these ranges is within the margin of error identified by Mr. Neyer.
23. The line labeled twenty-five feet (25') in the 2002 sketch, drawn between a tree and a fixed point on the shoreline, represents a real distance of between twenty-four feet (24') and twenty-six feet (26'). The apparently corresponding line labeled twenty-three feet (23') in the 2005 sketch represents a real distance of between twenty-two feet (22') and twenty-four feet (24'). A comparison of these ranges is within the margin of error identified by Mr. Neyer.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

24. The line labeled sixty-one feet (61') in the 2002 sketch, drawn between the southeast corner of the house and a fixed point at the shoreline, represents a real distance of between sixty feet (60') and sixty-two feet (62'). The apparently corresponding line labeled sixty feet (60') in the 2005 sketch represents a real distance of between fifty-nine feet (59') and sixty-one feet (61'). A comparison of these ranges is within the margin of error identified by Mr. Neyer.
25. Ms. Anderson further supported her claims that the seawall is necessary to stop the significant erosion on the shoreline by providing numerous photographs. These photographs demonstrated that erosion had occurred at some points, but did not provide specific measurements as to the amount and severity of erosion. These photographs also demonstrated that the house, concrete boat ramp, and other structures, had not changed position from 1998 to 2006. As evidenced by a comparison of 2002 and 2005 COE photographs, Ms. Anderson's shoreline has remained flush with the concrete boat ramp.
26. Ms. Anderson stated that a COE inspector had stated to that the COE had observed the property more than once, and had noted an increase in shoreline erosion. This testimony was admitted over a hearsay objection.
27. Ms. Anderson stated that many individuals and representatives of agencies charged with reviewing applications for approval of the seawall she seeks had stated that significant erosion was occurring along her shoreline, or that her seawall application should be approved. This conclusion was supported by testimony from the contractor retained by Ms. Anderson to build the proposed seawall on her property. The U.S. Fish and Wildlife issued denial letters on March 20, 2006 and March 29, 2006, requesting that this permit be denied because the project may result in substantial and unacceptable impacts to aquatic resources. (Stipulated Exhibits E and O, respectively)
28. Increased boat traffic, and increased proposed residential development with lake access was presented into evidence by Ms. Anderson and Mr. Bauermeister. Mr. Bauermeister is Ms. Anderson's nephew, has visited her home (and those of other relatives on Crooked Lake) on numerous occasions., and resides on Sylvan Lake, Rome City, Noble County, Indiana. He graduated with a mathematics major from Purdue University and holds an M.B.A. He has been a boater for approximately thirty (30) years. Mr. Bauermeister presented personal observations, speed estimates and calculations that indicated that boat traffic traveled at a speed to violate the "no wake zone" at Ms. Anderson's property. Increased boat traffic, boat speed and boat size contribute to shoreline erosion. The amount of projected increase in boat traffic, speed and size was not quantified. The amount of erosion currently caused by such boat traffic was not quantified.
29. Floating and riparian vegetation is present along Ms. Anderson's shoreline, which indicates the presence of low wave energy and an environment with minimal erosion.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

30. Ms. Anderson further stated that the § 401 water quality certification should issue because the area is not a wetland.
31. Ms. Anderson supported her claim that the project area is not a wetland by relying upon the August 26, 2005 Natural Resources Commission's ("NRC") Agreed Order ("NRC Agreed Order"). *Stipulated Exhibit M*. The NRC Agreed Order authorized Ms. Anderson "to construct a glacial stone seawall across approximately thirty-one (31) feet and a glacial stone seawall in front of a concrete seawall approximately two-hundred five (205) [feet] of [Ms. Anderson's] lake frontage on Crooked Lake . . . ", and utilized the terms classifying the project area as "an area of special concern." *Id.*
32. The NRC Agreed Order specifically stated that:
- (C) [t]his permit does not relieve the permittee of the responsibility for obtaining additional permits, approvals, easements, etc. as required by other federal, state, or local regulatory agencies. These agencies include, but are not limited to: Detroit District, U.S. Army Corps of Engineers, Indiana Department of Environmental Management, Local city or county planning or zoning commission.
- Id.*
33. The NRC Agreed Order further provided that "(D) [t]his permit must not be construed as a waiver of any local ordinance or other state or federal law." *Id.*
34. Ms. Anderson further stated that the § 401 water quality certification should issue because the monetary and property loss she experienced after the CR 400 Bridge Project would discontinue after the seawall was constructed and would provide bank protection. Ms. Anderson presented testimony that the monetary and property loss included her payment for the removal of a displaced beaver colony and some muskrats, that fourteen (14) mature trees were lost from soil saturation due to wave action, and accretion of her property into the lake. Ms. Anderson consistently expressed personal frustration and distress during the presentation of this case.
35. Ms. Anderson further stated that the § 401 water quality certification should issue because no other reasonable alternative exists to protect her property from future, projected increased erosion from development and accompanying boat traffic in the Second and Third Basins. The amounts of increased erosion, wave action or boat traffic were not specified.

