

**Objections to the Issuance of NPDES General Permit  
to the City of Angola and Tri-State University, Stueben County  
2005 OEA 14 (03-W-J-3205)**

---

**TOPICS:**

dismissal  
rules  
invalidate rules  
water permits

**PRESIDING JUDGE:**

Gibbs

**PARTY REPRESENTATIVES:**

Petitioners:	Thomas Neltner
Respondents/Permittees:	Kim Shoup
IDEM:	Anne Patterson

**ORDER ISSUED:**

March 15, 2005

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

---

**Objections to the Issuance of NPDES General Permit  
to the City of Angola and Tri-State University, Stueben County  
2005 OEA 14 (03-W-J-3205)**

STATE OF INDIANA	)	BEFORE THE INDIANA OFFICE OF
	)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION	)	

IN THE MATTER OF:	)	
	)	
OBJECTIONS TO THE ISSUANCE OF	)	
NPDES GENERAL PERMIT TO THE CITY	)	
OF ANGOLA AND TRI-STATE UNIVERSITY	)	CAUSE NO. 03-W-J-3205
STUEBEN COUNTY	)	
_____	)	
Kathy and Bruce McCoy,	)	
Petitioners,	)	
	)	
City of Angola, Tri-State University	)	
Respondents/Permittees	)	
	)	
Indiana Department of Environmental Management	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER**

This matter having come before the Court on the Indiana Department of Environmental Management’s (“IDEM”) Motion to Dismiss; and the Environmental Law Judge having considered the petitions, motions, briefs, responses and replies of the parties and being duly advised in the premises, now makes the following findings of fact, conclusions of law and Order:

**Findings of Fact**

1. The City of Angola and Tri-State University submitted a Notice of Intent for a NPDES general permit under 327 IAC 15-13 to the IDEM.
  
2. Pursuant to 327 IAC 15-13-6(a)(4), notice of the Notice of Intent was published in the local newspaper. Bruce and Kathy McCoy (the “McCoy’s”) jointly filed a Petition for Review objecting to the issuance of a general permit. Gretchen Weicht and Larry Watkins also filed a joint Petition for Review objecting to the issuance of the general permit.<sup>1</sup> The petitions for administrative review were timely filed.<sup>2</sup>

---

<sup>1</sup> Gretchen Weicht and Larry Watkins were dismissed from this proceeding on February 8, 2005 on their motion.

<sup>2</sup> The Court cannot independently determine from the Court’s file whether the Petitions were timely filed. However, the IDEM, in its Proposed Findings of Fact, Conclusions of Law and Order, stipulates that this is so. The Court finds no evidence to the contrary. Therefore, the Court finds that the Petitions were, in fact, timely filed.

**Objections to the Issuance of NPDES General Permit  
to the City of Angola and Tri-State University, Stueben County  
2005 OEA 14 (03-W-J-3205)**

3. On January 20, 2004, the McCoys, by counsel, filed their Amended Petition for Administrative Review. The McCoys raise 2 reasons for their request for administrative review. The first reason is that “General Permit Rule for storm water run-off with municipal separate storm sewer system conveyances at 327 IAC 15-13 is invalid pursuant to 327 IAC 15-2-10.”<sup>3</sup> The second reason is “IDEM acted arbitrarily and capriciously by not considering or acting on petitioners demand for an individual NPDES permit for the City of Angola.”<sup>4</sup>
4. On August 31, 2004, the IDEM filed its Motion to Dismiss that portion of the Amended Petition that challenges the validity of 327 IAC 15-2-10. IDEM’s argument alleges that the Office of Environmental Adjudication does not have subject matter jurisdiction to hear any argument based on the invalidity of a regulation.
5. The McCoys filed their Response to Indiana Department of Environmental Management’s Motion to Dismiss on October 28, 2004.
6. Proposed Findings of Fact, Conclusions of Law and Order were filed on January 7, 2005. Oral argument was held on March 8, 2005.

