



ISSUED:  
September 10, 2025

STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

**OAKLAND HOLDINGS, LLC,**  
Petitioner,

v.

**ORGANICS SOUTHERN, LLC,**  
Permittee/Respondent,

**INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT,**  
Respondent.

**Administrative Case Number** IDEM-2312-003076:  
OEA 23-S-J-5270

**Agency Number:** Industrial Waste Products  
Composting and Marketing and Distribution  
Permit No. IN LA 000909

### **FINAL ORDER ON SUMMARY JUDGMENT**

The Administrative Law Judge (“ALJ”) Vanessa Voigt Gould, having reviewed the record and Petitioner Oakland Holdings, LLC’s (“Oakland”) Motion for Summary Judgment, brief in support, designation of evidence, and reply, as well as Respondents’ responses in opposition and counter designations, now issues this Final Order on Summary Judgment as it relates to the Indiana Department of Environmental Management’s (“IDEM”) granting of Industrial Waste Products Composting and Marketing and Distribution Permit No. IN LA 000909 (the “Permit”). Any aggrieved party may appeal this decision. Appeal instructions are at the end of this document.

#### **Jurisdiction**

The ALJ assigned to this proceeding by the Director of the Office of Administrative Law Proceedings (“OALP”), see Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (“AOPA”) or “any other statute that requires or allows the office to take action.” The OALP has jurisdiction over this case because this case is governed by AOPA.

## Issues

The following issues were presented by the Petitioner, Oakland Holdings, LLC (“Oakland”) on Summary Judgment:

1. Whether the Permit unlawfully allows Organics to construct and operate a solid waste processing facility without a solid waste processing permit in violation of 329 IAC 11-9.
2. Whether the Permit unlawfully allows Organics to construct and operate a compost facility without a composting facility registration in violation of Indiana Code § 13-20-10-2.
3. Whether the Permit violates Ind. Code § 13-20-10-9.
4. Whether the Permit violates 327 IAC 6.1-5-3.
5. Whether the Permit violates 327 IAC 6.1-5-2.
6. Whether IDEM’s application of the Land Application Rule and default standards in issuing the Permit was arbitrary and/or unlawful.
7. Whether the Permit violates Indiana Code § 13-18-12-2.5.
8. Whether the Permit violates 327 IAC 6.1-8-6.
9. Whether the Permit violates Indiana Code § 13-15-4-1.

## Procedural History

1. On November 30, 2023, IDEM issued Industrial Waste Products Composting and Marketing and Distribution Permit No. IN LA 000909 (the Permit) to Organics Southern, LLC (“Organics”).<sup>1</sup>
2. On December 8, 2023, Oakland, an adjacent property owner, filed a Petition for Administrative Review and Stay with the Office of Environmental Adjudication.
3. On February 15, 2024, Oakland filed an Amended Petition for Administrative Review and Stay.
4. On January 31, 2025, Oakland filed its Motion for Summary Judgment, Brief in Support, and Designation of Evidence.

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<sup>1</sup> IDEM Ex. 1, Organics Ex. 8.

5. On March 3, 2025, Organics filed a Brief Opposing Oakland's Motion for Summary Judgment and Designation of Counter Evidence.
6. Also on March 3, 2025, IDEM filed its Response to Oakland's Motion for Summary Judgment and a Designation of Evidence.
7. On March 17, 2025, Oakland filed its Reply in Support of Summary Judgment.
8. On March 7, 2025, Oakland filed a Motion for Extension of Time to file a Reply in Support of Summary Judgment that was subsequently granted.
9. Oral Arguments were heard on the Motion for Summary Judgment on March 26, 2025.
10. On May 29, 2025, ALJ Lori Kyle Endris issued an Order requiring the parties file Proposed Findings of Fact and Conclusions of Law by June 12, 2025.
11. This matter was then reassigned from ALJ Lori Kyle Endris to ALJ Vanessa Voigt Gould.
12. On June 12, 2025, the parties filed their respective Proposed Findings of Fact and Conclusions of Law and the record on Summary Judgment closed.

### **Findings of Fact**

1. The Findings of Fact stated herein are undisputed.
2. On February 22, 2023, Organics submitted a marketing and distribution permit application to IDEM ("Application") under 327 IAC 6.1-5.<sup>2</sup>
3. Through the Application, Organics sought IDEM approval to construct a compost facility at 3155 Wesley Road, Boonville, Warrick County, Indiana ("Site"), receive and process and/or compost industrial waste product and other materials, and market and distribute the finished compost as a landscaping or soil amendment.<sup>3</sup>
4. The Site is adjacent to real property owned by Oakland that has been approved for a primary plat for a residential subdivision containing 57 lots. Oakland maintains its property will be adversely impacted by Organics' construction and operation of the Site under the Permit.<sup>4</sup>

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<sup>2</sup> Oakland Ex. C, pp. 19:17-22, 121-137.

<sup>3</sup> Oakland Ex. C, pp. 83:7-9, 130, 139-141; Oakland Ex. E, p. 83:11-14; Oakland Ex. A, Organics' Resp. to RFAs 14 and 22; IDEM Ex. 2, Organics, Ex. 4.

<sup>4</sup> Oakland Ex. F, pp. 28-30, 49-51, 111-12, 114-15.

5. At the time Organics submitted its Application to IDEM, the Application was incomplete in that it was missing information required under 327 IAC 6.1-5-3.<sup>5</sup>
6. Specifically, the Application did not contain the following information relevant to how industrial waste products would be stored at the Site: (1) slope; (2) the water table; (3) soil pH. The Application also did not contain any analytical testing results or laboratory analysis for the industrial waste products that would be received at the Site for processing and/or composting.<sup>6</sup>
7. During the permitting process, IDEM requested some additional information and/or documentation from Organics.<sup>7</sup> In response to IDEM's requests, Organics supplemented its Application on multiple occasions.<sup>8</sup>
8. In March 2023, Organics supplemented its Application by providing additional information on the notice given to adjoining property owners, the physical location address for the Site that had previously been omitted, and new language on the receipt of additional industrial waste.<sup>9</sup>
9. In June of 2023, Organics supplemented its Application by providing a Master Operations Plan to IDEM.<sup>10</sup>
10. Then, in September and October of 2023, Organics further supplemented its application by submitting a revised site plan, revised master operations plan, and retention pond design calculations.<sup>11</sup>
11. During the permitting process, Organics did not provide slope information for where industrial waste products will be stored at the Site to IDEM.<sup>12</sup>
12. IDEM was able to verify the topography – including slope information - for the Site using GIS and/or other available online resources during the permitting process.<sup>13</sup>

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<sup>5</sup> Oakland Ex. C, pp. 108:1-5, 141-142, 179:1-7, 182:18-23, 208; Oakland Ex. D, pp. 39:4-12, 112:17-113:18.

<sup>6</sup> Oakland Ex. B, IDEM Resp. to RFAs 4-5, 8-9, 11-12; Oakland Ex. D, pp. 39:4-12, 65:6-19; Oakland Ex. C, pp.121-147, 161-204.

<sup>7</sup> Organics Ex. 2, 3, 5 & 6.

<sup>8</sup> Organics Ex. 2, 3, 5 & 6.

<sup>9</sup> Organics Ex. 2.

<sup>10</sup> Organics Ex. 6.

<sup>11</sup> Organics Ex. 6.

<sup>12</sup> Oakland Ex. C, pp.121-147, 161-204; see also Oakland Ex. D, pp. 105:25-106:25.

<sup>13</sup> Oakland Ex. C, p. 69:14-19; Oakland Ex. D, p. 62:7-14, 64:17-25.

13. The purpose of slope information being required in the management plan is to consider drainage at the Site and the potential for runoff.<sup>14</sup>
14. During the permitting process, Organics did not provide IDEM with information on the water table where industrial waste will be stored at the Site.<sup>15</sup>
15. The purpose of the water table information being required in a management plan is to determine whether the water table below the base of any storage structures will need to be artificially lowered so as not to compromise the integrity of any permitted storage structures.<sup>16</sup>
16. During the permitting process, Organics did not provide IDEM with soil-boring data or the soil pH where the industrial waste will be stored at the Site.<sup>17</sup>
17. IDEM is unsure of the purpose of soil pH being required in a management plan and believes it is irrelevant in terms of the Permit because all industrial waste products at the Site will be stored on asphalt pads and not in direct contact with the soil.<sup>18</sup>
18. IDEM generally requires slopes, water table information, and soil borings to be submitted with the application during the permitting process and before a Permit is approved and/or issued.<sup>19</sup>
19. The Application did not contain all the information IDEM requires to perform an engineering analysis before issuing the Permit.<sup>20</sup>
20. During the permitting process, Organics did not provide IDEM with any analytical testing or laboratory analysis that would demonstrate that industrial waste products to be accepted, processed or composted, then later marketed and distributed by Organics at the Site are: (1) dewatered; (2) meet the heavy metal limits detailed in Table 3 in 327 IAC 6.1-4-9(c); or (3) meet the Polychlorinated Biphenyl ("PCB") limit of 2 milligrams per kilogram on a dry weight basis.<sup>21</sup>

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<sup>14</sup> Oakland Ex. C, p. 69:1-10.

<sup>15</sup> Oakland Ex. B, IDEM Resp. to RFA 4, 5, 8, and 11.

