

**REVOCAION OF WASTEWATER TREATMENT PLANT CLASS II
OPERATOR CERTIFICATE NO. 4759
GREGORY J. HART
MARION COUNTY, INDIANA
1998 OEA 030, OEA CAUSE NO. 97-W-J-1907**

Official Short Cite Name: GREGORY J. HART, 1998 OEA 030

OEA Cause Nos 97-W-J-1907

Topics/Keywords: 327 IAC 8-12-1(8)
327 IAC 5-16-2
327 IAC 8-12-1(10)
327 IAC 5-2-13
IC § 13-18-11-14
IC § 13-18-11-8(a)
IC § 13-18-11-3

Presiding ELJ: LORI KYLE ENDRIS

Party Representatives: NANCY HOLLORAN, ESQ., IDEM
GREGORY J. HART, *pro se.*

Order Issued: APRIL 30, 1998

Index Category: WATER QUALITY

Further Case Activity:

2. Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.

3. The Complainant has the burden of persuasion in proposing to revoke Gregory J. Hart's certificate for cause under Ind. Code §13-18-11-8. In conducting a hearing pursuant to Ind. Code §13-18-11-8, the presiding Environmental Law Judge has the task of making findings of fact and conclusions of law regarding the IDEM's proposed action to revoke an operator's certificate. Such findings of fact and conclusions of law are hereby submitted to the Commissioner of the IDEM for his consideration and final action.

4. Gregory J. Hart was issued Class II Operator's Certificate No. 4759 on November 17, 1977, by the IDEM in accordance with 320 IAC 3.1, subsequently recodified as 327 IAC 8-12.

5. Pursuant to Ind. Code §13-18-11-14 and his certificate, Gregory J. Hart may operate Class II wastewater treatment plants as the certified operator in responsible charge.

6. The issuance of an operator certificate by the IDEM's Commissioner (or his predecessor) certifies that the recipient is qualified to supervise successfully the operation of wastewater treatment plants. Ind. Code §13-18-11-3. The qualifications for operator certification include the skill, knowledge and experience that the operator must have to be placed in responsible charge of the supervision of a wastewater treatment plant's operation so as to protect the public health. Ind. Code §13-18-11-2(2). The term "responsible charge" is defined in 327 IAC 8-12-1(10) and means "the individual responsible for the overall daily operation, supervision, or management of a ... wastewater facility." In a Class II facility, it means the individual who supervises and is responsible for a major section of the plant or operating shift who may be credited with responsible charge experience. The term "operator" is defined in 327 IAC 8-12-1(8) and means "the person in direct or responsible charge and supervising the operation of a wastewater or water treatment plant and/or a water distribution system."

7. National Pollution Discharge Elimination System (NPDES) permits, over which the IDEM has delegation to issue, require the permittee to have the waste treatment facility under the direct supervision of an operator certified by the Commissioner of the IDEM.

8. Pursuant to Ind. Code §13-18-11-8(a), the Commissioner of the IDEM may revoke the certificate of an operator, following a hearing under Ind. Code §13-15-7-3 and Ind. Code 4-21.5, if any of the following conditions are found:

- (1) The operator has practiced fraud or deception.
- (2) Reasonable case, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties.

- (3) The operator is incompetent or unable to perform the operator's duties.

The IDEM has the burden of proof in proposing to revoke Gregory J. Hart's certificate.

