

**OBJECTION TO THE ISSUANCE OF
327 IAC 3 CONSTRUCTION PERMIT APPLICATION
SRF PROJECT PERMIT APPROVAL NOS. L-0631, L-0633
POSEY COUNTY REGIONAL SEWER DISTRICT -
WADESVILLE/BLAIRSVILLE WWTP
2022 OEA 1**

Official Short Cite Name:	Wadesville/Blairsville Wastewater Treatment Plant
OEA Cause No.:	21-W-J-5158
Topics/Keywords:	Amended petition for administrative review
	Construction of sanitary sewers
	Wastewater treatment permit
	Water pollution treatment/control facility
	Collection system permit
	OEA authority
	Speculation of future compliance
	Doctrine of mootness
	Issues raised outside of petitions for administrative review
	Ind. Code 13-15
	Ind. Code 4-21.5
	Ind. Code 13-14-1-1
	315 IAC 1-3-2(b)(4)
	327 IAC 3
	Ind. Trial Rule 56(C)
Presiding ELJ:	LORI KYLE ENDRIS
Party Representatives:	SIERRA ALBERTS, ESQ., IDEM
	JOSHUA A. CLAYBOURN, ESQ., PETITIONER
	JAMES D. JOHNSON, ESQ., PETITIONER
	JOSEPH H. LANGERAK IV, ESQ., PERMITTEE/RESPONDENT
	JORDAN SANER, ESQ., PERMITTEE/RESPONDENT
	TED C. ZIEMER IV, ESQ., PERMITTEE/RESPONDENT
Order Issued:	FEBRUARY 2, 2022
Index Category:	WATER QUALITY
Further Case Activity:	



INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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STATE OF INDIANA)
)
COUNTY OF MARION)
)
IN THE MATTER OF:)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

CAUSE NO. 21-W-J-5158

OBJECTION TO ISSUANCE OF PERMIT)
327 IAC 3 CONSTRUCTION PERMIT APPLICATION)
POSEY COUNTY REGIONAL SEWER DISTRICT)
WADESVILLE/BLAIRSVILLE WASTEWATER)
TREATMENT PLANT)
SRF PROJECT PERMIT APPROVAL NOS. L-0631, L-0633)
WADESVILLE, POSEY COUNTY, INDIANA.)

Kirk D. Ashburn, II, MSN, FP-BC)
Petitioner,)
Posey County Region Sewer District,)
Wadesville/Blairsville Wastewater Treatment Plant,)
Permittee/Respondent,)
Indiana Department of Environmental Management,)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

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

This matter came before the Office of Environmental Adjudication (OEA) on Respondent, Indiana Department of Environmental Management's (IDEM) Motion for Summary Judgment, filed on November 9, 2021, which pleading is part of the Court's record. Having read and considered the motion, brief, response, and reply, the presiding Environmental Law Judge makes the following Findings of Fact, Conclusions of Law and enters the Final Order:

FINDINGS OF FACT

1. On July 23, 2021, Respondent IDEM issued a 327 IAC 3 Construction Permit, Wadesville/Blairsville Wastewater Treatment Plant (WWTP), SRF Project Permit Approval No. L-0631 (WWTP Permit) to Permittee/Respondent Posey County Regional Sewer District (PCRS). The WWTP Permit authorized the construction of a water pollution treatment/control facility to be located approximately 125 feet north and 350 feet east of the intersection of Springfield Road and Schneider Land in Center Township, Posey County, Indiana.

2. On August 6, 2021, Petitioner, pro se, timely filed a request for administrative review of the WWTP Permit with OEA. On August 17, 2021, OEA issued a Notice of Incomplete Filing, Order to Supplement Petition and Notice of Proposed Order of Default. The Notice and Order instructed Petitioner that he must attach a copy of the IDEM action to which the Petitioner objected to the petition for administrative review; send a copy of the petition for administrative review to all parties; and identify which portion(s) of the permit to which Petitioner objected on or before August 30, 2021.

3. On August 23, 2021, IDEM issued a 327 IAC 3 Construction Permit, Wadesville/Blairsville Collection System, SRF Project Permit Approval No. L-0633 (Collection System Permit) to PCRSD. The Collection System Permit authorized the construction of a low-pressure sanitary sewer system in the unincorporated communities of Wadesville and Blairsville.