<sup>16</sup> Oakland Ex. D, pp. 36-38.

<sup>17</sup> Oakland Ex. B, IDEM Resp. to RFA 5.

<sup>18</sup> Oakland Ex. D, pp. 65:22-25; 66:1-3; Oakland Ex. C, p. 67:7-15.

<sup>19</sup> Oakland Ex. D, p. 42, 61-62.

<sup>20</sup> Oakland Ex. D, p. 39:4-12.

<sup>21</sup> Oakland Ex. C, pp. 97:13-98:4, 176:14-19.

21. On November 20, 2023, IDEM approved the Application and issued Industrial Waste Products Composting and Marketing and Distribution Permit No. IN LA 000909 to Organics (the "Permit").<sup>22</sup>
22. The Permit was issued pursuant to 327 IAC 6.1-5, which falls under IDEM's Land Application of Biosolid, Industrial Waste Product, and Pollutant-Bearing Water Rule, 327 IAC 6.1 (the "Land Application Rule").<sup>23</sup>
23. Upon receipt of an application for a marketing and distribution permit, IDEM reviews the information provided and determines what statutes, rules, and standards are relevant and/or apply.<sup>24</sup>
24. In certain instances, the Land Application Rule does not prescribe the specific standards to be applied by IDEM in issuing a marketing and distribution permit.<sup>25</sup>
25. In the absence of specific statutory or regulatory standards, in its review and issuance of marketing permits, IDEM has developed default standards based on and consistent with other regulatory programs, rules, and regulations.<sup>26</sup>
26. These default standards require all industrial waste products to be stored on asphalt pads that are sufficiently impermeable to prevent seepage into the soil and or groundwater, and that all run off be contained on-site to prevent impact to surface waters.<sup>27</sup>
27. IDEM has applied these default standards to marketing and distribution permits as a means of ensuring storage structures at a marketing and distribution facility protect human health and the environment.<sup>28</sup>
28. These standards are comparable and consistent with regulatory standards imposed under other regulatory programs and more specifically under certain solid waste rules and confined feeding rules.<sup>29</sup>
29. The Permit was to be effective on issuance unless stayed through an appeal action.<sup>30</sup>

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<sup>22</sup> Oakland Ex. C, pp.225-238; IDEM Ex. 1; Organics Ex. 8.

<sup>23</sup> IDEM Ex. 1; Organics Ex. 8.

<sup>24</sup> Oakland Ex. C, p. 22-24, 67:7-15.

<sup>25</sup> Oakland Ex. C, pp. 14-16, 34-41; Oakland Ex. D, pp. 30-35, 50.

<sup>26</sup> Oakland Ex. C, pp. 16-17, 35, 39, 120, 171; Oakland Ex. D, p. 19:12-18, 27, 30-32, 50.

<sup>27</sup> Oakland Ex. C, pp 120:6-11, 171; Oakland Ex. D, p. 19:12-18.

<sup>28</sup> Oakland Ex. C, pp. 35, 47-54, 119-121, 171; Oakland Ex. D, 14-24, 126-128.

<sup>29</sup> Oakland Ex. C, pp. 16-17, 35, 39, 120, 171; Oakland Ex. D, p. 19:12-18, 27, 30-32, 50.

<sup>30</sup> IDEM Ex. 1, p. 1; Organics Ex. 8, p. 2.

30. The Permit allows Organics to construct and operate a composting facility at the Site.<sup>31</sup>
31. The composting facility authorized under the Permit has not yet been constructed and is thereby not yet operational.<sup>32</sup>
32. The Permit allows Organics to accept approximately 10,000 dry tons of industrial waste product from a Pratt Industries facility located in Henderson, Kentucky (“Kentucky Pratt Facility”) at the Site.<sup>33</sup>
33. Pratt Industries is a paper recycler. The industrial waste product being imported from the Kentucky Pratt Facility (“Kentucky Industrial Waste Product”) is a solid waste and/or industrial waste product that consists mainly of cellulose materials and/or cellulose fibers generated as a byproduct of recycling of paper.<sup>34</sup>
34. The Permit also allows Organics to accept natural wood waste, yard waste (including limbs, leaves, and grass), manures, spent feeds, straw, and pre- and post-consumer food waste at the Site.<sup>35</sup>
35. The Permit also allows Organics to accept other industrial waste products at the Site upon prior approval by IDEM.<sup>36</sup>
36. The Permit allows for the materials received by Organics to undergo a composting process, as described in the Application, Management Plan, and Master Operation Plan – at the Site.<sup>37</sup>
37. During the composting process the Kentucky Industrial Waste Product will be deposited in long windrows and combined with other compostable materials approved by IDEM under the Permit.<sup>38</sup> The combined materials will then be turned, kept moist, and allowed to cure for a period of approximately twelve to eighteen months.<sup>39</sup>

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<sup>31</sup> IDEM Ex. 1, p.1; Organics Ex. 8, p. 2; Oakland Ex. C, pp. 15:15, 19:17-22, 150:13-16.

<sup>32</sup> Oakland Ex. A, Organics Resp. to RFAs 13-15; Oakland Ex. C, pp. 130-131, 224-225

<sup>33</sup> Oakland Ex. C, pp. 83:7-9, 130-131, 224-225; Oakland Ex. E, p. 83:11-14; Oakland Ex. A, Organics’ Resp. to RFAs 13-15, 22.

<sup>34</sup> IDEM Ex. 2, p. 3. Organics, Ex. 4.

<sup>35</sup> Organics Ex. 8, p. 5; IDEM Ex. 1, p. 4.

<sup>36</sup> Organics Ex. 8, p. 5; IDEM Ex. 1, p. 4.

<sup>37</sup> Organics, Ex. 1 & 8; IDEM Exhibit 1, 2, 3 & 4; Oakland Ex. C, pp.182-183; Ex. E, pp. 130:18-132:9; Ex. A, Organics’ Resp. RFAs 18-19.

<sup>38</sup> Oakland Ex. E, pp. 101:16-102:17, 134:20-135:7.

<sup>39</sup> Oakland Ex. E, pp. 101:16-102:17, 134:20-135:7; Oakland Ex. C, pp. 120, 121, 124, 125,127, and 131; Oakland Ex. A, Organics’ Resp. to RFAs 24-26.

38. The Permit allows Organics to market and/or distribute the final or finished compost as a landscaping or soil amendment, provided it complies with 327 IAC 6.1 and the Permit's specific requirements.<sup>40</sup>
39. The Permit imposes detailed requirements upon Organics related to the construction, operation, safety, record keeping, monitoring, and compliance that are derived from the applicable statutes, rules, and regulations.<sup>41</sup>
40. The Permit allows for the construction and maintenance of multiple storage structures at the Site including asphalt pads, a retention pond or lagoon, and swale to direct and capture stormwater, runoff, or any other liquid that may come in contact with the materials at the Site.<sup>42</sup>
41. Under the Permit, all composting, curing, and storage of materials at the Site must take place on the asphalt pads.<sup>43</sup> This prevents the materials at the Site from coming into direct contact with the soil.<sup>44</sup>
42. The permitted storage structures at the Site are designed to prevent seepage of stormwater, runoff, or any other liquid that may come in contact with the materials at the Site into the soil and groundwater.<sup>45</sup>
43. The Permit sets construction requirements and/or specifications for each of the permitted storage structures.<sup>46</sup>
44. The Permit requires Organics to submit documentation, including photographs to demonstrate compliance with said requirements once the storage structures are constructed and before Organics begins operations at the Site.<sup>47</sup>
45. The Permit also requires Organics to measure the depth to the seasonal high water table as determined by a registered professional soil scientist before constructing the asphalt pads and/or retention pond or lagoon.<sup>48</sup>

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<sup>40</sup> Organics Ex. 8, p. 4; see also IDEM Ex. 1, p. 3; IDEM Ex. 2, p. 9.

<sup>41</sup> IDEM Exhibit 1; Organics Ex. 8.

<sup>42</sup> IDEM Ex. 1, pp. 4-5; IDEM Ex. 3; Organics Ex. 8, pp. 5-6.

<sup>43</sup> IDEM Ex. 1, p. 6; Organics Ex. 8, p. 7.

<sup>44</sup> IDEM Ex. 1, p. 6; Organics Ex. 8, p. 7.

<sup>45</sup> Oakland Ex. E, p. 137:7-13; Oakland Ex. C, p. 126:8-10.

<sup>46</sup> IDEM Ex. 1, pp. 4-7; Organics Ex. 8, pp. 5-8.

<sup>47</sup> IDEM Ex. 1, pp. 4-5 and 12, IDEM Ex. 3, Oakland Ex. C, p. 77:17-19; Oakland Ex. D, pp. 35:23-25, 36:1-3, 38:1-17; Organics Ex. 8, pp. 5-6.

<sup>48</sup> IDEM Ex. 1, p. 4; Organics Ex. 8, p.5.

