

# TITLE 315

## OFFICE OF ENVIRONMENTAL ADJUDICATION

Art. 1. ADJUDICATORY PROCEEDINGS BEFORE ENVIRONMENTAL LAW JUDGES

### ARTICLE 1. ADJUDICATORY PROCEEDINGS BEFORE ENVIRONMENTAL LAW JUDGES

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#### Rule 1. General Provisions

315 IAC 1-1-1 Applicability

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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

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:

(1) air pollution control laws, water pollution control laws, environmental management laws, solid waste and hazardous waste control laws, financial assurance board laws; and

(2) rules of:

- (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.

(b) Procedural questions arising at any stage of the proceeding that are not addressed in these rules shall be re-solved 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*)

#### Rule 2. Definitions

315 IAC 1-2-1 Definitions

#### 315 IAC 1-2-1 Definitions

Authority: IC 4-21.5-7-7

Affected: IC 4-21.5-1-4; IC 4-21.5-1-10; IC 4-21.5-3-27; IC 4-21.5-7-1; IC 4-21.5-7-2; IC 13-18-1; IC 13-23-11

Sec. 1. In addition to the definitions contained in IC 4-21.5-1, the definitions in this section apply throughout this title:

(1) "Act" means IC 4-21.5-7.

(2) "Agency" means the Indiana department of environmental management.

(3) "Board" means a board created under IC 13-7-2 [*IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*], IC 13-18-1, IC 13-9-2 [*IC 13-9 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*], or IC 13-23-11.

(4) "Commissioner" means the commissioner of the department of environmental management or the commissioner's designee.

(5) "Confidential information" means any information that is entitled to treatment as, or that has been determined to be, confidential information under 326 IAC 17-1 [*326 IAC 17-1 was repealed filed Jan 26, 2000, 2:03 p.m.: 23 IR 1372.*], 327 IAC 12-1 [*327 IAC 12 was repealed filed Mar 9, 2000, 7:47 a.m.: 23 IR 1636.*], or 329 IAC 6-1 [*329 IAC 6 was repealed filed Nov 4, 1999, 10:19 a.m.: 23 IR 563.*], and includes any information submitted to the office of environmental adjudication under claim of confidentiality during the pendency of a final determination of the claim.

(6) "Decision" means an agency action as prescribed by IC 4-21.5-1-4.

(7) "Director" means the director of the office of environmental adjudication.

(8) "Electronic facsimile transmission" or "FAX" means a method of transmitting and receiving information in 8½ × 11" paper medium over telephone lines or other forms of electronic transmissions available to the office.

(9) "Environmental law judge" means an individual acting in the capacity of an administrative law judge in a proceeding under IC 4-21.5.

(10) "Final order" means an order of the environmental law judge, acting as ultimate authority, disposing of the proceeding prescribed by IC 4-21.5-3-27.

(11) "Office" means the Indiana office of environmental adjudication.

(12) Notwithstanding IC 4-21.5-1-10, "party" means any person that is designated in the record of the proceeding as a party to the proceeding.

(13) "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*)

#### Rule 3. Rules of Practice

315 IAC 1-3-1 Powers and duties of the director, presiding environmental law judge, and office of environmental adjudication

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- 315 IAC 1-3-3 Filing and service of pleadings and documents
- 315 IAC 1-3-4 Form of pleadings and documents
- 315 IAC 1-3-5 Request for extension of time for filing pleading, document, or motion
- 315 IAC 1-3-6 Answers and affirmative defenses
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- 315 IAC 1-3-12 Continuances of prehearing conference, status conference, stay hearing, and hearing
- 315 IAC 1-3-13 Proposed findings of fact, conclusions of law and final order; petitions for rehearing
- 315 IAC 1-3-14 Petition for judicial review

**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 4-21.5-3-24; IC 4-21.5-3.5; IC 4-21.5-6-2; IC 4-21.5-7-6; IC 5-14-3-8

Sec. 1. (a) An environmental law judge shall:

- (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 environmental law judge shall have authority to do the following:

- (1) Conduct administrative hearings under IC 4-21.5 and this article.
- (2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders.
- (3) Administer oaths and affirmations and consider affidavits submitted by the parties.
- (4) Examine witnesses, admit purported scientific evidence and related opinions into evidence in accordance with applicable Indiana trial rules on admissibility of testimony by experts, allocate among the parties appropriate costs, pursuant to IC 5-14-3-8, for the office's production of documents, order the pre-filing of testimony, solicit testimony in appropriate cases, and receive documentary or other evidence.
- (5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and, failing the production thereof without good cause being shown, draw an adverse inference against that party.

(6) Admit, limit, or exclude evidence in accordance with IC 4-21.5.

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

(8) Issue subpoenas and subpoenas deuces tecum.

(9) Require parties to attend conferences for the settlement or simplification of the issues, to expedite the proceedings, or to participate in alternative dispute resolution.

(10) Where no *[sic., not]* inconsistent with IC 4-21.5 and this title, the presiding environmental law judge may apply the Indiana Rules of Trial Procedure.

(11) In addition to the remedies provided in IC 4-21.5-3-24, to impose reasonable and appropriate sanctions pursuant to IC 4-21.5-6-2 and Indiana Trial Rules 26 through 37.

(12) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair, and impartial adjudication of issues arising in proceedings governed by this article.

(13) 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.

(c) For failure to attend a prehearing conference, the presiding environmental law judge may:

(1) Strike claims or defenses.

(2) Default or dismiss a party pursuant to 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*)

**315 IAC 1-3-2 Initiation of a proceeding for administrative review**

**Authority:** IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-7; IC 4-21.5-3-15; IC 4-21.5-4; IC 13-15-6-1

Sec. 2. (a) A proceeding before the office is initiated when a petition for administrative review, which may include a request for stay, in writing, is filed with the Office of Environmental Adjudication, 150 West Market Street, Suite 618, Indianapolis, Indiana 46204.

(b) The petition for administrative review shall contain the following information:

(1) Name, address, and telephone number of each person filing the petition.

(2) Identification of the interest of each petitioner in the subject of the petition.

(3) Statement demonstrating that the petitioner is:

(A) a person to whom the order is directed;

(B) aggrieved or adversely affected by the order; or

(C) entitled to review under any law.

(4) Statement with particularity the legal issues proposed for consideration in the proceedings and in a case involving an appeal of a permit:

(A) identification of environmental concerns or technical deficiencies related to the action of the commissioner which is the subject of the petition; and

(B) identification of permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.

(c) The petition for administrative review should also contain the following information:

(1) Identification of any persons represented by the person making the request pursuant to IC 4-21.5-3-15.

(2) Statement identifying the person against whom administrative review is sought.

(3) A copy of the notice of the commissioner's action issued by the department of environmental management which is the basis of the petition for administrative review.

(4) Statement indicating the identification of petitioner's attorney or other representative.

(d) A petition for administrative review, filed pursuant to IC 4-21.5-3-7(a), may be amended.

(e) Copies of the petition for administrative review shall be sent to the agency and to any person whose interest is affected by the petition. (*Office of Environmental Adjudication; 315 IAC 1-3-2; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733*)

### 315 IAC 1-3-3 Filing and service of pleadings and documents

**Authority:** IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-1; IC 4-21.5-3-2; IC 13-15-6-1

Sec. 3. (a) Filing of pleadings and documents:

(1) The burden of proof for the timely filing of pleadings and documents with the office is on the person so filing.

(2) The computation of any period of time under these rules is prescribed by IC 4-21.5-3-2.

(3) The filing of a petition for administrative review with an environmental law judge may be completed, pursuant to IC 4-21.5-3-1(f), by the following methods:

(A) Personal delivery.

(B) First class mail.

(C) Certified mail.

(D) Private carrier.

(4) The filing of any other document or pleading with an environmental law judge may be completed, pursuant to IC 4-21.5-3-1(f), by the following methods:

(A) Personal delivery.

(B) First class mail.

(C) Certified mail.

(D) Private carrier.

(E) Electronic facsimile transmission, including the following:

(i) Filing by facsimile shall be followed by the filing of the signed original with the office by one (1) of the methods specified in subsection (a)(3) of this section [*sic., subdivision (3)*] within one (1) day after the document is filed by facsimile.

(ii) All documents filed by facsimile must be accompanied by a descriptive cover sheet, which states the following:

(AA) The title of the document.

(BB) The case number.

(CC) The number of pages.

(DD) The identity and voice telephone number of the sending party.

(EE) The instructions for filing.

(FF) The signature of the person authorizing the filing.

(b) Service of pleadings and documents.

(1) All documents and pleadings filed with the presiding environmental law judge shall be served on all parties.

(2) If a party is represented by an attorney or another authorized representative, service of a document must be made upon the attorney or other authorized representative. If an individual appears without separate representation, service must be made upon the individual.

(3) A signed certificate of service, stating "I certify that on the \_\_\_\_ day of [month], [year], service of a true and complete copy of [document being forwarded], was made upon each party or attorney of record herein by [identifying any of the methods of service prescribed by (a)(3) or (4) above [*subsection (a)(3) or (a)(4)*]]", shall accompany each document filed or served.

(4) When the presiding environmental law judge corresponds directly with the parties, the original of the correspondence shall be maintained by the presiding environmental law judge in the official file, and a copy shall be sent to all parties by certified mail, return receipt requested, first class mail, personal service, or overnight, express mail.

(c) Where date of filing or service is determined by the date of delivery to or receipt at the office, all filing or service deliveries received after 4:45 p.m., EST, will be deemed to have been received on the next following regular day. However, a document filed by electronic facsimile shall be deemed to be filed on the date on which it is electronically submitted. (*Office of Environmental Adjudication; 315 IAC 1-3-3; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734*)

**315 IAC 1-3-4 Form of pleadings and documents****Authority:** IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-7-7**Affected:** IC 4-21.5-3; IC 13

Sec. 4. (a) Form of pleadings and documents:

(1) The petition for administrative review shall be in the form prescribed by section 2 of this rule.

(2) The first page of every subsequent pleading, letter, or other document filed thereafter shall contain a caption identifying the action and the case number that has been assigned by the office of environmental adjudication.

(3) The original of any pleading, letter, or other document, excepting exhibits, shall be signed by the party filing or by the party's counsel. The signature constitutes a representation by the signer that the signer has read the pleadings, letter, or other document, that to the best of the signer's knowledge, information, and belief, the statements made therein are true, and that it is not interposed for delay.

(b) Any changes in name, mailing address, or telephone number occurring during the course of a proceeding shall be communicated promptly in writing to the presiding environmental law judge and all parties to the proceeding. Service of orders or correspondence from the office shall be made to the last known address on file.

(c) Nothing in this section shall be construed to modify the time in which a party is otherwise required to file under IC 4-21.5, IC 13, or this article. (*Office of Environmental Adjudication; 315 IAC 1-3-4; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734*)**315 IAC 1-3-5 Request for extension of time for filing pleading, document, or motion****Authority:** IC 4-21.5-2-1; IC 4-21.5-7-7**Affected:** IC 4-21.5-3-34; IC 4-21.5-3-35Sec. 5. (a) Unless prohibited by statute, the presiding environmental [*sic.*] law judge may grant an extension of time for the filing of any pleading, document, or motion:

(1) upon timely motion of a party to the proceeding;

(2) after notice to all other parties unless the moving party can show good cause why serving notice is impracticable; and

(3) after consideration of prejudice to other parties.

(b) Unless prohibited by statute, the presiding environmental law judge may grant an extension of time for the filing of any pleading, document, or motion whenever all parties have consented to such extension. (*Office of Environmental Adjudication; 315 IAC 1-3-5; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3735*)**315 IAC 1-3-6 Answers and affirmative defenses****Authority:** IC 4-21.5-7-7**Affected:** IC 4-21.5-3-23

Sec. 6. (a) Except as provided in subsection (b), the matters contained in a pleading described in section 4(a) of this rule are deemed automatically denied by any other party.

(b) A party wishing to assert an affirmative defense, counterclaim, or cross-claim shall do so in a writing filed and served not later than the prehearing conference or a subsequent date as ordered by the presiding environmental law judge.

(c) Every defense listed below, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted by motion:

(1) Lack of jurisdiction over the subject matter.

(2) Lack of jurisdiction over the person.

(3) Incorrect venue.

(4) Insufficiency of process.

(5) Insufficiency of service of process.

(6) Failure to state a claim upon which relief can be granted.

(7) Failure to join a party needed for just adjudication. (*Office of Environmental Adjudication; 315 IAC 1-3-6; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3735*)**315 IAC 1-3-7 Defaults and dismissals****Authority:** IC 4-21.5-7-7**Affected:** IC 4-21.5-3-24

Sec. 7. (a) An environmental law judge may enter a final order of dismissal if the person who initiated administrative review requests the proceeding be dismissed.

(b) An environmental law judge may, sua sponte or upon the motion of a person, enter and serve upon all parties a proposed order of default or proposed order of dismissal under IC 4-21.5-3-24, if at least one (1) of the following applies:

(1) A party fails to file a responsible [*sic.*] pleading required by statute or rule.

(2) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding.

(3) The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.

(4) The person seeking administrative review does not qualify for review under IC 4-21.5.

(c) Within seven (7) days after service of a proposed order of default or dismissal, a party may file a written motion requesting the order not be imposed and stating the grounds relied upon.

(d) During the time within which a party may file a written motion under subsection (c), the presiding environmental law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceeding.

(e) If the party fails to file a written motion under subsection (c), the presiding environmental law judge shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the presiding environmental law judge may either enter or refuse to enter the order of default or dismissal.

(f) After issuing an order of default, but before issuing a final order or disposition, the presiding environmental law judge shall conduct any action necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulted party. (*Office of Environmental Adjudication; 315 IAC 1-3-7; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3735*)

### **315 IAC 1-3-8 Informal settlement; alternative dispute resolution**

**Authority:** IC 4-21.5-2-1; IC 4-21.5-3-35; IC 4-21.5-3.5-1; IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-5; IC 4-21.5-3.5-2; IC 4-21.5-5-5; IC 13-30-3-5; IC 13-30-3-6

Sec. 8. (a) Settlement among and between the parties is encouraged at any time when:

- (1) the settlement is within the legal authority of the agency; and
- (2) the settlement is consistent with the prescriptions and objectives of:
  - (A) IC 4-21.5;
  - (B) IC 13-7 [*IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.*];
  - (C) IC 13-30; and
  - (D) applicable environmental regulations.

(b) In the event the parties reach settlement regarding the appeal of a permit, the parties to the settlement shall file with the presiding environmental law judge, a joint or stipulated motion to dismiss or withdraw petition for administrative review identifying the issues raised in the petition for administrative review that have been disposed of by the settlement document or agreement between the parties. The parties need not file the settlement document or agreement with the presiding environmental law judge.

(c) In the event the parties reach a settlement regarding the appeal of a commissioner's order as prescribed by IC 13-30-3-5, before the presiding environmental law judge

issues a final order, and the commissioner approves an agreed order based on the settlement as provided by IC 13-30-3-6, the parties shall notify the presiding environmental judge who shall then enter a final order.

(d) For each type of administrative proceeding, the presiding environmental law judge shall determine whether mediation is an appropriate means of alternative dispute resolution pursuant to IC 4-21.5-3.5.

(e) In the event the presiding environmental law judge determines mediation is an appropriate means of alternative dispute resolution, the parties to the mediation shall comply with IC 4-21.5-3-5. (*Office of Environmental Adjudication; 315 IAC 1-3-8; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736*)

### **315 IAC 1-3-9 Conduct of prehearing conference**

**Authority:** IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-19; IC 4-21.5-3-35

Sec. 9. (a) In addition to IC 4-21.5-3-19, the following may apply to prehearing conferences:

(1) Parties could be required to set a date to exchange witness lists which shall contain the names and addresses of all witnesses expected to be relied upon at the hearing, other than witnesses intended to be used solely for the purpose of impeachment or rebuttal.

(A) The names and addresses of witnesses discovered after the exchange of lists shall be furnished to the opposing party forthwith upon such discovery.

(B) Witnesses, whose names and addresses have not been exchanged, shall not be allowed to testify without permission of the presiding environmental law judge.

(C) The names of any witnesses to testify as experts shall be accompanied with a brief narrative summary of the witnesses' expected testimony.

(2) Parties could be required to set a date for exchange of items intended to be offered as exhibits.

(A) Copies of exhibits discovered after such exchange shall be furnished to the opposing party forthwith upon such discovery.

(B) Documents and exhibits that have not been exchanged shall not be introduced into evidence without the permission of the presiding environmental law judge.

(C) The presiding environmental law judge shall allow the parties reasonable opportunity to review and respond to new evidence.

(3) The parties could be required to set a date for stipulations to be entered, with parties stipulating to the fullest extent possible, the issues, undisputed facts, authenticity and admissibility of exhibits, and any and all other matters which will expedite the hearing by reducing formal proof.

(4) The parties could be required to file a statement with the presiding environmental law judge as to all existing disputed issues of fact and law of the cause of action.

(5) The parties could be required to be prepared to discuss any presently contemplated or pending preliminary motions.

(b) No transcript of any prehearing conferences shall be made by the office unless requested, upon timely motion by a party, and ordered by the presiding environmental law judge. (*Office of Environmental Adjudication; 315 IAC 1-3-9; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736*)

### **315 IAC 1-3-10 Conduct of hearing; separation of witnesses**

**Authority:** IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-34; IC 4-21.5-3-35

Sec. 10. (a) The presiding environmental law judge shall govern the conduct of a hearing and the order of proof.

(b) On a motion by a party before the commencement of testimony, the presiding environmental law judge may provide for a separation of witnesses. (*Office of Environmental Adjudication; 315 IAC 1-3-10; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736*)

### **315 IAC 1-3-11 Evidence**

**Authority:** IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-25; IC 4-21.5-3-26; IC 5-14-3-4

Sec. 11. (a) In addition to IC 4-21.5-3-25, IC 4-21.5-3-26, and IC 5-14-3-4, the following shall apply:

(1) Trade secrets; confidential, commercial, and financial information.

(A) In the presentation, admission, disposition, and use of evidence, the presiding environmental law judge shall preserve the confidentiality of trade secrets and other commercial and financial information to the extent required by statute.

(B) The confidential or trade secret status of any information shall not preclude its being introduced into evidence.

(C) The presiding environmental law judge may make such protective or other orders as may be necessary to consider such evidence in camera, including the preparation of a reviewable order to address questions of law, fact, or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

(2) Verified statements.

(A) The presiding environmental law judge may admit into the record as evidence, in lieu of oral

testimony, verified statements of fact or opinion prepared by a witness or his attorney.

(B) The admissibility of a verified statement shall be subject to the same procedural requirements as if the testimony were produced under oral examination.

(C) The verified statement of a witness, whether or not a party, may be used by any party if the presiding environmental law judge finds:

(i) that the witness is dead; or

(ii) that the witness is outside the state, unless it appears that the absence of the witness was procured by the party offering the statement; or

(iii) that, despite due diligence, the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) that the party offering the statement has been unable to procure the attendance of the witness by subpoena; or

(v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of due process and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(vi) upon agreement of the parties.

(D) If only part of a statement is offered into evidence by a party, an adverse party may require the offering party to introduce any other part which ought in context to be considered with the part introduced, and any party may introduce any other parts.

(E) The presiding environmental law judge shall allow reasonable opportunity to review such statement.

(3) Exhibits.

