

**Objection to the Denial of WT3 Drinking Water Operator Exam**  
**James E. Pence**  
**Ashley, Steuben County, Indiana**  
**2010 OEA 183, (10-W-J-4425)**

---

**OFFICIAL SHORT CITATION NAME:** When referring to 2010 OEA 183 cite this case as  
*James E. Pence, 2010 OEA 183.*

**TOPICS:**

hearing  
drinking water  
exam  
late  
application  
postmarked  
327 IAC 8-12-4(b)  
I.C. § 13-18-11-6.5(c)

**PRESIDING JUDGE:**

Catherine Gibbs

**PARTY REPRESENTATIVES:**

IDEM: April Lashbrook, Esq.  
Petitioner: James E. Pence, pro se

**ORDER ISSUED:**

November 4, 2010

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

[none]

---



**Objection to the Denial of WT3 Drinking Water Operator Exam**

**James E. Pence**

**Ashley, Steuben County, Indiana**

**2010 OEA 183, (10-W-J-4425)**

The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to this controversy pursuant to I.C. § 4-21.5-7-3. The Petitioner has the burden of proving that the IDEM failed to consistently apply statutory and regulatory requirements.

327 IAC 8-12-4(b) states:

- (b) A person wishing to be examined for water treatment plant or water distribution system certification shall fulfill the following requirements:
  - (1) Complete an application on a form approved by the commissioner that:
    - (A) contains true and accurate information to the best of the applicant's knowledge; and
    - (B) is free of omissions and misrepresentations, either of which may result in rejection of the application or revocation of any certificate previously granted.
  - (2) Submit a completed application, with the necessary fee, to the commissioner postmarked not later than forty-five (45) days preceding the date of the examination.

I.C. § 13-18-11-6.5(c) states: “A water treatment plant operator or a water distribution system operator who fails to renew a certificate within one (1) year after the date the certificate expires may not receive a renewal certificate without reexamination.”

**CONCLUSIONS OF LAW**

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3.
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. In this instance, the Petitioner was required to take the examination because he did not renew his certification within one of year of the expiration date.
4. Applications to take the WT3 exam must be postmarked at least 45 days prior to the examination date. In this case, the application must be postmarked by September 20, 2010. The Petitioner’s application was postmarked September 22, 2010.
5. The Petitioner has failed to show that the IDEM’s action was not in compliance with the applicable statutes and regulations.

**Objection to the Denial of WT3 Drinking Water Operator Exam**

**James E. Pence**

**Ashley, Steuben County, Indiana**

**2010 OEA 183, (10-W-J-4425)**

**FINAL ORDER**

**AND THE COURT**, being duly advised, hereby **ORDERS, JUDGES AND DECREES** that the Petitioner failed to meet his burden of proof. Judgment is entered for the Indiana Department of Environmental Management. The Petition for Review is **DISMISSED**.

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. 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 4th day of November, 2010 in Indianapolis, IN.**

Hon. Catherine Gibbs  
Environmental Law Judge