OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 7, cite this case as *Variance for Open Burning, Herring*, **2008 OEA 7.**

TOPICS:

open burning
variance
dismissal
timely
petition
AOPA
time computation
postmark

PRESIDING JUDGE:

Gibbs

PARY REPRESENTATIVES:

Petitioners: pro se

IDEM: Steven Griffin, Esq.

ORDER ISSUED:

January 18, 2008

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	
IN THE MATTER OF:)
)
OBJECTIONS TO THE ISSUANCE OF)
VARIANCE FOR OPEN BURNING)
HERRING, 7251 WEST ROBERTSC	ON ROAD)
MORGANTOWN, BROWN COUNT	ΓY, INDIANA	
) CAUSE NO. 08-A-J-4047
)
Marcus Anderson, Victor & Deborah	Bartes)
Patricia Bolinger, Jason Burke,)
Jay A. Charon & Wanda E. Jones,)
Derek & Bonita Grider,)
Richard & Kathleen Haggard, Ronald	Heeter)
Donald & Joy Hollcroft, Connie & Ga	ary Hollett,)
Robert N. Hull, John & Cheryl Koche	er)
Steven J. McCubbin, Lynn Morning S	Star,)
Bryan D. Norcutt, Jerrol W. Pairie, M	att J. Powell,)
James & Sally Richardson, Jean Webe	er,)
Margaret Zapf, Sallie Ann Zody)
Petitioners)
Herring Property, 7251 W. Robertson	Road,)
Morgantown, Brown County, Indiana)
Permittee/Respondent)
Indiana Department of Environmental	l Management)
Respondent	-)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter having come before the Court on the Petitions for Review filed on January 8, 2008, by the Petitioners, as stated above, which pleadings are 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 Petitions for Review of the Indiana Department of Environmental Management's approval of a variance for open burning at a property located at 7251 W. Robertson Road, Morgantown, Brown County, Indiana.
- 2. The Petitions were sent via UPS ground mail, postmarked January 8, 2008.

- 3. Pursuant to 315 IAC 1-3-3(c)(3), the Petitions were deemed to have been filed with the OEA on January 8, 2008.
- 4. Pursuant to statements made in the Petitions for Review, the notice of approval from the IDEM was dated December 12, 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 Ind. Code § 4-21.5-7, et seq.
- 2. This is a Final Order issued pursuant to Ind. Code § 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. 326 IAC 4-1-4.1(g) provides that review of the Commissioner's decision to approve a variance for open burning is subject to IC 4-21.5 (the Administrative Orders and Procedures Act).
- 4. 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.
- 5. IC §4-21.5-3-2(e) provides that three (3) days shall be added to this deadline if service is by mail.
- 6. IC §4-21.5-3-2 provides in pertinent part:
 - (a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:
 - (1) a Saturday;
 - (2) a Sunday;
 - (3) a legal holiday under a state statute; or
 - (4) a day that the office in which the act is to be done is closed during regular business hours.
 - (b) A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.
 - (c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:
 - (1) the person is personally served with the notice; or
 - (2) a notice for the person is deposited in the United States mail.

- 7. Pursuant to IC §4-21.5-3-1(f)(2) and 315 IAC 1-3-3(c)(2), the date of filing is the date of the postmark on the envelope containing the document if the document is deposited with a private carrier.
- 8. The Petitioners had eighteen (18) days from December 12, 2007, the date of the notice and the presumed date of mailing, until December 31, 2007, to file the Petition for Review.
- 9. The Petitions for Review were filed on January 8, 2008 and were not timely filed in this matter.

Final Order

IT IS THEREFORE ORDERED that the Petitions for Review filed by Petitioners are hereby **DISMISSED**.

You are hereby further notified that pursuant to provisions of Indiana Code § 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 18th day of January, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs Environmental Law Judge