(A) An original and one (1) copy of each exhibit shall be filed with the presiding environmental law judge for the record; and

(B) A copy of each exhibit shall be furnished to each party or their counsel.

(C) A certified copy of any exhibit may be substituted for the original once admitted into the record.

(b) Objections concerning the conduct of the hearing shall be stated orally during the hearing.

(1) The party raising the objection shall supply a short statement of the grounds.

(2) Both the objection and any ruling by the presiding environmental law judge on an objection shall be part of the record.

(3) An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(c) Whenever evidence is excluded from the record,

the party offering the evidence may make an offer of proof, which shall be included in the record.

(1) The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded.

(2) The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded and may include a brief statement describing the nature of the evidence excluded.

*(Office of Environmental Adjudication; 315 IAC 1-3-11; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3737)*

### **315 IAC 1-3-12 Continuances of prehearing conference, status conference, stay hearing, and hearing**

**Authority:** IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-34; IC 4-21.5-3-35

Sec. 12. (a) Unless prohibited [*sic.*] by statute, the presiding environmental law judge may grant a continuance of prehearing conference, status conference, stay hearing, or hearing:

(1) upon the motion of a party to the proceeding:

(A) at least five (5) days in advance of the date on which the prehearing conference, status conference, stay hearing, or hearing; or

(B) upon a showing of good cause for a shorter time period;

(2) after notice to all other parties; and

(3) after consideration of prejudice to other parties.

(b) A motion to continue a hearing because of the absence of evidence must be made upon affidavit and must show the following:

(1) The materiality of the evidence expected to be obtained.

(2) That due diligence has been used to obtain the evidence.

(3) The possible location of the evidence.

(4) If based on the absence of a witness:

(A) the name and address of the witness, if known;

(B) the probability of procuring the testimony in a reasonable time;

(C) that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party;

(D) what facts the party believes to be true; and

(E) that the party is unable to prove the facts by another witness whose testimony can be readily procured.

(c) If, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts the party seeking the continuance indicated

could not be presented, the hearing shall not be continued.

(d) The presiding environmental law judge shall grant the continuance whenever all parties have consented to such continuance. *(Office of Environmental Adjudication; 315 IAC 1-3-12; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3737; errata, 21 IR 4215)*

### **315 IAC 1-3-13 Proposed findings of fact, conclusions of law and final order; petitions for rehearing**

**Authority:** IC 4-21.5-3-35; IC 4-21.5-7-7

**Affected:** IC 4-21.5-3-28; IC 4-21.5-5

Sec. 13. (a) At such time as may be fixed by the presiding environmental law judge, a party may submit for the consideration of the presiding environmental law judge an original and one (1) copy of proposed findings of fact, conclusions of law, and proposed order.

(1) The presiding environmental law judge may require briefs when proposed findings of fact, conclusions of law, and proposed orders are submitted.

(2) The presiding environmental law judge may set a time by which reply briefs and response briefs must be submitted.

(3) All submissions shall be:

(A) in writing;

(B) served upon all parties; and

(C) contain references to the record and relied upon authorities.

(b) In addition to IC 4-21.5-3-28, the following shall apply to final orders:

(1) When the presiding environmental law judge issues an order that fully disposes of the issues, the order shall be denominated specifically as a final order.

(2) When either:

(A) a party withdraws his petition for review; or

(B) the case has been dismissed for any other reason; the presiding environmental law judge shall issue a final order signifying that the case has been disposed.

(c) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected on the motion of any party or on the presiding environmental law judge's own motion.

(d) An action of a petitioning party under this section does not toll the period in which a party may petition for judicial review under IC 4-21.5-5. However, if a rehearing is granted, this period is tolled and a new period begins on the date that a new final order is served. *(Office of Environmental Adjudication; 315 IAC 1-3-13; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3738)*

**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 person 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 environmental law judge issuing the order being appealed at the following address:

Office of Environmental Adjudication

150 West Market Street

Suite 618

Indianapolis, Indiana 46204.

*(Office of Environmental Adjudication; 315 IAC 1-3-14; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3738)*

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