

Cause #: 00-48Q
Name: AK Steel, Rockport
Administrative Law Judge: William K. Teegarden
Date: October 2, 2000
Commission Action:

III. FINDINGS OF FACT

1. The SBC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-12 and 675 IAC 12 apply to this proceeding.
3. The SBC is the state agency responsible for reviewing building plans and issuing design releases for industrial buildings built in Indiana.
4. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to decisions of the SBC.
5. At all times relevant to this proceeding, AK was a major industrial business building a steel plant near Rockport, Indiana.
6. In January of 1997, AK filed plans for a very large facility with the SBC.
7. Pursuant to 675 IAC 12-3-2, the SBC determined the processing fee to be Category A and collected a fee of \$57,502.00.
8. AK contends the plans should have been classified as Category B, thus reducing the fee to \$24,643.50.
9. AK paid the full fee on January 30, 1997.
10. AK received its design release from the SBC on March 4, 1997.
11. The petition for administrative review was filed on May 3, 2000.
12. Under normal circumstances, it would be easy to dismiss the petition for not being filed in the 18 day period provided by IC 4.21.5-3-7.
13. However, the release from the SBC did not conform to IC 4-21.5-3-5 (c) which requires the Agency to include a brief explanation of available procedure and the time limits for seeking administrative review.

14. IC 4-21.5 does not provide a specific remedy for failure to include appeal rights.
15. Case law directly on point is also unavailable.
16. The Natural Resources Commission (NRC) indexes their administrative cases pursuant to IC 4-21.5-3-32 and therefore may use final decisions as precedent.
17. These final orders of contested matters are available on the NRC website under the acronym "CADDNAR".
18. While not binding on other agencies, these decisions may help provide guidance on the application of IC 4-21.5 which should not vary from agency to agency.
19. There are two cases in CADDNAR which may be helpful.
20. In the case of St. John Save Our Streams v. DNR and Mercantile National Bank (89-054W, 1989), the DNR failed to notify a local environmental group probably entitled to notice of the grant of a floodway construction permit.
21. The petition for review was received two or three days after the time had expired.
22. The NRC adopted the findings of the administrative law judge which found in effect that the absence of proper notice tolls the time limit until the party has actual knowledge of the permit or should have actual knowledge of it. Therefore, the petition for review in the St. John case was timely.
23. In the case of Hoosier Environmental Counsel v. DNR and Vigo Coal (96-026R, 1997), the DNR gave a grossly inadequate notice of the grant of a permit to HEC.¹
24. HEC, among other requests, asked for more information within the time provided for administrative review.
25. The NRC found that since HEC could not comply with the technical requirements of IC 4-21-5-3-3 since it could not specify the order it wished reviewed and the reason it could not comply was the fault of the Agency, it would treat the HEC filings as a valid petition for administrative review.
26. One recent Court of Appeals case also is informative on the issue of

¹ The notice in question did not mention the name, number, or location of the permit.

improper notice.

27. In City of North Vernon v. IDEM, et al (40A05-9904-CV-180, March 20, 2000), the Court of Appeals tackled an interesting case in which the petition for judicial review was filed over one year after the final agency action.
28. The parties agreed that the City had not been given notice of a sewer district formation proceeding by IDEM as required by law.
29. The City admitted it had actual notice of the order in June of 1997, approximately seven months after the agency action became final.
30. Suit was not filed until September of 1998.
31. The Court of Appeals found that since the City had not filed suite within 30 days of having actual knowledge of IDEM's action, IC 4-21.5-5 prohibited judicial review.
32. There is a common thread in these decisions.
33. In the two administrative cases, the petitioners acted promptly upon discovering there was an outstanding Agency order that it might want to appeal and were allowed to continue.
34. In the Appeals Court case, the City did not act promptly upon discovering an Agency action it wished to appeal.
35. In the AK case, the initial determination was made in March of 1997.
36. The administrative law judge takes official notice of his own records and notices that by November of 1997, the SBC was putting appeal rights on Design Releases, See IN RE: Ball Memorial Hospital, (97-49, 1997)
37. Further, AK's representatives in this case have appealed orders of the SBC involving design releases during 1998. See IN RE: KNIGHTS OF COLUMBUS, (98-31, 1998).
38. Had this petition for administrative review been filed during 1997 or early 1998, the petitioner would have a very strong argument.
39. However, the administrative law judge must conclude that AK had actual knowledge of appeal rights prior to the year 2000, thus a petition for review pursuant to IC 4-21.5 filed on May 3, 2000, clearly falls outside the time limit

found in IC 4-21.5-3-7.

40. Since one criteria of qualifying for administrative review is the filing of a petition for review within the time provided by law (18 days in this case), AK does not qualify for administrative review.
41. The petition for administrative review should be dismissed.

NONFINAL ORDER

The petition for administrative review filed by AK Steel on May 3, 2000, is hereby dismissed.