

**Objection to the Denial of Wastewater Treatment Plant Operator Examination
Brandon L. Gaines
Merrillville, Lake County, Indiana
2012 OEA 26, (12-W-J-4569)**

OFFICIAL SHORT CITATION: When referring to 2012 OEA 26 cite this case as
Brandon L. Gaines, 2012 OEA 26.

TOPICS:

Hearing
wastewater treatment plant
operator
certification
examination
327 IAC 5-22-11
application
deadline

PRESIDING LAW JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: April Lashbrook, Esq.
Petitioner: Brandon L. Gaines, pro se

ORDERED ISSUED:

April 27, 2012

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

Objection to the Denial of Wastewater Treatment Plant Operator Examination

Brandon L. Gaines

Merrillville, Lake County, Indiana

2012 OEA 26, (12-W-J-4569)

STATE OF INDIANA)
)
COUNTY OF MARION) BEFORE THE INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)
)
OBJECTION TO THE DENIAL OF WASTEWATER)
TREATMENT PLANT OPERATOR CERTIFICATION)
EXAMINATION) CAUSE NO. 12-W-J-4569
BRANDON L. GAINES)
MERRILLVILLE, LAKE COUNTY, INDIANA)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter came before the Office of Environmental Adjudication (the “OEA” or the “Court”) on the hearing on the petition for review filed by Brandon L. Gaines; and the Court, having read the pleadings and heard the evidence, enters the following findings of fact, conclusions of law and final order.

Summary of Decision

Mr. Gaines asks to be allowed to take the April 26, 2012 examination for wastewater treatment plant operator certification. The IDEM presented evidence that Mr. Gaines did not apply to take this exam by the deadline set by the applicable rules. The Environmental Law Judge (ELJ) finds in favor of the Indiana Department of Environmental Management (IDEM).

FINDINGS OF FACT

1. Brandon L. Gaines submitted his application for Wastewater Treatment Plant Operator Certification Examination on March 20, 2012. See IDEM Exhibit 1.
2. Mr. Gaines wanted to take the examination for wastewater treatment plant operator certification that was set for April 26, 2012.
3. The IDEM informed Mr. Gaines on March 30, 2012 that he could not take the exam because he had not submitted his application prior to the deadline of March 12, 2012. The IDEM had posted the date for the April exam on its website at least 6 months prior to the date of the exam.
4. Mr. Gaines filed his petition for administrative review of IDEM’s decision on April 13, 2012. With the consent of both Mr. Gaines and IDEM, a final hearing was held on April 20, 2012.
5. Mr. Gaines admits that he knew the date by which the application must be submitted and that he failed to submit the application on time. Mr. Gaines believed, in good faith, that his

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employer would submit the fee for him. However, his employer (Gary Sanitary District) failed to do so.

6. This matter was set for a prehearing conference on April 20, 2012. With the consent of the parties¹, a final hearing was held on this date instead. With his consent, Mr. Gaines participated by telephone. At the close of evidence, the presiding ELJ ruled in favor of IDEM finding that Mr. Gaines had not submitted his application on time and that the rule did not allow IDEM any discretion in this matter.

Applicable Law

327 IAC 5-22-11 requires IDEM to establish a testing procedure for persons wanting to become certified as wastewater treatment plant operators. Part of this rule establishes the applicant's responsibilities. 327 IAC 5-22-11(b) states:

- (b) A person wishing to be examined for wastewater treatment apprenticeship or certification shall fulfill the following requirements:
 - (1) Complete an application on a form approved by the commissioner that:
 - (A) contains true and accurate information to the best of the applicant's knowledge; and
 - (B) is free of omissions and misrepresentations, either of which may result in rejection of the application or revocation of any certificate previously granted.
 - (2) Submit a completed application, with the necessary fee, to the commissioner not later than forty-five (45) days preceding the date of the examination.

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.
2. 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. The rule (327 IAC 5-22-11(b)) is clear that applications to take the wastewater treatment plant operator certification exam must be submitted no later than 45 days prior to the date of the exam. In this case, that deadline was March 12, 2012. By his admission, Mr. Gaines did not submit his application until March 20, 2012.
4. The rule does not allow IDEM any discretion to allow a person who submits an application past the deadline to take the exam.

¹ The ELJ wishes to thank IDEM's counsel for her coordination and cooperation in expediting this matter.

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FINAL ORDER

AND THE COURT, being duly advised, hereby **ORDERS, ADJUDGES AND DECREES** that the Petitioner failed to meet his burden of proof. Judgment is entered for the Indiana Department of Environmental Management. The Petition for Review is **DISMISSED**.

You are hereby 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 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 I.C. § 4-21.5. Pursuant to I.C. § 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 27th day of April 2012 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge