



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

June 28, 2024

VIA EMAIL Townmanager@topeka-in.gov

Town of Topeka
Attn: Stewart Bender
Town Manager
825 South Barr Street
Fort Wayne, Indiana 46802

Re: Approval of Closure Plan
Town of Topeka
LaGrange County
SW Program ID 44-010

Dear Mr. Bender:

Town of Topeka's *Clean Closure Plan - Water Treatment Backwash Lagoon* (Plan) dated April 10, 2024 to implement a solid waste clean closure of an impoundment previously associated with their drinking water treatment plant (WTP) is approved. The proposal meets the standard for closure of a surface impoundment under 329 IC 10-3-1(9). The impoundment is located at 226 Pleasant Drive in Topeka.

The facility is proposing to implement a solid waste clean closure of an impoundment previously associated with their drinking water treatment plant (WTP) in Topeka. The approximately 8,800 square feet impoundment received backwash water from the filter system at the WTP from approximately 1979 to 2022. The impoundment previously discharged fluids via an eventual outfall into the public storm sewer system. The Plan estimates a completion date for closure activities within one half of a year after IDEM approval of their Plan. After receiving clean closure certification, the facility will regrade and vegetate the area.

The Plan proposes to remove all sludge/residuals from the impoundment and dispose of the material in an approved solid waste landfill. Additionally, the Plan proposes to remove the pipe connection to the WTP and plug the discharge pipe. Furthermore, the Plan includes basic sampling and analysis protocols and a laboratory quality-assurance project plan. Please note that Topeka is proposing to utilize the site-specific background soil concentrations approved for use for their solid waste clean closure of their wastewater treatment plant (WWTP) impoundments (SW Program ID 44-006) for the WTP impoundment closure project, which is acceptable.



Visit on.IN.gov/survey or scan the QR code to provide feedback.

We appreciate your input!



For additional information on WTP Impoundments, please refer to the IDEM Clean Closure Certification Approval dated June 30, 2023 (VFC #[83497090](#)), and the associated references. The Plan proposes to discharge the fluids remaining in the 'percolation/evaporation basin' (i.e., the WTP Impoundment) into an adjacent sedimentation basin. However, the Plan does not specify or clarify that these fluids are being discharged under a current NPDES permit, land application permit, or via the town's certified sanitary sewer system.

The Plan is approved with the following conditions and concluding statement:

- You must close this lagoon as described in your proposal within one year after receiving this approval.
- Discharge/dispose of the fluids within the impoundment under a valid NPDES or land application permit, or via a certified wastewater treatment system. Excavate sludge and sludge residuals to depths with no visual staining in underlying soils in the impoundment and dispose of the material at a permitted solid waste disposal facility, or via a land application permit. The facility must remove all this material before acquiring confirmational samples. Remove, cap, and/or permanently plug all pipe connections to the impoundment.
- Collect a minimum of three confirmational soil samples per acre from the impoundment. Based on the approximate size and historical use of the impoundment, the single proposed confirmational soil sample from the impoundment appears adequate.
- Acquire background soil samples at areas unaffected by facility activities and at similar depths below the ground surface as those attained for confirmational samples (depths based on the original ground surface before construction of the impoundment), which may assist in sample acquisition of similar soil lithologies for both (background and confirmational) sample types. Please note that soil lithologies vary in naturally occurring metallic concentrations. We agree to the proposed use of the site-specific background soil concentrations approved for use for Topeka's solid waste clean closure of their wastewater treatment plant impoundments (SW Program ID 44-006) for this WTP impoundment closure project.
- Include at least one duplicate sample for every 10 confirmational/background samples, and at least one matrix spike/matrix duplicate sample for every 20 confirmational/background samples for properly evaluating laboratory accuracy and precision.
- Include the analyses of the RCRA metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver), iron, and manganese at all soil sample locations.

- Individually analyze all soil samples (no composites) from the proposed locations (background and confirmational) and report the laboratory results. Compositing of any samples does not meet solid waste clean closure requirements or objectives.
- Individually compare confirmational sampling results to background concentrations. If the facility utilizes statistically determined background concentrations, then the statistical analyses need to calculate upper tolerance limits at a 95% level of confidence using a scientifically valid procedure. If confirmational sampling results exceed background concentration(s), then additional soil removal of any 'hot spots' may be necessary until results are at or below background concentrations. Alternatively, the facility may attempt to supplement the background concentrations by performing additional background sampling and analyses and utilize those results in the statistical calculations. Additionally, the facility may be able to justify that a minor exceedance above background is within the laboratory analytical method accuracy level, etc.
- Specify the sampling and analytical methods in a solid waste clean closure certification report. The facility needs to utilize SW-846 Methods or acceptable equivalents for laboratory analyses.
- Background concentrations are the standard utilized for comparisons of analytical results for solid waste clean closures. Therefore, do not reference or make comparisons to the IDEM, Office of Land Quality, Risk-Based Closure Guide published levels, as these levels are not applicable to solid waste clean closure certifications.
- Within 60 days after completing closure, you must submit a report of sampling results; definitive photographic evidence for removal of all sludge and visually impacted soils; and documentation of the chosen disposal method of the fluid, sludge, soil, or any other contaminated media associated with the impoundment in a solid waste clean closure certification report.

You are requesting to implement a solid waste clean closure. An IDEM solid waste clean closure certification requires the facility to achieve background concentrations in confirmational samples. If the facility cannot achieve this standard, then the facility needs to submit an amended closure plan for a solid waste in-place closure based on 329 IAC 10-29 through 329 IAC 10-31, or a risk-based closure following the IDEM, Office of Land Quality, Risk-Based Closure Guide (RCG2). Please note that a risk-based closure would need to include waste removal and disposal, groundwater monitoring, and all other facets described in the RCG2.

We recommend you use the *Solid and Hazardous Waste Programs Analytical Data Deliverable Requirements: Supplemental Guidance* for guidance during the lagoon's closure. A copy of the guidance is available at

http://www.in.gov/idem/landquality/files/sw_resource_data_deliverable_reqs.pdf.

Public records for your facility are available in IDEM's Virtual File Cabinet at www.in.gov/idem. Documents related to this approval include the closure plan dated April 8, 2024 (VFC #[83622607](#)).

This approval does not: convey any property rights of any sort or any exclusive privileges; authorize any injury to any person or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or preempt any duty to comply with other state or local requirements.

If you wish to appeal this decision, you must file a request for administrative review with the Office of Environmental Adjudication within 18 days after the postmark of this letter. The enclosed guidance provides information on the appeal process and your rights and responsibilities for filing an adequate and timely appeal.

If you have any questions, please contact Kira Wren, the permit manager assigned this facility, by dialing 317-233-7090 or by e-mail at KWren@idem.IN.gov.

Sincerely,



Thomas Kreke, Chief
Solid Waste Permits Section
Office of Land Quality

Enclosure: Guidance on How to Appeal IDEM Decision

cc with enclosure: LaGrange County Health Department
LaGrange County Commissioners
LaGrange County Solid Waste Management District
President, Topeka Town Council
Kristie Dailey; kdailey@dlz.com



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Commissioner

What if you are not satisfied with this decision and you want to file an appeal?

Who may file an appeal?

The decision described in the accompanying Notice of Decision may be administratively appealed. Filing an appeal is formally known as filing a “Petition for Administrative Review” to request an “administrative hearing”.

If you object to this decision issued by the Indiana Department of Environmental Management (IDEM) and are: 1) the person to whom the decision was directed, 2) a party specified by law as being eligible to appeal, or 3) aggrieved or adversely affected by the decision, you are entitled to file an appeal. (An aggrieved and adversely affected person is one who would be considered by the court to be negatively impacted by the decision. If you file an appeal because you feel that you are aggrieved, it will be up to you to demonstrate in your appeal how you are directly impacted in a negative way by the decision).

