

Commissioner, Indiana Department of Environmental Management v.  
Lei Zhao aka Laura Lei, Owner, Zionsville MHP Trust  
2019 OEA 103 (18-W-E-4995)

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**OFFICIAL SHORT CITATION NAME:** When referring to 2019 OEA 103, cite this case as

*Zionsville MHP Trust, 2019 OEA 103.*

**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:**

November 7, 2019

**INDEX CATEGORY:**

Water

**Additional Case Information:**

Original OEA site Number 2018 OEA 044

Judicial Review: Cause No. 49-D03-1808-CC-035048. REMANDED TO OEA

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4. The presiding ELJ takes official notice that Zionsville MHP Trust is not a registered entity with the Indiana Secretary of State<sup>1</sup>. Laura Lei met with the inspectors and with IDEM representatives on numerous occasions. Further, she notified IDEM that she is the mailing contact, emergency contact, and financial contact. For purposes of this Order, Lei Zhao a/k/a Laura Lei is the owner and operator of the Facility.
5. On April 27, 2016, an IDEM representative hand delivered the NOV to Lei Zhao (aka Laura Lei).
6. IDEM and the Respondent did not enter into an Agreed Order resolving the violations. 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. On August 1, 2018, the presiding Environmental Law Judge entered Findings of Fact, Conclusions of Law and Final Order dismissing this matter on IDEM's motion on the basis that Respondent's petition for review was not timely filed.
8. Respondent filed for judicial review of this final order. On May 3, 2019, the Marion County Superior Court 3 reversed the ELJ's decision and remanded the case to the Office of Environmental Adjudication.
9. The ELJ issued an order setting this cause for a prehearing conference on June 4, 2019.
10. On May 31, 2019, Respondent's counsel moved for a continuance, which was granted. The prehearing conference was reset for June 25, 2019.
11. On June 17, 2019, Respondent's counsel moved for another continuance of the prehearing conference. This motion was granted and the prehearing conference was continued until August 13, 2019.
12. On July 1, 2019, Respondent's counsel moved to withdraw his appearance for Respondent. This motion was granted on July 10, 2019.
13. Respondent failed to appear for the prehearing conference on August 13, 2019. A Notice of Proposed Order of Default was issued on August 16, 2019. The Notice was sent via U.S. Mail postage prepaid and via certified mail. The certified mail was returned marked "unclaimed". The Notice sent via U.S. Mail was not returned.
14. A Final Order of Default and Order Setting Hearing was issued on September 12, 2019 and sent to Respondent via U.S. Mail. Respondent was found to be in default.
15. A hearing was held on September 12, 2019. Respondent was given notice of the hearing in the Final Order of Default and Order Setting Hearing.

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<sup>1</sup> <https://bsd.sos.in.gov/publicbusinesssearch>.

16. IDEM appeared at the hearing and presented evidence through testimony and exhibits. All findings are based upon IDEM testimony and other evidence presented at the hearing.
17. Respondent did not appear.
18. IDEM conducted inspections and/or conducted reviews of the Facility's records on July 12, 2013; September 18, 2013; December 22, 2014; July 7, 2015; July 14, 2015; November 2, 2015; December 1, 2015; February 29, 2016; and June 7, 2017.
19. The Respondent failed to distribute consumer confidence reports (CCRs) in 2013 and 2014 to the persons served by the PWS and failed to mail a copy to IDEM within three (3) months.
20. The Respondent failed to notify her customers of lead samples taken on September 13, 2013.
21. The Respondent designated a certified operator, however, that operator's license expired on July 1, 2014. The Respondent failed to notify the IDEM of license expiration and failed appoint a successor operator.
22. A Sanitary Survey, conducted on September 13, 2013, showed that Respondent failed to maintain the appropriate operation and maintenance records.
23. The September 13, 2013 survey also showed that Respondent had failed to develop an Emergency Response Plan.
24. Customers documented power outages and water and/or pressure losses on July 7, 2015, November 14, 2015, November 24, 2015, December 1, 2015, and January 20, 2016. IDEM conducted inspections in response to customer complaints on July 7, 2015, July 14, 2015, December 1, 2015, and February 29, 2016.

#### 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. Pursuant to Indiana Trial Rule 55(B), the presiding ELJ set this matter for hearing to determine the appropriate amount of penalties and/or the appropriate corrective action to be taken.

