

**In re: Objection to Issuance of Wastewater Treatment Plant Operator Certification  
Examination—Class 1 Charles Enstrom  
2004 OEA 7 (03-W-J-3079)**

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**TOPICS:**

wastewater operator certification and examination  
moot  
summary judgment  
dismiss  
job duties  
responsible charge  
signature  
percentage of time in hands-on operation  
question of great public interest  
statutory construction  
agency deference

**PRESIDING JUDGE:**

Davidsen

**PARTY REPRESENTATIVES:**

Petitioner, pro se: Charles T. Enstrom  
IDEM: Nancy Holloran, Esq.

**ORDER ISSUED:**

April 16, 2004

**INDEX CATEGORY:**

Enforcement, Water

**FURTHER CASE ACTIVITY:**

[none]

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“‘Acceptable experience’ means employment in the actual hands-on operation of a wastewater treatment plant. Experience in wastewater treatment plant maintenance will be given fifty percent (50%) credit for operational experience for those employed solely in this area. Experience in wastewater laboratory will be given full credit for those employed solely in this area.”

The application instructions further direct applicants to refer to 327 IAC 5-22 to obtain specific direction applicable to their individual situations. Exhibit 1.

3. On April 23, 2003, IDEM’s staff directed a letter to Mr. Enstrom, requesting that he needed to provide additional information in order to sit for the May 8, 2003. The April 23, 2003 letter was designated as Exhibit 2. In its April 23, 2003 letter, IDEM requested that Mr. Enstrom provide specific percentages of time spent per week in hands-on wastewater treatment duties and in responsible charge. The letter further requested that Mr. Enstrom state the specific percentage of time he spent as a driver. The letter advised Mr. Enstrom that he need not submit a new application, but “additional information must include the signature of both the applicant and supervisor.”, and indicated that Mr. Enstrom’s response had to be received by April 30, in order for Mr. Enstrom to be eligible for the May 8, 2003 examination.
4. On April 28, 2003, Mr. Enstrom faxed to IDEM a copy of IDEM’s April 23, 2003 letter, Exhibit 2, with additional information provided on the last page of IDEM’s April 23, 2003 letter, page 2 of Mr. Enstrom’s original application and on an attached sheet. Mr. Enstrom’s additional information, full Exhibit 2, also referred to in IDEM’s Motion for Summary Judgment as Exhibit F, specified percentages of time spent in defined duties, but included neither the signature of Mr. Enstrom nor of his supervisor.
5. IDEM’s May 5, 2003 letter to Mr. Enstrom, Exhibit 3, stated that Mr. Enstrom was denied approval for the May 8, 2003 exam for the reason that the application was incomplete for lack of certification, and advised Mr. Enstrom of his appeal rights. Affidavits of IDEM Branch Chief, Wastewater Compliance Branch Debra Dubenetzky (Exhibit G, IDEM’s Motion for Summary Judgment), and of IDEM Environmental Manager, Operator Assistance and Pretreatment Section, Office of Water Quality Natalie Green (Exhibit H, IDEM’s Motion for Summary Judgment), state affirmation of the decisions stated in IDEM’s correspondence to Mr. Enstrom.
6. Mr. Enstrom filed a petition for administrative review on May 19, 2003, in which he alleged that as his application complied with the relevant regulations, IDEM improperly denied him admission to the May 8, 2003 examination.
7. As part of the prehearing litigation ordered by the Court, Mr. Enstrom submitted a July 1, 2003 letter in response to the Court’s Order Requesting Status Report, which

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- letter is identified as Exhibit 4. Mr. Enstrom's July 1, 2003 letter included portions of copies of Exhibit 2 stating Mr. Enstrom's specified duty descriptions and percentages, and further included Mr. Enstrom's signature along with his supervisor's signature beneath the statement "I hereby certify that the information in this section of this application is true and correct to the best of my knowledge!"
8. On December 8, 2003, IDEM transmitted written acceptance of the additional information submitted by Mr. Enstrom in his July 1 letter, Exhibit 4, and further notified him of IDEM's approval of his application and eligibility to sit for the April 22, 2004 examination. Exhibit 5. The Court's December 10, 2003 scheduling Order affirmed the parties' agreement that Mr. Enstrom was eligible to sit for the April, 2004 examination.
  9. The parties' agreement to resolve this matter by dispositive motions was summarized in the Court's December 10, 2003 Case Management Order. On January 15, 2004, IDEM filed its Motion to Dismiss for Mootness and in the Alternative, Motion for Summary Judgment. Mr. Enstrom filed his letter in response on January 29, 2004. IDEM's Reply to Motion to Dismiss and in the Alternative, Motion for Summary Judgment was filed on February 27, 2004.

**Conclusions of Law**

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.
2. This is a Final Order issued pursuant to Ind. Code § 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. Mr. Enstrom timely filed his May 19, 2003 Petition for Administrative Review of IDEM's May 5, 2003 notice that he was denied approval to sit for the May 8, 2003 examination.
4. "When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed." Travelers Indem. Co. v. P.R. Mallory & Co., 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. A.D. v. State, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, it is impossible for the Court to order Mr. Enstrom to sit for the May 8, 2003 examination which has already occurred. Nor is this Court aware of relief it is authorized to order for Mr. Enstrom. However, this Court "may decide an arguably moot case on its merits if it

