

TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

Proposed Rule
LSA Document #08-689

DIGEST

Amends [315 IAC 1-1-1](#), [315 IAC 1-2-1](#), [315 IAC 1-3-1](#), and [315 IAC 1-3-14](#) and adds [315 IAC 1-3-16](#), concerning procedural rules for the Office of Environmental Adjudication, to provide for the consolidation of proceedings with the Natural Resources Commission, Division of Hearings as required by SEA 134. *NOTE: This document is jointly promulgated with the Natural Resources Commission. See LSA Document #08-688, posted at [20081210-IR-312080688PRA](#).* Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[315 IAC 1-1-1](#); [315 IAC 1-2-1](#); [315 IAC 1-3-1](#); [315 IAC 1-3-14](#); [315 IAC 1-3-16](#)

SECTION 1. [315 IAC 1-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[315 IAC 1-1-1](#) Applicability

Authority: [IC 4-21.5-3-35](#); [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5-7-3](#); [IC 13-11-2](#); [IC 13-19](#); [IC 14-10-2-2.5](#)

Sec. 1. (a) The procedural requirements established by this rule shall apply to all proceedings governed by [IC 4-21.5-7-3](#) for which an environmental law judge in the office of environmental adjudication is the ultimate authority, including adjudicatory hearings required to implement **the following**:

- (1) Air pollution control laws, water pollution control laws, environmental management laws, solid waste and hazardous waste control laws, **and** financial assurance board laws. ~~and~~
- (2) Rules of **the following**:
 - (A) The air pollution control board.
 - (B) The water pollution control board.
 - (C) The solid waste management board. ~~and~~
 - (D) The financial assurance board.
- (3) Any other decision of the commissioner for which appeal under [IC 4-21.5](#) is specifically provided.

In conjunction with [312 IAC 3-1](#), this rule also governs a proceeding consolidated with the natural resources commission, division of hearings under [IC 14-10-2-2.5\(b\)](#).

(b) Procedural questions arising at any stage of the proceeding that are not addressed in these rules shall be resolved at the discretion of the presiding environmental law judge.

(Office of Environmental Adjudication; [315 IAC 1-1-1](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3732; errata, 21 IR 4215; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 2. [315 IAC 1-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[315 IAC 1-2-1](#) Definitions

Authority: [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5-1-4](#); [IC 4-21.5-3-27](#); [IC 13-11-2-51](#); [IC 13-17-1](#); [IC 13-18-1](#); [IC 13-19-2](#); [IC 13-23-11](#); [IC 14-10-1](#); [IC 14-10-2-2](#)

Sec. 1. In addition to the definitions in [IC 4-21.5-1](#), the definitions in this section apply throughout this title:

- (1) **"Administrative law judge" or "ALJ" means a person appointed by the natural resources commission under [IC 14-10-2-2](#) to function as an administrative law judge under [IC 4-21.5](#).**
- ~~(1)~~ (2) "Board" means a board established or created under [IC 13-17-1](#), [IC 13-18-1](#), [IC 13-19-2](#), or [IC 13-23-11](#).
- ~~(2)~~ (3) "Commissioner" means the commissioner of the agency or the commissioner's designee.
- ~~(3)~~ (4) "Confidential information" means any information that:

- (A) is entitled to treatment as; or
 - (B) has been determined to be;
- confidential information under [326 IAC 17.1](#), [327 IAC 12.1](#), or [329 IAC 6.1](#) and includes any information submitted to the office under claim of confidentiality during the pendency of a final determination of the claim.
- (5) "Decision" means an agency action as prescribed by [IC 4-21.5-1-4](#) of the department.**
- ~~(4)~~ **(6)** "Department" has the meaning set forth in ~~[IC 13-11-1-51](#)~~; [IC 13-11-2-51](#).
- ~~(5)~~ "Decision" means an agency action as prescribed by ~~[IC 4-21.5-1-4](#)~~ of the department.
- ~~(6)~~ **(7)** "Director" means the director of the office.
- (8) "Division of hearings" means the division established by [IC 14-10-2-2](#).**
- ~~(7)~~ **(9)** "Electronic facsimile transmission" or "fax" means a method of transmitting and receiving information in eight and one-half (8 1/2) inch by eleven (11) inch paper medium over telephone lines or other forms of electronic transmissions available to the office.
- ~~(8)~~ **(10)** "Environmental law judge" or "ELJ" means an individual acting in the capacity of an administrative law judge in a proceeding under [IC 4-21.5](#).
- ~~(9)~~ **(11)** "Final order" means an order of the ELJ, acting as ultimate authority, disposing of the proceeding prescribed by [IC 4-21.5-3-27](#).
- (12) "Natural resources commission" means the commission established under [IC 14-10-1](#).**
- ~~(10)~~ **(13)** "Office" means the Indiana office of environmental adjudication.
- ~~(11)~~ **(14)** "Presiding environmental law judge" means the environmental law judge assigned by the director to preside over a particular proceeding.

