

Cause #: 97-22F

Name: Eastern International Trading Corp.

Administrative Law Judge: William K. Teegarden

Date: December 12, 1997

Commission Action: Affirmed

## **FINDINGS OF FACT**

1. The Fire Prevention and Building Safety Commission (“FPBSC”) is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 applies to this proceeding.
3. The FPBSC has the authority to conduct administrative reviews of orders issued by local fire departments and is the ultimate authority with respect to such orders.
4. On April 3, 1997, a duly authorized representative of the Warren Township Fire Department (“WTFD”) issued a fire code enforcement order to Eastern International Trading Corporation (“Eastern”).
5. On April 24, 1997, Eastern filed a petition for administrative review with the FPBSC.
6. IC 4-21.5-3-7(a) states that to qualify for administrative review, “. . . a person must petition for review in writing that:
  - (1) [not at issue], and
  - (2) is filed with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order . . .”
7. Any person who does not meet the requirements of paragraph 6 above thus does not qualify for administrative review.
8. IC 4-21.5.3-2 provides that if a notice is served through the U.S. mail, 3 days is added to the time requirements, thus an aggrieved party has 18 days to file a petition for administrative review of an order alleging fire code violations.
9. IC 4-21.5-3-1(f) provides that “The filing of a document with the ultimate authority is complete on the earliest of the following dates that apply to

the filing:

- (1) The date on which the document is delivered to the ultimate authority under subsection (c).
  - (2) The date of the postmark on the envelope containing the document . . . .
  - (3) The date on which the document is deposited with a private carrier, . . . .”
10. IC 4-21.5-3-2 (e) provides that the time allowed for the filing of a petition for review “. . . commences with respect to a particular person or the earlier of the date that:
- (1) The person is personally served with the notice; or
  - (2) a notice for the person is deposited in the United States mail.”
11. The file of the FPBSC shows that the petition for review was filed via hand delivery on April 24, 1997.
12. Eastern acknowledges receipt of the April 3, 1997, (a Thursday) order on April 7, 1997, (a Monday).
13. The operative date of the April 3, 1997, order is neither the date on the order nor the date of receipt; it is the date the order is deposited in the U.S. mail.
14. While there is no direct evidence of that date, based on 10 years as an administrative law judge, the judge can conclude that the most likely scenario is that the order was placed into the U.S. mail system no later than April 4, 1997.<sup>1</sup>
15. The 18 days would thus expire on April 22, 1997.
16. The petition for administrative review was filed 2 days late and thus pursuant to IC 4-21.5-3-7, the petitioner does not qualify for administrative review of

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<sup>1</sup> This finding is consistent with evidence submitted by Eastern in which another notice from FPBSC was dated May 9, 1997, (Friday) and postmarked May 12, 1997 (Monday).

the April 3, 1997, order of the WTFD.<sup>2</sup>

17. The order of the WTFD became a final order at midnight on April 22, 1997.
18. There are several references to an order dated March 31, 1997, the date of the inspection, which was personally served on Eastern on that date.
19. The FPBSC file on this matter indicates it was a separate order dealing with cooking on the premises and contained misleading information about the time limits for administrative review. The April 3, 1997, order, which did not involve cooking on the premises, contained accurate information about the time for filing of a petition for administrative review.
20. A review of the petition for review filed by Eastern indicates that the only order being appealed is the April 3, 1997, order, so the misleading information on the March order involving cooking equipment is immaterial.

### **NONFINAL ORDER**

The decision of the Fire Prevention and Building Safety Commission to deny administrative review to Eastern International Trading Corporation is affirmed.

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<sup>2</sup> While there have been no reported court cases directly on point, there are several which hold that the 30 day requirement to file for judicial review in IC 4-21.5-5-5 is jurisdictional and failure to comply is fatal. See HEC v. DNR (1996) 673 N.E.2d 811.