

**OBJECTION TO THE ISSUANCE OF CONSTRUCTION PERMIT APPLICATION
SANITARY SEWER EXTENSION – CONTRACT B - PERMIT APPROVAL NO. L-0604
ADAMS COUNTY REGIONAL SEWER DISTRICT PREBLE/PETERSON SRF PROJECT
2021 OEA 082, CAUSE NO. 20-W-J-5126**

Official Short Cite Name:	Adams County RSD/Preble/Teeple, 2021 OEA 082
OEA Cause No.:	20-W-J-5126
Topics/Keywords:	Sanitary Sewer Construction Permit Application I.C. § 13-13 I.C. § 13-15-2 I.C. § 13-26-5 I.C. § 4-21.5 I.C. § 4-21.5-3 I.C. § 4-21.5-7 315 IAC 1 315 IAC 1-3-1(b)(18) 315 IAC 1-3-2(b)(4)(A)(i) 315 IAC 1-3-2(b)(4)(A)(ii) 315 IAC 1-3-7 327 IAC 3 327 IAC 3-1-1 327 IAC 9 Tr. R. 12(B) Tr. R. 12(B)(6) Self-Represented Cost of project Property damage Constitutional rights District approval process Public notice Referendum No alternatives proposed System not working properly System could leak System has substitutes IDEM, OEA legal, regulatory authority limited Conjecture Speculation Tr.R. 12(B) amend Petition as a matter of right after Tr.R. 12(B)(6) dismissal
Presiding ELJ:	MARY DAVIDSEN, ESQ.

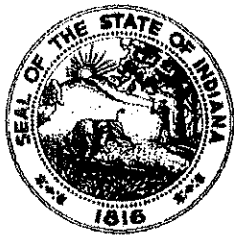
Party Representatives:	CONNIE TEEPLE, PRO SE
	DANIEL WILLARD, ESQ., IDEM
	MARK S. BURRY, ESQ., PERMITTEE/Respondent
	STEPHANIE H. FRIEL, ESQ., Permittee/Respondent
	JOEL T. BOWERS, ESQ., Permittee/RESPONDENT
	MICHAEL T. SCANLON, ESQ., Permittee/ RESPONDENT

Order Issued:	March 15, 2021; April 6th, 2021
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Index Category:	WATER
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Further Case Activity:	
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04.06.21 MD



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary Davidsen
Chief Environmental Law Judge

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STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE
OF ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF OBJECTION TO ISSUANCE OF) CAUSE NO. 20-W-J-5126
CONSTRUCTION PERMIT APPLICATION)
SANITARY SEWER EXTENSION – CONTRACT B -)
ADAMS COUNTY REGIONAL SEWER DISTRICT)
PREBLE/PETERSON SRF PROJECT)
PERMIT APPROVAL NO. L-0604)
DECATUR, ADAMS COUNTY, INDIANA.)
_____)
Connie Teeple,)
Petitioner,)
Adams County Regional Sewer District,)
Permittee/Respondent,)
Indiana Department of Environmental Management,)
Respondent.)

FINAL ORDER OF DISMISSAL

**PLEASE SUBMIT ALL FILINGS TO THE COURT VIA EMAIL AT
frontdesk@oea.in.gov**

Pursuant to Ind. Code § 4-21.5-3-24 and 315 IAC 1-3-8, the Petition for Administrative Review filed by Petitioner, Connie Teeple, is **DISMISSED**; Petitioner was to file an Amended Petition for Administrative Review within ten days of service of the March 15, 2021 Findings of Fact, Conclusions of Law and Order and Notice of Proposed Order of Dismissal (“March 15 Order”). Petitioner’s legal counsel was served the March 15, 2021 Order on March 15, 2021 via email. As Petitioner’s legal counsel’s March 5, 2021 Motion to Withdraw was pending, Petitioner Connie Teeple was served via certified mail, return receipt requested (and was also served via U.S. Mail, First Class, on March 15, 2021). The March 15, 2021 Order provided:

IT IS ORDERED, ADJUDGED AND DECREED that the Respondent’s Motions to Dismiss is **GRANTED**. Pursuant to T.R. 12(B), Petitioner Connie Teeple is given leave to amend her petition for review within ten (10) days after service of this Order.

Pursuant to Ind. Code § 4-21.5-3-24 and 315 IAC 1-3-7, this constitutes

notice of a Proposed Order of Dismissal. It is proposed that this matter be dismissed if Petitioner fails to file an amended petition. **IT IS FURTHER ORDERED** that Petitioner Connie Teeple's failure to amend her petition for review shall result in the entry of a final order of dismissal of this matter.

Per court order, Petitioner's legal counsel was to serve the March 15, Order (and other documents) on Petitioner Teeple before legal counsel's motion to withdraw was effective, and to confirm same with the Court. Petitioner's legal counsel submitted no other communications with the Court, after her March 5, 2021 motion to withdraw. Petitioner Teeple did not claim the March 15, 2021 Order sent via certified mail; the March 15, 2021 Order sent via U.S. Mail, First Class, was not returned, indicating no defect in mailing. Petitioner Teeple was served the March 15, 2021 Order.

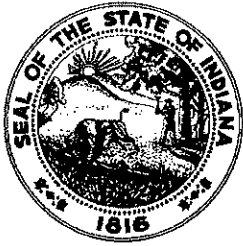
No further submissions have been made to the Court by Petitioner or her legal counsel, nor was leave sought from complying with the Court's March 15, 2021 Order. Neither Petitioner nor her legal counsel participated in the March 8, 2021 Final Telephonic Prehearing Conference, nor did they seek leave from participating.

For failure to comply with the March 15, 2021 Order, the Petition for Administrative Review filed by Petitioner, Connie Teeple, is **DISMISSED**. All pending scheduled events are hereby **VACATED**.

You are further advised that, pursuant to Ind. Code § 4-21.5-5, et seq., this Final Order is subject to judicial review. Pursuant to Ind. Code § 4-21.5-5, et seq., 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 6th day of April, 2021 in Indianapolis, IN.

Hon. Mary L. Davidsen
Chief Environmental Law Judge



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary Davidsen
Chief Environmental Law Judge

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STATE OF INDIANA)
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DECATUR, ADAMS COUNTY, INDIANA.)

) CAUSE NO. 20-W-J-5126

Connie Teeple,
Petitioner,
Adams County Regional Sewer District,
Permittee/Respondent,
Indiana Department of Environmental Management,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS and NOTICE OF PROPOSED FINAL ORDER OF DISMISSAL

Petitioner Connie Teeple, seeks stay and revocation of a sanitary sewer construction permit.. This matter came before the Office of Environmental Adjudication (“OEA” or “Court”) on December 18, 2020, on a Motion to Dismiss filed by Permittee/Respondent Adams County Regional Sewer District. The OEA’s Chief Environmental Law Judge (“ELJ”), having read the motion, responses and replies, now enters the following findings of fact, conclusions of law and order.

Findings of Fact

1. Petitioner Connie Teeple (“Teeple”) owns and lives at property at 1065 West US 224, Decatur, Adams County, Indiana (“Teeple’s Property”)¹. Petitioner Teeple disputes the construction of and connection to a sanitary sewer extension. All substantive pleadings on Petitioner Teeple’s behalf were filed without legal representation. During most of this dispute, Petitioner Teeple represented herself without legal counsel.²

¹ Petitioner Teeple’s filing with the Court reference the tax sale of this property, but these references also include the conclusion that Ms. Teeple still owns the property. Therefore, the Court will refer to Ms. Teeple as the property owner.

² Petitioner Teeple’s legal counsel filed a February 9, 2021 appearance and a March 12, 2021 withdrawal, No substantive pleading were filed by Ms. Teeple’s legal counsel.