4. On September 7, 2021,¹ Petitioner, by counsel, filed an Amended and Restated Petition for Administrative Review and to Stay² Agency Action (Amended Petition) requesting administrative review of the Collection System Permit and restating the request for review of the WWTP Permit.

5. At the September 27, 2021, Telephonic Prehearing Conference, Petitioner sought to defer his Request to Stay Agency Action pending a motion to reset the matter. Petitioner did not subsequently file a motion to reset the Request to Stay Agency Action, and thus, no stay hearing was held.

6. On October 26, 2021, Petitioner, by counsel, filed a Second Amended and Restated Petition for Administrative Review³ (Second Amended Petition) and to Stay Agency Action. Petitioner, by counsel, also filed a Motion to Join and sought to join forty-one (41) additional individuals, residents of the Oakfield Subdivision in Posey County, Indiana, as petitioners in this Cause.

7. A petition for administrative review, filed under IC 4-21.5-3-7(a), may be amended as a matter of course at any time within thirty (30) days after the earlier of the following dates: (1) The initial prehearing conference. (2) The filing of a motion to dismiss. (3) Service of a notice of incomplete petition and order to supplement. Otherwise, a party may amend his or her petition only by leave of the presiding ELJ or by written consent of all parties. 315 IAC 1-3-2(e). Here, Petitioner filed his first Amended Petition by leave of the presiding ELJ through the August 17, 2021, Notice of Incomplete Filing, Order to Supplement Petition and Notice of Proposed Order

¹On September 1, 2021, OEA granted Petitioner an extension of time to file his Amended Petition up to and including September 7, 2021.

² In both Amended Petitions, Petitioner contends that "because Ashburn has timely filed this petition for review. . .he is entitled to an order staying the effect of IDEM's permits until a hearing on the merits and final decision. . .". Amended Petition, p. 5 ¶ 18; Second Amended Petition, p. 5, ¶ 21. Whether an order should be stayed in whole or in part requires a preliminary hearing where Petitioner bears the "burden of persuasion and the burden of going forward with the proof of [its] request." Ind. Code § 4-21.5-3-14(c).

³ In both Amended Petitions, Petitioner states, "Ashburn does not object to the project, *per se*, but does object to the District's proposed service boundaries and the location of the wastewater plant." Amended Petition, p. 3, ¶ 10; Second Amended Petition, p. 4, ¶ 13.

of Default. Petitioner filed his Second Amended Petition by consent of all parties at the time of the September 27, 2021 Telephonic Prehearing Conference. At no time has Petitioner requested to file a Third Amended Petition.

8. On November 9, 2021, IDEM filed its Motion for Summary Judgment and Objection to Petitioner's Motion to Join. On November 12, 2021, PCRSD filed its Objection to Petitioner's Motion to Join.

9. On December 9, 2021, Petitioner filed his Response in Opposition to IDEM's Motion for Summary Judgment. On December 21, 2021, IDEM filed its Reply in Support of Its Motion for Summary Judgment and its Reply in Support of Its Objection to Petitioner's Motion to Join. On January 20, 2022, the OEA denied Petitioner's Motion to Join.

CONCLUSIONS OF LAW

1. IDEM is authorized to implement and enforce Indiana environmental statutes and rules promulgated relevant to those statutes. See Ind. Code § 13-13 *et seq.* and Ind. Code § 13-14-1-11.5. OEA has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to Ind. Code § 4-21.5-7-3. In the exercise of its jurisdiction, OEA is governed by the Administrative Orders and Procedures Act (AOPA) per Ind. Code § 4-21.5 *et seq.* and OEA-specific rules per 315 IAC 1, *et seq.*

2. This is an Order issued pursuant to Ind. Code § 4-21.5-3-23. 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 OEA must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.*; Ind. Code § 4-21.5-3-27(d). OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806 (Ind. 2004).

4. The OEA considers a motion for summary judgment "as would a court that is considering a motion for summary judgment filed under Ind. Trial Rule 56." Ind. Code § 4-21.5-3-23(b). Citing Ind. Tr. R. 56(C), the Indiana Supreme Court stated, "[d]rawing all reasonable inference in favor of...the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Hughley v. State*, 15 N.E.3d 1000, 1003. "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id.*

5. The moving party bears the initial burden to establish the absence of any genuine issue of material fact. *Hughley*, 15 N.E.3d at 1003. Once established, the burden shifts to the non-moving party to “come forward with contrary evidence’ showing an issue for the trier of fact.” *Id.* Summary judgment is particularly appropriate where the relevant facts are undisputed and pure legal questions of statutory interpretation are presented. *Kluger v. J.J.P Enterprises, Inc.*, 159 N.E.3d 82, 87 (Ind. Ct. App. 2020). All rational assertions of fact and reasonable inferences are deemed to be true and are viewed in the nonmovant’s favor. *Lindsey v. DeGroot*, 898 N.E.2d 1251, 1256 (Ind. Ct. App. 2009).

6. “Mere speculation cannot create questions of fact” sufficient to defeat summary judgment. *Id. Beatty v. LaFontaine*, 896 N.E.2d 18, 20 (Ind. Ct. App. 2008) (citing *Briggs v. Finley*, 631 N.E.2d 959, 964-65 (Ind. Ct. App. 1994)). Opinions expressing mere possibility with regard to a hypothetical situation are insufficient to establish a genuine issue of material fact. *Id.* “Put another way, ‘guesses, supposition and conjecture are not sufficient to create a genuine issue of material fact to defeat summary judgment.’” *Beatty* at 20 (citing *Midwestern Indem. Co. v. Sys. Builders, Inc.*, 801 N.E.2d 661, 666 (Ind. Ct. App. 2004)).

7. As state agencies, IDEM and OEA only have the authority to take those actions granted by law. IDEM is authorized to determine whether a permit should be issued by applying the relevant statutes and regulations pertaining to permits and can only consider the relevant statutes and regulations when deciding whether to issue the permit. *American Suburban Utilities*, 2019 OEA 48, 53. Here, OEA’s review is limited to determining whether IDEM complied with the applicable statutes and regulations. Ind. Code § 4-21.5-7-3; *Blue River Valley*, 2005 OEA 1, 11. OEA does not have authority to address any other issues.

8. IDEM contends that Petitioner’s Petitions lack sufficient particularity and no disputed material facts exist. IDEM Memorandum in Support of Summary Judgment, p. 5.

9. On August 17, 2021, OEA issued a Notice of Incomplete Filing, Order to Supplement Petition and Notice of Proposed Order of Default with respect to Petitioner’s original Petition. The Notice and Order instructed Petitioner to attach a copy of the IDEM action to which Petitioner objected, send a copy of the petition to all parties, and identify which portion(s) of the permit to which Petitioner’s objections apply.

10. Petitioner cites *Ind. Office of Env’tl. Adj., Ind. Dep’t. of Env’tl Mgt. v. Kunz*, 714 N.E.2d 1190, 1196 (Ind. Ct. App. 1999) (internal citation omitted) to support its argument that “[a]dministrative pleadings are to be liberally construed and amended.” *Id.* (internal citation omitted). The court in *Kunz* found that Ind. Code § 13-15-6-2 requires a petition for administrative review to

(1) State the name and address of the person making the request.

(2) Identify the interest of the person making the request.

- (3) Identify any person represented by the person making the request.
- (4) State with particularity the reasons for the request.
- (5) State with particularity the issues proposed for consideration at the hearing.
- (6) Identify the permit terms and conditions that, in the judgment of the person making the request, would be appropriate in the case in question to satisfy the requirements of the law governing permits of the type granted or denied by the commissioner's action.

Id. In addition to Ind. Code § 13-15-6-2, 315 IAC 1-3-2(b)(4)(A), the initiation of a proceeding for administrative review, requires a petitioner in a case involving an appeal of a permit to state with particularity⁴ and identify:

- (i) Environmental concerns or technical deficiencies related to the action of the commissioner that is the subject of the petition.
- (ii) Permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.

The liberal construal of Petitioner's Petition, Amended Petition and Second Amended Petition does not obviate the need to comply with Ind. Code § 13-15-6-2 and 315 IAC 1-3-2(b)(4)(A).

Here, Petitioner⁵ was afforded three (3) opportunities --- through the original filing and two (2) additional amendments --- to meet the requirements of Ind. Code § 13-15-6-2 and 315 IAC 1-3-2(b)(4)(A).

