

STATE OF INDIANA) IN THE LAKE SUPERIOR COURT
) SS: CIVIL DIVISION 6
COUNTY OF LAKE) CAUSE NO.: 45D10-2304-MI-000215

CITY OF GARY,)
)
Petitioner,)
)
v.)
)
INDIANA OFFICE OF)
ENVIRONMENTAL)
ADJUDICATION,)
)
Respondent.)

FILED IN OPEN COURT
June 27, 2023
Rachel Adat-Lopez
JUDGE, LAKE SUPERIOR COURT, RA
CIVIL DIVISION, ROOM 6



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came before the Court regarding the petition for judicial review filed by Petitioner, the City of Gary, against Respondents, the Indiana Office of Environmental Adjudication and the Indiana Department of Environmental Management. The Court, having reviewed the filings and having been duly advised therein, finds, concludes, and orders as follows:

Findings of Fact

1. Any point identified as a finding of fact may be considered a conclusion of law to the extent it may be appropriate to do so, and any point identified herein as a conclusion of law may also be considered a finding of fact to the extent it may be appropriate to do so.
2. This case is a judicial review of a final agency action under the Administrative Orders and Procedures Act (“AOPA”), Indiana Code § 4-21.5 *et seq.*
3. On April 14, 2023, the City of Gary filed its petition for judicial review.

4. By May 15, 2023, Gary had neither filed the agency record nor requested an extension of time to do so.

5. On June 9, 2023, the Indiana Department of Environmental Management filed a motion to dismiss and a brief in support of motion to dismiss.

Conclusions of Law

6. Under AOPA, the petitioner bears the burden to timely file the agency record. Ind. Code § 4-21.5-5-13(a).

7. Within 30 days of filing a petition, “or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action.” *Id.*

8. “[F]ailure to file the record within the time permitted” is cause for dismissing the petition. Ind. Code § 4-21.5-5-13(b). *See also Teaching Our Posterity Success, Inc. v. Indiana Dep’t of Educ.*, 20 N.E.3d 149, 155 (Ind. 2014) (holding that a petitioner for judicial review “cannot receive consideration of its petition where the statutorily-defined agency record has not been filed”).

9. A petitioner may not file a belated motion for extension of time to file the agency record. *See Howard v. Allen Cnty. Bd. of Zoning Appeals*, 991 N.E.2d 128, 131 (Ind. Ct. App. 2013) (holding that “an extension must be granted by the court . . . in order for a petitioner to transmit the agency record more than thirty days after filing a petition,” and that the court may do so “only if the request is made during the initial thirty days following the filing of the petition for review or within any previously granted extension”) (internal citations omitted).

10. Here, the City of Gary filed its petition on April 14, 2023. The City of Gary's deadline to file the record, or request an extension to do so, was May 15, 2023. The City of Gary neither filed the agency record, nor requested an extension of time, on or before May 15, 2023.

11. Due to the City of Gary's failure to file the record, or request an extension of time, within 30 days, the Court cannot consider the petition and must dismiss the case.

12. Therefore, the Court finds that the City of Gary's failure to timely file the agency record or request an extension of time, a condition precedent to judicial review, bars its claim for relief.

Order

For the foregoing reasons, the Court **GRANTS** the Indiana Department of Environmental Management's motion to dismiss. The City of Gary's petition for judicial review is **DISMISSED** with prejudice.

SO ORDERED this 27th day of June, 2023.



Judge, Lake Superior Court, Civil Division 6

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