46. The purpose of measuring the water table depth is to ensure the structural integrity of the retention pond or lagoon, including preventing seeps or breaches.<sup>49</sup>
47. The Permit also requires that Organics must maintain, routinely inspect, and provide monthly inspection reports on the storage structures at the Site to IDEM.<sup>50</sup>
48. Organics is required under the Permit to promptly correct and/or take remedial action if any deterioration or malfunction of the storage structures at the Site occurs.<sup>51</sup>
49. The Permit also sets specific pollutant concentration limits and testing requirements - including heavy metals and PCB limits - for all incoming solid waste and/or industrial waste products and for all outgoing final or finished compost.<sup>52</sup>
50. The pollutant and PCB limits contained in the Permit are identical to those required under 327 IAC 6.1-5-2 as established by 327 IAC 6.1-4-9.<sup>53</sup>
51. Prior to accepting any solid waste and/or industrial waste product at the Site, the Permit requires Organics to sample the material for arsenic, cadmium, copper, lead, nickel, mercury, molybdenum, selenium, zinc, PCBs, and Percent Total Solids.<sup>54</sup>
52. Prior to accepting or composting any solid waste and/or industrial waste products at the Site, Organics must also verify that the solid waste and/or industrial waste product has been determined, in accordance with 329 IAC 3.1, to be non-hazardous.<sup>55</sup>
53. The Permit requires that before Organics can market or distribute the final or finished compost, it must submit analytical data to IDEM for review and approval.<sup>56</sup> Said analytical data must demonstrate that the final or finished compost does not contain any pollutants that exceed the statutory limits on a dry weight basis and does not exceed 2mg/kg or greater on a dry weight basis of PCBs.<sup>57</sup>

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<sup>49</sup> Oakland Ex. C, p. 77:17-19; Oakland Ex. D, p. 35:23-25, 36:1-3, 38:1-17.

<sup>50</sup> IDEM Ex. 1, p. 6; Organics Ex. 8, p. 7.

<sup>51</sup> IDEM Ex. 1, p. 6; Organics Ex. 8, p. 7.

<sup>52</sup> IDEM Ex. 1, pp. 7-8; Organics Ex. 8, pp. 8-9.

<sup>53</sup> IDEM Ex. 1, p. 7; Organics Ex. 8, p. 8.

<sup>54</sup> IDEM Ex. 1, pp. 7-8, 10; Organics Ex. 8, pp. 8-9, 11.

<sup>55</sup> IDEM Ex. 1, p. 10; Organics Ex. 8, p. 11.

<sup>56</sup> IDEM Ex. 1, p. 10; Organics Ex. 8, p. 11.

<sup>57</sup> IDEM Ex. 1, p. 8; Organics Ex. 8, p. 9.

54. The Permit also requires Organics to conduct regular monitoring, ongoing analysis, and consistent record keeping as to all incoming and outgoing materials.<sup>58</sup>
55. The Permit requires that the final or finished compost must be sampled for nutrients and heavy metals for every 60-day period in which marketing and distribution of the compost occurs and for PCBs every 365-day period.<sup>59</sup>
56. The Permit requires that Organics must comply with its management plan and Master Operation Plan which detail how the incoming industrial waste products and/or finished compost will be stored, processed, marketed, and distributed.<sup>60</sup>
57. The Permit requires that Organics must comply with 327 IAC 6.1 (the “Land Application Rule”), its management plan, and all permit prohibitions, limits, and restrictions.<sup>61</sup>
58. The material approved for marketing and distribution under the Permit is the final or finished compost.<sup>62</sup>
59. If Organics violates any provision of the Permit or the applicable statutes and regulations, Organics may be subject to an enforcement action by IDEM.<sup>63</sup>
60. In December of 2024, Organics submitted additional documents to IDEM - for compliance with certain Permit requirements - including a soil resources and water table depth report prepared by David Ralston, a certified professional soil scientist.<sup>64</sup>
61. Organics does not hold, nor has it applied for, a compost registration for the Site.<sup>65</sup>
62. Organics does not hold, nor has it applied for, a solid waste processing facility permit for the Site.<sup>66</sup>
63. It is unknown specifically what is in the Kentucky Industrial Waste Product or whether it has been tested for heavy metals or PCBs.<sup>67</sup>

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<sup>58</sup> IDEM Ex. 1, pp. 6-9; Organics Ex. 8, pp. 7-10.

<sup>59</sup> IDEM Ex. 1, pp. 9-10; Organics Ex. 8, pp. 11-12.

<sup>60</sup> IDEM Ex. 1, pp. 2-4, 11-12; Organics Ex. 8, pp. 3-5, 12-13.

<sup>61</sup> IDEM Ex. 1, p. 4; Organics Ex. 8, p. 5.

<sup>62</sup> IDEM Ex. 1, p. 4; Organics Ex. 8, p.5.

<sup>63</sup> Oakland Ex. C, p. 161:4-9.

<sup>64</sup> Organics Ex. 7, OS00001612-1628.

<sup>65</sup> Oakland Ex. C, p. 150:13-16.

<sup>66</sup> Oakland Ex. A; Organics Resp. to RFAs 2-3.

<sup>67</sup> Oakland Ex. C, pp. 176:6-177:7, 82:24-85:3.

64. It is unknown whether the Kentucky Industrial Waste Product contains hazardous material.<sup>68</sup>
65. IDEM has no reason to believe that the Kentucky Industrial Waste Product contains hazardous material.<sup>69</sup>
66. It is also unknown whether the Kentucky Industrial Waste Product has been dewatered.<sup>70</sup>
67. All required testing and analysis of incoming and outgoing material is required to be done on a dry weight basis.<sup>71</sup>
68. Cellulose material and/or fibers - like those expected to be contained in the Kentucky Industrial Waste Product - have historically been disposed of in landfills which is harmful to the environment.<sup>72</sup>
69. Recently, Organics and its affiliates have developed and implemented a composting process for cellulose material and/or fibers that instead allows for the final or finished compost to be sold for use in crop production enhancement, soil reclamation, and water retention projects.<sup>73</sup>
70. This composting process allows the cellulose material and/or fibers to be repurposed for environmentally beneficial purposes and thereby prevents unnecessary landfill use, reduces methane emissions associated with organic material decomposition, and enhances soil health through sustainable waste management practices.<sup>74</sup>
71. IDEM has issued marketing and distribution permits to two such affiliates located in Indiana including a site in Valparaiso (“Duneland,” Permit Nos. IN LA 000855 and 000893) and a site in Fort Wayne (“Organics East,” Permit No. IN LA 000880) that compost industrial waste product from Indiana Pratt Industries facilities (“Indiana Pratt Facilities”).<sup>75</sup>

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<sup>68</sup> Oakland Ex. C, p. 177:4-7.

<sup>69</sup> Oakland Ex. C, p. 165:1-4.

<sup>70</sup> Oakland Ex. C, pp. 95-97.

<sup>71</sup> IDEM Ex. 1; Organics Ex. 8.

<sup>72</sup> Oakland Ex. C, pp. 99:2-8, 163:7-18; Oakland Ex. E, pp. 190:24-191:10.

<sup>73</sup> Oakland Ex. E, pp. 98:17-99:3.

<sup>74</sup> Oakland Ex. C, pp. 93:16, 94:19; 163-164; Oakland Ex. E, pp. 101:16-102:17.

<sup>75</sup> Oakland Ex. C, pp. 84:25-85:10.

72. The Kentucky Pratt Facility will use the same protocols and processes as the Indiana Pratt Facilities and is expected to generate the same or similar cellulose material and/or industrial waste product.<sup>76</sup>
73. Analytical testing has confirmed that the cellulose material and/or industrial waste product coming from the Indiana Pratt Facilities were well below the limits for accepting and/or marketing and distributing the material under 327 IAC 6.1.<sup>77</sup>

### Conclusions of Law

1. This is a Final Order issued under 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.
2. The Indiana Department of Environmental Management (the “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.
3. The OALP has jurisdiction over and serves as the ultimate authority for this matter. See Indiana Code § 4-21.5, Ind. Code § 4-15-10.5-12.
4. OALP must apply a de novo standard of review when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993).
5. Findings of fact must be based exclusively on the evidence presented to the ALJ, and deference to the agency’s initial factual determination is not allowed. *Id.*; Ind. Code § 4-21.5-3-27(d).
6. At any time after the ALJ is assigned to the case, a party may move for summary judgment in that party’s favor. Ind. Code § 4-21.5-23.
7. Pursuant to Ind. Code § 4-21.5-3-23, an ALJ shall consider a summary judgment motion as would a court that is considering a motion for summary judgment filed under Rule 56 of the Indiana Rules of Trial Procedure.

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<sup>76</sup> Oakland Ex. E, pp. 91:11–91:22, 91:23–92:4; 243; Organics Ex. 3, OS00001015; Oakland Ex. C, pp. 82, 95:4–95:15, 185.

<sup>77</sup> Oakland Ex. C, pp. 161:10–161:21.

