



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Department of Natural Resources' February 4, 2011, Approval of Coverage Under Type A Registration Air Operation Permit and Type A Registration Air Construction Permit for Waukesha Iron & Metal, Inc.

Case No.: IH-11-05

RULING ON MOTION TO DISMISS

On February 20, 2012, a motion hearing was conducted by telephone, Jeffrey D. Boldt, administrative law judge (ALJ) presiding.

The appearances were as follows:

Waukesha Iron and Metal, Inc. (WIM), by

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von Briesen & Roper, S.C.
411 East Wisconsin Avenue, Suite 700
Milwaukee, WI 53202-4427

and

Attorney Carl A. Sinderbrand
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2 East Mifflin Street, Suite 200
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Wisconsin Department of Natural Resources, by

Attorney Thomas Dosch
Department of Natural Resources
P. O. Box 7921
Madison, WI 53707-7921

Waukesha Environmental Action League (WEAL), by

Attorney David C. Bender
McGillivray, Westerberg & Bender, LLC
211 South Paterson Street, Suite 320
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Miller Compressing Company (MCC) (Party Status Disputed), by

Attorney Sarah Slack
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Waukesha Business Alliance, by

Attorney Donald P. Gallo
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P. O. Box 2265
Waukesha, WI 53187-2265

On February 15, 2012, Waukesha Iron and Metal, Inc. (WIM), filed a Motion to Dismiss this review of the Type A Registration Operating Permit (ROP) and Registration Construction Permit. On February 20, 2012, this matter came on for a telephone motion hearing.

After submitting stack testing results which were accepted by the Department of Natural Resources, the WIM facility was declared exempt from air permitting requirements by the Department of Natural Resources as of February 13, 2012. There is a 21 day Notice requirement with respect to withdrawal of the ROP and the effective date of the withdrawal is March 5, 2012.

This matter was Dismissed by the ALJ on the record on February 20, 2012, and this written Order formalizes and supplements that Ruling.

RULING

The ALJ made on the record on February 20, 2012, (or makes now) the following findings:

1. There is no timeliness issue with respect to consideration of this motion to dismiss under either Wis. Stat. § 227.44(4)(a) and/or the rules of civil procedure, Wis. Stat. § 802.06(8)(c).
2. The ROP is no longer in effect as either an operation or construction permit, given the Department's exemption determination of February 13, 2012. See: Wis. Stat. § 285.66(1) and Wis. Admin. Code NR 406.04 (zh)(1) and (2).
3. The ALJ accordingly no longer has jurisdiction to review of the Type A Registration and Construction Permits issued to WIM in Case No. 1H-11-05 and this matter is now moot.

ORDER

WHEREFORE, IT IS HEREBY ORDERED, that the above-captioned be DISMISSED, because the Division of Hearings and Appeals lacks subject matter jurisdiction and/or the matter is now moot in light of the exemption from air permitting requirements entered by the Department of Natural Resources as of February 13, 2012.

Dated at Madison, Wisconsin on March 8, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Jeffrey D. Boldt
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.