

**Commissioner, Indiana Department of Environmental Management: Complainant
v. Charles G. Hungler, Jr., Class I Operator's Certificate No. 10045 and
Class A Operator's Certificate No. 017131: Respondent
2009 OEA 83, (07-W-E-3901)**

OFFICIAL SHORT CITATION NAME: When referring to 2009 OEA 83, cite this case as
IDEM v. Hungler, 2009 OEA 83.

TOPICS:

revocation
operator's certificate
wastewater
fraud
deception
summary judgement

PRESIDING ENVIRONMENTAL LAW JUDGE:

Catherine Gibbs

PARTY REPRESENTATIVES:

IDEM: Sierra Alberts, Esq.
Petitioner: Larry Kane, Esq.; Bingham McHale LLP

ORDER ISSUED:

July 1, 2009

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

Judicial Review:

IDEM vs. Hungler, 49D02-0801-CC-003680 (Marion Super. Ct. 2009), **reversed**

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STATE OF INDIANA)
) BEFORE THE INDIANA OFFICE OF
) ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)

IN THE MATTER OF:)
))
COMMISSIONER, INDIANA DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT)
))
Complainant)
))
v.) CAUSE NO. 07-W-E-3901
))
CHARLES G. HUNGLER, JR., CLASS I)
OPERATOR’S CERTIFICATE NO. 10045)
And CLASS A OPERATOR’S)
CERTIFICATE NO. 017131)
))
Respondent)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER**

This matter having come before the Court on the Indiana Department of Environmental Management’s Motion for Final Order, which pleading is a part of the Court’s record; and the Court, being duly advised and having read the Motion for Final Order, now makes and enters the following findings of fact, conclusions of law and final order:

FINDINGS OF FACT

1. On April 9, 2007, the Indiana Department of Environmental Management (the IDEM) filed a Request for an Administrative Hearing seeking to have Charles G. Hungler’s (the Respondent) Class I Operator’s Certificate No. 10045 and Class A Operator’s Certificate No. 017131 (“Certificates”) revoked because he had practiced fraud or deception in violation of I.C. § 13-18-11-8.

2. On January 9, 2008, the presiding Environmental Law Judge (the “ELJ”) issued Findings of Fact, Conclusions of Law and Final Order (the 2008 Final Order), granting the Respondent’s Motion for Summary Judgment.

3. The IDEM filed a Verified Petition for Judicial Review.

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4. On May 8, 2009, Judge Theodore Sosin of the Marion Superior Court issued Findings of Fact, Conclusions of Law and Judgment stating that the ELJ's 2008 Final Order is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, short of statutory right and unsupported by substantial evidence. The Marion Superior Court granted the IDEM's Verified Petition for Judicial Review and remanded this case to the OEA to issue a new final order consistent with the Court's ruling.

CONCLUSIONS OF LAW

1. Pursuant to I.C. § 13-18-11-8, upon a finding that the Respondent has practiced fraud or deception, the Commissioner may revoke an operator's certification.
2. On May 8, 2009, the Marion Superior Court entered an order reversing the ELJ's grant of summary judgment to the Respondent.
3. Summary judgment is entered in favor of the IDEM.
4. The Commissioner may revoke the Respondent's Certificates.

FINAL ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED summary judgment is entered in favor of the IDEM. Pursuant to I.C. § 13-18-11-8, the Commissioner may revoke the Respondent's Certificates.

IT IS SO ORDERED this 1st day of July, 2009 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge