OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 40 cite this case as *IDEM v. Lee Wilder*, 2008 OEA 40.

TOPICS:

summary judgment water enforcement penalty NPDES Rule 5 storm water erosion control measures land disturbing activities common plan of development or sale construction activity ESCP, Erosion Sediment Control Plan sediment responsible corporate officer doctrine

PRESIDING JUDGE:

Davidsen

PARTY REPRESENTATIVES:

Respondent: Todd C. Young, Esq. IDEM: Denise A. Walker, Esq.

ORDER ISSUED:

April 16, 2008

INDEX CATEGORY: Water

FURTHER CASE ACTIVITY: judicial review

PREVIOUS CASE ACTIVITY:

Non-final order preceding this final order: <u>IDEM v. Lee Wilder, 2008 OEA 40nf</u> in .doc format <u>IDEM v. Lee Wilder, 2008 OEA 40nf</u> in .pdf format

Commissioner, Indiana Department of Environmental Management v. Mr. Lee Wilder d/b/a Rockwood Development 2008 OEA 40 (07-W-E-3892)

STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
COUNTY OF MARION)	ENVIRONMENTAL ADJUDICATION
	`
IN THE MATTER OF:)
)
COMMISSIONER, INDIANA DEPARTMENT OF	7)
ENVIRONMENTAL MANAGEMENT,)
Case No. 2003-12998-W)
BEDFORD, LAWRENCE COUNTY, INDIANA.)
Complainant,)
)
V.) CAUSE NO. 07-W-E-3892
)
MR. LEE WILDER, d/b/a)
ROCKWOOD DEVELOPMENT,)
Respondent.)

FINAL ORDER ON ISSUES GRANTED IN SUMMARY JUDGMENT

This matter came before the Court on the telephonic Status Conference, held as rescheduled on April 14, 2008, 3:15 PM, EDT, on IDEM's March 24, 2008 Motion for Final Order, and on the Court's March 14, 2008 Findings of Fact, Conclusions of Law and Order. During the telephonic Status Conference, the parties discussed the remaining procedural options concerning IDEM's Motion for Final order on the Court's Findings of Fact, Conclusions of Law and Order granting a portion of IDEM's Motion for Summary Judgment as to violation occurrence, denving a portion of IDEM's Motion for Summary Judgment and IDEM's Motion for Summary Judgment as to personal liability of a corporate actor. In sum, the Court indicated that it interpreted its March 14, 2008 Findings of Fact, Conclusions of Law and Order to grant IDEM's summary judgment, finding violation, jointly and severally, by Ash Lake Homes, d/b/a Rockwood Development, and Lee Wilder, but declining to find personal liability of Lee Wilder.¹ The parties agreed that a Final Order was appropriate as to the violation of occurrence and corporate liability. As for the remaining issue of the personal liability of Mr. Lee Wilder, the parties consented to the Court's suggestion that the remaining issue be set for status report, so that the parties could take judicial review of the Final Order, and resume administrative review of the remaining issue at a time appropriate to the issues remaining in contention after judicial review.

AND THE COURT, being duly advised, **FINDS and issues a FINAL ORDER** that IDEM's Motion for Summary Judgment shows that there are not genuine issues of material fact and that IDEM is entitled to judgment as a matter of law as to Ash Lake Homes, Inc., d/b/a Rockwood Development.

¹ An order for status report on the remaining issue as to Mr. Wilder's personal liability was issued contemporaneously with this Final Order.

Commissioner, Indiana Department of Environmental Management v. Mr. Lee Wilder d/b/a Rockwood Development 2008 OEA 40 (07-W-E-3892)

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as a FINAL ORDER that the Respondent, Ash Lake Homes, Inc., d/b/a Rockwood Development, shall comply with the terms and conditions of the March 14, 2008 Findings of Fact, Conclusions of Law and Order, and referenced Commissioner's Order, in all respect, including payment of the civil penalty of Fifteen Thousand Two Hundred Fifty Dollars (\$15,250), submission of a Notice of Intent ("NOI"), and submission of a Construction Plan ("CP"), all within thirty (30) days of this Final Order. The check shall be made payable to Cashier-IDEM and the cause number of this case shall appear on the check, and both the check and the NOI shall be submitted to Denise Walker, Deputy Attorney General; Indiana Government Center South-5th Floor; 302 West Washington Street; Indianapolis, IN 46204. The CP shall be submitted to: Mr. Randy Braun, Storm Water Program Manager, IDEM, Office of Water Quality, 100 North Senate Avenue, ICGN 1255, Indianapolis, IN 46204; Lawrence County Soil and Water Conservation District, 1919 Steven Avenue, Bedford, IN 47421.

You are hereby further notified that pursuant to provisions of IC 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5, *et seq.* Pursuant to IC 4-21.5-5-5, 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 SO ORDERED in Indianapolis, Indiana this 16th day of April, 2008.

Hon. Mary L. Davidsen Chief Environmental Law Judge