**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 and the parties to this controversy pursuant to IC §4-21.5-7, *et seq.*

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

2. This is a Final Order issued pursuant to IC § 4-21.5-3-27 and 315 IAC 1-2-1(9). 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. The OEA must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Department of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 247 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the OEA's Environmental Law Judge ("ELJ"), and deference to the agency's initial factual determination is not allowed. *Id.*; IC § 4-21.5-3-27(d). "*De novo* review means that:

all facts are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.

*Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981); *see also, Indiana-Kentucky Electric Co. v. Commissioner, Indiana Department of Environmental Management*, 820 N.E.2d 771, 781 (Ind. Ct. App. 2005).

4. OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Envntl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)(appeal of OEA review of NPDES Permit); *see also* IC § 4-21.5-3-14; IC § 4-32.5-3-27(d). OEA is authorized "to make a determination from the affidavits . . . pleadings or evidence." Ind. Code § 4-21.5-3-23(b). "Standard of proof generally has been described as a continuum with levels ranging from a "preponderance of the evidence test" to a "beyond a reasonable doubt" test. The "clear and convincing evidence" test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test." *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The "substantial evidence" standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *GasAmerica #47*, 2004 OEA at 129. *See also Blue River Valley*, 2005 OEA at 11, 12. *Objection to the Denial of Excess Liability Trust Fund Claim Marathon Point Service, ELF # 9810570/FID #1054, New Castle, Henry County, Indiana; Winimac Service, ELF #9609539/FID #14748, Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc. (04-F-J-3338)*, 2005 OEA 26, 41.
5. In this case, Ms. Anderson has the burden of supporting her claim that a § 401 water quality certification should be issued for her 2005 application.
6. The Indiana Department of Natural Resources ("DNR") regulates specified construction activities within, over and/or under the state's waterways, including seawall construction. IC § 14-26-2, *et seq.*, and 312 IAC 11, *et seq.* DNR does not issue § 401 water quality certifications, nor does DNR approval of a seawall construction permit mandate that IDEM should or must approve a § 401 water quality certification, as the differing regulations require different proof.



**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

7. The COE's Section 404 permit program regulates discharges of dredged or fill materials into waters of the United States. If construction for a seawall project requires an individual to dredge, excavate or fill within lakes, rivers, streams, ditches, wetlands, or other waters, that individual must first obtain a Federal permit from the COE prior to commencing the work, per 33 United States Code ("U.S.C.") §1341(a)(1).
8. COE district engineers are authorized to determine the areas defined by the terms "navigable waters of the United States" and "waters of the United States", per 33 Code of Federal Register ("CFR") Part 328,.
9. Jurisdiction over "non-tidal waters" is assigned to the COE per 33 CFR 328.4, which defines "non-tidal waters" to include wetlands. Only the COE has jurisdiction to delineate wetlands for the purposes of a Section 404 permit and a Section 401 state water quality certification.
10. "Wetland" means those areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions, per 33 CFR 328.3(b). Wetlands generally include swamps, marshes, bogs, and similar areas.
11. "Adjacent" means bordering, contiguous, or neighboring. "Adjacent wetlands" are wetlands separated from other waters of the United States by manmade dikes or barriers, natural river berms, beach dunes, etc., per CFR 328.3(c),
12. Any activity that would result in a discharge to lakes, rivers, streams, ditches or wetlands is regulated by IDEM under § 401 as well as under Indiana Code Title 13. A state may deny Water Quality Certification, per 33 U.S.C. §1341(a) (frequently referred to as § 401 of the Clean Water Act). IDEM is authorized to take state action on § 401 water quality certifications for such projects, including Ms. Anderson's application, per IC § 13-18-23-1.
13. For purposes of IDEM's § 401 water quality certification, the COE determines if an area is a wetland. 33 C.F.R. 328. The distinction between the term "wetland" and "area of special concern" is only relevant to DNR, and is not relevant to IDEM's charge to make its final determination regarding a § 401 water quality certification and to provide an applicant with a statement of reason(s). IC § 13-18-23-1.
14. "Waters", for purposes of Indiana water pollution control laws and environmental management laws, means (1) "the accumulation of water, surface and underground, natural and artificial, public and private; or (2) a part of the accumulation of water; that are wholly or partially within, flow through, or border upon Indiana . . . (c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana."