**CONCLUSIONS OF LAW**

1. 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.
2. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) pursuant to Ind. Code § 4-21.5-7-3. The relevant portion of this statute states:
  - (a) The office of environmental adjudication is established to review, under this article, decisions of the commissioner of the department of environmental management.
  - (b) The office of environmental adjudication shall:
    - (1) conduct adjudicatory hearings required to implement:
      - (A) air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19; and
      - (B) rules of:
        - (i) the air pollution control board;
        - (ii) the water pollution control board;
        - (iii) the solid waste management board; and
        - (iv) the financial assurance board;

---

<sup>3</sup> See Amended Petition for Administrative Review, filed January 20, 2004, page 1.

<sup>4</sup> See Amended Petition for Administrative Review, filed January 20, 2004, page 3.

**Objections to the Issuance of NPDES General Permit  
to the City of Angola and Tri-State University, Stueben County  
2005 OEA 14 (03-W-J-3205)**

3. The word “decisions” is not defined. Therefore, this Court must look to the rules of statutory construction to determine its meaning. When construing a statute or regulation, the Court must apply certain rules of statutory construction. One of these rules is, “If a statute is subject to interpretation, our main objectives are to determine, effect, and implement the intent of the legislature in such a manner so as to prevent absurdity and hardship and to favor public convenience.” *State v. Evans*, 790 N.E.2d 558, 560 (Ind. App., 2003).
4. IC 4-21.5-1-9 defines “order” as “an agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one (1) or more specific persons.”
5. “Agency action” is defined under IC 4-21.5-1-4 as:
  - (1) The whole or part of an order.
  - (2) The failure to issue an order.
  - (3) An agency’s performance of, or failure to perform, any other duty, function, or activity under this article.
6. While the word “decisions” is not defined, it is clear from reading IC 4-21.5-7-3 that “decisions” means an “order” as defined in IC 4-21.5-1-9 and/or “agency action” as defined in IC 4-21.5-1-4. The Court reaches this conclusion after examining the wording of IC 4-21.5-7-3. The statute states that the OEA is established to review decisions made under “this article”, *that is, Article 21.5, the Administrative Orders and Procedures Act*. IC 4-21.5-2-1 states that “this article creates minimum procedural rights and imposes minimum procedural duties” for adjudicatory hearings for challenging the orders of an administrative agency.
7. The statute gives the OEA the authority to conduct hearings required to implement the laws and regulations of the air pollution control board, the water pollution control board, the solid waste management board, and the financial assurance board. It does not give the OEA the authority to oversee these boards’ rulemaking functions. IC 4-21.5-7-3(b)(1).
8. It is clear from these statutes that OEA does not have subject matter jurisdiction to hear challenges to the validity of rules.
9. Petitioner points to *In the Matter of: Objection to the Denial of Permit Approval Sunman Waterworks*, 1999 In Env Lexis 21 (In Env 1999) in support of its argument that this Court has the authority to decide this issue. Pursuant to IC 4-21.5-3-27(c), this Court must state its reasons for deviating from prior orders. In this matter, the *Sunman* case is factually distinguishable from this matter. In *Sunman*, the issue was one of statutory interpretation and the applicability of a rule in light of revisions to the statute. In this case, the Petitioner has asked this Court to invalidate a rule.

**Objections to the Issuance of NPDES General Permit  
to the City of Angola and Tri-State University, Stueben County  
2005 OEA 14 (03-W-J-3205)**

**ORDER**

IT IS THEREFORE ORDERED that the Office of Environmental Adjudication hereby **DISMISSES** that portion of the McCoys' Amended Petition that challenges the issuance of the Permit based on the invalidity of 327 IAC 15-13. No evidence relevant to this matter may be introduced at the hearing.

The hearing remains scheduled for May 3, 2005 to hear Petitioners' evidence on whether the IDEM improperly failed to act or consider the Petitioners' request that the IDEM require the City of Angola to apply for an individual NPDES permit.

You are further notified that pursuant to provisions of IC 4-21.5-7-5, the Office of Environmental Adjudication serves as the ultimate authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is an order subject to further review consistent with applicable provisions of IC 4-21.5 and other applicable rules and statutes.

**IT IS SO ORDERED this 15th day of March, 2005 in Indianapolis, IN.**

---

Hon. Catherine Gibbs  
Environmental Law Judge