2. The Adams County Regional Sewer District (“District.”) submitted an application, per 327 IAC 3, for a project to extend new sanitary sewer service to 126 single family homes and 11 commercial units along an unincorporated portion of Highway U.S. 224 outside of Decatur, Indiana, (“the Project”).

3. On October 26, 2020, the Indiana Department of Environmental Management (“IDEM”) issued Approval No. L-0604 (“Permit”) for the District’s construction permit application. *See* Teeple Petition, p. 1.

4. On November 16, 2020, Ms. Connie Teeple (“Petitioner Teeple”) timely filed her Petition of/for Administrative Review (“Petition”).

5. Petitioner Teeple is one of the citizens whose home will be connected to the approved sewer extension. In summary, Petitioner Teeple requests that the Permit be set aside and stayed for the following reasons, summarized as:

- a. Cost and property objections: Petitioner Teeple stated objections about the cost of the project to residents, increase in utility bills, concerns with property damage and concerns about “constitutional rights” and compliance with Ind. Code § 36-9-23, *et seq.* *Petition*, p. 1, 2.
- b. Process objections: Petitioner Teeple stated objections to the process by which the Project was approved by the District, including public notice, the lack of a referendum on the Project, that “facts and figures” were not provided to the public, that no alternatives were proposed to the public, and the allegation Ms. Teeple did not receive a certified letter regarding the Project. *Id.*
- c. Permit objections: Petitioner Teeple’s objections to the Construction Permit itself, stated concerns that the proposed system will not work properly, that the system could leak, and the “system has substitutes”. *Id.*

6. The Court’s November 18, 2020 order set the original telephonic pre-hearing conference for December 14, 2020 but after consideration of a motion for continuance by Petitioner, OEA continued the Pre-hearing conference to January 11, 2021.

7. On December 18, 2020, the Respondent District filed its Motion to Dismiss for failure to state a claim under Indiana Trial Rule 12(B)(6). Per the January 11, 2021 Case Management Order, Petitioner Teeple’s response to Respondent’s Motion to Dismiss was due on January 25; however Petitioner Teeple sought an indefinite continuance to conduct legal and factual research at the county health department. Petitioner Teeple’s response deadline was extended to February 1, 2021.

8. On February 3, 2021, Petitioner Teeple filed her “Motion to Dismiss Stephanie Friel’s Motion to Dismiss for Failure to State a Claim on Which Relief Can Be Granted”³. On

³ Stephanie Friel is one of the District’s legal counsel. In her Motion, per Tr. R. 12(B)6), Petitioner Teeple sought to dismiss the District’s Motion to Dismiss, alleging that Stephanie Friel did not file the District’s

February 9, 2021, Respondent filed its Reply. Petitioner Teeple, representing herself, has filed numerous pleadings, subpoenas, photo exhibits and objections to the case schedule. Petitioner Teeple's filings raise substantive support to her claims, but do not support that her claims are within OEA's jurisdiction to grant relief.

Conclusions of Law

1. The Indiana Department of Environmental Management ("IDEM") is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws, per Ind. Code § 13-13, *et seq.* The Office of Environmental Adjudication ("OEA" or "Court") has jurisdiction over the decisions of the Commissioner of IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7, *et seq.* In the exercise of its jurisdiction, OEA is governed by the Administrative Orders and Procedures Act ("AOPA"), stated in I.C. § 4-21.5, *et seq.*, and OEA-specific rules stated in 315 IAC 1, *et seq.*

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. Permittee/Respondent District, by legal counsel, filed a December 18, 2020 Motion to Dismiss Petitioner Teeple's Petition for Administrative Review. The Court, having read the motion, response and reply, now enters the following findings of fact, conclusions of law and order.

4. In its Motion to Dismiss, Permittee/Respondent District, argues that that under Ind. Trial Rule 12(B)(6), Petitioner Teeple fails to state a claim upon which relief can be granted under Ind. Trial Rule 12(B)(6).