(Office of Environmental Adjudication; [315 IAC 1-2-1](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3732; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 469)

SECTION 3. [315 IAC 1-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[315 IAC 1-3-1](#) Powers and duties of the director, presiding environmental law judge, and office of environmental adjudication

Authority: [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5](#); [IC 5-14-3-8](#); [IC 14-10-2-2.5](#)

Sec. 1. (a) An ELJ shall do the following:

- (1) Conduct a fair and impartial proceeding.
- (2) Maintain an accurate and complete record.
- (3) Adjudicate all issues necessary for resolution of the matter. ~~and~~
- (4) Avoid delay.

(b) The ELJ shall have authority to do the following:

- (1) Conduct administrative hearings under the following:
 - (A) [IC 4-21.5](#).
 - (B) This article.
- (2) Rule upon the following:
 - (A) Motions.
 - (B) Requests.
 - (C) Offers of proof.
- (3) Dispose of procedural requests.
- (4) Issue all necessary orders.
- (5) Administer oaths and affirmations.
- (6) Consider affidavits submitted by the parties.
- (7) Examine witnesses.
- (8) Admit:
 - (A) purported scientific evidence; and
 - (B) related opinions;into evidence in accordance with applicable Indiana trial rules on admissibility of testimony by experts.
- (9) Allocate among the parties appropriate costs under [IC 5-14-3-8](#) for the office's production of documents.
- (10) Order the prefiling of testimony.
- (11) Solicit testimony in appropriate cases.
- (12) Receive documentary or other evidence.

- (13) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce:
 - (A) testimony;
 - (B) documents; or
 - (C) other nonprivileged evidence;

and failing the production thereof without good cause being shown, draw an adverse inference against that party.

(14) Admit, limit, or exclude evidence in accordance with [IC 4-21.5](#).

(15) Hear and decide questions of facts and law.

(16) Issue:

- (A) subpoenas;
- (B) subpoenas ~~deuces~~ **duces** tecum.

(17) Require parties to:

- (A) attend conferences for the settlement or simplification of the issues;
- (B) expedite the proceedings; or
- (C) participate in alternative dispute resolution.

(18) Where not inconsistent with [IC 4-21.5](#) and this title, the presiding environmental law judge may apply the Indiana Rules of Trial Procedure, except for those trial rules that provide for provisional and final remedies and special proceedings (TR 64 through 71), except as provided in section 2.1(c) of this rule.

(19) In addition to the remedies provided in [IC 4-21.5-3-24](#), to impose reasonable and appropriate sanctions under the following:

- (A) [IC 4-21.5-6-2](#).
- (B) Indiana Trial Rules 26 through 37.

(20) Do all other acts and take all measures necessary for the:

- (A) maintenance of order; and
- (B) ~~for the~~ efficient, fair, and impartial adjudication of issues arising;

in proceedings governed by this article.

(21) Determine whether mediation is an appropriate means of alternative dispute resolution for each type of administrative proceeding in accordance with [IC 4-21.5-3.5](#).

(22) Conduct consolidated proceedings under [IC 14-10-2-2.5](#).

(c) For failure to attend a prehearing conference, the presiding ELJ may do the following:

- (1) Strike claims or defenses.
- (2) Default or dismiss a party under [IC 4-21.5-3-24](#).

