



ISSUED:
December 30, 2025

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

DAVID COLE,
Petitioner,

v.

TOWN OF GRABILL,
Permittee/Respondent,

and

INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
Respondent.

Administrative Case Number: IDEM-2502-000857

Agency Action: Page Road Sanitary Extension,
Permit Approval No. 25694

FINAL ORDER GRANTING SUMMARY JUDGMENT

The Administrative Law Judge (“ALJ”) Vanessa Voigt Gould, having reviewed the record and the pleadings filed by the parties on Summary Judgment, now issues this Final Order as it relates to the Petition for Administrative Review filed by David Cole (“Petitioner”) on the 327 IAC 3 Construction Permit, Page Road Sanitary Extension, Permit Approval No. 25694, issued to the Town of Grabill (“Town”) by the Indiana Department of Environmental Management (“IDEM”) on February 10, 2025. This decision is favorable to the Town and the IDEM (referred to collectively below as “Respondents”). 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 the 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.

Issue

Whether, based on the undisputed material facts in the record, the Respondents are entitled to judgment as a matter of law on the Petition for Review filed by the Petitioner seeking administrative review of the 327 IAC 3 Construction Permit, Page Road Sanitary Extension, Permit Approval No. 25694 (the “Permit”), issued to the Town by the IDEM on February 10, 2025.

Procedural History

1. On February 10, 2025, IDEM issued an Authorization for Construction of Sanitary Sewer System Under 327 IAC 3, Permit Approval No. 25694 (the “Permit”).
2. A petition for administrative review of the Permit was filed by Petitioner with the OALP on February 28, 2025.
3. The OALP assigned ALJ Lori Kyle Endris to preside over this matter that same day.
4. ALJ Endris issued a Notice of Insufficient Filing (“NOI”) on March 3, 2025.
5. On March 6, 2025, this matter was reassigned to ALJ Vanessa Voigt Gould and an Order was issued affirming the NOI.
6. On April 7, 2025, Petitioner supplemented and/or amended his Petition for Review.
7. An Initial Prehearing Conference was held in this matter on April 24, 2025.
8. On August 25, 2025, the Respondents filed a Joint Motion for Summary Judgment and Memorandum of Law in Support of their Motion for Summary Judgment which included the designation of one exhibit, Respondents’ Exhibit A, the Permit Application Package for Permit Approval 25694, VCF #83763768 (56 pages).
9. On September 24, 2025, Petitioner filed a Response to Summary Judgment and counter designation of evidence. Petitioner’s counter designation of evidence was nearly identical to Respondents’ Exhibit A referenced above, however, it varied in that Petitioner had added comments and/or notes to the document.
10. On October 9, 2025, the Respondents filed a Reply in Support of their Motion for Summary Judgment and the record on summary judgment closed.

FINDINGS OF FACT

The following are undisputed material facts:

1. On November 5, 2024, the Town submitted an application for a construction permit to the IDEM proposing to build a low-pressure sanitary sewer system (Respondents' Exhibit A to Respondents' Brief in Support of Motion for Summary Judgment ("Respondents' Exhibit A"), pp. 10-22).
2. The application sought to extend an existing sanitary sewer system along Page Road in the Town of Grabill, Indiana (Respondents' Exhibit A, p. 2).
3. The Town supplemented its application on December 2, 2024, through the submission of plans and specifications that were prepared by DLZ Indiana, LLC and certified by Casey Erwin, Professional Engineer (Respondents' Exhibit A, pp. 2, 23-25).
4. The Town later supplied additional information to the IDEM and submitted a revised application on February 3, 2025 (Respondents' Exhibit A, pp. 2, 26-56).
5. On February 10, 2025, IDEM issued an Authorization for Construction of Sanitary Sewer System Under 327 IAC 3, Permit Approval No. 25694 (the "Permit") (Respondents' Exhibit A, pp. 2-9).
6. The Permit authorizes the construction of a low-pressure sanitary sewer system along Page Road extending approximately 3,665 feet south from the intersection with Witmer Road and along Witmer Road extending approximately 431 feet east from the intersection with Page Road (the "Project") (Respondents' Exhibit A, pp. 2 and 5).
7. The Project involves the installation of approximately 56 feet of 10-inch diameter PVC (ASTM D3034 SDR-35) sanitary sewer and approximately 4,105 feet of 3-inch small diameter HDPE (ASTM D3035 DR9, 250 PSI) low-pressure sewer (Respondents' Exhibit A, p. 5).
8. Under the Permit, the Project may provide sewer service for 31 single family homes (Respondents' Exhibit A, p. 5).
9. The Permit requires privately owned simplex grinder pump stations to be installed on each residential property that will be serviced by the Project (Respondents' Exhibit A, p. 5).
10. The Permit requires that the owners of each residential property serviced by the Project will be responsible for installing, providing power to, and maintaining the grinder pump stations as well as the lateral service lines up to the connection with the public sewer main at the right-of-way line (Respondents' Exhibit A, p. 5).