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

15. Water quality in the waters of Indiana is regulated by IDEM, as authorized by IC § 13-8-4-5.
16. “A person may not: (1) throw, run, drain or otherwise dispose into any of the streams or waters of Indiana; or (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise dispose into any waters; any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under Sections 1 and 3 of this chapter.” IC § 13-8-4-5.
17. Surface waters of Indiana within the Great Lakes system are protected, per IDEM regulations. 327 IAC 2-1.5-4(a).
18. “Great Lakes system” means all the streams, rivers, lakes and other waters of Indiana within the drainage basin of the Great Lakes within Indiana, per 327 IAC 2-1.5-2(44), including Crooked Lake.
19. “For all surface waters of the state within the Great Lakes system, existing instream water uses and the level of water quality necessary to protect existing uses shall be maintained and protected. Where designated uses of the waterbody are impaired, there shall be no lowering of water quality with respect to the . . . pollutants that are causing the impairment.” 327 IAC 2-1/5-4(a).
20. IDEM is required to protect all waters within the Great Lakes system at all times and at all places, so as to meet the minimum conditions of being free from substances, materials, and discharges that form objectionable deposits, are unsightly or deleterious, and are toxic to plant, animal or aquatic life. 327 IAC 2-1.5-8(b)(1).
21. IDEM was the legally-authorized agency to review and determine whether Ms. Anderson’s 2005 § 401 Water Quality Certification should issue.
22. While the Court is sympathetic to monetary or property loss, personal distress, and frustration, under applicable law, the Court cannot rely upon these factors to determine the issuance of a § 401 Water Quality Certification.
23. Evidence is present in the record to support an inference of increased future boat traffic. Testimony of future, projected increased erosion from increased development, boat traffic and resulting wave action, was speculative as to the amount of future erosion which would reasonably occur on Ms. Anderson’s property. That evidence is not sufficiently quantified in order to present substantial evidence future erosion sufficient to support the issuance of Ms. Anderson’s 2005 § 401 water quality certification. It is also reasonable to infer that erosion will be minimized by the “no boat wake” requirement for boaters in the vicinity of Ms. Anderson’s property.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

24. In compliance with IC § 13-18-23-1, IDEM deemed Ms. Anderson's application complete for purposes of beginning its review on February 1, 2006. IDEM complied with application review laws, regulations, policies and procedures when it conducted its certification analysis based upon information provided by Ms. Anderson in her application, and not upon independent research, such as drafting its own sketches based upon its own measurements, to confirm the accuracy of Ms. Anderson's application. IDEM made its April 18, 2006 final determination of §401 water quality certification on Ms. Anderson's application and provided her with IDEM's reason that "[t]his application has failed to demonstrate that the proposed discharge and associated impacts to aquatic resources are necessary."
25. The presence of aquatic vegetation is probative, but not conclusive, substantial evidence of minimal wave action and of the area's designation as a wetland, as such vegetation is usually present in wetland areas, but is frequently removed by wave action.
26. Comparing the few measurements among identical points on the 2002 and the 2005 sketches do not provide substantial evidence to support Ms. Anderson's claims of shoreline erosion of a significance to support her 2005 application for a § 401 water quality certification. When measurement ranges are extrapolated and compared, the measurement ranges overlap within the standard margin of error for each sketch, providing substantial evidence of margin of error as the cause for the sketch differences. Substantial evidence does not exist to support Ms. Anderson's contention that the varying measurements among the sketches are caused by shoreline erosion.
27. Ms. Anderson has not met her burden of providing substantial evidence to support her claim that sufficient erosion exists on the site so as to support the approval of her 2005 application for a § 401 Water Quality Certification in controversy in this case.
28. Ms. Anderson's claims that the NRC Agreed Order designated the project area as an area of special concern, and not a wetland, does not provide substantial evidence that the project area is not a wetland. By law, IDEM's legal authority and jurisdiction are separate and distinct from DNR. No legal authority exists to support Ms. Anderson's claim that the NRC Agreed Order required IDEM, and now requires this Court, to approve her 2005 application for a § 401 Water Quality Certification. By its specific terms, the NRC Agreed Order specifically advised that, as applicant, Ms. Anderson was required to obtain approvals and permits from other agencies, including IDEM. The NRC Agreed Order expressly stated that it did not constitute a waiver of other state laws.
29. A review of the witness testimony, along with exhibits including photographs and letters, does not present substantial evidence that the project area is not a wetland.
30. Ms. Anderson has not met her burden of providing substantial evidence to support her claim that the site is not a wetland, so as to support the approval of her 2005 application for a § 401 Water Quality Certification in controversy in this case.

**Objection to the Denial of Water Quality Certification No. 2005-576-76-RDC-A,  
Crooked Lake, Steuben County, Indiana.**

---

**Michele Anderson: Petitioner;  
Indiana Department of Environmental Management: Respondent.  
2007 OEA 82 (06-W-J-3714)**

**Final Order**

**IT IS THEREFORE ORDERED** that the Petitioner Michele T. Anderson's Petition for Review of IDEM's denial of Ms. Anderson's application for § 401 Water Quality Certification is hereby **DENIED**, IDEM's denial of Ms. Anderson's application for § 401 Water Quality Certification is hereby **SUSTAINED**.

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 15th day of June, 2007 in Indianapolis, IN.

Hon. Mary L. Davidsen  
Chief Environmental Law Judge