Amended Petition:

11. Petitioner contends "[u]pon information and belief, water quality testing was not conducted until after the District's boundaries had been determined, strongly indicating that the District determined its proposed boundaries based on income and revenue sources rather than based on need." Amended Petition, p. 5, ¶ 21. Petitioner did not identify with particularity the environmental concerns, technical deficiencies or the portion of the permits at issue as required by Ind. Code § 13-15-6-2 and 315 IAC 1-3-2. The timing of water quality testing and its perceived relationship to "proposed boundaries based on income and revenue sources rather than need" is not an issue required by IDEM to consider under 327 IAC 3.

⁴ "Particularity" is defined as "a minute detail; the quality or state of being particular as distinguished from universal." *Particularity*. Merriam Webster Dictionary (11th ed. 2020).

⁵ "Petitioner contends that because he did not receive actual notice of the issuance of the permits until shortly before the statutory deadline for submittal of the Petition to the OEA, [s]uch abbreviated time precluded Petitioner's ability to fully analyze the permits and define issues for appeal in any detail." OEA granted Petitioner additional time in which to file his Amended Petition and a second opportunity to file his Second Amended Petition. These opportunities to file three (3) versions of the Petition belie any perceived issues regarding "abbreviated time."

12. Petitioner contends “[u]pon information and belief, all residents in the Oakfield Subdivision possess functioning septic systems that range in age from three (3) years old to nineteen (19) years old. No leaching, pooling, or health hazards have ever been observed or documented in the Oakfield Subdivision.” Amended Petition, p. 6, ¶ 23. Petitioner did not identify with particularity the environmental concerns, technical deficiencies or the portion of the permits at issue as required by Ind. Code § 13-15-6-2 and 315 IAC 1-3-2.

13. Petitioner cites 327 IAC 2-1-6 to contend Oakfield Subdivision’s E. coli results “do not justify inclusion in the District’s boundaries.” Petitioner further argues that “if the sampling does justify Oakfield Subdivision’s inclusion. . .sampling from the same study indicates that other subdivisions must be included. . .including that of District president Dwayne Ackerman.” Amended Petition, p. 6 - 7 ¶ 27. Petitioner did not identify with particularity the environmental concerns, technical deficiencies or the portion of the permits at issue as required by Ind. Code § 13-15-6-2 and 315 IAC 1-3-2. While Petitioner provided a copy of the study he and other residents of Oakfield Subdivision contracted to test for E. coli., Petitioner provided no cogent argument how the Subdivision’s E. coli levels are related to the geographical inclusion of any subdivision. Further, E. coli levels are not an issue required by IDEM to consider when issuing construction permits under 327 IAC 3.

14. Petitioner contends, “[u]pon information and belief, the District lacks sufficient participants to sustain itself financially nor [sic] from an engineering perspective.” Amended Petition, p. 7, ¶ 31. Even had Petitioner provided documentary evidence to support his belief, financial sustainability is not related to whether IDEM could issue the WWTP Permit pursuant to 327 IAC 3. *Sidney WTPSS, 2004 OEA 99, 102.* IDEM has authority to review the application and determine estimated flow rates based on the design, but IDEM does not have authority to dictate the size of a proposed WWTP or issue a construction permit based on the number of participants.

15. Petitioner contends, “AOPA requires IDEM to state factually and legally supported reasons for the conclusions it reaches” and cites Ind. Code § 4-21.5-3-27. Amended Petition, p. 7, ¶ 32.⁶ Ind. Code § 4-21.5-3-27 is not applicable to IDEM or its decisions; rather, it applies to OEA and sets forth the requirements it must meet when issuing a final order.

16. Petitioner contends, “IDEM’s issuance of [the Permits] without previous comment, question, or request for information is also arbitrary, capricious, and an abuse of agency discretion.” Amended Petition, p. 8, ¶ 33.⁷ 327 IAC 3 does not require “previous comment, question, or request for information” prior to IDEM issuing a construction permit.

17. In the Amended Petition, Petitioner did not identify with particularity environmental concerns or technical deficiencies related to IDEM’s issuance of the permit as required by Ind.

⁶ Petitioner makes the same contention in his Second Amended Petition, p. 6, ¶ 28.