The Indiana Office of Environmental Adjudication (OEA) was established by state law – see Indiana Code (IC) 4-21.5-7 – and is a separate state agency independent of IDEM. The jurisdiction of the OEA is limited to the review of environmental pollution concerns or any alleged technical or legal deficiencies associated with the IDEM decision making process. Once your request has been received by OEA, your appeal may be considered by an Environmental Law Judge.

What is required of persons filing an appeal?

Filing an appeal is a legal proceeding, so it is suggested that you consult with an attorney. Your request for an appeal must include your name and address and identify your interest in the decision (or, if you are representing someone else, his or her name and address and their interest in the decision). In addition, please include a photocopy of the accompanying Notice of Decision or list the permit number and name of the applicant, or responsible party, in your letter.

Before a hearing is granted, you must identify the reason for the appeal request and the issues proposed for consideration at the hearing. You also must identify the permit terms and conditions that, in your judgment, would appropriately satisfy the requirements of law with respect to the IDEM decision being appealed. That is, you must suggest an alternative to the language in the permit (or other order, or decision) being appealed, and your suggested changes must be consistent with all applicable laws (See Indiana Code 13-15-6-2) and rules (See Title 315 of the Indiana Administrative Code, or 315 IAC).

The effective date of this agency action is stated on the accompanying Notice of Decision (or other IDEM decision notice). If you file a "Petition for Administrative Review" (appeal), you may wish to specifically request that the action be "stayed" (temporarily halted) because most appeals do not allow for an automatic "stay". If, after an evidentiary hearing, a "stay" is granted, the IDEM-approved action may be halted altogether, or only allowed to continue in part, until a final decision has been made regarding the appeal. However, if the action is not "stayed" the IDEM-approved activity will be allowed to continue during the appeal process.

Where can you file an appeal?

If you wish to file an appeal, you must do so in writing. There are no standard forms to fill out and submit, so you must state your case in a letter (called a petition for administrative review) to the Indiana Office of Environmental Adjudication (OEA). Do not send the original copy of your appeal request to IDEM. Instead, send or deliver your letter to:

**The Indiana Office of Environmental Adjudication
100 North Senate Avenue, Room N103
Indianapolis, IN 46204**

If you file an appeal, also please send a copy of your appeal letter to the IDEM contact person identified in the Notice of Decision, and to the applicant (person receiving an IDEM permit, or other approval).

Your appeal (petition for administrative review) must be received by the Office of Environmental Adjudication in a timely manner. The due date for filing an appeal may be given, or the method for calculating it explained, on the accompanying Notice of Decision (NOD). Generally appeals must be filed within 18 days of the mailing date of the NOD. To ensure that you meet this filing requirement, your appeal request must be:

- 1) Delivered in person to OEA, by the close-of-business on the eighteenth day (if the 18th day falls on a day when the Office of Environmental Adjudication (OEA) is closed for the weekend or for a state holiday, then your petition will be accepted on the next business day on which OEA is open), or
- 2) Given to a private carrier who will deliver it to the OEA on your behalf, (and from whom you must obtain a receipt dated on or before the 18th day), or
- 3) For those appeal requests sent by U.S. Mail, your letter must be postmarked by no later than midnight of the 18th day, or
- 4) Faxed to the OEA at (317) 233-9372 before the close-of-business on the 18th day, provided that the original signed "Petition for Administrative Review" is also sent, or delivered, to the OEA in a timely manner.

What are the costs associated with filing an appeal?

The OEA does not charge a fee for filing documents for an administrative review or for the use of its hearing facilities. However, OEA does charge a fifteen cent (\$.15) per page fee for copies of any documents you may request. Another cost that could be associated with your appeal would be for attorney's fees. Although you have the option to act as your own attorney, the administrative review and associated hearing are complex legal proceedings; therefore, you should consider whether your interests would be better represented by an experienced attorney.

