

INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

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Date: September 17, 2012

To: Adam Horst
State Budget Director

From: Mary L. Davidsen
Director, Chief Environmental Law Judge
Office of Environmental Adjudication

Subject: FY 2014 and FY 2015 Biennial Budget Proposal

I am pleased to submit the Biennial Budget Proposal for the Office of Environmental Adjudication (OEA). OEA serves as the Ultimate Authority (the final Administrative Authority) by reviewing challenges to permitting, enforcement and other regulatory final agency actions taken by the Commissioner of the Indiana Department of Environmental Management (IDEM), and some specified local government environmental agencies. OEA last year quasi-judicially reviewed approximately 145 new cases, has reviewed 92 new cases in 2012 (calendar year), all of which originated from over 60 technical subject matters under the jurisdiction of IDEM and others assigned to review by OEA.

A. MISSION STATEMENT

The Office of Environmental Adjudication was created per P.L. 41-1995, Ind. Code §4-21.5-7, *et seq.* and is entrusted by the citizens of Indiana to provide an impartial statewide forum in which petitioning parties who believe they may be adversely affected by the permitting, enforcement and other determinations of the Commissioner of the Indiana Department of Environmental Management may be timely heard and their objections fairly considered. As ultimate authority in the review of these regulatory decisions, the OEA must ensure compliance with its statutory mandates while providing its services in a fiscally responsible manner in order to safeguard the best interests of the public.

B. ACCOMPLISHMENTS AND CHALLENGES

The major challenge facing OEA is managing its caseload with limited resources due to ongoing budget limitations. Limited resources have impacted two key functions:

- First, OEA is continuing with its anticipated database conversion project, and its case authority index, continue, but at a pace which staff can perform without incurring additional expenses such as enhanced computer needs or fees for an available independent contractor to assist with programming issues not otherwise available. OEA continues to work at expanding its case authority index to provide on-line access to its non-confidential public data records.

- Second, with increased accountability for responsible fiscal performance placed in each agency's control after the launch of ENCOMPASS and other internal financial controls, OEA

continues to provide some administrative support for financial and office manager duties, which duties are also performed for office-suite mate State Employees Appeals Commission (SEAC). Per a Memorandum of Understanding, OEA provided primary financial functions for OEA, Commission on Proprietary Education (COPE) and SEAC. After the key staff member responsible for these functions resigned, all three agencies started participating in centralized accounting services provided by the State Budget Agency (SBA), but have been left with a vacancy for remaining administrative functions. One-third of the staff member's duties are completed by SBA, but the remaining two-thirds fall to OEA to perform for both agencies. In sum, OEA's administrative workforce reduced from two full-time people, to half of one person. These tasks are usually performed by the undersigned Director/Chief Environmental Law Judge, by diverting time away from the key function of adjudication. As OEA understands that the State cannot function efficiently with every small agency having its own administrative support, OEA wishes to develop these functions to be able to revert the Director/Chief Environmental Law Judge's time back to adjudication and appointing authority administrative tasks, while recouping expenses applied to the benefit of other agencies while meeting the State's overall accountability and efficiency goals, to meet the deadlines and requirements at the agency level, and to be able to provide support for other similarly-situated small agencies.

OEA's accomplishments include staff stability, outreach, increased mediation for efficient case management, and strong case management, including eliminating a backlog and assisting SEAC's new Director/Administrative Law Judge with that agency's backlog. OEA's primary accomplishments focus on fulfilling its statutory duties to Indiana's corporate and individual citizens as a judicial forum. From the time Key Performance Indicators were tracked for OEA, no OEA decisions have been overturned on appeal by higher courts for avoidable error. Usually, reviewing courts sustain OEA's decisions in full. OEA also accomplished its judicial duties to Indiana citizens while transitioning many fiscal functions to the SBA centralization team, reorganizing its administrative staff, and providing administrative support to SEAC, all without any time taken away from adjudicating the concerns of Indiana citizens, and while meeting its fiscal obligations.

OEA also continues to engage qualified law student interns to assist with legal research. As the law student interns were compensated in the form of class credit, no agency funds were spent on the interns.

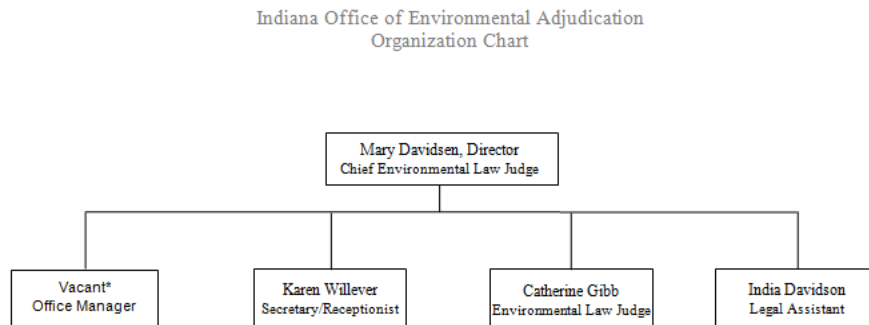
A database platform conversion project with IOT was postponed due to budget limitations and OEA computer equipment and programming failure, but is proceeding. OEA's independent contractor remains available to supplement the tasks needed to collate and deliver its Final Orders to *in.gov* in a searchable, indexed form available for public inspection and copying, as required by Ind. Code § 4-21.5-3-32. OEA does not believe that its activities are susceptible to a quantitative assessment of pollution prevention or waste management progress. OEA's effectiveness is measured in terms of its consistency in complying with the procedural requirements set for it by statute and by judicial case law.

C. NEW AGENCY INITIATIVES

OEA continues to improve its case authority index, as online access to case data is a key initiative. OEA's immediate future needs are to fill its vacant administrative assistant position with an office manager compensated at a lower rate than paid to the position's predecessor. The original salary was used to cover other expenses so OEA is requesting a change package of \$43,843 in FY14 and FY15 to fill this reclassified position. The relationship between OEA and SEAC must be clarified to determine how OEA will be compensated for providing administrative support to SEAC for accounting and human resources functions provided by the office manager, and for present administrative support for half of the time of OEA's secretary-receptionist.

OEA continues to research the feasibility of obtaining reliable, low-cost audio recording equipment to create the official record of briefer evidentiary proceedings which the parties would not likely request to be transcribed. This initiative should reduce expenditures for independent court reporters.

D. CURRENT ORGANIZATIONAL CHART



*This position is currently vacant as an Administrative Assistant 3 and is not included in the base. OEA is requesting to fill this position full-time as an Administrative Assistant 4.

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Per the Organizational Chart above, OEA's Director and Chief Environmental Law Judge currently supervises a full-time environmental law judge, two administrative assistants (one position is currently vacant) and a secretary-receptionist. Intermittent law student interns serve to assist with legal research when qualified applicants are available.

E. PROGRAMS AVAILABLE FOR REDUCTION, ELIMINATION OR REPLACEMENT

Per OEA's statutory mandates, there are no current programs available to be reduced, eliminated and/or replaced by other programs.

F. PERSONAL SERVICES FUNDING REALLOCATED

OEA will not need to reallocate any personal service funds; however OEA will request to fill the current vacant position as an Office Manager, which will require a request for additional funds included in a change package request.

Please contact me at your convenience if I can provide further information.

Respectfully Submitted,

Mary L. Davidsen
Director, Chief Environmental Law Judge