9. In its Request for Hearing, the IDEM contended that Gregory J. Hart (1) had practiced fraud or deception in the performance of his duties as certified operator; and (2) had not used reasonable care, judgment, or the application of his knowledge or ability in the performance of his duties as certified operator.
10. Gregory J. Hart was the certified operator of the LaGrange Wastewater Treatment Plant (WWTP) from January 1994 through February 1997.
11. R. Doug Alley, an employee of the IDEM, has been a facility inspector for the Office of Water Management for seven (7) years. Mr. Alley inspected the LaGrange WWTP for the period of review from January 1994 through February 1997.
12. Mr. Alley observed and testified that on the February 4, 1995 total suspended solids monitoring report, data was altered on the influent test record. (Exhibit 1).
13. Mr. Alley observed and testified that on the September 28, 1995 total suspended solids monitoring report, data was altered on the influent test record. (Exhibit 2).
14. Mr. Alley observed and testified that on the Monthly Report of Operation (MRO) for August 1996, for which Hart was the certified operator in responsible charge, no effluent bench data was provided as required to support the carbonaceous biochemical oxygen demand, five-day test (CBOD-5), value. In addition, for samples data reported on the August 1996 MRO, there were no TSS or CBOD-5 bench sheets for data reported August 3, 1996, August 21, 1996, August 27, August 28, or August 29, 1996. (Exhibit 3).
15. Mr. Alley observed and testified that on the Monthly Report of Operation (MRO) for December 1995, for which Hart was the certified operator in responsible charge, three (3) samples were reported on MRO's on different dates from those recorded on sample logs as collection dates. (Exhibit 4).
16. Monitoring of unit treatment process operations, also known as process control testing, is required by the NPDES Permit issued to LaGrange WWTP and by 327 IAC 5-2-13. Mr. Alley observed and testified that on the MRO for November 1995, for which Hart was the certified operator in responsible charge, seven (7) log sheets were noted with no laboratory analysis to validate 30-minute settleability data reported on the MRO. (Exhibit 6).
17. Mr. Alley observed and testified that on the MRO for December 1996, for which Hart was the certified operator in responsible charge, nine (9) log sheets were noted with no laboratory

analysis to validate mixed liquor suspended solids (MLSS) data reported on the MRO. (Exhibit 7).

18. Mr. Alley observed and testified that on the MRO for April 1996, for which Hart was the certified operator in responsible charge, one (1) log sheet contained no laboratory analysis and the log sheet for April 21, 1996 was blank and therefore data was inadequate and/or unavailable on which to validate 30-minute settleability data reported on the MRO. (Exhibit 8).

19. Mr. Alley observed and testified that on the MRO for October 1995, for which Hart was the certified operator in responsible charge, the log sheet for October 24, 1995 was noted with no laboratory analysis to validate 30-minute settleability data reported on the MRO. (Exhibit 16).

20. Mr. Alley observed and testified that on the MRO for July 1996, for which Hart was the certified operator in responsible charge, three (3) log sheets for July 9, July 15, and July 18, 1996 were noted with no laboratory analysis to validate 30-minute settleability data reported on the MRO. (Exhibit 18).

21. Mr. Alley observed and testified that on the MRO for September 1996, for which Hart was the certified operator in responsible charge, two (2) log sheets for September 4, and September 12, 1996 were noted with no laboratory analysis to validate 30-minute settleability data reported on the MRO. (Exhibit 13).

22. Mr. Alley observed and testified that the October 7, 1996 log sheet bench analysis for MLSS, initialed by Mr. Hart, reflects a calculation error that, when corrected, renders the result irrational and indicative of back-calculation and falsification of the result. (Exhibit 21).

23. Gregory J. Hart committed fraud and/or deception through the alteration of data on influent test records on February 4, and September 28, 1995 for the total suspended solids test required by the facility's NPDES permit. Further, Gregory J. Hart committed fraud and/or deception through the alteration of data used for an October 7, 1996 log sheet bench analysis for the mixed liquor suspended solids test.

24. Gregory J. Hart did not practice reasonable care, judgment or the application of his knowledge or ability in submitting data for the following MRO's for the LaGrange WWTP:

- a) October 1995
- b) November 1995
- c) December 1995
- d) March 1996
- e) April 1996
- f) June 1996
- g) July 1996
- h) August 1996
- i) September 1996

j) December 1996

25. The plain language of Ind. Code §13-18-11-8 indicates that only one of the stated conditions need be found for the Commissioner to revoke an operator's certification. The record is likewise replete with evidence and testimony that Gregory J. Hart: (1) altered and/or falsified data reported to IDEM in his duties; and (2) failed to perform certain monitoring or related activities as required. The IDEM met its burden of proof regarding Ind. Code §13-18-11-8(a).

Order

It is hereby DETERMINED that the Indiana Department of Environmental Adjudication has established a factual basis upon which the Commissioner may revoke Gregory J. Hart's Class II Operator Certificate No. 4759 pursuant to Ind. Code §13-18-11-8(a).

Dated this 30th day of April, 1998. .

Lori Kyle Endris
Environmental Law Judge

cc: Matthew Rueff, Assistant Commissioner
Office of Water Management