⁷ Petitioner makes the same contention in his Second Amended Petition, p. 6, ¶ 29.

Code § 13-15-6-2 and 315 IAC 1-3-2. Moreover, Petitioner did not identify permit terms and conditions or provisions in 327 IAC 3 IDEM allegedly failed to consider during the permitting process, let alone establish whether IDEM failed to do so. Petitioner has failed to provide sufficient evidence to create a genuine issue of material fact in the Amended Petition. Summary judgment as to the Amended Petition in favor of IDEM is appropriate.

Second Amended Petition:

18. Petitioner contends, “[u]pon information and belief, [the proposed grinder pump collection and disposal system] will fail to remove the District’s sewage properly and efficiently.” Second Amended Petition, p. 5, ¶ 24. The permits at issue here are for the construction --- not the operation --- of the treatment plant. Because the PCRSD must apply for and receive an operating permit before it can operate the plant, the issue raised here regarding a system’s operation is premature. “OEA may not overturn an IDEM approval upon speculation that the regulated entity will not operate in accordance with the law.” *Jennings Water, Inc. v. Off. Of Env’tl. Adjud.*, 909 N.E.2d 1020, 1026 (Ind. Ct. App. 2009).

19. Petitioner contends, “[u]pon information and belief, this plant’s location will lead to substantial operational failures and substantially increase costs to the District’s residents.” Second Amended Petition, p. 5, ¶ 24. IDEM has no authority to regulate plant location or consider costs under 327 IAC 3. *Sidney WTPPS*, at 102. OEA has no authority to overturn an IDEM approval upon speculation of future non-compliance. *Jennings*, at 1026.

20. Petitioner contends “[u]pon information and belief, this plant’s size will lead to substantial operational failures and substantially increase costs to the District’s residents.” Second Amended Petition, p. 6, ¶ 25. IDEM has no authority to regulate plant size or consider costs under 327 IAC 3. See *Sidney WTPPS*, at 102. OEA has no authority to overturn an IDEM approval upon speculation of future non-compliance. *Jennings*, at 1026.

21. Petitioner contends “[u]pon information and belief, the District lacks sufficient participants to sustain itself from an operational and technical standpoint, also creating financially [sic] issues for the District’s long-term viability. Second Amended Petition, p. 6, ¶ 27. Again, the Permits at issue here are construction permits under 327 IAC 3. Because the PCRSD must apply for and receive an operating permit before it can operate the plant, the issue raised here regarding the sustainability of system’s operation is premature. Further, IDEM does not have authority to regulate the sufficiency of participants, financial issues or the District’s long-term viability under 327 IAC 3.

22. OEA’s authority is limited to determining whether IDEM followed the applicable environmental laws and rules. *Blue River Valley*, 2005 OEA 1, 11. Petitioner failed to specify which provisions in 327 IAC 3 IDEM allegedly failed to consider during the permitting process, let alone establish whether IDEM failed to do so. Petitioner has failed to provide sufficient

evidence to create a genuine issue of material fact in this cause. Summary judgment as to the Second Amended Petition in favor of IDEM is appropriate.

Petitioner's Response in Opposition to IDEM's Motion for Summary Judgment:

23. A petition for administrative review, filed under Ind. Code § 4-21.5-3-7(a), may be amended as a matter of course at any time within thirty (30) days after the earlier of the following dates: (1) The initial prehearing conference. (2) The filing of a motion to dismiss. (3) Service of a notice of incomplete petition and order to supplement. Otherwise, a party may amend his or her petition only by leave of the presiding ELJ or by written consent of all parties. 315 IAC 1-3-2(e). Here, Petitioner filed his first Amended Petition by leave of the presiding ELJ and filed his Second Amended Petition by consent of all parties. At no time did Petitioner seek to file a Third Amended Petition.

In Petitioner's Response in Opposition to IDEM's Motion for Summary Judgment (Response), Petitioner raises multiple issues for the first time.⁸ Petitioner's adding issues for OEA's review vis-à-vis his Response does not comply with 315 IAC 1-3-2. Moreover, the issues raised in a Response cannot amend his Petitions as he neither sought leave of the presiding ELJ to amend nor obtained the written consent of all parties. 315 IAC 1-3-2(e).