8. The Court may enter summary judgment for a party if it finds that “the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Ind. Tr. R. 56(C); IC § 4-21.5-3-23.
9. “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.” *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (internal citations omitted).
10. The moving party bears the burden of establishing that summary judgment is appropriate. All facts and inferences must be construed in favor of the non-movant, and all doubts as to the existence of a material issue must be resolved against the moving party. *Gibson v. Evansville Vanderburgh Building Commission, et al.*, 725 N.E.2d 949 (Ind. Ct. App. 2000); *City of North Vernon v. Jennings Northwest Regional Utilities*, 829 N.E.2d 1, (Ind. 2005); *Tibbs v. Huber, Hunt & Nichols, Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).
11. A party opposing summary judgment must present specific facts demonstrating a genuine issue for trial. *Hale v. Community Hospitals of Indianapolis*, 567 N.E.2d 842, 843 (Ind. Ct. App. 1991). When a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of their pleading but must set forth specific facts showing that there is a genuine issue for trial. *Williams v. Tharp*, 914 N.E.2d 756 (Ind. 2009).
12. The ALJ is required to base its findings, including its determination as to whether there is a genuine issue of material fact, on substantial and reliable evidence. IC § 4-21.5-3-27(d). The substantial evidence standard “requires a lower burden of proof than the preponderance [of the evidence] test, yet more than the scintilla of the evidence test.” *Burke v. City of Anderson*, 612 N.E.2d 559, 565, (Ind. Ct. App. 1993). *See also GasAmerica # 47*, 2004 OEA 123, 129; *Blue River Valley*, 2005 OEA 1, 11-12; *Objection to the Denial of Excess Liability Trust Fund Claim Marathon Point Service, ELF # 9810570/FID # 1054*, New Castle, Henry County, Indiana; *Winimac Service, ELF # 9609539/FID # 14748*; *HydroTech Consulting and Engineering, Inc.* 2005 OEA 26, 41.
13. Pursuant to Indiana Trial Rule 56(B): “When any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party.”

**I. Whether the Permit unlawfully allows Organics to construct and operate a solid waste processing facility without a solid waste processing permit in violation of 329 IAC 11-9.**

14. Oakland contends that the Permit unlawfully allows Organics to construct and operate a solid waste processing facility without a solid waste processing permit in violation of 329 IAC 11-9.<sup>78</sup> In support of this contention, Oakland argues that: (1) Organics is required to obtain a solid waste processing permit under 329 IAC 11-9; (2) Organics is not exempt from this requirement under 329 IAC 11-3 because it is not conducting land application activities and controlling law has rejected exempting entities from 329 IAC 11-9; and (3) in the alternative, if Organics is exempt under 329 IAC 11-3, the rule constitutes “ultra vires” rulemaking and is unconstitutional.<sup>79</sup>

**A. Organics is not required to obtain a Solid Waste Processing Permit in addition to its Marketing and Distribution Permit under 329 IAC 11-9.**

15. 329 IAC 11-9-1(a) states that “[u]nless excluded in 329 IAC 11-3, any person who constructs or operates a solid waste processing facility as defined under 329 IAC 11-2-43 shall have a solid waste processing facility permit under this article.”

16. 329 IAC 11-3-1 states: “The following solid waste management activities are not subject to the provisions of this article: . . . (2) Land application activities regulated by 327 IAC 6.1” or the Land Application Rule.

17. The stated purpose of the Land Application Rule is to establish procedures, requirements, and standards regarding land application and related activities. 327 IAC 6.1-1-1(a).

18. More specifically, the Land Application Rule applies to “any person who prepares biosolid, industrial waste product, or pollutant-bearing water for land application or marketing and distribution in Indiana.” 327 IAC 6.1-1-3(a)(1).

19. For purposes of the Land Application Rule, “industrial waste product” is defined as a material that is a solid waste, has beneficial use, and contains one percent or greater total solids.” 327 IAC 6.1-2-30. An industrial waste product is of a beneficial use when it is used for its “fertilizing or soil conditioning properties.” 327 IAC 6.1-2-6.

20. Pursuant to Ind. Code § 13-18-12-2.5, IDEM may allow “the use of industrial waste products... as ingredients in a soil amendment or soil substitute to be land applied on the same basis as

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<sup>78</sup> Oakland’s Brief in support of Motion for Summary Judgment (“Oakland’s Brief”), pp. 2, 10-15.

<sup>79</sup> Oakland’s Brief, p.13.

other materials under the rules concerning land application and marketing and distribution permits.” Ind. Code § 13-18-12-2.5(b)(1)(B).

21. Oakland’s argument that the activities authorized under the Permit are not “land application activities” is unavailing.<sup>80</sup> Here, the applicable rules and regulations demonstrate that the activities to be undertaken by Organics at the Site constitute land application activities. Under the Permit, Organics is allowed to conduct certain operations or activities regulated by 327 IAC 6.1. Specifically, the Permit authorizes Organics to receive and prepare or compost industrial waste product for marketing and distribution as a soil amendment that will be land applied in Indiana. The Permit is a marketing and distribution permit that was issued by IDEM under the Land Application Rule, 327 IAC 6.1. The exclusion cites the whole of the Land Application Rule which includes marketing and distribution permits as well as the operations and /or activities they authorize. Further, the stated purpose of the Land Application Rule – to establish procedures, requirements, and standards regarding land application activities – confirms that activities and/or operations under a marketing and distribution permit are land application activities. See 327 IAC 6.1-1-1-1. Therefore, under the Permit, Organics is authorized to conduct land application activities at the Site. As such, Organics’ activities, as authorized by the Permit, are land application activities regulated by 327 IAC 6.1. This is further supported by the fact that Ind. Code § 13-18-12-2.5 grants IDEM the authority to “allow the use of industrial waste products. . . as ingredients in a soil amendment or soil substitute to be land applied on the same basis as other materials under the rules concerning land application and marketing and distribution permits.” Ind. Code 13-18-12-2.5(b)(1)(B). Land application activities that are regulated by 327 IAC 6.1 are not subject to the provisions of 329 IAC 11, et. seq., and thereby exempt from the requirements of 329 IAC 11-9. 329 IAC 11-3-1(2).

**B. Oakland is not required to obtain a Solid Waste Processing Permit under the holding of *Medical Disposal Services v. IDEM*, 669 N.E.2d 1054, 1058 (Ind. Ct. App. 1996).**

22. Oakland’s argument, that *Medical Disposal Services v. IDEM*, 669 N.E.2d 1054, 1058 (Ind. Ct. App. 1996) - prohibits regulation-based exemptions “to avoid a solid waste processing facility permit” misstates the holding in *Medical Disposal* and is equally unavailing. In *Medical Disposal*, a medical waste disposal company sought declaratory judgment that: (1) the medical waste it was handling was not solid waste; (2) the facility it was operating was not a solid waste processing facility, (3) its operations were not subject to regulation by IDEM under the Environmental Management Statute or Solid Waste Processing Rules; and (4) its operations did not require a solid waste processing permit. *Medical Disposal*, 669 N.E.2d

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<sup>80</sup> Oakland Brief, p. 12.

1054. The Court of Appeals disagreed. In affirming the trial court's grant of summary judgment in favor of IDEM, the Court of Appeals found that the medical waste did in fact constitute solid waste, that Medical Disposal was operating a solid waste processing facility, that solid waste processing facility subject to regulation by IDEM, and that Medical Disposal was therefore required to obtain a permit under 329 IAC 2-8-1(a). *Id.*

23. While the Court addressed an exemption in its decision, that exemption was distinct from the exemption at issue here. Specifically, Medical Disposal argued that it was not subject to regulation under the Environmental Management Statute (IC 13-7), because infectious waste is specifically excluded from the definition of solid waste pursuant to Ind. Code § 13-9.5-1-26 (1993). *Id.* at 1059-60. The Court found that because the infectious waste exclusion put forth by Medical Disposal was derived from Article 9.5, and the definitions given in Article 9.5 were limited to Article 9.5, the exclusion did not render the definitions and regulations under Article 7 inapplicable. *Id.* The Court also held that to find otherwise would frustrate the purpose of Article 7:

[T]o preserve, protect, and enhance the quality of the environment so that, to the extent possible, future generations will be ensured clean air, clean water, and a healthful environment." See Ind.Code § 13-7-1-1(a) (1993). The permit requirement exists to protect the public from the inherent dangers of waste processing facilities through inspection by the IDEM and through correction of potential hazards. *National Salvage, supra*, at 559. A facility without a permit poses an imminent and substantial endangerment to the health and welfare of the people in the area. *Id.* This purpose, coupled with the fact the legislature has proposed to include infectious waste in the definition of solid waste, is indicative of the legislature's intent that infectious waste is subject to the regulations under Article 7 and that the exclusion of infectious waste in IC 13-9.5-1-26 is limited to that article.

*Id.* at 1060.

24. As explained in detail above, 329 IAC 11-3 specifically excludes land application activities regulated by 327 IAC 6.1. The holding in *Medical Disposal* does not prohibit or invalidate this exclusion. Additionally, it is to be noted that the Court's decision in *Medical Disposal* was based in part on its concerns that the activity at issue would otherwise go unregulated without the solid waste permit. *Id.* at 1157-58. Those concerns do not apply here, where IDEM followed the land application rules and issued a marking and distribution permit that subjects Organics' facility to operational conditions, strict testing, and continuous IDEM oversight. *Medical Disposal* is further distinct in the kind of material in and specific regulations at issue.

Accordingly, the holding in Medical Disposal does not act to invalidate the exception under 329 IAC 11-3-1 nor does it mandate that Organics must obtain a solid waste processing permit in addition to a marketing and distribution permit.