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involves questions of great public interest.” Id. “Cases that fit within this exception typically are those containing issues that are likely to recur.” Id. Indiana’s Courts have determined the likelihood of recurrence so as to involve questions of great public interest sufficient to overcome a challenge for mootness in the review of the following: a three-month commitment at a juvenile correctional facility will always result in issues becoming stale in A.D. v. State, supra.; hardship restrictions on a temporarily-suspended driver’s license in Gibson v. Hernandez, 764 N.E.2d 984 (Ind.Ct.App. 2002); a case management order enjoining litigation in another forum in Traveler’s Indem. Co., supra.; county’s practice of not correcting forwarding addresses on property tax delinquency notices in McBain v. Hamilton County, 744 N.E.2d 984 (Ind.Ct.App. 2001), trans. den.; competitive bidding process challenged by taxpayers after bid contract had been completed in Irwin R. Evens & Sons, Inc. v. Board of Airport Authority, 584 N.E.2d 576 (Ind.Ct.App. 1992); a family’s right to determine an incompetent family member’s withdrawal of nutrition and hydration in Matter of Sue Ann Lawrence, 579 N.E.2d 32, 37 (Ind. 1991); emergency injunction sought in statutory application of fish and game regulations concerning gill net fishing brought by fishing interest group and restaurant in Ridenour v. Furness, 514 N.E.2d 273, 274-275 (Ind. 1987); violations of statutory “status quo” provisions in school collective bargaining in Indiana Educ. Employment Relations Bd. V. Mill Creek Classroom Teacher’s Ass’n, 456 N.E.2d 709, 711-712 (Ind. 1983); mandate to school trustees to grant transfer of students from one school to another in State ex rel. Smitherman v. Davis, 238 Ind. 563, 151 N.E.2d 495 (1958). As in A.D. v. State, challenges to IDEM’s application process such as posed by Mr. Enstrom will likely become stale before judicial review can be accomplished, and are likely to recur. The issues raised in Mr. Enstrom’s Petition for Administrative Review are likely to recur, and present sufficient public interest to be determined on their merits. Therefore, Mr. Enstrom’s petition for administrative review is not moot. IDEM’s Motion to Dismiss should be denied.

5. The OEA may enter judgment for a party if it finds that “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to judgment as a matter of law.” IC 4-21.5-3-23. The moving party bears the burden of establishing the correctness of summary judgment. All facts and inferences must be construed in favor of the non-movant. Gibson v. Evansville Vanderburgh Building Commission, et al., 725 N.E.2d 949 (Ind.Ct.App. 2000); see also Ind. Code § 4-21.5-3-23(b); Ind. Tr. R. 56(C); Objection to the Issuance of NPDES Permit No. IN001830, Delphi Delco Electronics Systems, Kokomo, IN, OEA Cause No. 02-A-J-2883 (2004). The parties designated evidence indicating the lack of genuine issue of material fact so as to permit this Court to determine whether the information submitted by Mr. Enstrom was sufficient to comply with the regulatory requirements as a matter of law.
6. Wastewater Operator Certification regulations authorize IDEM to establish and administer the Wastewater Operator Certification and Examination process. Ind. Code § 13-18-11, et seq.; 327 IAC 5-22, et seq. Applicants such as Mr. Enstrom are required to

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disclose their applicable experience and to define responsible charge in their applications. 327 IAC 5-22. As the term “applicable experience” is defined in 327 IAC 5-22-3(1) and “responsible charge” is defined in 327 IAC 5-22-3(10), specific duties and percentage of time for relevant activities must be defined by an applicant. And, the application must be certified by the applicant and his supervisor. Ind. Code § 13-18-11, et seq.; 327 IAC 5-22, et seq; 327 5-22-7(b)(2)(B).

7. Indiana’s appellate court have consistently held that an agency’s interpretation of a statute is entitled to deference. “When a statute is subject to different interpretations, the interpretation of the statute by the administrative agency charged with the duty of enforcing the statute is entitled to great weight, unless that interpretation is inconsistent with the statute itself.” Shaffer v. State, 795 N.E.2d 1072, 1076 (Ind.Ct.App. 2003); Objection to the Issuance of NPDES Permit No. IN001830, Delphi Delco Electronics Systems, Kokomo, IN, OEA Cause No. 02-A-J-2883 (2004).
8. IDEM’s interpretation of the applicable regulations stated in Ind. Code § 13-18-11, et seq., and 327 IAC 5-22, et seq., is consistent with the statutory authority, and is therefore entitled to deference from this Court. The interpretation advocated by Mr. Enstrom would not allow IDEM to perform its duties under applicable law, and would result in significant delays to all parties involved.
9. Mr. Enstrom’s March 10, 2003 application, and his additional information submitted without signature and supervisor signature and certification dated July 1, 2003, were not submitted in compliance with the Wastewater Operator Certification Examination regulations implemented by IDEM. IDEM’s denial of Mr. Enstrom’s application to sit for the May, 2003 examination is entitled to deference from this Court, and was denied appropriately and in accordance with applicable regulations.

**Final Order**

IT IS THEREFORE ORDERED that IDEM’s Motion to Dismiss Mr. Charles Enstrom’s Petition for Administrative Review as Moot is DENIED, that IDEM’s Motion for Summary Judgment is GRANTED and the Petition for Administrative Review filed by Petitioner Charles Enstrom is hereby dismissed. This Court’s prior order affirming the parties’ agreement that Mr. Enstrom remains eligible to sit for the April, 2004 examination is reaffirmed and not otherwise affected by this Order.

You are hereby further notified that pursuant to provisions of Indiana Code § 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 IC 4-21.5. Pursuant to IC 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.

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**IT IS SO ORDERED this 16th day of April, 2004 in Indianapolis, IN.**

Hon. Mary L. Davidsen  
Chief Environmental Law Judge