

**Philip H. Chamberlain, Owner, Sandhill Estates Subdivision, Greene County, Indiana.
2003 OEA 30 (03-W-E-3009)**

OFFICIAL SHORT CITATION NAME: When referring to 2003 OEA 30 cite this case as
Sandhill Estates, 2003 OEA 30.

TOPICS:

notice of violation
NOV
erosion and sediment control plan
five acres
notice of Intent
327 IAC 15-5
unauthorized land disturbing activities
commissioner's Order
civil penalty
Department of Natural Resources
Soil and Water Conservation District
motion for summary judgment
requests for Admissions

PRESIDING JUDGE:

Daidsen

PARTY REPRESENTATIVES:

Respondent: Phillip H. Chamberlain, Esq.
IDEM: Joseph H. Merrick, Esq.

ORDER ISSUED:

November 7, 2003

INDEX CATEGORY:

Enforcement
Land

FURTHER CASE ACTIVITY:

[none]

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

IN THE MATTER OF:)

COMMISSIONER., INDIANA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,)

v.)

CAUSE NO. 03-W-E-3009

MR. PHILIP H. CHAMBERLAIN, OWNER,)
SANDHILL ESTATES SUBDIVISION,)
GREENE COUNTY, INDIANA.)

Respondent.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER GRANTING
COMMISSIONER'S MOTION FOR SUMMARY JUDGMENT AND VACATING ORAL
ARGUMENT SET ON NOVEMBER 10, 2003**

This matter came before the Office of Environmental Adjudication ("OEA" or "Court") pursuant to a timely petition for administrative review of the Notice and Order of the Commissioner of the Indiana Department of Environmental Management ("IDEM") filed by Respondent, Philip H. Chamberlain, Esq., Owner of Sandhill Estates Subdivision, on January 25, 2003.

On January 16, 2002, Chamberlain received a Notice of Violation ("NOV") from IDEM for failing to submit a Notice of Intent letter to IDEM and for failing to submit an erosion and sediment control plan to IDEM, the Indiana Department of Natural Resources ("DNR") or the Greene County Soil and Water Conservation District ("GCSWCD"), in violation of 327 IAC 15-5, et seq. Respondent and IDEM failed to settle the violation charge and on September 9, 2002, a Notice and Order of the Commissioner was issued to Respondent for these violations. More than sixty (60) days passed between the issuance of the NOV and the Commissioner's Notice/Order.

Pursuant to a scheduling order of April 10, 2003, Ordered clarified on September 25, 2003, the parties were to conduct discovery and to submit dispositive motions; only the Commissioner conducted discovery and pursued a dispositive motion in the form of a Motion for Summary Judgment, filed on September 8, 2003. Respondent, Mr. Philip H. Chamberlain, Esq., Owner of Sandhill Estates Subdivision ("Chamberlain, Esq."), did not submit any responses to the Commissioner's Motion for Summary Judgment, which Motion was supported by Chamberlain's Admissions.

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And the Chief Environmental Law Judge (“ELJ”), having read and considered the petitions, motions, record of proceeding, evidence, and briefs and responses of the parties, now finds that IDEM met its required burden of proof to support the Commissioner’s Notice and Order against Respondent, Philip H. Chamberlain, Esq., Owner of Sandhill Estates Subdivision. Judgment may be made upon the record. The EU, by a preponderance of the evidence, now makes the following findings of fact and conclusions of law, and enters the following Order with respect to the Petition of Respondent Chamberlain:

Statement of the Case

1. On September 9, 2002, the Commissioner of the Indiana Department of Environmental Management issued a Notice and Order of the Commissioner of the Department of Environmental Management (“Notice/Order”) to Mr. Chamberlain, as owner of Sandhill Estates Subdivision, Greene County, Indiana, specifying unauthorized land-disturbing activities occurring on or before November 8, 2000, and assessing a civil penalty of Eight Thousand Five Hundred Dollars (\$8,500).
2. On January 25, 2003, Mr. Chamberlain petitioned for administrative review of the Commissioner’s September 9, 2002 Notice/Order; Mr. Chamberlain’s Petition for Administrative Review (“Petition”) was assigned OEA Cause No. 03-W-E-3009.
3. Mr. Chamberlain’s petition was timely filed, per Ind. Code §4-21.5-3-7. The petition was postmarked January 25, 2003, after Mr. Chamberlain took delivery of the Notice/Order transmitted by first class mail, in supplement to prior certified mailings (the record reflects, and Mr. Chamberlain stated in his May 12, 2003 letter to IDEM’s Ms. Aletha Lenahan, copied to the Court, that he usually does not claim certified mail, noting that he was “in the *final* stages of receiving a “blizzard” of nasty legal correspondence”, but further noting that he did claim correspondence sent via other methods, including first class mail, the method used by the Court). Mr. Chamberlain represented that he was an attorney, but was proceeding as representing himself pro se, unless he elected to obtain co-counsel. The Court’s record reflects that Mr. Chamberlain represented himself without assistance in these proceedings.
4. The parties appeared at a prehearing conference on April 9, 2003; Mr. Chamberlain participated by telephone. In addition to Mr. Chamberlain’s May 12, 2003 letter copied to the Court (noted in para. 2, above), the Court was copied on a February 5, 2003 letter to Ms. Lenahan indicating that Mr. Chamberlain was attempting to communicate with IDEM concerning compliance, and was inquiring about the prehearing conference schedule. No other documents, pleadings, responses, evidence, or communications were received by the Court, and none were returned as unclaimed or undeliverable.
5. The parties’ formal discovery schedule was established in the Court’s April 10, 2003 Scheduling Order, ordered clarified on September 25, 2003, but the Court record demonstrates that Chamberlain did not participate in discovery. Chamberlain’s Admissions were ordered established by the Court on August 25, 2003, after Chamberlain failed to submit responses to the Commissioner’s Request for Admissions.

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Chamberlain was further subject to an order to compel his responses to the Commissioner's Interrogatories and Requests for Production, issued on August 25, 2003. Chamberlain neither complied with nor disputed the Court's order to compel.

6. On September 8, 2003, the Commissioner, Indiana Department of Environmental Management, filed a Motion for Summary Judgment, per the Court's Scheduling Orders. Chamberlain filed no responses.

Findings of Fact

1. Chamberlain is sole owner of Sandhill Estates Subdivision ("Site"), property located approximately one mile east of Scotland, Indiana on State Road 725, Greene County.
2. Chamberlain was the incorporator, registered agent and an officer of Sycamore Development Group, Inc., which was administratively dissolved by the Indiana Secretary of State on December 8, 2001.
3. The Site is at least five (5) acres in size.
4. The Site is subject to the requirements of 327 IAC 15-5.
5. Chamberlain initiated land disturbing activities at the Site on or before November 8, 2000.
6. Chamberlain failed to submit a Notice of Intent letter, as defined by 327 IAC 15-3-2 and 327 IAC 15-5-5, to IDEM prior to initiating land disturbing activities at the Site, nor has Chamberlain, Esq. submitted a Notice of Intent letter to date.
7. Chamberlain failed to submit an erosion control plan, also known as an erosion and sediment control plan, to the Indiana Department of Natural Resources ("DNR") or the Greene County Soil and Water Conservation District ("GCSWCD") prior to beginning land-disturbing activities at the Site, nor has Chamberlain submitted an erosion and sediment control plan to date.
8. Agents of DNR and the GCSWCD conducted an inspection at the Site on November 8, 2000.
9. At the time of the November 8, 2000 Site inspection, Chamberlain had not submitted a Notice of Intent letter to IDEM or an erosion and sediment control plan to IDEM, DNR or the GCSWCD.
10. Agents of DNR conducted inspections of the Site on March 15, 2001 and April 16, 2001.

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11. At the time of the March 15, 2001 and April 16, 2001 Site inspections, Chamberlain had not submitted a Notice of Intent letter to IDEM or an erosion and sediment control plan to IDEM, DNR or the GCSWCD.
12. On May 8, 2001, DNR sent a warning of noncompliance letter to Chamberlain via certified mail no. 7000 0600 0024 8133 2314, requiring Chamberlain, to submit an erosion and sediment control plan to the GCSWCD on or before May 31, 2001, and to submit a Notice of Intent letter to IDEM.
13. Chamberlain did not submit a Notice of Intent letter or an erosion and sediment control plan to IDEM, DNR or the GCSWCD on or before May 31, 2001.
14. On January 16, 2002, Chamberlain received a Notice of Violation (“NOV”) from IDEM for failing to submit a Notice of Intent letter to IDEM and for failing to submit an erosion and sediment control plan to IDEM, DNR or GCSWCD.
15. 327 JAC 15-2-5, 327 IAC 15-5-5, 327 IAC 15-5-6 and 327 IAC 15-5-7 are applicable to the Site and to the facts of this case.
16. The civil penalty assessed by IDEM in the Commissioner’s Order in this case, a sum of Eight Thousand Five Hundred Dollars (\$8,500) is not arbitrary and capricious.
17. There are no facts in dispute in this case, as all of the above facts were deemed admitted by Chamberlain through his failure to deny them when presented as the Commissioner’s Requests for Admissions on or about June 5, 2003, per this Court’s Order Establishing [Chamberlain’s] Admissions entered on August 25, 2003. *See* Indiana Rules of Trial Procedure 36, 37; City of Muncie v. Peters, 709 N.E.2d 50 (Ind.Ct.App. 1999), Corby v. Swank, 670 N.E.2d 1322 (Ind.Ct.App. 1996).
18. 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.

Conclusions of Law

Based upon the foregoing Findings of Fact and Statement of the Case, the Chief Environmental Law Judge concludes, as a matter of law:

1. The Indiana Office of Environmental Adjudication has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) and the parties to the controversy pursuant to Ind. Code § 4-21.5-3-23.

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2. Philip H. Chamberlain, Esq., as the incorporator, registered agent and an officer of Sycamore Development Group, Inc., and as sole owner of Sandhill Estates Subdivision, is jointly and severally liable with Sycamore Development Group, Inc. and Sandhill Estates Subdivision (collectively referred to as "Respondent"), for any regulated activity on the Site located approximately one mile east of Scotland, Indiana on State Road 725, Greene County.
3. As the Site is at least five (5) acres in size, it is subject to IDEM's jurisdiction for land-disturbing activities by Chamberlain, and is subject to the requirements of 327 IAC 15-2-5, 327 IAC 15-5-5, 327 IAC 15-5-6 and 327 IAC 15-5-7. Respondent performed land-disturbing activities at the Site without prior authorization of IDEM, then failed to submit a Notice of Intent letter to IDEM, as defined in 327 IAC 15-3-2 and required by 327 IAC 15-2-5 and 327 IAC 15- 5, et seq. Respondent further failed to prepare and submit an erosion and sediment control plan to IDEM as required by 327 IAC 15-5, et seq., nor did Respondent submit an erosion and sediment control plan to the Indiana Department of Natural Resources or the Greene County Soil and Water Conservation District.
4. Per Ind. Code § 13-30-4-1, the Commissioner of IDEM may assess penalties for any violations of any environmental management laws, or a rule or standard adopted by one of the boards. The civil penalty of Eight Thousand Five Hundred Dollars (\$8,500) imposed upon Respondent by the Commissioner of the Indiana Department of Environmental Management is not an arbitrary and capricious assessment, as conceded by Respondent as a matter of law.
5. IDEM has met its burden of proof and persuasion in establishing facts to support the violations alleged in the Notice and Order of the Commissioner.
6. Respondent has failed to participate in these proceedings, and his petition for administrative review is eligible for dismissal, as stated in the Court's order to compel Respondent's discovery responses entered on August 25, 2003, and as authorized in Ind. Code §4-21.5-3-24 and 315 IAC 1-3-7. However, the Court elects to exercise its discretion provided by the above-cited statute and administrative rule to enter a final order on the merits of this case.
7. No genuine issues of material fact exist in this case, and the Commissioner of the Indiana Department of Environmental Management is entitled to judgment as a matter of law. Ind. Code § 4-21.5-3-23; 315 IAC 1-3-1(b)(2) and (b)(7).

ORDER

AND THE COURT, being duly advised, hereby **ORDERS, ADJUDGES AND DECREES** that the Motion Summary Judgment filed by the Commissioner, Indiana Department of Environmental Management, is **GRANTED**.

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Respondent, Philip H. Chamberlain, Esq., the incorporator, registered agent and an officer of Sycamore Development Group, Inc., and sole owner of Sandhill Estates Subdivision, shall pay a civil penalty in the amount of Eight Thousand Five Hundred Dollars (\$8,500), to be remitted to the Indiana Department of Environmental Management within thirty (30) days of the effective date of this Order. Checks shall be made payable to the Environmental Management Special Fund, with the Case Number indicated on the check and mailed to: Cashier, IDEM, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, IN 46206-6015.

Respondent shall submit a Notice of Intent letter to IDEM, and an erosion and sediment control plan to IDEM, the Indiana Department of Natural Resources, and to the Greene County Soil and Water Conservation District within thirty (30) days of the effective date of this Order.

IT IS FURTHER ORDERED that the Oral Argument on the Commissioner's Motion for Summary Judgment, scheduled for November 10, 2003, 2:00 PM, EST, is **VACATED** by this Order.

You are further advised that, pursuant to Indiana Code §4-2L5-5, this Final Order is subject to judicial review. Pursuant to Indiana Code §4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS HEREBY ORDERED this 7th day of November, 2003 in Indianapolis, Indiana.

Hon. Mary L. Davidsen
Chief Environmental Law Judge