4. Pursuant 327 IAC 8-2.1-2(b) and 327 IAC 8-2.1-5(c), a community water system shall send a consumer confidence report (CCR) to its customers each year by July 1 and to send a copy of the CCR and certification that the CCR was delivered to IDEM within three (3) months. IDEM presented sufficient evidence to show that Respondent violated these rules.
5. Pursuant to 327 IAC 8-2-44(d), a community water system shall deliver a consumer notice of lead tap water monitoring results to its customers no later than thirty (30) days after learning of the results. Pursuant to 327 IAC 8-2-46(f)(3), a community water system shall send a copy of the customer notice and certification that the notice was distributed to customers to IDEM not later than three (3) months after the end of the monitoring period. IDEM presented sufficient evidence to show that Respondent violated these rules.
6. The owner of a community water system shall comply with all applicable provisions in 327 IAC 8-12-1.1 regarding hiring a certified operator and notifying IDEM of all pertinent information. IDEM presented sufficient evidence to show that Respondent violated these rules.
7. I.C. §13-18-16-6(a) requires all public water systems to be operated so that the water is safe in quality, clean and adequate in quantity; and chemically satisfactory for ordinary domestic consumption. I.C. §13-18-16-6(b) requires the person responsible for the operation of a public water system to take all measures necessary to carry out the requirements of section (a) so as to protect the quality and quantity of raw water from actual or threatened contamination. 327 IAC 8-2-8.2(e)(7)(E)(i) requires operation and maintenance of the system in a manner to ensure providing water that meets all requirements of the Safe Drinking Water Act (42 U.S.C. 300f through 300j-26) and I.C. §13-18-16-6. Measures to meet these requirements must include having and implementing a written or otherwise documented approach for maintaining a record of system components, including information necessary to operate, maintain and repair system components. IDEM presented sufficient evidence to show that Respondent violated these rules.
8. Pursuant to 327 IAC 8-2-8.2(e)(7)(B), the PWS is required to develop an emergency response plan. IDEM presented sufficient evidence to show that Respondent violated this rule.
9. Pursuant to 327 IAC 8-3.2-11(b), the normal operating pressure in the water main shall not fall below 20 pounds per square inch (psi). 327 IAC 8-2-8.2(e)(7)(F) requires notice to IDEM within 24 hours of any service interruption lasting more than eight (8) hours. Pursuant to 327 IAC 8-2.1-7(b)(2)(E) and 327 IAC 8-2.1-7(d)(4), a PWS must provide special public notice to customers for violations and send a copy of such notices to IDEM. IDEM presented sufficient evidence to show that Respondent violated this rule.

10. I.C. 13-30-4-1 authorizes the IDEM to assess a penalty of \$25,000 per day per violation. The IDEM used the Civil Penalty Policy<sup>2</sup> to determine the appropriate penalty in this matter. According to this policy, a civil penalty is calculated by “(1) determining a base civil penalty dependent on the severity and duration of the violation, (2) adjusting the penalty for special factors and circumstances, and (3) considering the economic benefit of noncompliance.” The base civil penalty is calculated taking into account two factors: (1) the potential for harm and (2) the extent of deviation.
11. A review of the Civil Penalty Worksheet (Exhibit 17) demonstrates that IDEM properly and appropriately calculated the penalty in compliance with the Civil Penalty policy. The appropriate penalty is four thousand, three hundred dollars (\$4,300).

### **Final Order**

**AND THE COURT**, being duly advised, hereby **ORDERS, JUDGES AND DECREES** judgment is entered in the Indiana Department of Environmental Management’s favor. All further proceedings are **VACATED**. Further, the Court **ORDERS** the following:

1. Respondent is in violation of 327 IAC 8-2.1-2(b), 327 IAC 8-2.1-5(c), 327 IAC 8-2-44(d), 327 IAC 8-2-46(f)(3), 327 IAC 8-12-1.1, 327 IAC 8-2-8.2(e)(7)(E)(i), I.C. §13-18-16-6(a); I.C. §13-18-16-6(b), 327 IAC 8-2-8.2-(e)(7)(B), 327 IAC 8-3.2-11(b), 327 IAC 8-2-8.2(e)(7)(F), 327 IAC 8-2.1-7(b)(2)(E), and 327 IAC 8-2.1-7(d)(4).
2. Respondent is assessed a penalty of four thousand, three hundred dollars (\$4,300) to be paid within thirty (30) days of the effective date of this Order. This penalty shall be paid to the Environmental Management Special Fund in accordance with Paragraph 13 of the Notice and Order of the Commissioner of the Indiana Department of Environmental Management; and
3. is further ordered to comply with Paragraph 1, 2, 3, 4, 5, 6, 7 8, 9, 10 and 11 of the Notice and Order of the Commissioner of the Indiana Department of Environmental Management issued on January 22, 2018.

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.

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<sup>2</sup> IDEM’s Civil Penalty Policy is a nonrule policy document, ID No. Enforcement 99-0002-NPD, originally adopted on April 5, 1999 in accordance with IC 13-14-1-11.5.

**IT IS SO ORDERED** this 7<sup>th</sup> day of November, 2019 in Indianapolis, IN.



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Hon. Catherine Gibbs  
Environmental Law Judge

**DISTRIBUTION**

Susanna Bingman, Esq.  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue, Room 1307  
Indianapolis, IN 46204

Laura Lei  
2650 MLK Jr. St.  
PO Box 88724  
Indianapolis IN 46208