5. A motion to dismiss under Ind. Trial Rule 12(B)(6) for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim, not the facts supporting it. *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003). In reviewing a motion to dismiss, "a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint. This Court views the pleadings in a light most favorable to the nonmoving party, and we draw every reasonable inference in favor of that party." *Huffman v. Office of Environmental Adjud.*, 811 NE.2d 806, 814 (Ind. 2004). Therefore, the face of Petitioner Teeple's complaint as stated in her November 12, 2020 Petition for Administrative Review and Stay contains the scope of evidence to be examined under Tr. R. 12(B)(6) consideration.

6. In responding to the District's motions to dismiss, Petitioner Teeple argues the facts of her claims. Petitioner Teeple states facts and argument as to how she and others will be harmed by the District's sewer extension. In order to determine this case on the merits, as Petitioner Teeple seeks, the Court first needs to address whether it has jurisdiction over Petitioner Teeple's case.

motion with OEA. The District's Motion was filed with OEA, and even if it had not been, such a defect would not support Petitioner Teeple's dismissal motion under Tr. R. 12(B)(6).

7. The OEA and IDEM, as state agencies, only have the authority to take those actions which are granted by the law. See *In Re: Cooper Farms*, 2018 OEA 24; *In Re: Twin Lakes Regional Sewer District*, 2007 OEA 53, 61. “An agency, however, may not by its rules and regulations add to or detract from the law as enacted, nor may it by rule extend its powers beyond those conferred upon it by law.” *Lee Alan Bryant Health Care Facilities, Inc. v. Hamilton*, 788 N.E.2d 495, 500 (Ind. Ct. App. 2003). IDEM can only determine whether a permit should be issued by applying the relevant statutes and regulations and may only consider those factors specified in the applicable regulations in deciding whether to issue a permit. Virtually all of IDEM’s regulatory authority focuses on implementing, regulating and enforcing environmental laws, including those related to permit issuance. See I.C. § 13-15-2, *et seq.* In this case, IDEM was required to base its permitting decision upon IDEM’s review of the District’s application along with its Project plans and specifications, conducting its review within the scope of applicable policies, procedures and technical requirements stated in 327 IAC 3-1-1. As the ultimate authority for the IDEM, the OEA’s authority is limited by statute (I.C. §4-21.5-7-3) to determining whether an IDEM decision complies with the applicable statutes and regulations. A petition challenging a construction permit for a sanitary sewer approved by IDEM must allege “[e]nvironmental concerns or technical deficiencies related to the action of commissioner that is the subject of the petition.” 315 IAC 1-3-2(b)(4)(A)(i). (In a case where a party objects in total to all aspects of a project, a petition for administrative review understandably may exclude “Permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.” 315 IAC 1-3-2(b)(4)(A)(ii)).

8. If the IDEM does not have the regulatory authority to address certain issues, the OEA does not have the authority to revoke a permit on the basis that IDEM failed to consider these issues.

9. Petitioner Teeple’s objections based upon economic and property damage impact are not properly before the OEA. The Petitioner does not cite to any regulations supporting her contentions that the Permit should be revoked because of these objections. In fact, there are no regulations which require IDEM to consider the affect its Approval will have on these matters. The District’s Motion to Dismiss should be granted as to these issues.

10. Petitioner Teeple’s objections based upon stated general concerns that the proposed system will not work properly, that the system could leak, and the “system has substitutes” are not properly before the OEA. Beyond her conjecture, Petitioner Teeple does not specify any regulatory requirements supporting her contentions that the Permit should be revoked because of these objections. To the extent that Petitioner Teeple is asserting that the Permitted system will not function in compliance with applicable regulations, OEA may not consider Petitioner Teeple’s allegations of future violations as a basis for invalidating the Permit. By its terms, the District’s Permit requires that the Permitted activity must comply with all other regulations, even if it complies with regulations under IDEM’s stewardship. IDEM presumes that any person that receives a permit will comply with the applicable regulations and with future permits. OEA may not overturn an IDEM approval upon speculation that the regulated entity will not operate in accordance with the law. *In the Matter of: Objection to the Issuance of Approval No. AW 5404, Mr. Stephen Gettelfinger, Washington, Indiana*, 1998 WL 918589 (Ind.Off.Env.Adjud.); *Grahn, Id.*; *Sidney, Id.*; *In Re: Sanitary Sewer Construction Permit, Lafollette Station Towne Centre*,

US 150 and Lawrence Banet Road, 2004 OEA 67, 70 (03-W-J-3263); *DeGroot Dairy by Lindsey*, 2006 OEA 1, 6-7. The District's Motion to Dismiss should be granted as to these issues.