**C. 329 IAC 11-3-1 does not constitute “ultra vires” rulemaking.**

25. In the alternative, Oakland argues that the exemption found in 329 IAC 11-3-1 constitutes “ultra vires” rulemaking and thereby violates the separation of powers doctrine.<sup>81</sup> In support of this argument, Oakland contends that IDEM lacked authority to enact such an exemption.<sup>82</sup> because IDEM lacked the authority to enact it is without merit. “It is well established that administrative agencies may make reasonable rules and regulations to apply and enforce legislative enactments.” *IDEM v. Twin Eagle LLC*, 798 N.E.2d 839, 847 (Ind. 2003). Further, Ind. Code § 13-14-8-7 specifically grants IDEM the power to promulgate rules to establish “procedures for the administration of a system of permits for . . . the construction, installation, or modification . . . [and] the operation of any[] facility[,] . . . to control or prevent pollution.” Similarly, Ind. Code § 13-15-2-1 authorizes IDEM to “adopt rules . . . to establish requirements and procedures for the issuance of permits.” Finally, Ind. Code § 13-18-12-4 empowers IDEM to issue permits for the “land application of authorized septage, solid waste, and industrial waste products.” The exemption found in 329 IAC 11-3-1 was properly promulgated by IDEM pursuant to the authority bestowed on it by the legislature.

**D. Organics cannot be required to obtain a solid waste processing permit in addition to a marketing and distribution permit.**

26. Finally, IDEM is by law prohibited from imposing requirements beyond the Land Application Rule for marketing and distribution permits “unless additional requirements are necessary for the protection of human health and the environment.” Ind. Code § 13-18-12-2.5(b)(2). Oakland does not explain or offer substantial evidence to show that the environment or human health will be negatively impacted if the activities authorized under the Permit are regulated through the Land Application Rule instead of the Solid Waste Processing Rule, especially in light of the fact that the eligibility standards, reporting, and testing requirements under Land Application Rule are more stringent than those under Solid Waste Processing. See 327 IAC 6.1-5-2, 327 IAC 6.1-5-2, Ind. Code § 13-20-10-3, Ind. Code § 13-20-10-4. Further, the purpose of the Land Application Rule is the same as the Solid Waste Processing Rule – to protect and enhance the quality of Indiana’s environment and protect the “public health, safety, and well-being of its citizens. 327 IAC 6.1-1-1-1(a). As such, Oakland has failed to

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<sup>81</sup> Oakland Brief, pp. 2, 14.

<sup>82</sup> Oakland Brief, pp. 2, 14.

establish that requirements beyond those contained in 327 IAC 6.1 – such as requiring Organics to obtain a solid waste processing permit - are necessary here.

27. For all of these reasons, Oakland has failed to establish by substantial evidence that the Permit allows Organics to construct and operate a solid waste processing facility at the Site in violation of 329 IAC 11-9 as a matter of law and its request for summary judgment on this issue is DENIED.

28. Further, the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

**II. Whether the Permit unlawfully allows Organics to construct and operate a compost facility without a composting facility registration in violation of Indiana Code § 13-20-10-2.**

29. Oakland contends that the Permit violates Indiana Code § 13-20-10-2 because “Organics’ proposed facility is a composting facility. Yet through the Permit, IDEM will allow Organics to construct and operate this facility without obtaining a composting facility registration.”<sup>83</sup>

30. Ind. Code § 13-20-10, et. seq., the Compost Statute, is the statutory framework created by the legislature to govern the registration of facilities for composting certain vegetative matter and applies to “composting (as defined in Ind. Code § 13-11-2-38) of vegetative matter and other organic material.” Ind. Code § 13-20-10-1(a).

31. Ind. Code § 13-11-2-38 defines “composting” as “the biological treatment process by which microorganisms decompose the organic component of vegetative matter and other types of organic material.” Ind. Code § 13-11-2-3.

32. Under Ind. Code § 13-20-10-2, “[a] person may operate a composting facility only if the person registers the composting facility with” IDEM.

33. The definition of “solid waste” under Ind. Code § 13-11-2-205 excludes “vegetative matter at composting facilities registered under Ind. Code § 13-20-10.”

34. In addition, the Land Application Rule specifically excludes materials that are not defined as a solid waste. 327 IAC 6.1-1-3(c)(1)(B).

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<sup>83</sup> Oakland’s Brief, pp. 2, 16-17.

35. Industrial Waste product governed by the Land Application Rule is specifically defined as a solid waste. 327 IAC 6.1-2-30.
36. Oakland's argument that the Permit is unlawful because it authorizes Organics to operate a compost facility absent a compost facility registration fails as a matter of law. Because Organics obtained a marketing and distribution permit for solid waste and/or industrial waste product, it was not also required nor can it be required under Indiana law to also obtain a compost registration for vegetative and/or organic matter.
37. The regulatory framework under Ind. Code § 13-20-10 is intended to govern facilities who are composting certain vegetative matter, not facilities that are composting solid waste or industrial waste products. See Ind. § 13-20-10-1. This is evidenced by the fact that the definition of "solid waste" under Ind. Code § 13-11-2-205 excludes "vegetative matter at composting facilities registered under Ind. Code § 13-20-10." It is further evidenced by the fact that the Compost Statute differentiates between vegetative matter and solid waste. See Ind. Code § 13-20-10-9. In addition, Ind. Code § 13-18-12-2.5 allows for industrial waste products to be used as ingredients in a soil amendment to be land applied and has granted IDEM the authority to regulate such operations "on the same basis as other materials under the rules concerning land application and marketing and distribution permits". This confirms that it was the intent of the legislature to regulate the composting of solid waste for use in a soil amendment to be land applied under the Land Application Rule through a marketing and distribution permit. What is authorized under the Permit is the composting of solid waste or industrial waste products for marketing and distribution as a soil amendment - not simply the composting of vegetative matter. As such, Organics is not required to obtain a Compost Registration under Indiana Code § 13-20-10-2.
38. Further, as discussed above, IDEM is prohibited from imposing requirements beyond the Land Application Rule for marketing and distribution permits "unless additional requirements are necessary for the protection of human health and the environment." Ind. Code § 13-18-12-2.5(b)(2). Because the Permit was issued under the Land Application Rule, if IDEM were to require Organics to obtain a composting registration for the Site, said registration would exempt the solid waste or industrial waste products being received, processed, marketed, and distributed at the Site from regulation under the applicable statutes and regulations for solid waste and/or marketing and distribution. See 327 IAC 6.1-1-3(c)(1)(B) and 327 IAC 6.1-2-30. The Compost Statute does not contain any testing, monitoring, or sampling requirements for the final or finished compost. See Ind. Code § 13-20-10-3 and Ind. Code § 13-20-10-4. Nor does it contain any provisions related to the design, construction, or operation of a facility that will be composting solid and/or industrial waste products. Id. As such, this would equate to less regulation and less protection of human health and the environment which would

thereby frustrate the purpose of the overall regulatory scheme. Oakland does not explain or offer substantial evidence that would demonstrate that the environment or human health will be negatively impacted if the activities authorized under the Permit are regulated through the Land Application Rule alone. Accordingly, Oakland has failed to establish that requirements beyond those contained in 327 IAC 6.1 – such as requiring Organics to also obtain a composting facility registration - are necessary here.

39. Oakland has failed to show by substantial evidence that the Permit allows Organics to operate a composting facility in violation of Indiana Code § 13-20-10-2 as a matter of law and as such, Oakland’s request for summary judgment on this issue is DENIED.
40. Further, the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

### **III. Whether the Permit violates Ind. Code § 13-20-10-9.**

41. Oakland contends that the Permit violates Ind. Code § 13-20-10-9 because it “allows Organics to combine vegetative matter with the Kentucky industrial waste, which Organics admitted is a solid waste.”<sup>84</sup>
42. Under Ind. Code § 13-20-10-9, “a person may not knowingly combine vegetative matter resulting from landscaping maintenance and land clearing projects that is intended for: (1) collection; and (2) disposal at a solid waste landfill; with another type of solid waste.”
43. Oakland’s argument here fails as a matter of law. Oakland has failed to present substantial evidence that would establish that vegetative matter resulting from landscaping maintenance and land clearing projects that is intended for collection and disposal at a solid waste landfill is or will be combined with another type of solid waste at the Site.
44. Further, the Permit does not contain any provision or statement regarding disposal of any materials at a landfill. Also, the materials to be accepted at the facility are intended to be processed and/or composted then marketed and distributed as a soil amendment. In other words, the materials accepted and composted at the Site are intended to be sold – not landfilled.
45. Oakland has failed to show by substantial evidence that the Permit violates Ind. Code § 13-20-10-9 as a matter of law. As such, its request for summary judgment on this issue is DENIED.

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<sup>84</sup> Oakland’s Brief, pg. 2, 17-18.

46. Further, the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

**IV. Whether the Permit violates 327 IAC 6.1-5-3.**

47. Oakland contends that “327 IAC 6.1-5-3 requires certain information to be submitted to IDEM before a marketing and distribution permit can be issued, such as slope of the asphalt pads, water table depth, and soil pH. But Organics failed to provide IDEM with the required information” prior to the permit being issued and as such the Permit is unlawful.<sup>85</sup>

48. The application requirements for a marketing and distribution permit are found in 327 IAC 6.1-5-3.

49. Pursuant to 327 IAC 6.1-5-3(a) approval for a “biosolid or industrial waste product marketing and distribution permit must be requested in an application on forms and in a format prescribed by the commissioner and submitted to the commissioner in accordance with 327 IAC 6.1-3.”

