

**Objection to Issuance of Source Specific Operating Agreement No. S167-29540-00153**  
**ST Construction, Inc.**  
**Terre Haute, Vigo County, Indiana**  
**2011 OEA 85, (10-A-J-4408)**

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**OFFICIAL SHORT CITATION NAME:** When referring to 2011 OEA 85 cite this case as  
*ST Construction, Inc., 2011 OEA 85.*

**TOPICS:**

Source Specific Operating Agreement

fugitive airborne emissions

ground water

gravel pit

aggrieved or adversely affected

general public harm

zoning petition

Motion to Dismiss

future violation

I.C. § 4-31.5-3-7

I.C. § 13-15-6-2

315 IAC 1-3-2(b)

326 IAC 2-9

326 IAC 2-9-7(b)(4)(G)

Ind. Trial. Rule 12(B)(1), (6)

*Huffman*, 811 N.E.2d 806

*Illinois Mining*, 2010 OEA 86

*Great Lakes Transfer Solid Waste Facility Permit*, 2006 OEA 24

*Board of Commissioners of LaPorte County, Board of Commissioners of Porter County, Town of Beverly Shores and Town of Pines v. Great Lakes Transfer, LLC and the Indiana Department of Environmental Management*, 888 N.E.2d 784 (Ind. Ct. App. 2008)

**PRESIDING JUDGE:**

Mary L. Davidsen

**PARTY REPRESENTATIVES:**

IDEM: Justin D. Barrett, Esq.

Petitioner: Gail L. Phillips

Respondent/Permittee: Thomas S. Clary, II, Esq.; Wright Shagley & Lowery, PC

**ORDER ISSUED:**

June 16, 2011

**INDEX CATEGORY:**

Air

**FURTHER CASE ACTIVITY:**

[none]

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On behalf of the Terre Town Community Association, I, as President of the association, wish to protest any IDEM Approval for ST Construction of Terre Haute, Indiana, to operate a gravel pit at 1503 Boston Avenue, pursuant to the Indiana Office of Environmental Adjudication (OEA) qualifications as aggrieved party, for the following reasons:

- 1) The location of the proposed gravel pit referenced above is 3 blocks southwest of Terre Town Elementary School, the largest elementary school (700+ students) in Terre Haute. Prevailing winds blow from southwest to northeast verified as the main airport runway alignment at Terre Haute and Indianapolis, which is 5/23 with wind blowing from southwest to northeast. Winds would blow dust, dirt, and aggregate from the gravel pit directly over Terre Town Elementary School and the outdoor area these children play in daily, as well as local homes.
- 2) The local community surrounding the proposed gravel pit is called Terre Town, a community of approximately 350 homes. Nearly 100% of these homes utilize well water as their primary source of water. An approval for ST Construction to use heavy equipment and aggregate materials (i.e. chemicals) will most definitely compromise the purity of the local ground water and air quality for the surrounding community. I request that OEA deny petitioner ST Construction, Inc., air quality permit to conduct sand and gravel operations at 1503 Boston Avenue in Terre Haute, Indiana. *Pet. Aug. 31 letter*.

Attached to Petitioner's letter were 5 pages of documents, stating:

**Petition Action Petitioned for: Decline Industrial/Business Zoning**

**Petition Summary:** Terre Town community Association and Terre Town residents are asking our civic leaders to decline the request by ST Construction, Inc. for rezoning for the gravel pit located on Boston Avenue in North Terre Haute in the Terre Town Community. We, the undersigned, are concerned citizens who urge our civic leaders to act now to decline the zoning of a gravel pit in Terre Town.

This petition concerning zoning had 58 addresses and signatures (41 people on August 24, 2010, 4 people on August 25, 2010, 2 people on August 30, 2010, and 11 people not providing a signature date).

Also attached to Petitioner's letter was an August 13, 2010 Notice of Decision for the SSOA, primarily stating appeal rights and procedures for administrative review to OEA, and a one-page document titled SSOA, signed by IDEM's Alfred C. Dumauval, Ph. D., Section Chief, Permits Branch, Office of Air Quality.

3. On September 8, 2010, the Court issued an Order Scheduling Prehearing Conference for September 27, 2010, 1:30 PM, E.D.T.

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4. On September 23, 2010, legal counsel for Permittee ST filed a Motion to Dismiss per Ind. Trial Rules 12(b)(1) and (6), and accompanying supporting Memorandum. In sum, ST sought dismissal of Terre Town's Petition, for lack of subject matter jurisdiction, for failure to demonstrate that Terre Town is an aggrieved or adversely affected party, for failure to state a claim upon which relief could be granted, and for failure to comply with Petition content requirements stated in I.C. § 13-15-6-2.
5. As noted in the Court's September 28, 2010 Report of Prehearing Conference and Order Continuing Telephonic Status Conference, the September 27, 2010, 1:30 PM, EDT prehearing conference was conducted telephonically. Petitioner Terre Town participated without legal counsel and was represented by Gail L. Phillips; Norm Loudermilk also participated. Respondent/Permittee ST attended by its legal counsel. Respondent IDEM attended by its legal counsel and by Dr. Dumauval. Petitioner's request to schedule further litigation after an October 21, 2010 association meeting was granted, with the Court setting the case management order as agreed by the parties during the telephonic prehearing conference.
6. In response to the September 28 Case Management Order, on October 21, 2010, IDEM filed a concurrence in part with ST's Motion to Dismiss. On November 1, 2010, Terre Town filed Plaintiffs' Response to Defendant's Motion to Dismiss of Defendant, ST Construction, Inc., Memorandum in Support of Petitioner's Grant of Appeal Hearing, and Plaintiffs' Response to IDEM's Concurrence. On November 4, 2010, ST filed its Response to Petitioner's Response to Respondent's Motion to Dismiss. On November 23, 2010, ST filed its proposed findings of fact, conclusions of law and order. No further filings were submitted to the Court.

**CONCLUSIONS OF LAW**

1. The Indiana Department of Environmental Management ("IDEM") is authorized to implement and enforce specified Indiana environmental laws, and rules promulgated relevant to those laws, per I.C. § 13-13, *et seq.* The Office of Environmental Adjudication ("OEA" or "Court") has jurisdiction over the decisions of the Commissioner of IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7, *et seq.*
2. This is a Final Order issued pursuant to I.C. § 4-21.4-3-27. 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. In this case, IDEM and Permittee ST seek dismissal, asserting that OEA lacks subject matter jurisdiction over an inadequate petition, and that the petition stated claims for which relief could not be granted. *See Ind. Trial Rule 12(b)(1),(6).* Motions to dismiss generally test the legal sufficiency of a claim, not the facts supporting it. *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003). When ruling on a motion to dismiss, "a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would

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not be entitled to recover under any set of facts admissible under the allegations of the complaint.” *Huffman v. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004). Determinations considering facts beyond the complaint are treated by the court as a motion for summary judgment. *Id.* Whether on a motion to dismiss or on summary judgment, all reasonable inferences must be drawn in favor of the non-moving party. *Meyers v. Meyers*, 861 N.E.2d 704, 705-706 (Ind. 2007).

4. This Court must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993), *Indiana-Kentucky Electric v. Commissioner, Indiana Department of Environmental Management*, 820 N.E.2d 771 (Ind. Ct. App. 2005). Findings of fact must be based exclusively on the evidence presented to the ELJ. I.C. § 4-21.5-3-27(d). Deference to the agency’s initial determination is not allowed. *Id.* “*De novo* review” means that “all issues are to be determined anew, based solely upon the evidence adduced at that hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247, 253 (Ind. Ct. App. 1981).
5. OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)(appeal of OEA review of NPDES permit); *see also* I.C. § 4-21.5-3-27(d). “Standard of proof generally has been described as a continuum with levels ranging from a "preponderance of the evidence test" to a "beyond a reasonable doubt" test. The "clear and convincing evidence" test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test.” *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The "substantial evidence" standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *GasAmerica #47*, 2004 OEA 123, 129. *See also 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, Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc. (04-F-J-3338)*, 2005 OEA 26, 41.
6. The petition identifies that the Petitioner is Terre Town; “Terre Town’s documents were filed “on behalf of Terre Town . . . by its President” Gail L. Phillips”. *Pet. Aug. 31 letter*. Permittee ST disputes whether Terre Town’s documents meet the requirements to be regarded as a Petition for Administrative Review; both ST and IDEM seek dismissal of Terre Town’s petition for failure to state a claim upon which relief may be granted. A person who is “aggrieved or adversely affected” by, and wants to challenge, an agency action or order, seeks administrative review by filing a written petition for administrative review in compliance with I.C. § 4-21.5-3-7(a). Petitions for review of IDEM agency actions are filed with OEA. I.C. § 4-21.5-7, *et seq.* *See Objection to the Issuance Construction Application for Wastewater Collection Permit Approval No. 19800, Big Monon Bay Wastewater Treatment Plant, Monticello, White County, Indiana*, 2011 OEA 58 (“*Twin Lakes Regional Sewer District*”).

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7. Terre Town is represented by its president, Gail L. Phillips, without representation by legal counsel. “It is well established that pro se litigants are held to the same standard as are licensed lawyers.” *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).
8. I.C. § 4-21.5-3-7(1) mandates that “[t]o qualify for review of [an agency order], a person must petition for review in a writing that . . . states facts demonstrating that:
  - (A) the petitioner is a person to whom the order is specifically directed;
  - (B) the petitioner is aggrieved or adversely affected by the order; or
  - (C) the petitioner is entitled to review under any law.
9. Terre Town’s written filings do not qualify as a petition for review of the SSOA under I.C. § 4-21.5-3-7(1)(A), as the SSOA was specifically directed to ST, not Terre Town. Terre Town’s written filings do not qualify as a petition for review of the SSOA under I.C. § 4-21.5-3-7(1)(C) , as Terre Town has not provided legal authority establishing that it is entitled to review under any law. Therefore, Terre Town’s written filings must first establish that it is aggrieved or adversely affected by the SSOA to qualify as a petition for review under I.C. § 4-21.5-3-7(1)(B).
10. “[W]hether a person is entitled to seek administrative review depends upon whether the person is “aggrieved or adversely affected”. *Huffman v. Indiana Office of Environmental Adjudication, et al.*, 811 N.E.2d 806, 807 (Ind. 2004). Per *Huffman*, in order for a person to be “aggrieved or adversely affected”, they “must have suffered or be likely to suffer in the immediate future harm to a legal interest, be it pecuniary, property or personal interest.” *Id.* at 810. *Huffman* interpreted the language of I.C. § 4-21.5-3-7 as not allowing administrative review based upon a generalized concern as a member of the public. *Id.* *Huffman* had challenged the issuance of a permit to Eli Lilly and Company to discharge pollutants into Indiana's waters. Huffman owned the corporation that had one unit of and was the managing member of the corporation that owned a property adjacent to the property from which the discharge would occur. The lower courts dismissed Huffman's objection to the issuance of the permit because of a lack of factual support for the allegations that Huffman or the property might be harmed. Huffman had alleged that her management duties of the neighboring property required her to be present on the property with frequency, and thus she might be exposed to health risks not addressed by the permit issued by IDEM. In response, the permittee alleged that due to the downstream location of the discharge point, no impact to Huffman was possible. Huffman's petition was challenged by a motion to dismiss supported by facts outside Huffman's pleadings, and thus was required to be treated by the Court as a Motion for Summary Judgment. The Indiana Supreme Court ruled that Huffman's dismissal by the lower courts was not supported by substantial evidence. The Court remanded Huffman's case back to OEA to provide Huffman with an opportunity to present additional evidence of her health concerns (settled prior to OEA decision on remand). “Particularly because the OEA never gave Huffman an opportunity to provide additional evidence or to develop the argument more fully, it was impossible for the OEA to tell what Huffman’s personal health claim was and whether it had any merit. Dismissing the claim was therefore premature.” *Id.* at 815. See *Twin Lakes Regional Sewer District*, 2011 OEA 58.

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11. Whether Terre Town is aggrieved or adversely affected by the SSOA is a factual issue dispositive of this litigation. Terre Town had opportunities to meet the statutory requirement to prove that it was aggrieved or adversely affected in its petition for review or in its pleadings responsive to Permittee ST's Motion to Dismiss. In its August 31, 2010 letter, Terre Town states that airborne particles from ST's proposed gravel pit operations will adversely affect students at an elementary school located within 3 blocks of an elementary school. However, Petitioner Terre Town does not present substantial evidence of a relationship to the elementary school which would allow it to represent the elementary school and its students. And, the harm alleged is general public harm, not a particularized harm peculiar to Petitioner Terre Town. Petitioner Terre Town's allegations concerning the elementary school, even if taken as true, do not provide sufficient evidence that Terre Town is aggrieved and adversely affected so as to qualify for administrative review.
12. The 5 pages of the zoning petition attached to Terre Town's August 31<sup>st</sup> letter urge civic leaders to deny zoning approval to ST. The zoning petition states a request germane to the citizens, but does not provide substantial evidence of a particularized harm peculiar to Terre Town. And, neither IDEM nor OEA have the legal authority to encroach on the local community's zoning authorities. *Board of Commissioners of LaPorte County, Board of Commissioners of Porter County, Town of Beverly Shores and Town of Pines v. Great Lakes Transfer, LLC and the Indiana Department of Environmental Management*, 888 N.E.2d 784 (Ind. Ct. App. 2008) ("*Great Lakes Transfer Station SWFP I*").
13. Terre Town further alleges that the "local community surrounding the gravel pit . . . is a community of approximately 350 homes", whose well water and air quality will be compromised by ST's permitted operations. The Court must next determine whether Terre Town's assertion provides substantial evidence as to whether it is aggrieved or adversely affected. On a T.R. 12(b) challenge, a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint. In its Motion, ST raises factual disputes as to whether Terre Town has proved that it exists as a real party in interest. In its November 1, 2010 Memorandum in Support of Petitioner's Grant of Appeal Hearing, Gail L. Phillips states that she is a resident living on the same street as ST's facility, and provides further information about Terre Town's organizational meeting on May 26, 2010. For purposes of T.R. 12(b) analysis, these conflicting inferences of fact are to be construed in favor of non-movant Terre Town. The inference that Terre Town is aggrieved or adversely affected is drawn from the reasonable assumption that it is the community association for the homes surrounding ST's gravel pit subject to the SSOA, further giving rise to a reasonable inference that the SSOA directly affects Terre Town, via its membership. Terre Town's statement constitutes an assertion that it is likely to suffer immediate future harm to a legal interest from IDEM's issuance of the SSOA.
14. Terre Town's written statements, and the inferences to be drawn from them, provide a sufficient factual basis for Terre Town to provide substantial evidence that Terre Town was aggrieved or adversely affected by the SSOA under I.C. § 4-21.5-3-7(1).