11. Petitioner's general objections as to the constitutionality of the Permit issuance are not within OEA's authority to specify or determine. IDEM's authority to regulate and issue construction permits to sanitary sewer systems is generally found in I. C. § 13-15, *et seq.* and 327 IAC 3-1-1. IDEM's permitting authority is focused on environmental considerations, including a technical review of a projects plans and specifications. 327 IAC 9, *et seq.* See also I. C. § 13-15-6-2(6). District powers and duties are enumerated by statute and rule; Petitioner Teeple specifically challenges the District's actions taken during its application process: that public notice was insufficient, that there was no referendum, that the public was not provided "facts and figures", that there were no alternatives, and that some notice was not provided via certified mail. Petitioner Teeple's specific allegations are not sufficient to support her allegation of unconstitutionality, nor would such an allegation be within OEA's jurisdiction to cure by Permit revocation. The District's Motion to Dismiss should be granted as to these issues.

12. To the extent that Petitioner Teeple is asserting that IDEM's permitting action was unconstitutional, for lack of notice to Petitioner Teeple, this process cures such a notice deficiency. *Huffman* requires OEA to examine the impact on the specific petitioner's aggrieved or adversely status, not on that of the general public. As Petitioner obtained notice in time to timely appeal the Permit, this current administrative adjudicatory review process before OEA cures any due process deprivation asserted by the Petitioner. *In Re: Fall Creek Regional Waste District*, 2007 OEA 64. And, as noted above, permit revocation is not a remedy provided for failure to comply with I.C. § 13-26-5, *et seq.* Permittee's Motion to Dismiss should be granted if Petitioner Teeple is claiming that she was denied due process for lack of notice.

13. The last question is whether Petitioner Teeple should be allowed to amend her petition. In *Office of Environmental Adjudication v. Kunz*, 714 N.E.2d 1190, the Court of Appeals found that the OEA erred in not allowing the petitioners an opportunity to amend the petition for review. 315 IAC 1-3-1(b)(18) allows the ELJ to apply the Indiana Rules of Trial Procedure. T. R. 12(B) provides that a pleading may be amended by right within ten (10) days after service of the court's order dismissing a matter under T.R. 12(B)(6). Petitioner Teeple may amend her petition for review within ten (10) days of the effective date of this Order.

Order

AND THE COURT, being duly advised, **FINDS and ORDERS** that Permittee/Respondent Adams County Regional Sewer District's Motions to Dismiss the petition for administrative review, filed by Petitioner Connie Teeple, should be **GRANTED**.

IT IS ORDERED, ADJUDGED AND DECREED that the Respondent's Motions to Dismiss is **GRANTED**. Pursuant to T.R. 12(B), Petitioner Connie Teeple is given leave to amend her petition for review within ten (10) days after service of this Order.

Pursuant to Ind. Code § 4-21.5-3-24 and 315 IAC 1-3-7, this constitutes notice of a Proposed Order of Dismissal. It is proposed that this matter be dismissed if Petitioner fails to file an

amended petition. **IT IS FURTHER ORDERED** that Petitioner Connie Teeple's failure to amend her petition for review shall result in the entry of a final order of dismissal of this matter.

You are further notified that pursuant to provisions of IC §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 an order subject to further review consistent with applicable provisions of IC §4-21.5 *et seq* and other applicable rules and statutes.

IT IS SO ORDERED this 15th day of March, 2021 in Indianapolis, IN.

Hon. Mary L. Davidsen
Chief Environmental Law Judge