

Cathy Watson v. Indianapolis Resource Recovery Facility and IDEM (99-S-J-2410)
Cathy Watson v. Indianapolis Resource Recovery Facility and IDEM (00-A-J-2476)
2000 OEA 20

TOPICS:

dismissal
aggrieved
standing
failure to state a claim
amended petition

PRESIDING JUDGES:

Lucas

PARTY REPRESENTATIVES:

Complainant: Richard S. VanRheenen
VanRheenen & Associates, P.C.
Respondent: Michael J. Huston, Esq., David L. Hatchett
Baker & Daniels
IDEM: Sierra Cutts, Esq., Kathleen Mills

ORDER ISSUED:

June 5, 2000

INDEX CATEGORY:

Air and Land

FURTHER CASE ACTIVITY:

Judicial review

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

IN THE MATTER OF:)	
)	
CATHY WATSON,)	
Complainant,)	
)	
v.)	CAUSE NO. 99-S-J-2410
)	
INDIANAPOLIS RESOURCE)	
RECOVERY FACILITY, and)	
INDIANA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Respondents.)	

CATHY WATSON,)	
Complainant,)	
)	
v.)	CAUSE NO. 00-A-J-2476
)	
INDIANAPOLIS RESOURCE)	
RECOVERY FACILITY, and)	
INDIANA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
Respondents.)	

FINAL ORDER OF DISMISSAL
IN ADMINISTRATIVE CAUSE NUMBER 99-S-J-2410

On October 27, 1999, Cathy Watson filed correspondence seeking administrative review of approval by the Indiana Department of Environmental Management to make a Minor Modification to Solid Waste Permit FP-49-13. On January 31, 2000, "Ogden Martin's Motion to Dismiss and/or Motion for Summary Judgment" was filed. "Respondent IDEM's Concurrence in the Motion to Dismiss and/or Motion for Summary Judgment" was filed on the same day.

On March 20, 2000, the Special Environmental Law Judge issued a "Final Order of Dismissal Against Cathy Watson for Failure to State a Claim upon which Relief Can Be Granted." In this order, the Special Environmental Law Judge stated Watson "may file an amended pleading by March 31, 2000 that states a claim upon which relief can be granted. If an amended pleading is filed in a timely fashion, the final order of dismissal will be set aside." On March 24, 2000, Watson filed her "Amended Appeal."

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On April 18, 2000, Watson filed her "Motion to Set Aside Final Order of Dismissal Against Cathy Watson for Failure to State a Claim upon which Relief Can Be Granted." On April 20, 2000, an "Entry Concerning Filing of Amended Appeal" was made by the Special Environmental Law Judge that acknowledged timely filing of the "Amended Appeal" and set aside the dismissal.

The proceeding came for hearing as scheduled on June 5, 2000. Cathy Watson testified as to her claim of standing to pursue this proceeding and her concerns for air contamination from infectious waste she believed could result from the activities of the Indianapolis Resource Recovery Facility. On cross-examination by counsel for the Indianapolis Resource Recovery Facility, she testified her concerns were directed solely to air pollution and not to the treatment of solid waste.

Following the completion of testimony by Watson, the Indianapolis Resource Recovery Facility moved to dismiss the proceeding, arguing Watson lacked standing and that any grievance complained related to the alleged potential for air pollution, a matter counsel asserted was not currently at issue. The Indiana Department of Environmental Management joined in the motion. Rebuttal to the motion was received from counsel for Watson.

The Special Environmental Law Judge then granted the motion to dismiss, stating his reasons for granting the motion would be reduced to writing. This entry now memorializes and constitutes the anticipated final order of dismissal.

Cathy Watson has failed to state that she is aggrieved by the approval by the Indiana Department of Environmental Management of Minor Modification to Solid Waste Facility Permit FP 49-13. Indeed, her unrefuted testimony is to the contrary. She is unaggrieved by Permit FP 49-13. On its face, Permit FP-13 was not issued for purposes of controlling air pollution but is rather directed to solid waste management. If she has a grievance that is subject to administrative review under IC 4-21.5, that grievance must relate to air pollution control. The testimony by Watson suggests she may have standing to pursue review of an air pollution control permit, and the review she has sought of the amendment to Permit 097-10550-00123 (and which is the subject of Administrative Cause Number 00-A-J-2476) is explicitly determined to be unaffected by this dismissal.

WHEREFORE, a final order of dismissal is entered in favor of the Indianapolis Resource Recovery Facility, in favor of the Indiana Department of Environmental Management, and against Cathy Watson in Administrative Cause Number 99-S-J-2410. The stay previously entered against the effectiveness of Permit FP 49-13 is vacated.

Any person who wishes to take judicial review of this order shall serve copies of the petition for judicial review upon the persons described in IC 4-21.5-5-5. The copy of the petition, required under IC 4-21.5-8(a)(1) to be served upon the ultimate authority, shall be served upon the Special Environmental Law Judge at the following address:

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Office of Environmental Adjudication
150 West Market Street
Suite 618
Indianapolis, IN 46208

Dated: June 5, 2000

Stephen L. Lucas
Special Environmental Law Judge