

**IN THE MATTER OF:**  
**COMMISSIONER, INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
**v.**  
**GARY STEELE, SR., CLASS II OPERATOR'S CERTIFICATE NO. 13582**  
**2006 OEA 054, OEA CAUSE NO.: 05-W-J-3563**

**Official Short Cite Name:** Gary Steel, Sr., Class II Operator's Certificate, 2006 OEA 054

**OEA Cause No.:** 05-W-J-3563

IC 13-18-11-8  
IC 13-15-7-3  
IC 4-21.5-3-27  
revocation of wastewater treatment plant operator license

**Presiding ELJ:** Catherine Gibbs

**Party Representatives:** Nancy Holloran, Esq.  
Gary Steele, Sr. *pro se*

**Order Issued:** 2/22/2006

**Index Category:** Waste

**Further Case Activity:**



**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: )  
 )  
 COMMISSIONER, INDIANA DEPARTMENT )  
 OF ENVIRONMENTAL MANAGEMENT )  
 )  
 Complainant )  
 )  
 v. ) CAUSE NO. 05-W-E-3563  
 )  
 GARY STEELE SR., CLASS II )  
 OPERATOR'S CERTIFICATE NO. 13582 )  
 )  
 Respondent )

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
 AND ORDER**

This matter having come before the Court for the final hearing, held on January 24, 2006, on the Indiana Department of Environmental Management's (the "IDEM") Request for Administrative Hearing; and the Environmental Law Judge (the "ELJ") having considered the evidence presented at the hearing, now makes the following findings of fact and conclusions of law and enters the following Order:

**Findings of Fact**

1. On June 24, 2005, the IDEM issued its Request for Administrative Hearing, requesting the Office of Environmental Adjudication (the "OEA") enter findings of fact that support the revocation of Gary Steele, Sr.'s operator certificate.
2. A prehearing conference was held on October 3, 2005. A final hearing was held on January 24, 2006. The IDEM appeared by counsel. Mr. Steele appeared in person.
3. Mr. Steele was the certified operator of the Town of Shelburn's (the "Town") wastewater treatment plant (the "WWTP") during 2004 and through January of 2005.

4. Mr. Steele, as the certified operator for the Town's plant, was in direct or responsible charge for the operation of the plant in compliance with the NPDES<sup>1</sup> permit, including, performing sampling and laboratory analysis in compliance with the NPDES permits, preparing reports, including DMRs<sup>2</sup> and MROs<sup>3</sup>, and had a duty to comply with the requirements of the NPDES permit.
5. Mr. Steele prepared and submitted DMRs and MROs that failed to contain sample analysis results for samples that were required to be taken at the Town's WWTP during November 2004 and January of 2005.
6. Mr. Steele did not report to the IDEM any raw or final sample analysis results for Total Phosphorus or ammonia-nitrogen, which are pollutants specified in the Town's NPDES permit, for samples that were required to be taken at the Town's WWTP during the period of November 1, 2004 through November 23, 2004.
7. Mr. Steele did not report to IDEM any raw or final sample analysis results for CBOD<sup>4</sup>, TSS<sup>5</sup>, or ammonia-nitrogen, which are pollutants specified in the Town's NPDES permit, for samples that were required to be taken at the Town's WWTP during the period of January 1, 2005 through January 11, 2005.
8. Mr. Steele failed to conduct raw and final Total Phosphorus analyses using required test procedures with the frequency required by the Town's NPDES permit during 2004 as evidenced by a laboratory review conducted during a November 23, 2004 inspection. The inspection revealed that Mr. Steele was not using analyte packets, which are necessary in the analysis for Total Phosphorus, at a rate which would indicate that the Total Phosphorus was being regularly conducted in compliance with the Town's NPDES permit throughout 2004.
9. Mr. Steele failed to operate the WWTP as efficiently as possible and in a manner which would minimize upsets and discharges of excessive pollutants, as evidenced by an inspection conducted by IDEM staff at the Town's WWTP on January 7, 2004 and November 23, 2004, during which several areas of wastewater treatment were evaluated as unsatisfactory, including the operation, self monitoring program and records/reports.
10. Mr. Steele failed to report to the IDEM sewer overflow from a lift station, as evidenced by an inspection conducted by the IDEM staff at the Town's WWTP on January 7, 2004.

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<sup>1</sup> National Pollutant Discharge Elimination System

<sup>2</sup> Discharge Monitoring Reports

<sup>3</sup> Monthly Report of Operations

<sup>4</sup> Carbonaceous Biochemical Oxygen Demand

<sup>5</sup> Total Suspended Solids

### 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 IC 4-21.5-7-3.
2. This office 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.*; I.C. 4-21.5-3-27(d). “*De novo* review” means that:

all are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.

Grisell v. Consol. City of Indianapolis, 425 N.E.2d 247 (Ind.Ct.App. 1981).

3. Indiana Code (IC) 13-18-11-8(a) provides that:
  - a) The commissioner may suspend or revoke the certificate of an operator, following a hearing under IC 13-15-7-3 and IC 4-21.5, if any of the following conditions are found:
    - (1) The operator has practiced fraud or deception.
    - (2) Reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties.
    - (3) The operator is incompetent or unable to properly perform the operator's duties.
  - (b) A hearing and further proceedings shall be conducted in accordance with IC 4-21.5-7.
4. Findings of Fact #5 through #10 show that the Respondent, Gary Steele Sr., did not use reasonable care, judgment or the application of his knowledge or ability in the performance of his duties as the certified operator of the Town’s WWTP.
5. Findings of Fact #5 through #10 show that the Respondent, Gary Steele Sr. is incompetent and unable to properly perform the operator’s duties.
6. Therefore, the ELJ finds and concludes that the Commissioner has provided substantial evidence that grounds exist for the revocation of the Respondent’s wastewater treatment plant operator certificate. The Commissioner of IDEM may revoke Mr. Allen’s certificate if he so chooses.

### Final Order

**AND THE COURT**, being duly advised, hereby **FINDS** that the Commissioner has met his burden of proof and persuasion so that the Commissioner may make a determination to revoke Respondent, Gary Steele, Sr.’s, Class II Operator’s Certificate No. 13582.

You are hereby further notified that pursuant to provisions of IC § 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 THIS 22nd day of February, 2006.

  
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Catherine Gibbs  
Environmental Law Judge

**Distribution**

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