Objection to Denial of 401 Water Quality Certification, Allied Waste, Lake County C & D Landfill, Lowell, Lake County, Indiana. 2008 OEA 43 (08-S-J-4105)

OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 43 cite this case as *Allied Waste, Lake County*, **2008 OEA 43.**

TOPICS:

dismissal AOPA late Petition for Review timely IC 4-21.5-3-2 IC 4-21.5-3-7

315 IAC 1-3-3

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Petitioner: Derek Mauntel IDEM: Steve Griffin, Esq.

ORDER ISSUED:

May 7, 2008

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

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STATE OF INDIANA)	BEF	ORE THE INDIANA OFFICE OF
)	ENV	IRONMENTAL ADJUDICATION
COUNTY OF MARION)	1	
IN THE MATTED OF.	`	
IN THE MATTER OF:)	
)	
OBJECTION TO DENIAL OF)	
401 WATER QUALITY CERTIFICA	TION)	
ALLIED WASTE)	CAUSE NO. 08-S-J-4105
LAKE COUNTY C & D LANDFILL)	
LOWELL, LAKE COUNTY, INDIAN	NA)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court on the Petition for Review filed on May 1, 2008, by the Petitioner, Allied Waste, Lake County C & D Landfill, which pleading is a part of the Court's record and the Court, being duly advised, now, the following findings of fact, conclusions of law and final order:

Findings of Fact

- 1. The Office of Environmental Adjudication received a petition for review of the Indiana Department of Environmental Management's (the IDEM) denial of a 401 Water Quality Certification for Allied Waste, Lake County C & D Landfill.
- 2. Pursuant to statements in the petition for review, the IDEM's notice of denial was dated April 2, 2008.
- 3. Pursuant to 315 IAC 1-3-3(c), the Petition was deemed to have been filed with the OEA on May 1, 2008.

Conclusions of Law

- 1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to IC 4-21.5-7, *et seq*.
- 2. This is a Final Order issued pursuant to IC 4-21.4-3-27. 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.
- 3. IC 4-21.5-3-7(a)(3)(A) states that a Petition for Review must be filed within fifteen (15) days after the person is given notice of the order.

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- 4. IC 4-21.5-3-2(e) provides that three (3) days shall be added to this deadline if service is by mail.
- 5. Pursuant to IC 4-21.5-3-1(f)(2) and 315 IAC 1-3-3(c), the date of filing is the date of the postmark on the envelope containing the document.
- 6. The Petitioner had eighteen (18) days from April 2, 2007, the date of the notice and the presumed date of mailing, until April 20, to file the petition for review.
- 7. The petition for review was filed on May 1, 2008 and was not timely filed in this matter.

Final Order

IT IS THEREFORE ORDERED that the Petition for Review filed by Petitioner is hereby dismissed.

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. 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 this 7th day of May, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs Environmental Law Judge