

**Objection to the Denial of Tax Exemption
for Industrial Waste Control, AK Steel, Spencer County, Indiana
2018 OEA 20 (17-W-J-4971)**

OFFICIAL SHORT CITATION NAME: When referring to 2018 OEA 20, cite this case as
AK Steel, 2018 OEA 20.

TOPICS:

Jurisdiction

Useless provision

Intervention

in pari materia

I.C. §6-1.1-10-9(a)

I.C. §6-1.1-10-10

I.C. §6-1.1-10-11

I.C. §4-21.5

50 IAC 4.2-11.1-3

I.C. § 4-21.5-7

Statutory construction

Bourbon Mini-Mart, Inc. v. Commissioner, Indiana Department of Environmental Management,
806 N.E.2d 14, 20 (Ind. Ct. App. 2004)

Indiana Alcoholic Beverage Commission v. Osco Drug, Inc., 431 N.E.2d 823, 833 (Ind. Ct. App.
1982)

State v. Evans, 790 N.E.2d 558, 560 (Ind. App., 2003)

PRESIDING JUDGE: Catherine Gibbs

PARTY REPRESENTATIVES:

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ORDER ISSUED:

January 25, 2018

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

Judicial Review: Spencer Circuit Court, Cause No. 74C01-1802-PL-000051

**Objection to the Denial of Tax Exemption
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STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	

IN THE MATTER OF:)	
)	
OBJECTION TO THE DENIAL OF TAX)	
EXEMPTION FOR INDUSTRIAL WASTE CONTROL)	CAUSE NO. 17-W-J-4971
AK STEEL CORPORATION)	
SPENCER COUNTY, INDIANA)	

FINAL ORDER OF DISMISSAL

This matter came before the Office of Environmental Adjudication (the “OEA” or the “Court”) on AK Steel Corporation’s Petition for Administrative Review and Adjudicatory Hearing, timely filed on September 25, 2017. On October 11, 2017, Spencer County and Spencer County Assessor, Jane McGinnis (collectively referred to as “Spencer County”) jointly filed their Petition to Intervene. The motion to intervene was granted on November 1, 2017.

This matter began as a review of IDEM’s denial of AK Steel’s request for a tax exemption for its industrial waste control facility. The facility in question is located in Spencer County. Ind. Code §6-1.1-10-9(a) allows the owner of an industrial waste control facility to seek a tax exemption for personal property which is:

- (1) included either as a part of or an adjunct to a privately owned manufacturing or industrial plant or coal mining operation; and
- (2) used predominantly to:
 - (A) prevent, control, reduce, or eliminate pollution of a stream or a public body of water located within or adjoining this state by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, or disposing of waste or contaminants generated by the plant; or
 - (B) meet state or federal reclamation standards for a coal mining operation.

AK Steel sought such an exemption. After an investigation by IDEM (as provided for in I.C. §6-1.1-10-10), IDEM denied the request. AK Steel described the petition for review that appealed the denial as a protective filing to ensure that AK Steel reserved its rights to administrative review as the petition raised the question whether the OEA has jurisdiction to hear this matter.

There are two statutes that address the OEA’s jurisdiction over IDEM’s denial of the tax exemption. These are I.C. §6-1.1-10-11 and I.C. §4-21.5-3-7. I.C. §6-1.1-10-11 states:
A determination by the department of environmental management under section 10 of this chapter may be appealed by the property owner to the circuit court, superior court, or

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probate court of the county in which the property is located. The court shall try the appeal without a jury. Either party may appeal the court's decision in the same manner that other civil cases may be appealed.

The regulation that implements this statute, adopted by the Indiana Department of Local Government Finance, is 50 IAC 4.2-11.1-3, which states: "A determination by the Indiana department of environmental management under section 4 of this rule may be appealed by the property owner to the circuit court of the county in which the property is located. The court shall try the appeal without a jury. Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed."

I.C. §4-21.5 *et seq.* (the Administrative Orders and Procedures Act or AOPA) establishes the procedure through which agency actions are adjudicated. I.C. §4.21.5-2-3 states "This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise." I.C. §4-21.5-5-4 specifically provides that administrative remedies must be exhausted before a person can seek judicial review. I.C. § 4-21.5-7 sets out the limits of OEA's jurisdiction. This law states:

(a) The office of environmental adjudication is established to review, under this article, agency actions of the department of environmental management, actions of a board described in IC 13-14-9-1, and challenges to rulemaking actions by a board described in IC 13-14-9-1 made pursuant to IC 4-22-2-44 or IC 4-22-2-45.

