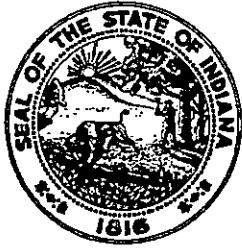


**OBJECTION TO THE ISSUANCE OF
PRESCRIBED PRAIRIE GRASS BURN
APPROVAL PB-234821
BEN BOHM
PLYMOUTH, MARSHALL COUNTY, INDIANA
2021 OEA 093, OEA CAUSE NO.: 20-A-J-5102**

Official Short Cite Name:	Ben Bohm Prairie Grass Burn, 2021 OEA 093
OEA Cause No.:	20-A-J-5102
Topics/Keywords:	stay mootness
Presiding ELJ:	Mary Davidsen, Esq.
Party representatives:	Petitioner Robert Hartman, <i>pro se</i> Respondent Ben Bohm, <i>pro se</i> Valerie Tachtiris, Esq. for IDEM
Date of Order:	December 8, 2021
Index Category:	Air
Further Case Activity:	



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary L. Davidsen, *Chief Environmental Law Judge*
Lori Kyle Endris, *Environmental Law Judge*
Sara C. Blainbridge, *Legal Administrator*

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE, SUITE N103
INDIANAPOLIS, INDIANA 46204-2273
FRONTDESK@OEA.IN.GOV
(317) 233-0850

STATE OF INDIANA)
)
COUNTY OF MARION)
)
IN THE MATTER OF:)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

CAUSE NO. 20-A-J-5102

OBJECTION TO THE ISSUANCE OF)
PRESCRIBED PRAIRIE GRASS BURN)
APPROVAL PB-234821 per 326 IAC 4-1)
BEN BOHM)
PLYMOUTH, MARSHALL COUNTY, INDIANA.)

Robert Hartman,)
Petitioner,)
Ben Bohm,)
Respondent/Permittee,)
Indiana Department of Environmental Management,)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER OF DISMISSAL

This matter came before the Office of Environmental Adjudication (“OEA” or “Court”) on a review of this case file concerning Petitioner Robert Hartman’s challenge to IDEM’s open burning approval. Having considered the parties’ submissions, the Court issues its Findings of Fact, Conclusions of Law and Final Order of Dismissal.

Findings of Fact

1. This matter concerns self-represented Petitioner Robert Hartman’s objection to IDEM’s March 10, 2020, Approval of a prescribed burn of prairie grasses¹ for native vegetation restoration/maintenance purposes at neighboring Respondent Ben Bohm’s residence in Plymouth, Marshall County, Indiana.

2. Mapping shows that Petitioner Hartman’s property abuts the west side of Respondent/Permittee’s property.² The Approved burn area is at least 150 feet from the north/south property line separating the Hartman and Bohm properties. *Id.* The Approved burn

¹ The Approval describes a burn area of approximately 1.5 acres. The Approval may be found at Petitioner’s Petition for Administrative Review, *Ex. 1*.

² *Respondent/Permittee Bohm’s April 17, 2020 Argument, Ex. 2.*

area is 1.5 acres, divided into two portions.³ Prevailing winds typically move from west to east,⁴ which would be from Petitioner Hartman's property toward Permittee Bohm's property.

3. Petitioner Hartman's March 24, 2020, Petition for Administrative Review included a request for Stay. The Court's April 8, 2020, temporary stay was based upon Governor's Executive Order related to the public emergency presented by COVID-19. Per the parties' consent, the Court evaluated submitted evidentiary documents (in lieu of a stay hearing) and lifted the Stay on April 22, 2020.

4. In its April 22, 2020, order lifting the stay, the Court ordered the parties to submit a joint proposed case management order by June 1, 2020. No party sought to expedite or modify the June 1, 2020, deadline.

5. Self-represented Respondent/Permittee Bohm conducted the approved burn on April 27, 2020.

6. In response to the April 27, 2020, approved burn, Petitioner Hartman filed an email with the Court and parties, noting his objection to the burn. In addition, Petitioner Hartman stated, "I will be challenging all future permits and this will be my evidence of why they should not be allowed to burn at their discretion."

7. On April 28, 2020, Respondent IDEM filed its Motion to Dismiss Petition as Moot. On April 29, 2020, the Court issued a Case Management Order for responses to IDEM's Motion to Dismiss as Moot. Responses were due on May 29, 2020; Replies and Praecipes for Oral Argument were due June 15, 2020. On April 29, 2020, Respondent/Permittee Ben Bohm filed an email noting his concurrence with IDEM's Motion to Dismiss as Moot. No further filings were submitted by Petitioner Hartman or any other party.

Conclusions of Law

1. This is an Order issued pursuant to IND. CODE § 4-21.5-3-4(e). The OEA has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") pursuant to Indiana Code (I.C.) § 4-21.5-7, et seq. 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.

2. In its Motion to Dismiss as Moot, IDEM relies upon "[t]he long-standing rule in Indiana Courts . . . that a case is deemed moot when no effective relief can be rendered to the parties before the Court." *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). "When the controversy in issue in a case 'has been ended or settled, or in some manner disposed of, so as to render it unnecessary to decide the question involved, the case will be dismissed." *A.D. v. State*, 736

³ *Id.*

⁴ IDEM's April 17, 2020 Response in Accordance with the Court's April 13, 2020 Order ("IDEM Response"), p. 4, Jones Affid., ¶ 13.

N.E.2d 1274, 1276 (Ind. Ct. App. 2000) (*quoting Dunn v. State*, 263 Ind 317, 71 N.E. 890, 891 (1904)).

3. Petitioner Hartman opposed the Approved burn, which occurred on April 27, 2020. No effective relief can be rendered by OEA to Petitioner Hartman. Thus, Petitioner Hartman's Petition for Administrative Review is moot and subject to dismissal.

Final Order

AND THE COURT, being duly advised, **FINDS AND ORDERS** that Petitioner Robert Hartman's Petition for Administrative Review of the Indiana Department of Environmental Management's prairie grass burn Approval PB-234821 is moot, as the burn occurred on April 27, 2020.

THE COURT ORDERS, ADJUDGES AND DECREES that Petitioner Robert Hartman's Petition for Administrative Review is **DISMISSED**.

You are further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the ultimate authority in 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 I.C. § 4-21.5-5, *et seq.* Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of a Final Order is timely only if filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 8th day of December, 2021 in Indianapolis, IN.

Hon. Mary L. Davidsen, Esq.
Chief Environmental Law Judge