

STATE OF INDIANA)
) SS:
COUNTY OF STEUBEN)

IN THE STEUBEN CIRCUIT COURT
CAUSE NO. 76C01-0808-MI-274

SCOTT STITES, DAVID M. RELUE)
and PETER J. WALTERS,)

Plaintiffs,)

vs.)

INDIANA DEPARTMENT OF)
NATURAL RESOURCES, and RCI)
DEVELOPMENT, LLC,)

Defendants.)

ORDER

Plaintiffs Scott Stites, David M. Relue and Peter J. Walters ("Stites, Relue and Walters") appear by counsel, Bradley K. Thomas. Defendant Indiana Department of Natural Resources ("DNR") appears by counsel, Denise A Walker. Defendant RCI Development, LLC ("RCI") appears by counsel, Steven H. Hazelrigg. On December 16, 2008 the Court conducted hearing on the Motion to Amend filed by Stites, Relue and Walters. At the conclusion of the hearing the Court took all matters under advisement. The Court at this time being duly advised in the premises now finds and orders as follows:

1. On July 16, 2008 the DNR handed down a Final Order.
2. On August 18, 2008 Stites, Relue and Walters filed their Verified Petition for Judicial Review of the Final Order handed down by the DNR on July 16, 2008.
3. The Petition for Judicial Review filed by Stites, Relue and Walters was not verified under oath.

4. On October 1, 2008 Stites, Relue and Walters filed their Motion to Amend Verified Petition for Judicial Review to add the previously omitted jurat.

5. The DNR and RCI each have objected to the Motion to Amend Verified Petition for Judicial Review.

6. Ind. Code 4-21.5-5-7(b) requires that a Petition for Judicial Review must be verified.

7. The failure of the moving party to verify the Petition for Judicial Review deprives the reviewing court of jurisdiction. See, *Kemp v. Family and Social Services*, 693 N.E.2d 641, 642-643 (Ind.App. 1998).

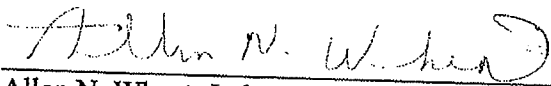
8. An Amended Petition for Judicial Review, in an effort to correct procedural errors, does not relate back to the date of filing the original Petition for Judicial Review. See, *Commissioner, Ind. Dept. of Environmental Management v. Bethlehem Steel Corp.*, 703 N.E.2d 680, 682-683 (Ind.App. 1998).

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion to Amend Verified Petition for Judicial Review filed by Stites, Relue and Walters shall be denied.

2. The Court, *sua sponte*, dismisses this case for lack of subject matter jurisdiction.

Dated this 19th day of December, 2008.


Allen N. Wheat, Judge
Steuben Circuit Court

Notice to:
RJO
All counsel of record
O.D.