50. In addition, 327 IAC 6.1-5-3(a) requires that an application for a biosolid or industrial waste product marketing and distribution permit “must include a proposed management plan submitted and approved by the commissioner” that includes the following information:

- (1) How the biosolid or industrial waste product will be marketed.
- (2) Quality control measures.
- (3) Treatment process description.
- (4) How the biosolid or industrial waste product will be stored, including the following:
  - (A) Setback distances from residences and public buildings, surface waters, wells, and other structures.
  - (B) Location criteria including flood plains, slopes, water table, soil pH, and other location criteria.
  - (C) Design and construction of storage structures.
  - (D) Nuisance control measures.
- (5) Procedures for addressing noncomplying practices by users, including:
  - (A) a written notification of the proper use of the biosolid or industrial waste product to the noncomplying user; and

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<sup>85</sup> Oakland’s Brief, pp. 2, 18-20.

- (B) other applicable procedures.
- (6) Other applicable information.

51. Oakland's argument that Organics' Application was deficient under 327 IAC 6.1-5-3 is well founded and supported by substantial evidence. The undisputed facts show that while the Application did include a management plan, the management plan lacked some of the required location criteria under 327 IAC 6.1-5-3. Specifically, the management plan submitted by Organics with its Application did not include information on the water table or soil pH for where the industrial waste product would be stored at the Site.<sup>86</sup> Accordingly, the Application was incomplete and/or deficient under 327 IAC 6.1-5-3.
52. IDEM and Organics argue that IDEM has the discretion to allow a permit applicant to provide the information required under 327 IAC 6.1-5-3 post-permit or - in the case of criteria IDEM deems irrelevant like soil pH – not at all. However, IDEM typically requires provision of the location criteria detailed in 327 IAC 6.1-5-3 in the Application before a permit is issued. IDEM uses this information to conduct a thorough engineering analysis and to build appropriate protections into the resulting permit to protect human health and the environment. Here, IDEM did not know the water table or soil pH for where the industrial waste would be stored at the time it approved the Application and issued the Permit. The requirements promulgated by IDEM under 327 IAC 6.1-5-3 are mandatory and unambiguous. As drafted, 327 IAC 6.1-5-3 does not afford IDEM the discretion to waive these mandatory requirements or deem them unnecessary or irrelevant. “[W]hen an agency promulgates rules and regulations, it is bound to follow them.” *City of N. Vernon v. Funkhouser*, 725 N.E.2d 898, 903–04 (Ind. Ct. App. 2000) *citing Indiana Family and Social Services Admin. v. Methodist Hosp. of Indiana, Inc.*, 669 N.E.2d 186, 190 (Ind.Ct.App.1996). As such, IDEM must strictly adhere to the requirements of 327 IAC 6.1-5-3 in order to approve a management plan and thereby an application for a marketing and distribution permit.
53. In approving the Application and issuing the Permit absent the location criteria information required under 327 IAC 6.1-5-3, IDEM failed to follow the applicable rules and regulations for issuing the Permit. Consequently, IDEM's approval of the Application and issuance of the Permit was invalid.

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<sup>86</sup> While Organics' management plan also did not contain the slope for where the industrial waste would be stored at the Site, IDEM was able to obtain said information through online sources and/or GIS in satisfaction of this requirement and/or criteria.

54. Oakland has demonstrated through undisputed facts and by substantial evidence that IDEM failed to follow the applicable rules and regulations in issuing the Permit. As such, Oakland is entitled to judgment as a matter of law on this issue.

**V. Whether the Permit violates 327 IAC 6.1-5-2.**

55. Oakland contends that 327 IAC 6.1-5-2 provides that an industrial waste product is eligible for a marketing and distribution permit only if the waste meets certain criteria and since Organics failed to provide IDEM with any analytical test showing the Kentucky Industrial Waste Product was permit eligible before IDEM issued the Permit – the Permit was unlawful.<sup>87</sup>

56. The eligibility criteria for the marketing and distribution of industrial waste products are set forth in 327 IAC 6.1-5-2. These requirements are not found under the application requirements listed in 327 IAC 6.1-5-3 but rather apply generally to the material that will be marketed and distributed under a marketing and distribution permit. Specifically, 327 IAC 6.1-5-2 states that:

For an industrial waste product to be eligible for a marketing and distribution permit, the following criteria must be met:

(1) The pollutant concentrations are less than the concentrations in Table 3 in 327 IAC 6.1-4-9(c).

(2) The industrial waste product must be dewatered.

(3) The industrial waste product must not contain a concentration of polychlorinated biphenyls (PCBs) of two (2) milligrams per kilogram or greater on a dry weight basis.

57. An "industrial waste product" is defined as "a solid waste as defined under 329 IAC 10-2-174." 327 IAC 6.1-2-30(1)(A). Under 329 IAC 10-2-174, "Solid Waste" has the meaning as set forth in Ind. Code § 13-11-2-205(a). Ind. Code § 13-11-2-205(a) defines "Solid Waste as "any garbage, refuse, sludge from a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities" subject to certain codified exceptions.

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<sup>87</sup> Oakland's Brief, pp. 2, 22-23.

58. Oakland's argument that, under 327 IAC 6.1-5-2, Organics must demonstrate that the Kentucky Industrial Waste Product is eligible for a marketing and distribution permit prior to the Permit's issuance, fails as a matter of law for two reasons. First, it is the final or finished compost that is subject to the requirements of 327 IAC 6.1-5-2, not the incoming industrial waste products like the Kentucky Industrial Waste Product. Second, Organics was not required to demonstrate that the final or finished compost is eligible for marketing and distribution under the Permit before the Permit was issued.
59. The Permit allows for the construction and operation of a compost facility at the Site, but the facility has not been constructed yet and is not yet operational. Organics may not market or distribute any final or finished compost containing concentration of pollutants or PCBs exceeding the limits detailed in the permit. These limits are the same as those outlined 327 IAC 6.1-5-2.
60. Once the first batch of final or finished compost is generated analytical data regarding the nutrient content, heavy metal concentrations, and PCB concentrations on a dry weight basis must be submitted to IDEM for review and approval. That data must be supplied to IDEM after the compost is dewatered and before the initial marketing and/or distribution of the final or finished compost.
61. Under the Permit, Organics must comply with 327 IAC 6.1 and may not market and/or distribute compost until it receives approval from IDEM. Because it is the final or finished compost that will be marketed and distributed under the Permit, it is the final or finished compost that is subject to the requirements of 327 IAC 6.1-5-2 not the Kentucky Industrial Waste Product. In order to be eligible for marketing and/or distribution under the Permit, the final or finished compost generated that will be generated at the Site must meet the criteria laid out in 327 IAC 6.1-5-2. This is exactly what is required under the Permit. As such, the Permit complies with 327 IAC 6.1-5-2.
62. Oakland's argument that the final or finished compost must be tested and proven eligible prior to the issuance of marketing and distribution does not give effect to the plain language of the rule and would lead to an absurd if not impossible result. *See, e.g., New v. Estate of New*, 938 N.E.2d 758, 765 (Ind. Ct. App. 2010) (courts "refuse to adopt an interpretation that would lead to an absurd result that is so contrary to the purpose" of a regulatory framework). A facility like the one authorized under the Permit must be permitted before it can begin operation. See 329 IAC 6.1-3-1, 6.1-5-4. It logically flows then that such a facility cannot begin to take in material, process it, or generate a final or finished material to be marketed and distributed before it is permitted nor can it test something that does not yet exist – the final

finished product. Therefore, under Oakland's interpretation of the rule, it would be impossible for lawful permits to ever be issued to a new facility like the one authorized under the Permit.

63. Furthermore, approval of a Permit may not be deemed unlawful based upon speculation of future non-compliance or speculation that the regulated entity will not operate in accordance with the law. See *Jennings Water, Inc. v. Office of Environmental Adjudication*, 909 N.E.2d 1020, 1026 (Ind. Ct. App. 2009).<sup>88</sup>

64. For these reasons, Oakland has failed to establish by substantial evidence that the Permit violates 327 IAC 6.1-5-2 and as such, its request for summary judgment on this issue is therefore DENIED.

65. The undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

**VI. Whether IDEM's application of the Land Application Rule and default standards was arbitrary and/or unlawful.**

66. Oakland contends that IDEM's application of the regulatory framework and certain default standards as it pertains to the Permit at issue was arbitrary and unlawful.<sup>89</sup> In support of this contention, Oakland argues that IDEM unlawfully permits Organics to go beyond marketing and distributing industrial waste through its new permit to also construct and operate a facility for processing industrial and solid waste.<sup>90</sup> Oakland also argues that IDEM's use of guidance from other programs and other rules in the absence of specific standards under the Land Application Rule was arbitrary and unlawful.

67. An agency action "is arbitrary and capricious when it is made without any consideration of the facts and lacks any basis that may lead a reasonable person to make the same decision made by the administrative agency." *IDEM v. Schnippel Constr.*, 778 N.E.2d 407, 412 (Ind. Ct. App. 2002) (quotation omitted).

68. Oakland has failed to present substantial evidence that would demonstrate that IDEM's permitting action here was arbitrary or unlawful. The undisputed facts and relevant law establish that IDEM's application of the Land Application Rule, and default standards where the rule was silent, was both reasonable and permissible.

