

Document: Proposed Rule, **Register Page Number:** 28 IR 2772

Source: June 1, 2005, Indiana Register, Volume 28, Number 9

Disclaimer: This document was created from the files used to produce the official CD-ROM Indiana Register.

**TITLE 315 OFFICE OF ENVIRONMENTAL
ADJUDICATION**

Proposed Rule
LSA Document #05-73

DIGEST

Amends 315 IAC 1-2-1 and 315 IAC 1-3 and adds 315 IAC 1-3-2.1 and 315 IAC 1-3-15 concerning errata, a change in address, clarifications regarding amendment of pleadings, and filing procedures. Effective 30 days after filing with the secretary of state.

315 IAC 1-2-1	315 IAC 1-3-7
315 IAC 1-3-1	315 IAC 1-3-8
315 IAC 1-3-2	315 IAC 1-3-9
315 IAC 1-3-2.1	315 IAC 1-3-10
315 IAC 1-3-3	315 IAC 1-3-12
315 IAC 1-3-4	315 IAC 1-3-14
315 IAC 1-3-5	315 IAC 1-3-15

SECTION 1. 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 4-21.5-1; IC 4-21.5-3-27; IC 4-21.5-7-1; IC 4-21.5-7-2; IC 13-11-2-51; IC 13-17-2; IC 13-18-1; IC 13-19-2; 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)~~ **(1)** “Act” means IC 4-21.5-7.

~~(2)~~ **(2)** “Agency” means the Indiana department of environmental management.

~~(3)~~ **(1)** “Board” means a board established or created under IC 13-7-2, IC 13-17-2, IC 13-18-1, IC 13-9-2, or IC 13-19-2, or IC 13-23-11.

~~(4)~~ **(2)** “Commissioner” means the commissioner of the department of environmental management or the commissioner’s designee.

~~(5)~~ **(3)** “Confidential information” means any information that:

(A) is entitled to treatment as; or ~~that~~

(B) has been determined to be;

confidential information under ~~326 IAC 17-1, 327 IAC 12-1, or 329 IAC 6-1~~, **326 IAC 17.1, 327 IAC 12.1, or 329 IAC 6.1** 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)~~ **(4)** “Decision” means an agency action, as prescribed by IC 4-21.5-1-4, **of the department.**

(5) “Department” has the meaning set forth in IC 13-11-2-51.

~~(7)~~ **(6)** “Director” means the director of the office. ~~of environmental adjudication.~~

~~(8)~~ **(7)** “Electronic facsimile transmission” or “fax” means a method of transmitting and receiving information in **eight and one-half inch (8½) by eleven (11) inch** paper medium over telephone lines or other forms of electronic transmissions available to the office.

~~(9)~~ **(8)** “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.

~~(10)~~ **(9)** “Final order” means an order of the ~~environmental law judge~~, **ELJ**, acting as ultimate authority, disposing of the proceeding prescribed by IC 4-21.5-3-27.

~~(11)~~ **(10)** “Office” means the ~~Indiana~~ office of environmental adjudication.

~~(12)~~ **(11)** ~~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)~~ **(12)** "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)

SECTION 2. 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 4-21.5-3-24; 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~~ **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 ~~environmental law judge~~ **ELJ** shall have authority to do the following:

(1) Conduct administrative hearings under **the following:**

~~(A)~~ IC 4-21.5. ~~and~~

(B) This article.

(2) Rule upon **the following:**

~~(A)~~ Motions.

~~(B)~~ Requests. ~~and~~

~~(C)~~ Offers of proof.

(3) Dispose of procedural requests. ~~and~~

(4) Issue all necessary orders.

~~(3)~~ **(5)** Administer oaths and affirmations. ~~and~~

(6) Consider affidavits submitted by the parties.

~~(4)~~ **(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 ~~pursuant to~~ **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. ~~and~~

(12) Receive documentary or other evidence.

~~(5)~~ **(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.

~~(6)~~ **(14)** Admit, limit, or exclude evidence in accordance with IC 4-21.5.

~~(7)~~ **(15)** Hear and decide questions of facts and law.

~~(8)~~ **(16)** Issue **the following:**

~~(A)~~ Subpoenas. ~~and~~

~~(B)~~ Subpoenas deuces tecum.

~~(9)~~ **(17)** Require parties to:

~~(A)~~ attend conferences for the settlement or simplification of the issues; ~~to~~

~~(B)~~ expedite the proceedings; or ~~to~~

~~(C)~~ participate in alternative dispute resolution.

~~(10)~~ **(18)** Where ~~no~~ **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.**

~~(11)~~ **(19)** In addition to the remedies provided in IC 4-21.5-3-24, to impose reasonable and appropriate sanctions ~~pursuant to~~ **under the following:**

(A) IC 4-21.5-6-2. ~~and~~

(B) Indiana Trial Rules 26 through 37.

~~(12)~~ **(20)** Do all other acts and take all measures necessary for the:

(A) maintenance of order; and ~~for the~~

(B) efficient, fair, and impartial adjudication of issues arising;
in proceedings governed by this article.

~~(13)~~ **(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.

(c) For failure to attend a prehearing conference, the presiding ~~environmental law judge~~ **ELJ** may **do the following:**

(1) Strike claims or defenses.

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

SECTION 3. 315 IAC 1-3-2 IS AMENDED TO READ AS FOLLOWS:

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 a stay, in writing, is filed with the Office of Environmental Adjudication, ~~150 West Market Street, Suite 618, Indiana Government Center-North, 100 North Senate Avenue, Room N1049, Indianapolis, Indiana 46204.~~ **46204-2211.**

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

(1) **The:**

(A) name;

(B) address; and

(C) telephone number;

of each person filing the petition.

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

(3) **A** 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~~ **State** with particularity the legal issues proposed for consideration in the proceedings ~~and~~ **as follows:**

(A) In a case involving an appeal of a permit, **identify the following:**

~~(A) identification of (i)~~ **(i)** Environmental concerns or technical deficiencies related to the action of the commissioner ~~which that~~ is the subject of the petition. ~~and~~

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

(B) In a case involving any other appeal of an order of the commissioner, identify those:

(i) facts;

(ii) terms; or

(iii) conditions;

for which the petitioner requests review.

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

- (1) Identification of any persons represented by the person making the request pursuant to under IC 4-21.5-3-15.
- (2) A statement identifying the person against whom administrative review is sought.
- (3) A copy of the **pertinent portions of the** notice of the commissioner's action issued by the department of environmental management which **that** is the basis of the petition for administrative review. **This shall, at a minimum, consist of that portion of the commissioner's action that identifies the following:**
 - (A) The person to whom the action is directed.
 - (B) The identification number of the action.
- (4) A statement indicating the identification of the petitioner's attorney or other representative.

(d) A petition for administrative review, filed pursuant to under IC 4-21.5-3-7(a), may be amended as a matter of course at any time within thirty (30) days after the earlier of the following dates:

- (1) The initial prehearing conference.
- (2) The filing of a motion to dismiss.

Otherwise, a party may amend his or her petition only by leave of the presiding ELJ or by written consent of all parties. Leave shall be given when justice so requires, but not later than thirty (30) days before the final hearing.

(e) If the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(f) Copies of the petition for administrative review shall be sent to the following:

- (1) The agency and to any person whose interest is affected by the petition department.
- (2) All persons to whom the order is directed.

(Office of Environmental Adjudication; 315 IAC 1-3-2; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 4. 315 IAC 1-3-2.1 IS ADDED TO READ AS FOLLOWS:

315 IAC 1-3-2.1 Stay

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

Affected: IC 13-15-6-1; IC 13-30-3-5

Sec. 2.1. (a) A stay applies automatically upon the filing of a timely petition for review when a person petitions for review of an order of the commissioner directed to that person under IC 13-30-3-5.

(b) The party requesting a stay of effectiveness has the burden of demonstrating, by a preponderance of the evidence, the following:

- (1) The person will suffer irreparable harm pending the resolution of the case on the merits because its remedies at law are inadequate.
- (2) The person is likely to prevail on the merits.
- (3) The threatened injury to the person requesting the stay outweighs the threatened harm that the grant of the stay may inflict on the other party.
- (4) The public interest will be served by the grant of the stay.

(c) A temporary emergency stay order may be granted without a hearing under the following circumstances:

- (1) Upon written notice to the other parties or their attorneys only if it clearly appears:
 - (A) from specific facts shown by affidavit; or
 - (B) by a verified motion;

that immediate and irreparable injury, loss, or damage will result to the applicant before the other parties can be heard in opposition.

- (2) The resulting order shall include a brief statement of the facts and the laws that justify the office's decision to issue the emergency order.
- (3) The matter shall be set for an evidentiary hearing as quickly as practicable.
- (4) An order issued under this section expires on the earliest of the following:
 - (A) The date set in the order.
 - (B) The date of the evidentiary hearing held under subsection (b).

(C) The lapse of sixty (60) days.

(Office of Environmental Adjudication; 315 IAC 1-3-2.1)

SECTION 5. 315 IAC 1-3-3 IS AMENDED TO READ AS FOLLOWS:

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) **The requirements for the filing of pleadings and documents are as follows:**

- (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~~ **ELJ** may be completed, ~~pursuant to under~~ IC 4-21.5-3-1(f), by **any of** the following methods:

- (A) Personal delivery.
- (B) First class **priority or express United States** mail.
- (C) Certified mail.
- (D) Private carrier.

(E) Electronic fax transmission. All documents filed by fax must be accompanied by a descriptive cover sheet that states the following:

- (i) The title of the document.**
- (ii) The number of pages.**
- (iii) The identity and voice telephone number of the sending party.**

Filing by fax shall be followed by the filing of the signed original and attachments with the office by one (1) of the methods specified in this subdivision within one (1) day after the document is filed by fax.

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

- (A) Personal delivery.
- (B) First class **priority or express United States** 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 within one (1) day after the document is filed by facsimile.~~

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

~~(AA) (i) The title of the document.~~

~~(BB) (ii) The case number.~~

~~(CC) (iii) The number of pages.~~

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

~~(EE) (v) The instructions for filing.~~

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

(F) If all parties and the presiding ELJ consent, by any other means.

- (5) Fax transmissions will be accepted for filing only during the regular business hours as set forth in subsection (d). Transmissions received by the office after close of business shall be filed effective the next regular business day.**

(b) The requirements for service of pleadings and documents are as follows:

- (1) All documents and pleadings filed with the presiding ~~environmental law judge~~ **ELJ** 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 a party~~ **an individual a party** appears without separate representation, service must be made upon the ~~individual party~~ **individual party**.
- (3) A signed certificate of service, **in substantially the following form**, 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 **subsection (a)(3) or (4) above**]", shall accompany each document filed or served.
- (4) When the presiding ~~environmental law judge~~ **ELJ** corresponds directly with the parties:

(A) the original of the correspondence shall be maintained by the presiding ~~environmental law judge ELJ~~ in the official file; and
(B) a copy shall be sent to all parties. ~~by certified mail, return receipt requested, first class mail, personal service, or overnight, express mail.~~

(c) **The filing of a document with the office is complete on the earliest of the following:**

(1) **The date on which the document is delivered to the office.**

(2) **The date of the postmark on the envelope containing the document if the document is mailed to the office by United States mail.**

(3) **The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the office by private carrier.**

~~(c)~~ (d) Where ~~the~~ 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~~ **4:30** p.m., EST, will be deemed to have been received on the next following regular day. However, a document filed by ~~electronic facsimile fax~~ 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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323*)

SECTION 6. 315 IAC 1-3-4 IS AMENDED TO READ AS FOLLOWS:

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) **The form of pleadings and documents shall be as follows:**

(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:

(A) action; and ~~the~~

(B) 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:

(A) the signer has read the pleadings, letter, or other document;

(B) ~~that~~ to the best of the signer's knowledge, information, and belief, the statements made therein are true; and

(C) ~~that~~ it is not interposed for delay.

(4) **Attachments to pleadings, including, but not limited to, the permit, may be submitted electronically as follows:**

(A) **In a compatible format to the office.**

(B) **To the other parties only with their consent.**

(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 ELJ~~ 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:

(1) IC 4-21.5;

(2) IC 13; or

(3) this article.

(*Office of Environmental Adjudication; 315 IAC 1-3-4; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323*)

SECTION 7. 315 IAC 1-3-5 IS AMENDED TO READ AS FOLLOWS:

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 4-21.5-3-35

Sec. 5. ~~(a)~~ Unless prohibited by statute, the presiding ~~environmental law judge~~ **ELJ** may grant an extension of time for the filing of any pleading, document, or motion **as follows:**

- (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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)~~

SECTION 8. 315 IAC 1-3-7 IS AMENDED TO READ AS FOLLOWS:

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~~ **ELJ** may enter a final order of dismissal if the person who initiated administrative review requests the proceeding be dismissed.

