

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)

OBJECTION TO ISSUANCE OF WQC REGIONAL)
GENERAL PERMIT NOTIFICATION)
EVANS HILL ROAD PROJECT)
SWITZERLAND COUNTY COMMISSIONERS)
SWITZERLAND COUNTY, INDIANA)

CAUSE NO. 18-W-J-5001

OFFICE OF

APR 22 2019

Ed and Melissa Brush)
Petitioners)
Switzerland County Commissioners)
Permittee/Respondent)
Indiana Department of Environmental Management)
Respondent)

ENVIRONMENTAL ADJUDICATION

THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT'S
MOTION TO DISMISS AS MOOT

The Indiana Department of Environmental Management ("IDEM"), by counsel, Sierra L. Alberts, respectfully moves this Court to dismiss Petitioners Ed and Melissa Brush's Petitions for Administrative Review in this matter. In support of said Motion, IDEM states as follows:

1. On December 12, 2014, IDEM issued Section 401 Water Quality Certification Project: 2014 Reissuance of Regional General Permit No. 1 for Indiana ("RGP WQC") to the U.S. Army Corps of Engineers ("USACE"). The RGP WQC authorized certain categories of activities that would cause minimal impacts to the aquatic environment.

2. On November 22, 2017, the Switzerland County Commissioners submitted a Section 401 WQC Regional General Permit Notification for pipe replacement and stabilization on Evans Hill Road ("November Notification").

3. On November 22, 2017, James Turner, a Wetlands, Lakes, and Streams Project Manager with IDEM, sent an email to Switzerland County stating that the November

Notification had been verified as meeting the conditions of the IDEM RGP WQC and provided the IDEM project number 2017-891-78-JBT-X .

4. On April 3, 2018, April 23, 2018, and May 11, 2018, Petitioners filed Petitions for Administrative Review of the November Notification and/or November 22, 2017 email.

5. On April 17, 2019, counsel for the Switzerland County Commissioners and the Switzerland County Highway Department withdrew the Section 401 WQC Regional General Permit Notification identified as IDEM No. 2017-891-78-JBT-X. A true and accurate copy of the April 17, 2019 Withdraw of IDEM No. 2017-891-78-JBT-X is attached hereto and incorporated herein as Exhibit A.

6. On April 18, 2019, IDEM withdrew the notification and issued a letter confirming the withdrawal. A true and accurate copy of the April 18, 2019 Withdrawal of Notification for Section 401 Water Quality Certification Project: Evans Hill Road, 2017-891-78-JBT-X is attached hereto and incorporated herein as Exhibit B. In the letter, IDEM informs Switzerland County that if, at a later date, it wishes to pursue the project, it would need to reapply for the appropriate Section 401 Water Quality Certification. Exhibit B, p. 1.

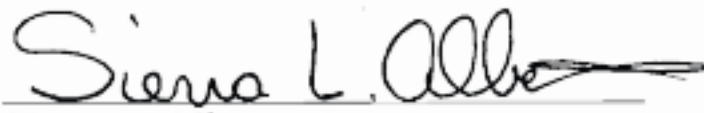
7. At this time, in order to proceed with this project Switzerland County would need to reapply for the appropriate Section 401 Water Quality Certification. This appeal is of RGP WQC Notification 2017-891-78-JBT-X, which has been withdrawn and is no longer effective. The sole issue on review is now moot. There is no effective relief that can be rendered to the Petitioners by OEA.

8. “The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court.” *Matter of Lawrence*, 579 N.E.2d 32, 37 (Ind. 1991). “When the controversy at 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 N.E.2d 1274, 1276 (Ind. Ct. App. 2000) quoting *Dunn v. State*, 163 Ind. 317, 321, 71 N.E. 890, 891 (1904).

WHEREFORE, the Indiana Department of Environmental Management moves the Court to dismiss the instant cause of action as moot and grant all other just and proper relief in the premises.

Respectfully submitted:

By: 
Sierra L. Alberts, Attorney
Atty. No. 19313-49

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the following by United States Mail, first-class, postage pre-paid this 22nd day of April, 2019:

Edward and Melissa Brush
P.O. Box 3421
Lawrenceburg, IN 47040

Wilmer E. Goering II
Goering Law LLC
322 Liberty St.
Vevay, IN 47043


Sierra L. Alberts

Office of Legal Counsel
Indiana Department of Environmental Management
IGCN, Room 1307
100 North Senate Avenue
Indianapolis, Indiana 46204
Telephone: (317) 232-5663
Fax: (317) 233-5517
salberts@idem.in.gov

GOERING LAW LLC

POST OFFICE 163
MADISON, INDIANA 47250

April 17, 2019

James Turner, Project Manager
Wetlands and Storm Water Section
Surface Water, Operations & Enforcement Branch
Office of Water Quality
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204