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<sup>88</sup> See also DeGroot Dairy, 2006 OEA 1; Gettelfinger, 2005 OEA 1; Lafollette Station Towne Centre, 2004 OEA 67; Grahn, 2004 OEA 40.

<sup>89</sup> Oakland Brief, p. 3.

<sup>90</sup> Oakland Brief pp. 26-27.

69. First, the Land Application Rule applies to any person who treats, prepares, or processes industrial waste product for land application or for marketing and distribution in Indiana, not just those who solely market and distribute industrial waste products. See 327 IAC 6.1-1-3(a)(1), 327 IAC 6.1-1-3(a)(3), 327 IAC 6.1-5-3 and 327 IAC 6.1-5-4. As such, the Land Application Rule specifically contemplates that the treatment, preparation, and/or processing of industrial waste products may be permitted under the Land Application Rule through a marketing and distribution permit.
70. Second, IDEM’s use of guidance from other programs and rules in establishing default standards where the Land Application Rule is silent – leaving a regulatory gap – in order to protect human health and the environment is both reasonable and permissible. In the absence of specific regulatory standards under the Land Application Rule, IDEM created certain default standards by looking to other program types and rules for guidance. IDEM has applied those standards when reviewing applications for marketing and distribution permits to protect human health and the environment. For example, IDEM has drawn guidance from certain solid waste and confined feeding rules to mandate that all permitted marketing and distribution facilities must store all industrial waste product on asphalt pads that are sufficiently impermeable and that all runoff be contained on-site to prevent seepage or impacts to surface waters through permit conditions.
71. Indiana courts have upheld IDEM’s authority to look to other programs for guidance and to include requirements and/or permit conditions drawn from analogous programs to protect human health and the environment. See *Twin Eagle*, 798 N.E.2d at 842 (finding IDEM acted within its statutory powers by utilizing the existing NPDES permit framework to cover activities previously regulated under the federal wetlands program, because Indiana law broadly authorizes IDEM to prevent “unreasonable” pollution and to restrict pollutants “discharged into any of the streams or waters of Indiana.”); see also *City of Indianapolis v. Moran Elec. Serv., Inc.*, 145 N.E.3d 124 (Ind. Ct. App. 2020)(finding that IDEM can look outside a particular regulatory framework to other resources for guidance as long as IDEM’s decision remains grounded in the environmental laws and is explained by the record underscoring that consideration of parallel standards is permissible and not arbitrary when supported by IDEM’s mandate to protect human health and the environment).
72. IDEM’s decision to draw guidance from standards rooted in other program types, in conjunction with the applicable rules and regulations under 327 IAC 6.1-5, reflects a reasonable response to the regulatory gaps in the applicable law. The default standards applied here fully align with IDEM’s statutory directive and the Land Application Rule’s stated regulatory purpose. In fact, this is exactly what Ind. Code § 13-18-12-2.5(b)(2)(B) permits—adding requirements beyond the basic 327 IAC 6.1-5 criteria “necessary for the protection of

human health and the environment.” Additionally, applying these default standards to marketing and distribution permits fulfills IDEM’s duty to prevent unreasonable pollution under Ind. Code § 13-18-4-4. Accordingly, IDEM had a reasonable basis and ample authority to look to other program types and rules when developing default standards to be applied to marketing and distribution permits like it did here. For these reasons, IDEM’s application of the Land Application Rule and certain default standards in this permitting action was not arbitrary or unlawful. *See Fam. Dev., Ltd. v. Steuben Cnty. Waste Watchers, Inc.*, 749 N.E.2d 1243, 1256 (Ind. Ct. App. 2001).

73. Oakland’s request for summary judgment on this issue is DENIED and, because the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

#### **VII. Whether the Permit violates Indiana Code § 13-18-12-2.5.**

74. Oakland contends that Indiana Code § 13-18-12-2.5 “prohibits using industrial waste as an ingredient in a soil amendment if the industrial waste is a hazardous waste” and “requires IDEM to assess whether any pollutant present in the industrial waste that does not have a pollutant limit in 327 IAC 6.1 creates a risk to human health and the environment”.<sup>91</sup> Oakland then argues that because IDEM approved the use of the Kentucky industrial waste as a soil amendment without knowing its pollutant concentrations and without knowing whether it is a hazardous waste, the Permit violates Indiana Code § 13-18-12-2.5.<sup>92</sup>

75. Under Indiana Code § 13-18-12-2.5(a)(1), IDEM may not allow the use of industrial waste products in a land application operation or as ingredients in a soil amendment or soil substitute to be land applied if the industrial waste products constitute hazardous waste.

76. Under Indiana Code § 13-18-12-2.5(a)(2), IDEM may not allow the use of industrial waste products in a land application operation or as ingredients in a soil amendment or soil substitute to be land applied if the industrial waste product does not have a beneficial use or “otherwise provide a benefit to the process of creating the soil amendments or soil substitute or to the final soil amendment, soil substitute, or material to be land applied, such as bulking”.

77. “Beneficial use” is defined as “the use of a solid waste for fertilizing or soil conditioning properties to: (1) provide nutrients for growing plants or crops; (2) increase organic matter;

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<sup>91</sup> Oakland’s Brief, pg. 3. See also Oakland’s Brief pg. 27-28.

<sup>92</sup> Oakland’s Brief, pg. 3. See also Oakland’s Brief pg. 27-28.

(3) provide pH adjustment capabilities; or (4) provide other benefits to the soil or crops as shown to the satisfaction of the commissioner.” 327 IAC 6.1-2-6.

78. Under Indiana Code § 13-18-12-2.5(a)(3), IDEM may not allow the use industrial waste products in a land application operation or as ingredients in a soil amendment or soil substitute to be land applied if the finished soil amendment, soil substitute, or material to be land applied does not satisfy the applicable criteria in 327 IAC 6.1.
79. Indiana Code § 13-18-12-2.5(b) provides that IDEM may allow such use of industrial waste products on the same basis as other materials under the rules concerning land application and marketing and distribution permits.
80. Oakland’s argument that the Permit is unlawful because it allows Organics to accept industrial waste products without first knowing whether they are hazardous and/or contain certain pollutant fails for several reasons. First, Oakland has failed to present substantial evidence showing that the industrial waste product Oakland will accept or process/compost at the Site is in fact hazardous or has “any pollutant present . . . that does not have a pollutant limit or concentration in 327 IAC 6.1.” There is no reason to believe that the industrial waste products coming into the facility is or will be hazardous – specifically as it relates to the Kentucky Industrial Waste Product – because similar facilities that receive industrial waste products from Pratt Industries have submitted them for analytical testing and said testing has demonstrated the industrial waste product itself could be marketed and distributed under 327 IAC 6.1.
81. Second, the Permit mandates compliance with Indiana Code § 13-18-12-2.5. The Permit requires Organics to verify that any industrial waste product received or processed and/or composted at the Site is non-hazardous prior to its receipt. Under the Permit all incoming and outgoing materials must meet the regulatory limitations promulgated by IDEM for heavy metals and PCBs and satisfy the applicable criteria in with 327 IAC 6.1. Under the Permit, Organics is required to comply with 327 IAC 6.1 and the materials at issue here are regulated by the Land Application Rule and have a beneficial use.
82. Additionally, as discussed previously, approval of a permit may not be deemed unlawful based upon speculation of future non-compliance or speculation that the regulated entity will not operate in accordance with the law. *See Jennings Water, Inc.*, 909 N.E.2d at 1026; see also supra note 90.
83. Oakland has failed to establish by substantial evidence that the Permit violates Indiana Code § 13-18-12-2.5 and its request for summary judgment on this issue is therefore DENIED.

84. The undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

**VIII. Whether the Permit violates 327 IAC 6.1-8-6.**

85. Oakland contends that the Permit violates 327 IAC 6.1-8-6 because it allows “construction of a lagoon in a manner that allows entry of storm water from surrounding areas” at the Site.<sup>93</sup> Oakland also argues that the Permit violates 327 IAC 6.1-8-6 because IDEM issued the Permit without knowing the depth to bedrock or the water table.”<sup>94</sup>

86. 327 IAC 6.1-8-1(a) states:

This rule applies to all storage structures for the storage of biosolid, industrial waste product, or pollutant-bearing water unless permitted, registered, or notified under any of the following programs:

(1) The marketing and distribution program in 327 IAC 6.1-5.

87. Oakland’s argument that the Permit violates 327 IAC 6.1-8-6 is directly contradicted by the applicable rules and regulations that apply to a marketing and distribution permit. The requirements of 327 IAC 6.1-8 are explicitly inapplicable to storage structures for the storage of biosolid, industrial waste product, or pollutant-bearing water permitted under the marketing and distribution program or 327 IAC 6.1-5.<sup>95</sup> The permitted storage structures at the Site – including the retention pond or lagoon - are permitted under the marketing and distribution program in 327 IAC 6.1-5. As such, they are exempted from the lagoon requirements detailed in 327 IAC 6.1-8-6 pursuant to 327 IAC 6.1-8-1(a)(1).

88. Oakland has failed to establish by substantial evidence that the Permit violates 327 IAC 6.1-8-6 and its request for summary judgment on this issue is therefore DENIED.