What can you expect from the Office of Environmental Adjudication (OEA) after you file for an appeal?

The OEA will provide you with notice of any prehearing conference, preliminary hearings, hearings, "stays," or orders disposing of the review of this decision. In addition, you may contact the OEA by phone at (317) 232-8591 with any scheduling questions. However, technical questions should be directed to the IDEM contact person listed on the Notice of Decision.

Do not expect to discuss details of your case with OEA other than in a formal setting such as a prehearing conference, a formal hearing, or a settlement conference. The OEA is not allowed to discuss a case without all side being present. All parties to the proceeding are expected to appear at the initial prehearing conference.

From: [Poe, Diane L](#)
To: townmanagers@topeka-in.gov
Cc: agarcia@lagrangecounty.org; pcook@lagrangecounty.org; tmartin@lagrangecounty.org; kevinmyers@lagrangecounty.org; [Ashley Kaye](#); cgarman@niswmd.org; rtroyer@topeka-in.gov; kdailey@dlz.com
Bcc: [Feller, Robin](#); [Kurylo, Leo](#); [Hummel, Lindsey](#); [Kreke, Thomas](#); [Wren, Kira](#); [BUCKEL, STEVE](#); [GUERRETTAZ, JOHN](#); [RAMAN, SHYAMALA](#); [OSSIVAND, BAHMAN](#); [WEAVER, TROY](#); [ARQUETTE, JULIE](#); [JEAN, RUTH](#)
Subject: Town of Topeka Permit Clean Closure Plan Approval
Date: Friday, June 28, 2024 8:23:00 AM
Attachments: [062824 44-010 Clean Closure approval ltr.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Attached is correspondence regarding the above property in LaGrange County. A hardcopy **will not** be sent to the addressee.

If you have any questions, please contact Kira Wren, permit manager. Her information is in the last paragraph of page 4 above Mr. Kreke's signature block.



Indiana Department of
Environmental Management

Diane Poe
OLQ Permits Branch Administrative Assistant
• (317) 232-4473 • dpoe@idem.IN.gov

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From: [Poe, Diane L](#)
To: ["townmanager@topeka-in.gov"](mailto:townmanager@topeka-in.gov)
Subject: FW: Town of Topeka Permit Clean Closure Plan Approval
Date: Friday, June 28, 2024 8:25:00 AM
Attachments: [062824 44-010 Clean Closure approval ltr.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

I apologize for the typo in your email address on the original mailing.

Diane Poe, Administrative Assistant
OLQ Permits Branch
(317) 232-4473
dpoe@idem.in.gov

From: Poe, Diane L
Sent: Friday, June 28, 2024 8:24 AM
To: townmanagers@topeka-in.gov
Cc: agarcia@lagrangepcounty.org; pcook@lagrangepcounty.org; tmartin@lagrangepcounty.org; kevinmyers@lagrangepcounty.org; Ashley Kaye <akaye@niswmd.org>; cgarman@niswmd.org; rtroyer@topeka-in.gov; kdailey@dlz.com
Subject: Town of Topeka Permit Clean Closure Plan Approval

Attached is correspondence regarding the above property in LaGrange County. A hardcopy **will not** be sent to the addressee.

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Indiana Department of
Environmental Management
Diane Poe
OLQ Permits Branch Administrative Assistant
• (317) 232-4473 • dpoe@idem.IN.gov

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From: postmaster@topeka-in.gov
To: townmanager
Subject: Delivered: FW: Town of Topeka Permit Clean Closure Plan Approval
Date: Friday, June 28, 2024 8:25:42 AM
Attachments: [FW Town of Topeka Permit Clean Closure Plan Approval.msg](#)

Your message has been delivered to the following recipients:
townmanager (townmanager@topeka-in.gov) <mailto:townmanager@topeka-in.gov>
Subject: FW: Town of Topeka Permit Clean Closure Plan Approval