11. The Permit encompasses only the public portion of the low-pressure sanitary sewer system (Respondents' Exhibit A, p. 5).
12. Under the Permit, the Town is responsible for inspecting the sewer installation and for the maintenance of public portion of the low-pressure sanitary sewer system after the Project is completed (Respondents' Exhibit A, p. 5).
13. In addition to imposing specific and general terms and conditions, the Permit requires the Project to conform to all provisions of 327 IAC 3 (Respondents' Exhibit A, pp. 2-9).
14. The Permit may be modified, suspended, or revoked for cause including, but not limited to, violations of any of the terms and/or conditions and for misrepresentation or failure to fully disclose all relevant facts during the permitting process (Respondents' Exhibit A, p. 6).
15. Petitioner owns certain real property located on Page Road that may be affected by the Permit and/or Project (Respondents' Exhibit A, p. 17).

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 OALP has jurisdiction over and serves as the ultimate authority for administrative reviews of permits issued by the IDEM. See Indiana Code § 4-21.5, Ind. Code § 4-15-10.5-12. In addition, administrative reviews of permits issued by the IDEM are governed by 315 IAC 1, *et. seq.*
3. Pursuant to Ind. Code § 4-21.5-3-14(c) “[a]t each stage of the proceeding, the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense.” The party who has the burden of proof will be required to prove their case by a preponderance of the evidence. Ind. Code § 4-21.5-5-14, see also *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004).
4. The ALJ 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). Findings of fact must be based exclusively on the evidence presented on the record and/or matters that are officially noticed by the presiding ALJ - deference to the agency's initial factual determination is not allowed. *Id.*; Ind. Code § 4-21.5-3-27(d). Further, OALP is

required to base its findings of fact on substantial and reliable evidence. Ind. Code § 4-21.5-3-27(d).

5. 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.
6. 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.
7. The ALJ may grant summary judgment 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.
8. "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).
9. 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).
10. 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*, 914 N.E.2d 756 (Ind. 2009).
11. Mere assertions, opinions, or conclusions of law will not suffice to create a genuine issue of material fact to preclude summary judgment. *Sanchez v. Hamara*, 534 N.E.2d 756, 758 (Ind. Ct. App. 1989), trans. denied; *McMahan v. Snap-On Tool Corp.*, 478 N.E.2d 116, 122 (Ind. Ct. App. 1985).
12. The IDEM is a state agency that implements and enforces specified Indiana environmental laws, and rules promulgated relevant to those laws, per Indiana Code § 13-13-1-1, *et seq.* and Indiana Code § 13-14-1-1, *et seq.* These statutes also give the IDEM authority to

review and issue certain permits. See Ind. Code § 13-15-1, et. seq. The 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 said statutes and regulations when deciding whether to issue the permit. See *American Suburban Utilities*, 2019 OEA 48, 53.

13. The Town is a municipality with powers, granted by the General Assembly, that are necessary or desirable in the conduct of its affairs. See Ind. Code § 36-1-2-11; Ind. Code § 36-1-3-4. Specifically, the Town has explicit power to “acquire, construct, improve, operate, and maintain sewage works.” See Ind. Code § 36-9-23-2. In an exercise of this power, the Town submitted an application to IDEM for a permit to construct a sanitary sewer system along Page Road and Witmer Road.
14. Permits for the construction of a sanitary sewer are required by and governed by the requirements that are laid out 327 IAC 3. Administrative review of a permit issued by the IDEM is limited to whether IDEM acted in conformity with controlling statutes and regulations. See *Aqua Indiana, Inc.*, 2010 OEA 168, citing *In re: Objection to Issuance of Section 401 Water Quality Certification COE ID No. 198800247 Conagra Soybean Processing Co.*, 1998 WL 918585, at *3, OEA Cause No. 98-W-J-2052 (Nov. 12, 1988).
15. 315 IAC 1-3-2(b)(4)(A) requires a petitioner in a case involving an administrative appeal of the issuance a permit to state with particularity 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.
16. Whenever a permit is required by any rule of the environmental rules board under Indiana Code § 13-15-1 for the construction, installation, operation, or modification of any facility, equipment, or device, the permit may be issued only after the IDEM has: (1) approved the plans and specifications; and (2) determined that the facility, equipment, or device meets the requirements of the applicable rule. Ind. Code § 13-15-3-5.
17. The undisputed facts in this matter demonstrate that the IDEM reviewed and approved the plans and specifications for the Project. The Town submitted plans and specifications to the IDEM during the permitting process. Those plans and specifications - including the design summary - were reviewed and approved by the IDEM through its issuance of the Permit. Petitioner has failed to present any argument or evidence to the contrary.

18. The undisputed facts also demonstrate that Petitioner has failed to allege, with the required specificity, any way in which the Permit does not meet the requirements of the applicable rule - 327 IAC 3. Specifically, neither the Petition nor the supplement/amendment thereto cite to any provision of 327 IAC 3 or to any specific Permit term or condition that the Petitioner deems deficient under the law as required by 315 IAC 1-3-2. Further, neither the Petition nor the supplement/amendment thereto state, with particularity, any environmental concern or technical defect related to IDEM's issuance of the Permit that stands in contravention of 327 IAC 3 as required by 315 IAC 1-3-2. Instead, Petitioner has alleged that the Town has not set forth evidence as to how people without utility service – particularly the Amish property owners on Page Road - will be able to install the required electric grinder pump stations, argued affected property owners were not given information, and expressed various concerns related to the design and future functionality of the Project should there be additional expansion.
19. It is important to note that under the applicable Indiana law, a petition for review of an IDEM action must state with particularity the issues proposed for consideration. See 315 IAC 1-3-2(a)(4); Ind. Code § 13-15-6-2(5). Issues not properly raised in the petition are waived. *Bd. of Comm'rs of LaPorte Cnty. v. Great Lakes Transfer, LLC*, 888 N.E.2d 784, 795 (Ind. Ct. App. 2008). As such, the issues raised by Petitioner in the summary judgment proceedings that were not raised by the Petition or the supplement/amendment thereto, have been waived. However, even if the arguments had not been waived, Petitioner's arguments fail nonetheless.
20. Petitioner's argument that the Town has not set forth evidence as to how people without utility service – particularly the Amish property owners on Page Road - will be able to install the required electric grinder pump stations is outside the scope of 327 IAC 3 and fails to state a claim upon which relief may be granted. 327 IAC 3 does not require a permittee to show that future users of a sanitary sewer system have utility power and/or possess sufficient power to operate grinder pump stations (if required) for a construction permit to be issued. As such, the Town was not required to provide such evidence or information nor was the IDEM authorized to require it as a condition precedent to approving the Town's application and issuing the Permit. The only applicable requirement contained within 327 IAC 3 related to grinder pumps states that an applicant must indicate who will be responsible for maintaining the grinder pumps. See 327 IAC 3-2-2(e)(5); *see also Page Road, 2022 OEA 150, 154*. The Town did precisely that when it noted in its application that the grinder pumps would be privately owned and maintained.
21. Further, it is undisputed that the Permit at issue mandates compliance with its terms and conditions as well as 327 IAC 3. Under the Permit's terms and conditions, grinder pump

stations are required for each lateral line and/or property that seeks to connect to the main sewer line. If a property owner does not have enough power to run a grinder pump station as detailed in the Permit, that property cannot connect to the main line nor can it send wastewater into the proposed sewer system. Petitioner's speculation that future users may not have enough power to run the required pump stations is not a sufficient basis for challenging or overturning the Permit. *See Jennings, 909 N.E.2d at 1026. See also DeGroot Dairy, 2006 OEA 1; Gettelfinger, 2005 OEA 1; Lafollette Station Towne Centre, 2004 OEA 67; Grahn, 2004 OEA 40.*