Re: IDEM NO. 2017-891-78-JBT-X
County: Switzerland

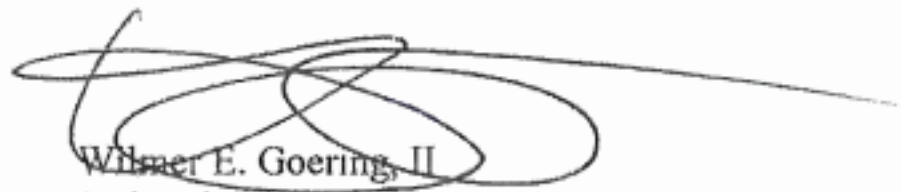
Dear Mr. Turner:

On behalf of the Switzerland County Commissioners and the Switzerland County Highway Department, Switzerland County now withdraws the Section 401 WQC Regional General Permit Notification submitted in this matter. It is understood that should the County do any work on Evans Hill Road in Switzerland County, Indiana that the County will be required to submit a new regional general permit notification form for your consideration.

Thank you very much.

Sincerely,

GOERING LAW LLC



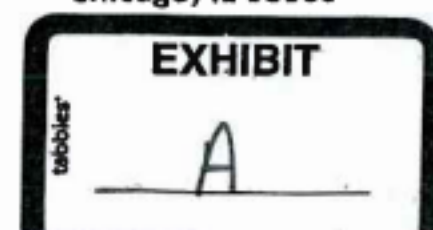
Wilmer E. Goering, II
Switzerland County Attorney

cc: Sierra L. Alberts, Attorney, Office of Legal Counsel, Indiana Department of Environmental Management – VIA EMAIL ONLY

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INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

April 18, 2019

VIA CERTIFIED MAIL 7017 3040 0000 9290 7995

Mr. Darrell Keith, Highway Supervisor
Switzerland County Commissioners
212 West Main Street
Vevay, IN 47043

Dear Mr. Keith:

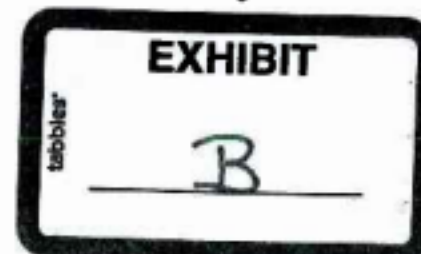
Re: Withdrawal of Notification for Section 401
Water Quality Certification
Project: Evans Hill Road
IDEM No.: 2017-891-78-JBT-X
County: Switzerland

The Office of Water Quality has reviewed correspondence submitted by Mr. Wilmer Goering II on your behalf, dated and received April 17, 2019, requesting the withdrawal of your notification for Section 401 Regional General Permit Water Quality Certification for the Evans Hill Road project. The project is located along Evans Hill Road approximately one half mile south of State Road 156, approximately latitude 33.8933°N and longitude 84.8708°W near Rising Sun, Switzerland County. As requested in your letter, the Office of Water Quality hereby withdraws your notification for Section 401 Regional General Permit Water Quality Certification originally dated November 20, 2017, and received November 22, 2017.

Please be advised that no work in wetlands or waters of the state should begin without authorization under a Section 401 Water Quality Certification. Should you decide to pursue the proposed project at a later date, you will need to *resubmit* notification materials to this office for verification under the Section 401 Water Quality Certification for the Regional General Permit or *submit* application materials for an individual Section 401 Water Quality Certification. We suggest that you also contact the U.S. Army Corps of Engineers regarding their permit process. Notification and application forms are available at the following web address:

<http://www.in.gov/idem/5157.htm>

Any unauthorized discharge of dredged or fill material into waters of the state will be treated as a knowing and willful violation of Section 401 of the Clean Water Act and the Indiana Water Quality Standards (33 USC Sec. 1341, IC 13-18-4-5, and 327 IAC 2). Failure to comply with the terms and conditions of the aforementioned rules and regulations may result in enforcement action. **You are reminded that you are not**



authorized to conduct work within any waters of the state located in or adjacent to this project location until such time that you obtain verification that your project meets the terms and conditions of a Section 401 Water Quality Certification from this office and a Section 404 permit from the Corps of Engineers. Once we have received a complete notification or application form, we may contact you with additional questions and/or to arrange a site inspection.

If you have any questions about this letter, please contact me at JTurner2@IDEM.IN.Gov or 317-234-6352.

Sincerely,

A handwritten signature in cursive script that reads "James Turner". The signature is written in black ink and is positioned above the typed name and title.

James Turner
Project Manager
Wetlands and Storm Water Section
Surface Water, Operations, & Enforcement Branch
Office of Water Quality

cc: Greg McKay, USACE-Louisville
Wilmer Goering II, Goering Law LLC