(b) An ~~environmental law judge~~ **ELJ** may, sua sponte or upon the motion of a ~~person~~ **party**, 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:
 - ~~(A)~~ file a ~~responsible~~ **responsive** pleading required by statute or rule; **or**
 - ~~(2) A party fails to~~ **(B)** attend or participate in a prehearing conference, hearing, or other stage of the proceeding.
- ~~(3)~~ **(2)** The party responsible for taking action does not take action on a matter for a period of at least sixty (60) days.
- ~~(4)~~ **(3)** The ~~person~~ **party** 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:

- (1)** requesting the order not be imposed; and
- (2)** 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~~ **ELJ** may:

- (1)** adjourn the proceedings; or
- (2)** 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~~ **ELJ** shall issue an order of default or dismissal. If the party has filed a written motion under subsection (c), the presiding ~~environmental law judge~~ **ELJ** 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~~ **ELJ** shall:

- (1)** conduct any action necessary to complete the proceeding without the participation of the party in default; and ~~shall~~
- (2)** 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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 9. 315 IAC 1-3-8 IS AMENDED TO READ AS FOLLOWS:

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 4-21.5-3.5-2; 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 **the settlement is:**

- (1) ~~the settlement is~~ within the legal authority of the ~~agency; department;~~ and
- (2) ~~the settlement is~~ consistent with the prescriptions and objectives of:
 - (A) IC 4-21.5;
 - (B) ~~IC 13-7;~~ **IC 13;**
 - (C) ~~IC 13-30;~~ and
 - (D) **(C)** applicable environmental regulations.

(b) In the event the parties reach a 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 resolving all issues raised in the petition for in controversy, the party who initiated administrative review that have been disposed of by the settlement document or agreement between the parties. shall submit a written motion requesting that the proceeding be dismissed.~~ The parties need not file the settlement document or agreement with the presiding environmental law judge. **ELJ. The presiding ELJ shall then enter a final order of dismissal.**

(c) In the event the parties reach a settlement **resolving all issues in controversy** regarding the appeal of a commissioner's order as prescribed by IC 13-30-3-5, before the:

- (1) presiding ~~environmental law judge ELJ~~ issues a final order; and ~~the~~
 - (2) commissioner approves an agreed order based on the settlement as provided by IC 13-30-3-6;
- the parties shall notify the presiding ~~environmental law judge ELJ~~ who shall then enter a final order **of dismissal.**

(d) For each type of administrative proceeding, the presiding ~~environmental law judge ELJ~~ shall determine whether mediation is an appropriate means of alternative dispute resolution ~~pursuant to under~~ 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.~~ **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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323*)

SECTION 10. 315 IAC 1-3-9 IS AMENDED TO READ AS FOLLOWS:

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 for~~ prehearing conferences, **the parties could be required to do the following:**

- (1) ~~Parties could be required to~~ Set a date to exchange **the following:**

(A) Witness lists ~~which that~~ 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, **as follows:**

- (A) (i) The names and addresses of witnesses discovered after the exchange of lists shall be furnished to the opposing party forthwith upon such discovery.
- (B) (ii) Witnesses, whose names and addresses have not been exchanged, shall not be allowed to testify without permission of the presiding ~~environmental law judge. ELJ.~~
- (C) (iii) 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~~ (B) Items intended to be offered as exhibits **as follows:**

- (A) (i) Copies of exhibits discovered after ~~such the~~ exchange shall be furnished to the opposing party forthwith upon ~~such the~~ discovery.
- (B) (ii) Documents and exhibits that have not been exchanged shall not be introduced into evidence without the permission of the presiding ~~environmental law judge. ELJ.~~
- (C) (iii) The presiding ~~environmental law judge ELJ~~ shall allow the parties reasonable opportunity to review and respond to new evidence.

- (3) ~~The parties could be required to~~ (2) Set a date for stipulations to be entered with parties stipulating to the fullest extent possible **the following:**

(A) Issues.

(B) Undisputed facts.

(C) Authenticity and admissibility of exhibits. ~~and~~

(D) Any and all other matters ~~which that~~ will expedite the hearing by reducing formal proof.

