

**FINAL ORDER ON REMAND OF
JUDICIAL REVIEW 49D03-2403-PL-009260
NORTHERN INDIANA MANUFACTURING, INC.
CHESTERTON, PORTER COUNTY, INDIANA.
2025 OALP 065, CAUSE NO.: IDEM-1912-000556**

Official Short Cite Name:	Northern Indiana Manufacturing, 2025 OALP 065
Original Agency Cause Nos.:	19-S-E-5091 (IDEM-1912-000556)
Topics/Keywords:	Judicial Review Northern Indiana Manufacturing, 2024 OEA 001 Voluntary Remediation Program (VRP) Commissioner’s Order ~ enforcement Attorney Fees CERCLA Ind. Code §§ 4-15-10.5-12 and 13 Ind. Code § 4-21.5 Ind. Code § 4-21.5-2-8 Ind. Code § 4-21.5-3-27.5 Ind. Code § 4-21.5-3-27.5 (a)(1)(A) and (a)(3) Ind. Code § 4-21.5-3-27.5 (2) and (3) Ind. Code § 4-21.5-4 Ind. Code §§ 4-21.5-5-14(d) and -15 Ind. Code § 13-25-4-1, et seq. Ind. Code § 34-11-1-2
Presiding ALJ:	Vanessa Voigt Gould
Party Representatives:	E. Sean Griggs – Petitioner Julie E. Lang - IDEM
Order Issued:	July 15, 2025
Index Category:	Enforcement
Further Case Activity:	



ISSUED:
July 15, 2025

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

COMMISSIONER, INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,
Complainant,

v.

NORTHERN INDIANA MANUFACTURING
INC.,
Permittee/Respondent.

Administrative Case Number: IDEM-1912-000556

OEA Cause No.: 19-S-E-5091

Agency (IDEM) Number: Commissioner's Order re
IDEM State Cleanup Site # 199202036

Official Short Cite Name: Northern Indiana
Manufacturing, 2024 OEA 001

Judicial Review Court Cause No.: 49D13-2403-PL-
009260

FINAL ORDER ON REQUEST FOR ATTORNEY'S FEES

The Administrative Law Judge ("ALJ") Vanessa Voigt Gould, having reviewed the record in this proceeding including, but not limited to, Respondent Northern Indiana Manufacturing, Inc.'s ("NIM") Request for Attorney's Fees, the Petitioner the Indiana Department of Environmental Management's ("IDEM") Response, NIM's Reply to the IDEM's Response, and the IDEM's Sur-Reply, now issues this Final Order denying NIM's request for attorney's fees. 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.

Issue

Whether NIM is entitled to attorney's fees under Ind. Code § 4-21.5-3-27.5.

Procedural History

1. NIM filed a Petition for Administrative Review (“Petition”) with the Office of Environmental Adjudication (“OEA”) on December 31, 2019.
2. That same day the proceeding was assigned to Chief Environmental Law Judge (“ELJ”) Mary Davidson.
3. The Petition presented seven issues for review:
 - a. Whether NIM is exempt from liability arising under Ind. Code § 13-25-4-1, *et seq.*
 - b. Whether Dynamic Alliance (“Dynamic”) should be held solely and 100% responsible for the investigation and remediation of the site.
 - c. Whether IDEM failed to pursue all avenues of recovery against the actual polluter.
 - d. Whether the claims against NIM were arbitrary, capricious, and/or an abuse of discretion.
 - e. Whether the Order was void for vagueness under Indiana law.
 - f. Whether the vagueness of the Order violated due process and due course of law rights under the U.S. Constitution and Indiana Constitution.
 - g. Whether the Order or IDEM's implementation of the Order violates NIM's due process and due course of law rights under the U.S. Constitution, the Indiana Constitution, the Indiana AOPA, or other Indiana law.
4. On May 11, 2022, this proceeding was reassigned to ELJ Lori Kyle Endris.
5. On June 19, 2023, the IDEM filed a Motion for Judgment on the Pleadings and a brief in support thereof, which was later converted to a Motion for Summary Judgment through the filing of an affidavit in support.
6. On June 20, 2023, NIM filed a Motion for Summary Judgment along with a brief in support thereof.
7. Briefing on summary judgment was completed by the parties in August of 2023.
8. Oral Argument on summary judgment was held on September 11, 2023. Thereafter, both parties submitted proposed findings of fact and conclusions of law.
9. On January 31, 2024, ALJ Endris issued a Final Order Denying in favor of the IDEM holding that:
 - a. NIM was not exempt from liability arising under Ind. Code under Ind. Code § 13-25-4-1.
 - b. OEA did not have the authority to hold Dynamic solely responsible for the investigation and remediation of the Site.
 - c. IDEM had not failed to pursue all avenues of recovery against the actual polluter.
 - d. The Commissioner’s Order was not untimely in that neither CERCLA’s six-year cost recovery statute, Indiana's 10-year residual statute of limitations, nor the doctrine of laches applied.