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15. Terre Town also has the burden of proving that its written statements must meet other statutory requirements in order to qualify as a petition for review. I.C. § 13-15-6-2 sets out the requirements for appealing a permit issued by IDEM as follows:

A written request for an adjudicatory hearing under section 1 of this chapter must do the following:

- (1) State the name and address of the person making the request.
- (2) Identify the interest of the person making the request.
- (3) Identify any persons represented by the person making the request.
- (4) State with particularity the reasons for the request.
- (5) State with particularity the issues proposed for consideration at the hearing.
- (6) Identify the permit terms and conditions that, in the judgment of the person making the request, would be appropriate in the case in question to satisfy the requirements of the law governing permits of the type granted or denied by the commissioner's action.

For a petitioner to maintain an administrative action, I.C. § 13-15-6-3 requires that a Petition for Administrative Review must comply with the requirements of I.C. § 13-15-6-2. *Indiana Office of Environmental Adjudication v. Kunz*, 714 N.E.2d 1190 (Ind. Ct. App. 1999), *cited in Grahn*, 2004 OEA 40, 43. *See also Twin Lakes Regional Sewer District*, 2011 OEA 58.

16. Additionally, Indiana Administrative Code provision 315 IAC 1-3-2(b) contains the following requirements related to the initiation of a proceeding for administrative review with the Office of Environmental Adjudication:

(b) The petition for administrative review shall contain the following information:

...

- (4) State with particularity the legal issues proposed for consideration in the proceedings as follows:
  - (A) In a case involving an appeal of a permit, identify the following:
    - (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.

(emphasis added).

17. On a Motion to Dismiss, Petitioner Terre Town has provided substantial evidence of compliance with I.C. § 13-15-6-2 (1), (2) and (3) by providing information about its identity and address, by Terre Town Community Association, by its President, Gail L. Phillips, by raising concerns for Terre Town subdivision, which surrounds ST's proposed gravel operation, and by enclosing incomplete portions of the SSOA which identified the permitted project. Terre Town's contentions that air and groundwater quality will be compromised by ST's operation provides substantial evidence of the basis for requesting review, but do not provide the particularity required by subpart (4), or by 315 IAC 1-3-2(b)(4). By substantial evidence, as a matter of law, Terre Town's written filings did not comply with I.C. § 13-15-



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6-2, subpart (4) or 315 IAC 1-3-2(b)(4). The content of Terre Town's written filings is insufficient as a petition for administrative review of the SSOA and should be dismissed.

18. Terre Town's petition for administrative review does not provide sufficient information about the SSOA's content to meet the content requirements stated in I.C. § 13-15-6-2 (4), (5) or (6), or 315 IAC 1-3-2(b)(4). Although not cited by Terre Town, the majority of technical environmental requirements relevant to the SSOA are stated in 326 IAC 2-9, *et seq.* A review of 326 IAC 2-9, *et seq.*, shows that the SSOA, as issued, complies with applicable regulations. Terre Town's assertions that the conditions of the proposed gravel pit's SSOA operation will result in compromise to the air and ground water quality for the surrounding homes does not provide sufficient evidence that Terre Town's petition complied with requirements stated in I.C. § 13-15-6-2 subpart (4), (5), (6) and 315 IAC 1-3-2(b)(4). By failing to provide sufficient information about the legal basis for the petition, or corrective provisions for the SSOA terms which would provide regulatory compliance, Terre Town did not comply with I.C. § 13-15-6-2 subparts (5), (6) and 315 IAC 1-3-2(b)(4), or the Order to Supplement and is subject to dismissal per I.C. § 4-21.5-3-23 and -24.
19. Even if Terre Town's petition and filings constituted a sufficient petition for administrative review, Terre Town did not state a claim upon which relief could be granted per T.R. 12(b). In its November 1, 2010 Response to IDEM, Terre Town seeks the relief of "a hearing" to present evidence that

"ST Construction has in the past failed to maintain a healthful and proper level of control over the dust, dirt, and aggregate that have situated upon, conveyed onto, and conveyed without, their property even BEFORE their petition for air quality permit from IDEM, and that such evidence strongly suggests that ST Construction has not abided the reasonable needs of a residential community to protect such a school and its inhabitants and visitors, as well as local residents and their homes and property, from the fugitive particulates that are carried away in whichever direction the winds may blow."

Per 326 IAC 2-9-7(b)(4)(G), "the fugitive particulate emissions at the sand and gravel operations shall not escape beyond the property lines or boundaries of the source property, right of way, or easement on which the source is located" per 326 IAC 6-4. In its November 1, 2010 Response to ST, Terre Town asserts that ST will allow fugitive particles to escape its boundaries, contrary to the SSOA and 326 IAC 2-9-7(b)(4)(G). Specifically, Terre Town presented testimony from local residents of illness caused by ST operation's fugitive dust in the sworn affidavits of Van W. Cottom and James C. Evinger. The unnotarized affidavits of David Utterback, Jeanine Utterback stated that ST's operations caused fugitive dust to deposit on them and their properties, and caused them harm from "constant fear and worry concerning airborne particles emanating" from ST's property. To prevail on the merits of this case, Petitioner Terre Town must show substantial evidence that the applicable regulations for SSOAs stated in 326 IAC 2-9 were not met in the SSOA issued to ST. OEA reviews

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IDEM's decisions to determine whether IDEM acted in conformity with controlling statutes and regulations. *See, e.g., 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). Allegations that fail to raise any issue concerning compliance with controlling legal requirements fail to state a valid claim. *In re: Objections to Issuance of Public Water Supply Construction Permit No. WS-2924 Issued to the City of Mishawaka, Indiana*, 1989 W: 436899, at \*6, OEA Cause No. 89-W-J-241 (IDEM, Sept. 1, 1989). To the extent Terre Town seeks to defeat the SSOA on the basis that ST will not comply with operating regulations, OEA may not overturn authorization of a permit on speculation that the regulated entity will not operate in accord with the law. *Objection to the Issuance of Source Specific Operating Agreement No. 181-29071-05341, Illinois Mining Corporation, Monon, White County, Indiana*, 2010 OEA 86.

20. By failing to state a claim upon which relief could be granted, OEA cannot grant Terre Town's request for a hearing on issues which OEA is not authorized to rule. In *Huffman*, the Court held that Ms. Huffman's stated a claim upon which relief could be granted, i.e., that she or others acting on her corporation's behalf might suffer physical harm at the Huffman property, as a result of Permittee's operations, conducted as permitted. Thus, the *Huffman* court held that OEA should have granted Ms. Huffman's request to conduct an administrative hearing on that issue. In this case, Terre Town, by Gail L. Phillips, is seeking an administrative hearing to present evidence that ST's past operations have caused fugitive airborne emissions and harm to residents' groundwater. On ST's and IDEM's Motions to Dismiss, OEA must assume that facts stated on the face of Terre Town's complaint are true. Even if Terre Town's allegations about ST's past operations are true, those facts cannot defeat IDEM's issuance of the SSOA. Should ST fulfill Terre Town predictions that ST will violate the conditions of its SSOA, then ST would be subject to enforcement action, but its SSOA cannot be defeated by allegations that ST will indeed violate its SSOA and applicable regulations.

**FINAL ORDER**

For all of the foregoing reasons, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Permittee/Respondent ST Construction, Inc.'s and Respondent Indiana Department of Environmental Management's Motions to Dismiss Terre Town Community Association's Petition for Administrative Review is **GRANTED**, such that Terre Town Community Association's Petition for Administrative Review is **DISMISSED** with prejudice. Source Specific Operating Agreement S167-29540-00153 issued to ST Construction, Inc. by the Indiana Department of Environmental Management is **AFFIRMED**. All further proceedings are **VACATED**.

You are hereby further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5.

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Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this Notice is served.

**IT IS SO ORDERED this 16th day of June, 2011 in Indianapolis, IN.**

Hon. Mary L. Davidsen  
Chief Environmental Law Judge