89. Further, the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

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<sup>93</sup> Oakland’s Brief, pp. 3, 24-26 and 28-29.

<sup>94</sup> Oakland’s Brief, pp. 3, 24-26 and 28-29.

<sup>95</sup> See 327 IAC 6.1-8-1(a)(1).

**IX. Whether the Permit violates Indiana Code § 13-15-4-1.**

90. Oakland contends that the Permit violates Indiana Code § 13-15-4-1.<sup>96</sup> Specifically, Oakland argues that under Indiana Code § 13-15-4-1, IDEM only has 180 days to approve or deny a marketing and distribution permit application.<sup>97</sup> Because IDEM issued the Permit 271 days after Organics filed its initial application, Oakland IDEM's statutory power or authority to approve or issue the Permit had expired and IDEM was required to deny the Application.<sup>98</sup>

91. Indiana Code § 13-15-4-1 provides in pertinent part, that "[e]xcept as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days... one hundred eighty (180) days for an application concerning. . . [a] permit for marketing and distribution of a biosolid or an industrial waste product."

92. However, Indiana Code § 13-15-4-11(b) states that:

If the commissioner does not issue or deny a permit within the time specified under sections 1 through 6 of this chapter, the applicant may proceed under this section. After reaching an agreement with the commissioner or after consulting with the commissioner for thirty (30) days and failing to reach an agreement, the applicant may choose to proceed under one (1) of the following alternatives:

(1) The:

(A) applicant may, except as provided in section 12.1 of this chapter, request and receive a refund of a permit application fee paid by the applicant; and

(B) commissioner shall do the following:

(i) Continue to review the application.

(ii) Approve or deny the application as soon as practicable.

(iii) Except as provided in section 12.1 of this chapter, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

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<sup>96</sup> Oakland's Brief, pg. 3. See also Oakland's Brief, pg. 29-30.

<sup>97</sup> Oakland's Brief, pg. 3. See also Oakland's Brief, pg. 29-30.

<sup>98</sup> Oakland's Brief, pg. 3. See also Oakland's Brief, pg. 29-30.

(2) The:

(A) applicant may:

(i) except as provided in section 12.1 of this chapter, request and receive a refund of a permit application fee paid by the applicant; and

(ii) submit to the department a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall do the following:

(i) Review the draft permit.

(ii) Approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

(iii) Except as provided in section 12.1 of this chapter, refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(3) The:

(A) applicant may hire an outside consultant to prepare a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall:

(i) review the draft permit; and

(ii) approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

93. Oakland's argument that IDEM lacked the authority to issue the Permit after 180 days fails under the applicable statutory framework and existing caselaw. "The first and often the only step in resolving an issue of statutory interpretation is the language of the statute." *Shell Oil Co. v. Meyer*, 705 N.E.2d 962, 972 (Ind.1998). "Shall" is defined by Merriam-Webster as "used in laws, regulations, or directives to express what is mandatory". Generally, in Indiana, when the word "shall" appears in a statute, it is given its plain meaning and construed to be mandatory rather than directory unless it is "clear from the context clear from the context or the purpose of the statute that the legislature intended a different meaning." *United Rural*

*Elec. Membership Corp. v. Indiana & Michigan Elec. Co.*, 549 N.E.2d 1019, 1022 (Ind. 1990) citing *State ex rel. City of Indianapolis v. Brennan*, 109 N.E.2d 409 (1952); see also *Hancock County Rural Elec. v. City of Greenfield*, 494 N.E.2d 1294, 1295 (Ind.Ct.App.1986), trans. denied. This is why the word “shall” has often been held to be directory rather than mandatory. See *May v. DNR*, 565 N.E.2d 367, 371 (Ind. Ct. App 1991).

94. The meaning and intention of the legislature may be ascertained from the language of the statute itself but also by considering its “its design, its nature and the consequences that flow from the various interpretations.” *State v. Langen*, 708 N.E.2d 617, 621–22 (Ind. Ct. App. 1999) citing *Allen County Dept. of Pub. Welfare v. Ball Memorial Hosp. Ass’n*, 253 Ind. 179, 184 (1969).

“All laws are mandatory in the sense that a duty of obedience is imposed, but it does not follow that every slight departure is fatal where the act is merely procedural and does not go to the merits. The basic test, we believe, to determine whether the requirement is essential or not, is to consider the consequences of the failure to follow the statute and, in this regard, other possible interpretations.”

*Id.* Accordingly, “when a statute contains no negative or prohibitive words and does not provide for penalties on the consequences for the failure to follow prescribed time limits, those limits may be merely directory.” *Id.*

95. IDEM issued the Permit 271 days after Organics filed its initial application and after the expiration of the 180-day time frame allotted under Indiana Code § 13-15-4-1. However, Indiana Code § 13-15-4-1 contains no negative or prohibitive words and similarly does not provide for negative consequences or penalties - other than those listed in Indiana Code § 13-15-4-11(b) - for a failure by IDEM to approve or deny a marketing and distribution permit within 180 days. Indiana Code § 13-15-4-11(b) makes it clear that the 180-day time period stated in Indiana Code § 13-15-4-1 is directory not mandatory. Indiana Code § 13-15-4-11(b) also makes it clear that IDEM retains the authority to approve or deny a marketing and distribution permit after 180 days.
96. Further, in interpreting “statutory language, we must presume that the legislature did not intend an unreasonable and absurd result.” *Langen*, 708 N.E.2d 617 citing *Chesnut v. Roof*, 665 N.E.2d 7, 10 (Ind.Ct.App.1996). To construe the “shall” in Indiana Code § 13-15-4-1 as mandatory would ignore the legislature’s clear intention that IDEM retains authority to approve or a deny a marketing and distribution permit after 180 days. Ind. Code § 13-15-4-11(b). Such a result would be unreasonable and absurd.

97. Because the 180-day statutorily prescribed time period imposed by Indiana Code § 13-15-4-1 is directory, and because IDEM retains authority to approve or deny a marketing and distribution permit beyond the 180 days, IDEM was not required to deny the Application.
98. Oakland has failed to show by substantial evidence that IDEM's statutory power to issue the Permit expired with the 180-day deadline and/or that the Permit violates Ind. Code § 13-15-4-1 as a matter of law. Accordingly, Oakland's request for summary judgment in this issue is DENIED.
99. Further, the undisputed facts demonstrate that IDEM and Organics are entitled to judgment as a matter of law. As such, summary judgment on this issue is GRANTED in favor of IDEM and Organics.

### **Decision and Order**

IT IS HEREBY ORDERED THAT Oakland's Motion for Summary Judgment is granted in part and denied in part.

Summary Judgment is entered in favor of IDEM and Organics on the following issues:

1. Whether the Permit unlawfully allows Organics to construct and operate a solid waste processing facility without a solid waste processing permit in violation of 329 IAC 11-9.
2. Whether the Permit unlawfully allows Organics to construct and operate a compost facility without a composting facility registration in violation of Indiana Code § 13-20-10-2.
3. Whether the Permit violates Ind. Code § 13-20-10-9.
4. Whether the Permit violates 327 IAC 6.1-5-2.
5. Whether IDEM's application of the Land Application Rule and certain default standards in issuing the Permit was arbitrary and/or unlawful.
6. Whether the Permit violates Indiana Code § 13-18-12-2.5.
7. Whether the Permit violates 327 IAC 6.1-8-6.
8. Whether the Permit violates Indiana Code § 13-15-4-1.

However, summary judgment is hereby entered in favor of Oakland on the issue of whether the Permit violates 327 IAC 6.1-5-3. In approving the Application and issuing the Permit absent the location criteria information required under 327 IAC 6.1-5-3, IDEM failed to follow the

applicable rules and regulations for issuing a marketing and distribution permit. Consequently, IDEM's approval of the Application and issuance of the Permit was invalid. The Permit is therefore overturned. Nothing in this opinion shall be construed to prevent Organics from obtaining a valid Permit for the Site in the future.

**SO ORDERED** on: September 10, 2025.



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Administrative Law Judge  
Hon. Vanessa Voigt Gould

**Distribution**

*(Sent via the email address on file with the Indiana Role of Attorneys, unless otherwise noted):*

**Petitioner**, Oakland Holdings, LLC, sent via counsel Jackson Schroeder, Esq. and Stephen C. Unger, Esq., as noted above.

**Permittee/Respondent**, Organics Southern, LLC, sent via counsel Christopher J. Bayh, Esq., Joel T. Bowers, Esq., Amanda Jane Gallagher, Esq., E. Sean Griggs, Esq., and Alejandra Reichard, Esq., as noted above.

**Respondent**, Indiana Department of Environmental Management, sent via counsel Susanna A. Bingman, Esq. and Brooke Werstler, Esq., as noted above.

## **APPEAL RIGHTS**

A person who wishes to seek judicial review of this final determination must file a petition for review in an appropriate court within 30 days of the date this Order was served. See Ind. Code § 4-21.5-5-5. Guidance for calculating deadlines may be found at Ind. Code § 4-21.5-3-2.

Other requirements for a petition for judicial review may be found at Ind. Code Ch. 4-21.5-5. A petition for judicial review must be served on the Office of Administrative Law Proceedings at [oalp@oalp.in.gov](mailto:oalp@oalp.in.gov) to ensure the Office prepares the record that will be filed in the court presiding over the judicial review.