(Office of Environmental Adjudication; [315 IAC 1-3-1](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 469)

SECTION 4. [315 IAC 1-3-14](#) IS AMENDED TO READ AS FOLLOWS:

[315 IAC 1-3-14](#) Petition for judicial review

Authority: [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5-5-1](#); [IC 4-21.5-5-8](#)

Sec. 14. (a) A party who wishes to take judicial review of a final order entered under this article shall serve copies of the petition for judicial review upon the persons described in [IC 4-21.5-5](#).

(b) The copy of the petition required under [IC 4-21.5-5-8\(a\)\(1\)](#) to be served upon the ultimate authority shall be served upon the ELJ issuing the order being appealed at the following address:

office of environmental adjudication.
~~Indiana Government Center North
100 North Senate Avenue, Room N1049
Indianapolis, Indiana 46204-2211.~~

(Office of Environmental Adjudication; [315 IAC 1-3-14](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3738; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 475)

SECTION 5. [315 IAC 1-3-16](#) IS ADDED TO READ AS FOLLOWS:

315 IAC 1-3-16 Consolidated proceedings with natural resources commission's division of hearings

Authority: [IC 4-21.5-7-5](#); [IC 4-21.5-7-5.5](#); [IC 14-10-2-2.5](#)

Affected: [IC 4-21.5-3](#); [IC 14](#); [IC 25](#)

Sec. 16. (a) This section controls the conduct of a proceeding presided over by an administrative law judge that is consolidated under [IC 14-10-2-2.5](#) with a proceeding presided over by an environmental law judge of the office of environmental adjudication.

(b) Before acting on a motion for consolidation under [IC 14-10-2-2.5\(b\)](#), an administrative law judge or environmental law judge may do any of the following:

(1) Consult with any administrative law judge or environmental law judge that presides over a proceeding sought to be consolidated.

(2) Request documents, briefs, or oral arguments from the parties to the following:

(A) The proceeding pending before the administrative law judge or environmental law judge.

(B) The proceeding sought to be consolidated.

(c) If an administrative law judge or an environmental law judge enters an order for consolidation under [IC 14-10-2-2.5\(b\)](#), the order shall establish a panel that complies with [IC 14-10-2-2.5\(c\)](#).

(d) Unless otherwise agreed by the panel, the administrative law judge or environmental law judge that entered the order under subsection (c) shall perform the following functions:

(1) Open and maintain a new adjudicatory file that includes in its caption the phrase "In the Matter of Consolidated Proceeding under [IC 14-10-2-2.5](#)".

(2) Include true and authentic copies of all pleadings and documents previously filed and orders previously entered in the proceedings that have been consolidated.

(3) Rule upon routine motions and requests by the parties, including objections at hearing. This subdivision does not prohibit the administrative law judge or environmental law judge from consulting with another panel member or members before ruling.

(e) The panel may make any orders concerning a consolidated proceeding that are necessary and appropriate.

(f) The panel, in furtherance of convenience and to avoid prejudice, or when separate hearings may be conducive to expedition and economy, may order a separate hearing of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(g) In furtherance of convenience and to avoid prejudice, the panel may certify a disposition of fewer than all issues as being ripe for judicial review where:

(1) a dismissal is granted with prejudice;

(2) a summary judgment is granted under [IC 4-21.5-3-23](#); or

(3) a separate hearing is conducted under subsection (f).

(h) On a party's motion or on the panel's motion, the panel may terminate a consolidated proceeding in furtherance of convenience and to avoid prejudice. If a party moves to terminate a consolidated proceeding because all issues of the department of natural resources or of the department of environmental management have been settled or adjudicated, the panel shall terminate the consolidated proceeding. An order for termination shall include any provisions that may reasonably support the convenience of the parties and the expeditious disposition by an administrative law judge or environmental law judge of the remaining proceeding.

(i) A final disposition of a consolidated proceeding shall be included both by the natural resources commission and by the office of environmental adjudication in their respective implementations of [IC 4-21.5-3-32](#) and [IC 4-21.5-3-27\(c\)](#).

(Office of Environmental Adjudication; [315 IAC 1-3-16](#))

[Notice of Public Hearing](#)

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