

**Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2018 OEA 44 (18-W-E-4995)**

---

**OFFICIAL SHORT CITATION NAME:** When referring to 2018 OEA 44, cite this case as  
*Zionsville MHP Trust, 2018 OEA 44.*

**TOPICS:**

Commissioner's Order  
Enforcement  
Request for admission  
Deemed admitted  
Timely  
I.C. § 13-30-3-5(a)  
Ind. T.R. 36  
*Wayne Metal Prods. Co. v. Indiana Dep't of Env'tl. Mgmt.,*

**PRESIDING JUDGE:** Catherine Gibbs

**PARTY REPRESENTATIVES:**

Counsel for IDEM:	Susanna Bingman
Respondent:	unrepresented

**ORDER ISSUED:**

August 1, 2018

**INDEX CATEGORY:**

Water

**FURTHER CASE ACTIVITY:**

Judicial Review: Marion County Cause No. 49-D03-1808-CC-035048 - REMANDED  
New order filed under **2019 OEA 103**

---

**Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2018 OEA 44 (18-W-E-4995)**

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. 18-W-E-4995

   )  
LEI ZHAO (aka LAURA LEI), OWNER                 )  
ZIONSVILLE MHP TRUST                                )  
Respondent    )

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

The Indiana Department of Environmental Management (IDEM) filed its Motion to Dismiss on June 14, 2018. The presiding Environmental Law Judge, having read the motion and record, now enters the following findings of fact, conclusions of law and final order.

**Findings of Fact**

1. In keeping with the uncontroverted evidence submitted by IDEM in support of its Motion to Dismiss, the ELJ makes the following findings of fact.
2. On November 19, 2015, IDEM issued a Notice of Violation (NOV) to Lei Zhao and Laura Lei regarding violations at a property located at 9111 East 600 South in Boone County, Indiana. A proposed Agreed Order was attached to the NOV.
3. The NOV was sent to Lei Zhao, Lei’s Family Limited Partnership, 6310 Michigan Road, Indianapolis Indiana and to Laura Lei, as the Registered Agent for Lei’s Family Limited Partnership, P.O. Box 88724, Indianapolis Indiana.
4. On April 27, 2016, an IDEM representative hand delivered the NOV to Lei Zhao (aka Laura Lei).
5. IDEM and the Respondent did not enter into an Agreed Order resolving the violations. Respondent was represented by counsel, Dylan Vigh, during this time.

**Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2018 OEA 44 (18-W-E-4995)**

6. On January 23, 2018, a Notice and Order of the Commissioner of the Indiana Department of Environmental Management (the CO) was issued to Lei Zhao (aka Laura Lei). The CO was sent by certified mail to Lei Zhao (aka Laura Lei), Zionsville MHP Trust, P.O. Box 88724, Indianapolis, Indiana.
7. Mr. Vigh was sent a copy of the CO.
8. The CO addressed to the Respondent was returned to IDEM as unclaimed on February 20, 2018.
9. Respondent, by counsel, filed a Petition for Administrative Review on February 21, 2018. The Petition was hand delivered to OEA.
10. IDEM's First Interrogatories, Requests for Production of Documents and Requests for Admissions were served upon the Respondent on April 19, 2018.
11. Request for Admission No. 2 was "Admit you received a copy of the Commissioner's Order on or before February 1, 2018." In response, Respondent states, "Yes around early Feb/2018 close to Feb 1/2018". See *IDEM's Motion to Dismiss, Exhibit E*
12. Respondent, in response to Interrogatory No. 5, describes how she received a copy of the Commissioner's Order as follows: "I think it's from Dylan Vigh's office."
13. In response to Interrogatory #6, Respondent states that she received a copy of Commissioner's Order "around early Feb/2018 close to Feb 1/2018.
14. IDEM received the responses to its First Interrogatories, Requests for Production of Documents and Requests for Admissions on May 24, 2018. The response was not signed by Respondent.
15. A prehearing conference was held on March 13, 2018. Respondent appeared by counsel, Thomas Gaunt.
16. On April 17, 2018, the parties filed a Joint Motion for Case Management Order. A case management order was issued April 17, 2018, in which deadlines for filing dispositive motions, responses and replies were set.
17. Respondent's counsel moved to withdraw his appearance on June 1, 2018. This motion was granted on June 6, 2018.
18. In accordance with the deadlines set in the Case Management Order, IDEM filed a Motion to Dismiss on June 14, 2018.
19. Respondent did not file a response to the Motion to Dismiss.

**Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2018 OEA 44 (18-W-E-4995)**

**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. 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. IDEM asserts that the Respondent did not timely file the Petition for Review and therefore, the petition must be dismissed.
4. Pursuant to Indiana Rule of Trial Procedure 28(F), any party to an adjudicatory hearing before an administrative agency “shall be entitled to use the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure.” Under 315 IAC 1-3-1(b)(18), the presiding Environmental Law Judge (the “ELJ”) may apply the Indiana Rules of Trial Procedure, including those rules dealing with discovery, when it would not be inconsistent with the Administrative Orders and Procedures Act (“AOPA”) (Ind. Code §4-21.5-3) or with the remaining rules in Title 315 of the Indiana Administrative Code.
5. Ind. T.R. 36 deals with Requests for Admissions. A request for admission is deemed admitted if not answered within thirty (30) days after service. Trial Rule 36(A), which states: “The matter is admitted unless, within a period designated in the request, not less than thirty [30] days after service thereof or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.” Further, the effect of the admission is “conclusively established.”
6. IDEM served Respondent with the requests for admissions on April 19, 2018. On May 24, 2018, more than 30 days after service, Respondent’s counsel sent IDEM the handwritten responses. The Respondent did not sign the responses. Therefore, under Ind. T.R. 36, the requests are deemed admitted. Specifically, Request No. 2 (“Admit you received a copy of the Commissioner’s Order on or before February 1, 2018.”) is deemed admitted.
7. I.C. § 13-30-3-5(a) states:
  - (a) Except as otherwise provided in:
    - (1) a notice issued under section 4 of this chapter; or
    - (2) a law relating to emergency orders;an order of the commissioner under this chapter takes effect twenty (20) days after the alleged violator receives the notice, unless the alleged violator requests under subsection (b) a review of the order before the twentieth day after receiving the notice.

**Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2018 OEA 44 (18-W-E-4995)**

8. *Wayne Metal Prods. Co. v. Indiana Dep't of Env'tl. Mgmt.*, 721 N.E.2d 316, 1999 Ind. App. LEXIS 2217, 30 ELR 20289 is directly on point in this matter. The Court held that, in order for a petition for review to be timely filed under I.C. § 13-30-3-5(a), the petition must be filed *before* the twentieth day after *receipt*. In *Wayne Metals*, the respondent received the CO on April 19, 1995. Therefore, the petition for review had to have been filed on or before May 8, 1995. Since the petition was not filed until May 9, 1995, the petition was not timely filed and the matter was properly dismissed.
9. In this case, the Respondent admits that she received the CO on or before February 1, 2018. Therefore, the petition for review had to be filed on or before February 20, 2018 in order to be timely filed. The Petition was filed on February 21, 2018. The Petition was not timely filed and must be dismissed.

**Final Order**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** IDEM's Motion to Dismiss is **GRANTED**. Judgement is entered in the Indiana Department of Environmental Management's favor. All further proceedings are **VACATED**.

You are further notified that pursuant to provisions of Ind. Code (I.C.) § 4-21.5-7-5, the Office of Environmental Adjudication serves as the ultimate authority in 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 1<sup>st</sup> day of August, 2018 in Indianapolis, IN.

Hon. Catherine Gibbs  
Environmental Law Judge