- e. All other issues presented in the Petition had been abandoned by NIM on Summary Judgment and had therefore been waived.
10. On March 1, 2024, NIM sought judicial review of the Final Order in the Marion County Superior Court, Civil Division 13, before the Hon. James A. Joven.
 11. On December 30, 2024, Judge Joven issued an Order Granting Relief on Judicial Review reversing the Final Order finding: "IDEM brought its enforcement action beyond the ten-year limitation period for any cause of action not limited by any other statute, as set forth by Ind. Code § 34-11-1-2. IDEM's action is, therefore, untimely. Accordingly, pursuant to Indiana Code §§4-21.5-5-14(d) and -15, the Court SETS ASIDE the OEA's Order and REMANDS the case to address Northern's entitlement to attorney's fees under Indiana Code § 4-21.5-3-27.5."
 12. On May 8, 2025, NIM filed a Request for Award of Attorney's Fees with the OALP.¹
 13. On May 19, 2025, this proceeding was reassigned to ALJ Vanessa Voigt Gould.
 14. On May 23, 2025, the IDEM filed its Response to NIM's Request for Attorney's Fees.
 15. On May 30, 2025, NIM filed a Reply to IDEM's Response on Attorney's Fees.
 16. On June 3, 2025, IDEM sought leave to file a Sur-Reply.
 17. On June 9, 2025, IDEM's request for leave to file a Sur-Reply was granted and the IDEM's Sur-Reply was incorporated into the record.

Findings of Fact

1. The Commissioner of the IDEM issued an Order to Compel Response Action ("Commissioner's Order") related to a 1978 spill of perchloroethylene ("PCE"), and the resulting contamination of an industrial manufacturing site located at 914 Broadway Street, Chesterton, Porter County, Indiana ("Site") on December 13, 2019.²
2. The Commissioner's Order was issued pursuant Ind. Code § 13-25-4-9 and sought to "compel the implementation of appropriate response activities in regard to past and ongoing releases of hazardous substances at the Site."
3. The Commissioner's Order was issued to the former owner of the Site - Dynamic Alliance, Inc. - and the current owner - NIM.
4. NIM timely sought administrative review of the Commissioner's Order by filing its Petition on December 31, 2019.

¹ On July 1, 2024, following the enactment of House Bill 1003, the OEA was eliminated and all proceedings under its jurisdiction were transferred to the Office of Administrative Law Proceedings.

² VCF No. 82879333.

Conclusions of Law

1. This proceeding is properly before the OALP on remand pursuant to Indiana Code § 4-21.5.
2. OALP has jurisdiction over both the subject proceeding and the parties to this action and is the ultimate authority. Ind. Code § 4-21.5-4; Ind. Code §§ 4-15-10.5-12 and 13.
3. The party challenging the agency's action has the burden of proof by a preponderance of the evidence. IC 4-21.5-3-27.5(a)(1).
4. "With respect to attorney fees, Indiana generally adheres to the American rule whereby each party bears its own attorney fees absent an agreement between the parties, a statute, or other rule to the contrary." *Song v. Iatarola*, 76 N.E.3d 926, 938 (Ind. Ct. App. 2017), reh'g granted on other grounds, 83 N.E.3d 80 (Ind. Ct. App. 2017), trans. denied.
5. At the time this proceeding was commenced, there was no statute or rule that would authorize an ALJ to award a party reasonable attorney's fees in an adjudicative proceeding under AOPA in deviation of the American rule. *See, e.g., Heller Development*, 2008 OEA 57 ("OEA has not been authorized by the legislature to impose legal fees").
6. However, in 2021 the Indiana legislature added a new section to AOPA - Ind. Code § 4-21.5-3-27.5 - which authorized an administrative law judge to order an agency to pay reasonable attorney fees to a party challenging an agency action if it could demonstrate that the action was frivolous, groundless, or pursued in bad faith. Ind. Code § 4-21.5-3-27.5.
7. In its originally enacted form, Ind. Code § 4-21.5-3-27.5 read:

In a proceeding under this chapter concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred in the proceeding by the party challenging the agency action if the party challenging the agency action proves, by a preponderance of the evidence, that: (1) the agency's action was frivolous or groundless; or (2) the agency pursued the action in bad faith.

This new section of AOPA became effective on the date of its enactment - July 1, 2021.

8. The Indiana legislature amended Ind. Code § 4-21.5-3-27.5 in 2023. The 2023 amendments added a requirement to the existing statutory framework that the party seeking reasonable attorney's fee must be the "prevailing party". See Ind. Code § 4-21.5-3-27.5 (2023). The 2023 amendments also added two new grounds for an award of reasonable attorney's fees if said prevailing party could prove by a preponderance of the evidence that the agency action at issue was based on an invalid rule or the agency failed to demonstrate that it acted within its

legal authority. See Ind. Code § 4-21.5-3-27.5 (2) and (3) (2023). The 2023 amendments took effect on July 1, 2023.

9. In conjunction with the 2023 amendments to Ind. Code § 4-21.5-3-27.5, the Indiana legislature enacted Ind. Code § 4-21.5-2-8 which states that the “amendments made to IC 4-21.5-3-27.5... in the 2023 session of the general assembly only apply to agency actions commenced under IC 4-21.5-3 after June 30, 2023.”
10. In 2024, the Indiana legislature amended Ind. Code § 4-21.5-3-27.5 for a second time. The 2024 amendments slightly modified the structure of Ind. Code § 4-21.5-3-27.5 and changed the “based on an invalid rule” language added in 2023 to “unsupported by a statute or valid rule”. See Ind. Code § 4-21.5-3-27.5(a)(2) (2024). The 2024 amendment also included the addition of subsection (b) which allows for a trial court to award reasonable attorney’s fees in a judicial review proceeding. See Ind. Code § 4-21.5-3-27.5(b) (2024). The 2024 amendments took effect on July 1, 2024.
11. In its Request for an Award of Attorney’s Fees, NIM initially concedes that the 2023 and 2024 amendments to Ind. Code § 4-21.5-3-27.5 do not apply to this proceeding pursuant to Ind. Code § 4-21.5-2-8. See NIM’s Request for Award of Attorney’s Fees, footnote 3. NIM then argues that it is entitled to an award of attorney’s fees under Ind. Code § 4-21.5-3-27.5, as originally enacted in 2021, because the agency action at issue here was frivolous and groundless. Conversely, in its Reply to IDEM’s Response to NIM’s Request for Attorney’s Fees, NIM changes course and argues that it is asking the OALP to award attorney’s fees under subparts (a)(1)(A) and (a)(3) of Ind. Code § 4-21.5-3-27.5, cites to the 2024 version of the statute, and proffers that Judge Joven’s Order Granting Relief on Judicial Review confirms not only that IDEM’s action was frivolous or groundless but that it is equally evident that the IDEM has not demonstrated that it acted within its legal authority.
12. “Whether a statute or amendment is to be applied retroactively to pending cases or only prospectively depends upon the legislature’s intent. Absent an express indication otherwise, we presume that the legislature intends statutes and amendments to apply prospectively.” *Chesnut v. Roof*, 665 N.E.2d 7, 9 (Ind. Ct. App. 1996). See also *Guzzo v. Town of St. John*, 131 N.E.3d 179, 180 (Ind. 2019). As more fully explained by the Indiana Court Appeals in *Indiana Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 385 (Ind. Ct. App. 2017):