A determination whether the OEA has jurisdiction of this matter requires application of the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain the intent of the legislature by giving effect to the ordinary and plain meaning of the language used." *Bourbon Mini-Mart, Inc. v. Commissioner, Indiana Department of Environmental Management*, 806 N.E.2d 14, 20 (Ind. Ct. App. 2004). "The meaning and intention of the legislature are to be ascertained not only from the phraseology of the statute but also by considering its nature, design, and the consequences which flow from the reasonable alternative interpretations of the statute. Statutes relating to the same general subject matter are *in pari materia* and should be construed together so as to produce a harmonious statutory scheme." *State v. Hensley*, 716 N.E.2d 71, 76 (Ind. Ct. App. 1999).

There is a strong presumption that the legislature in enacting a particular piece of legislation is aware of existing statutes on the same subject. *Morgan County R.E.M.C v. Indianapolis Power & Light Co.*, 260 Ind. 164, 261 Ind. 323, 302 N.E.2d 776 (1973); *Chaffin v. Nicosia* 297 N.E.2d 904 (Ind. Ct. App. 1973). Statutes relating to the same general subject matter are *in pari materia* and should be construed together so as to produce a harmonious system. *State ex rel. Moore v. Smock*, 156 Ind.App. 158, 295 N.E.2d 857 (1973); *Porter Memorial Hospital v. Harvey*, 151 Ind.App. 299, 279 N.E.2d 583 (1972). . . . Similarly, where one statute deals with a subject in general terms and another statute deals with a part of the same subject in a more detailed or specific manner, then the two should be harmonized, if possible; but if they are in irreconcilable conflict then the more detailed will prevail as to the subject matter it covers. *State ex rel.*

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Todd v. Hatcher, 158 Ind.App. 144, 301 N.E.2d 766 (1973); *Chaffin*, *supra*; *Citizens Gas & Coke Utility v. Sloan*, 136 Ind.App. 297, 196 N.E.2d 290 (1964), *reh. den.*, 136 Ind. App. 297, 197 N.E.2d 312.

Indiana Alcoholic Beverage Commission v. Osco Drug, Inc., 431 N.E.2d 823, 833 (Ind. Ct. App. 1982); *see also State v. Greenwald*, 116 N.E. 296 (Ind. 1917).

Further, the courts have held that it should be presumed that the legislature would not enact a “useless provision” and that “where statutory provisions are in conflict, no part of a statute should be rendered meaningless but should be reconciled with the whole.” *State v. Evans*, 790 N.E.2d 558, 560 (Ind. App., 2003) (citing *Moons v. Keith*, 758 N.E.2d 960, 965 (Ind. Ct. App. 2001)).

Under these rules, it is clear that the legislature intended to give jurisdiction of these matters to the local circuit, superior or probate courts and not to OEA. First of all, while I.C. §4-21.5-3 and 4-21.5-7 address OEA’s general jurisdiction, I.C. §6-1.1-10-11 specifically addresses what court has jurisdiction over an appeal of a determination made under I.C. §6-1.1-10-10. The rule that the more specific law prevails over the more general law applies here.

Second, if it were decided that the provisions of I.C. §4-21.5 prevailed, this would completely render I.C. §6-1.1-10-11 useless as the provisions of I.C. §6-1.1-10-11 would merely restate the general rule that local courts have jurisdiction to hear matters on judicial review, as provided by I.C. §4-21.5-5. The rule that the legislature to presumed to be aware of both I.C. §4-21.5 and I.C. §6-1.1-10-11 applies. The rule that the legislature would not enact a useless provision also applies.

Therefore, the OEA does not have jurisdiction to hear this matter.

THE OEA, being duly advised, **ORDERS** that this cause is **DISMISSED for lack of jurisdiction**. All further proceedings are **VACATED**.

The parties 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 in Indianapolis, Indiana this 25th day of January 2018.

Hon. Catherine Gibbs
Environmental Law Judge