22. Petitioner's argument that potentially affected property owners were not given certain information fails to state a claim upon which relief can be granted. For a sewer permit, an applicant must submit one prepared mailing label for each potentially affected person for IDEM to mail notice of the permit when issued. See 327 IAC 3-2-2(e)(6). Petitioner has offered no evidence that IDEM did not comply with this requirement in issuing the Permit.
23. Petitioner also takes issue with certain perceived discrepancies between the Town's initial application submitted on November 5, 2024, and the revised application submitted on February 3, 2025. The undisputed facts show that after the submission of its initial application, the Town submitted additional information and documentation to IDEM and that on February 3, 2025, it submitted a revised application. Allegations that fail to raise any issue concerning compliance with controlling legal requirements fail to state a valid claim or sufficient basis for challenging or overturning the Permit. *Aqua Indiana, Inc., supra, citing In re: Objections to Issuance of Public Water Supply Construction Permit No. WS-2924.*
24. Petitioner's concerns related to the design of the Project fail for the same reason. *See Id.* First, Petitioner has failed to present any evidence or argument that the design of the Project does not comply with 327 IAC 3. While Petitioner attempts to argue that IDEM's approval of 3-inch pipe in lieu of 4-inch pipe for the Project was somehow improper, his argument finds no support in the undisputed facts or law. Specifically, 327 IAC 3-6-32 gives the IDEM authority to approve alternative technical standards and the undisputed facts demonstrate that is exactly what was done here. Petitioner has offered no evidence that the IDEM should not have approved the 3-inch pipe or that the 3-inch pipe violates any of the provisions under 327 IAC 3. Further, Indiana law does not authorize the IDEM to dictate the design of a sanitary sewer beyond the requirements promulgated in 327 IAC 3. *See Page Road, 2022 OEA 150.*
25. Similarly, Petitioner's concerns related to the future functionality of the Project should there be an additional expansion also fails to state a valid claim or sufficient basis for

challenging or overturning the Permit. The first of Petitioner's concerns related to functionality centers on his unsupported belief that the Project will not be able to accommodate the anticipated flow from the 31 equivalent dwelling units ("EDU") noted in the Permit. The undisputed facts show that the Project will potentially receive flow from 78 Equivalent Dwelling Units (EDUs). Id. pp. 46-47. The Town's calculations show that the 3-inch pipe for this initial sewer line project will not only be capable of handling flow from the 31 EDUs stated in the updated application and Permit but from future, increased flows as well. Id. pp. 4, 10, 46-47. Petitioner has offered no evidence that the design flow calculations are incorrect, that the approved system is insufficiently sized, or that IDEM's approval violates any provision under 327 IAC 3.

26. Petitioner's second concern related to the future functionality of the Project is predicated on his unsupported belief that that the Town has authority under Ind. Code § 36-9-23-30 to force, and will force, certain users to connect to the Project and will therefore necessitate an additional expansion of the Project in upwards of ten to twenty years from now. But whether the Town may have the authority under Ind. Code § 36-9-23-30.1 to force connections to the Project has no relevance to IDEM's issuance of the Permit. IDEM approved the Permit under 327 IAC 3 based on the proposed design submitted by the Town for the Project. Should an expansion be required in the future, a new permit will need to be obtained and meet the requirements of 327 IAC 3. Again, allegations that fail to raise any issue concerning compliance with controlling legal requirements fail to state a valid claim. *Aqua Indiana, Inc., supra, citing In re: Objections to Issuance of Public Water Supply Construction Permit No. WS-2924.*
27. Finally, Petitioner's allegations that the Town has not set forth evidence as to how people without utility service will be able to install the required electric grinder pump stations, that affected property owners were not given information, and his concerns related to the design and future functionality of the Project should there be additional expansion are unsupported by the evidence, speculative, and fail to create a question of fact that would preclude summary judgment. *See Beatty v. LaFontaine*, 896 N.E.2d 18, 20 (Ind. Ct. App. 2008), *Sanchez*, 534 N.E.2d at 758, *McMahan*, 478 N.E.2d at 122.
28. For all of the foregoing reasons, Petitioner has failed to establish that the IDEM did not comply with the applicable statutes and regulations when issuing the Permit to the Town, has failed to establish that the Permit does not comply with the requirements of 327 IAC 3, and has failed to state a viable claim for relief.
29. The designated evidence shows that there is no genuine issue as to any material fact and that the Respondents are entitled to a judgment as a matter of law.

DECISION AND ORDER

For all of the foregoing reasons, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that summary judgment in favor of the Respondents is appropriate. Respondents' Motion for Summary Judgment is hereby **GRANTED** and summary judgment is entered in favor of the Town and the IDEM. The Page Road Sanitary Extension, Permit Approval No. 25694 is therefore **AFFIRMED** and all further proceedings in this matter are **VACATED**.

SO ORDERED on: December 30, 2025.



Administrative Law Judge
Hon. Vanessa Voigt Gould

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 Indiana Code § 4-21.5-3-2.

Other requirements for a petition for judicial review may be found at Indiana 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 to ensure the Office prepares the record that will be filed in the court presiding over the judicial review.

Distribution:

Petitioner, David Cole, sent via email at dave9111@gmail.com.

Permittee/Respondent, Town of Grabill, sent to counsel Thomas Sokolowski, via email at tsokolowski@taftlaw.com.

Respondent, Indiana Department of Environmental Management, sent to counsel Susanna Bingman, Esq., sent via email sbingma@idem.IN.gov.