~~(4) The parties could be required to~~ (3) File a statement with the presiding environmental law judge ELJ as to all existing disputed issues of fact and law of the cause of action.

~~(5) The parties could be required to~~ (4) 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:

(1) requested upon timely motion by a party; and

(2) ordered by the presiding environmental law judge ELJ.

(c) If no transcript is required, the parties have the option of conducting the prehearing conference by telephone. The party wishing to conduct the prehearing conference telephonically shall:

(1) contact the other parties;

(2) secure their agreement to conduct the prehearing conference by telephone; and

(3) notify the office at least one (1) business day in advance of the scheduled prehearing conference.

The party requesting the telephonic prehearing conference has the obligation of initiating the necessary phone calls. The party should have all the other parties on the telephone before contacting the ELJ. (*Office of Environmental Adjudication; 315 IAC 1-3-9; filed Jun 2, 1998, 3:47 p.m.: 21 IR 3736; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323*)

SECTION 11. 315 IAC 1-3-10 IS AMENDED TO READ AS FOLLOWS:

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 ELJ shall govern the:

(1) conduct of a hearing; and ~~the~~

(2) order of proof.

(b) The office's review of a department decision is de novo.

~~(b)~~ (c) On a motion by a party, before the commencement of testimony, the presiding environmental law judge ELJ 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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323*)

SECTION 12. 315 IAC 1-3-12 IS AMENDED TO READ AS FOLLOWS:

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~~ **prohibited** by statute, the presiding environmental law judge ELJ may grant a continuance of a prehearing conference, status conference, stay hearing, or hearing **as follows:**

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

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

(B) ~~upon~~ **for** 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.

The party requesting the continuance shall state in the motion what efforts were made to contact the other parties and whether any other party objects to the motion.

(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, **the following:**
 - (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:
 - (i) the party; ~~nor by or~~
 - (ii) 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; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323)

SECTION 13. 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 ~~person~~ **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 ~~environmental law judge~~ **ELJ** issuing the order being appealed at the following address:

Office of Environmental Adjudication

~~150 West Market Street~~

~~Suite 618~~

Indiana Government Center-North

100 North Senate Avenue, Room N1049

Indianapolis, Indiana ~~46204~~: **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)

SECTION 14. 315 IAC 1-3-15 IS ADDED TO READ AS FOLLOWS:

315 IAC 1-3-15 Representatives and attorneys; eligibility to practice

Authority: IC 4-21.5-7-7

Affected: IC 4-21.5-3

Sec. 15. (a) All attorneys who appear in a representative capacity on behalf of a party must file written notice of appearance setting forth the following:

- (1) The:
 - (A) name;
 - (B) address;
 - (C) telephone number;
 - (D) fax number; and
 - (E) electronic address;of the attorney.
- (2) The name and address of the party.

(3) The Indiana attorney number.

(4) If not licensed in Indiana, the following:

(A) A verified statement that the attorney is in good standing.

(B) A designation of the jurisdiction in which the attorney is currently licensed to practice law.

(C) The attorney registration number.

(5) If an attorney files a petition for review on behalf of his or her client that contains the information required by subdivisions (1) through (4), the petition shall serve as a written notice of appearance.

(b) Notwithstanding provisions of Rule 5.5 of the Indiana Rules of Professional Conduct, a representative that is not an attorney of a party must file written notice of the representation. The written notice shall include the following:

(1) The information requested in subsection (a)(1) and (a)(2).

(2) The written consent of each party whom he or she purports to represent.

(c) The presiding ELJ may require an attorney or representative appearing before it to:

(1) disclose the identity of the person the attorney or representative represents; and

(2) present proof that the attorney or representative is authorized to act on the client's behalf.

(d) An attorney may only withdraw his or her appearance upon written notice to the presiding ELJ. (*Office of Environmental Adjudication; 315 IAC 1-3-15*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2005 at 9:00 a.m., at the Office of Environmental Adjudication, Indiana Government Center-North, 100 North Senate Avenue, Room N1049, Indianapolis, Indiana the Office of Environmental Adjudication will hold a public hearing on proposed amendments concerning errata, a change of address, clarifications regarding amendment of pleadings, and filing procedures. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N1049 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Catherine Gibbs
Environmental Law Judge
Office of Environmental Adjudication