Notwithstanding non-compliance with 315 IAC 1-3-2, Petitioner contends IDEM failed to comply with 327 IAC 2-1.3-5 when reviewing PCRSD's Antidegradation Demonstration. Petitioner's Response, pp. 7 - 11 and pp. 14 - 19. 327 IAC 2-1.3-5 is not applicable to the Permits at issue here. The antidegradation standards and implementation procedures only apply "to new or increased loading of a regulated pollutant to surface waters of the state from a deliberate activity subject to the Clean Water Act, including a change in process or operation that will result in a significant lowering of water quality." 327 IAC 2-1.3-1(b). By the rule's own language, the antidegradation demonstration only applies to the operation or discharge from the constructed WWTP and not its physical construction.

24. Petitioner contends that 327 IAC 2-1.3-5(s) requires IDEM to "consider additional factors that may enhance the social or economic important of proposed discharge that the [PC]RSD provides to IDEM reflecting views or opinions of other governmental officials." Petitioner's claim that "the County's Environmental Sanitarian has received no complaints of wastewater discharging from the surface of the ground in the Oakfield Subdivision and the E. coli⁹ readings appear within acceptable ranges with functioning septic systems" is without merit as this rule only applies to the operation or discharge from the constructed WWTP and not its physical construction.

⁸ Petitioner's arguments in his Response did not respond to any contentions IDEM raised in its Memorandum in Support of its Motion for Summary Judgment. Moreover, Petitioner's arguments did not respond to IDEM's arguments raised in its Reply.

⁹ Petitioner's E. coli argument is disposed in ¶ 13 of the Conclusions of Law.

25. Petitioner cites Ind. Code § 13-18-3-2(s)(18), which requires IDEM to consider “[a]ny other action or recommendation relevant to the antidegradation demonstration received during the public participation process,” to contend “[t]he [PC]RSD falsely characterized Oakfield Subdivision support for the WWTP Permit and Collection System Permit in its applications.” Response, p. 15. Ind. Code § 13-18-3-2(s)(18) does not apply to the construction permits at issue here; thus, Petitioner’s contention is without merit.

26. Petitioner contends that “[a] genuine issue of material fact exists regarding [PC]RSD’s Collection System Permit --- the [PC]RSD failed to provide evidence that its WWTP is complete and operable as required.” Petitioner’s Response, pp. 11 – 14. Petitioner is correct that 327 IAC 3-6-4 and 327 IAC 3-6-7 require the proposed collection system not be contingent on a WWTP that is not completed and operational. The intent of these regulations is to protect against new waste being sent to an existing WWTP that cannot handle the additional capacity or to prevent a collection system from being put in when there is no WWTP available to accept waste. This issue often arises with proposed WWTPs and collection systems, and typically the issue is resolved through the issuance of a variance pursuant to Ind. Code § 13-14-8-8.

On December 20, 2021 PCRS D submitted a request for a variance, and IDEM issued the variance on December 21, 2021. “[A]n issue becomes ‘moot’ when it is no longer ‘live’ or when the parties lack a legally cognizable interest in the outcome; the principal questions in issue have ceased to be matters of real controversy between the parties; or the court is unable to render effective relief upon an issue.” *Haggerty v. Bloomington Bd. Of Pub. Safety*, 474 N.E.2d 114, 115 (Ind. Ct. App. 1985) (citing *Bartholomew County Hospital v. Ryan*, (Ind. Ct. App. 1982), 440 N.E.2d 754, 757). Because the necessary variance was issued, the prior lack of a variance is no longer live, has ceased to be a matter of real controversy between the parties, and the OEA is unable to render effective relief. Thus, this issue is moot. *Id.*

27. The 2021 WWTP and Collection System Permit approvals were issued in accordance with 327 IAC 3. In addition to the permits’ conditions, both permits require the PCRS D to comply with all provisions of 327 IAC 3. Summary judgment as to Petitioner’s Response to IDEM’s Motion for Summary Judgment in favor of IDEM is appropriate.

FINAL ORDER

IT IS THEREFORE ORDERED Petitioner's Petitions for Administrative Review are hereby **DISMISSED**, and the Permits issued by IDEM are hereby **AFFIRMED**.

You are 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 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 in Indianapolis, Indiana this 2 day of February, 2022.

Hon. Lori Kyle Endris
Environmental Law Judge