The general rule in Indiana is that “[s]tatutes are to be given prospective effect only, unless the legislature unequivocally and unambiguously intended retrospective effect as well.” *State v. Pelley*, 828 N.E.2d 915, 919 (Ind. 2005). An exception to this general rule exists for remedial or procedural statutes. *Martin v.*

State, 774 N.E.2d 43, 44 (Ind. 2002). Although statutes and rules that are procedural or remedial may be applied retroactively, they are not required to be. *Pelley*, 828 N.E.2d at 919. Even for procedural or remedial statutes, “retroactive application is the exception, and such laws are normally to be applied prospectively absent strong and compelling reasons.” *Hurst v. State*, 890 N.E.2d 88, 95 (Ind. Ct. App. 2008) (quotation omitted), *trans. denied*.

A remedial statute is a statute enacted to cure a defect, clear up any confusion and/or mischief in the prior law, or address silence in a statute. See *N.G. v. State*, 148 N.E.3d 971, 973 (Ind. 2020), *Lawrence v. State*, 214 N.E.3d 361, 363 (Ind. 2023), *Martin v. State*, 774 N.E.2d 43, 44 (Ind. 2002). A procedural statute is a statute that “prescribes the method of enforcing a right or obtaining redress for invasion of that right” as opposed to a substantive statute which “creates, defines and regulates rights.” *Morrison v. Vasquez*, 124 N.E.3d 1217, 1222 (Ind. 2019) citing *Hayden v. State*, 771 N.E.2d 100, 102 (Ind. Ct. App. 2002).

13. The Indiana legislature did not specify that Ind. Code § 4-21.5-3-27.5 should be given retrospective effect when originally enacted in 2021. Nothing in the plain language of the statute itself – as originally enacted or as it reads today - indicates an unequivocal and unambiguous retrospective intent. In fact, the only unequivocal and unambiguous intent expressed by the legislature as to Ind. Code § 4-21.5-3-27.5 is that it is not to be given retrospective effect. See Ind. Code § 4-21.5-2-8.
14. Further, Ind. Code § 4-21.5-3-27.5 is neither procedural nor remedial. It was not enacted to cure any defect, clear up confusion, or speak to silence in a preexisting statute – it was a new provision enacted to create a new right to attorney's fees outside of the American rule where none existed previously. Nor does it prescribe a method of enforcing a right or obtaining redress. Rather, Ind. Code § 4-21.5-3-27.5 creates, defines, and regulates a party's right to attorney's fees in an adjudicative proceeding under AOPA and is thereby substantive. Because Ind. Code § 4-21.5-3-27.5 is a substantive statute, the exclusion to the general rule does not apply.
15. NIM has not presented any evidence or argument to show that Ind. Code § 4-21.5-3-27.5 – as originally enacted or as amended - was intended to have retrospective effect. Similarly, NIM has not presented any evidence or argument that Ind. Code § 4-21.5-3-27.5 is procedural or remedial thereby excepting it from the general rule that statutes are to be given prospective effect only and are not to be applied retroactively.

16. Accordingly, Ind. Code § 4-21.5-3-27.5 may not be applied retroactively to create an entitlement to attorney's fees in proceedings commenced prior to its enactment and is thereby inapplicable to this proceeding.
17. NIM has failed to prove, by a preponderance of the evidence, that it is entitled to an award of attorney's fees under Ind. Code § 4-21.5-3-27.5.

Decision and Order

NIM is not entitled to attorney's fees under Ind. Code § 4-21.5-3-27.5 and as such, it is hereby **ORDERED** that NIM's Request for an Award of Attorney's Fees is **DENIED**.

SO ORDERED on: July 15, 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 chapter 4-21.5-5. A petition for judicial review must be served on the Office of Administrative Law at ualp@ualp.in.gov to ensure the Office prepares the record that will be filed in the court presiding over the judicial review.

Distribution

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

Complainant, Commissioner, Indiana Department of Environmental Management, sent via counsel Julie Lang, Esq., as noted above.

Permittee/Respondent, Northern Indiana Manufacturing Inc., sent via counsel E. Sean Griggs, Esq. of Barnes & Thornburg LLP, as noted above.