

Commissioner, Indiana Department of Environmental Management
Case No. 2004-13711-J
Indianapolis, Marion County, Indiana
v.
FLM, LLC, and DaimlerChrysler Corporation
2015 OEA 22, (06-S-E-3708)

OFFICIAL SHORT CITATION NAME: When referring to 2015 OEA 22 cite this case as
FLM, LLC, 2015 OEA 22.

TOPICS:

foundry sand	unenforceable
beneficial use	Notice of Violation (“NOV”)
collection	Proposed Commissioner’s Order
transportation	Commissioner’s Order (“CO”)
storage	bankruptcy
structural backfill	summary judgment
“Black Mountain”	process water
open dumping	I.C. § 4-21.5-3-23
six months	I.C. § 13-11-2-146
specific action	I.C. § 13-11-2-147
correct and control	I.C. § 13-30-2-1
nuisance conditions	I.C. § 13-30-3-4(b)(2)
removal	329 IAC 10-4-2
proper disposal	329 IAC 10-4-3
cover	329 IAC 10-2-181
vagueness	Ind. Trial Rule 56

PRESIDING JUDGE:

Daidsen

PARTY REPRESENTATIVES:

IDEM: April D. Lashbrook, Esq.
Respondent: Sue A. Shadley, Esq., Amy E. Romig, Esq.;
Plews Shadley Racher & Braun

ORDER ISSUED:

June 26, 2015

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

Judicial Review, *FLM, LLC v. Indiana Department of Environmental Management, et al.*,
49D02-1507-MI-024524

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FLM Site. *Id.* The waste foundry sand is sometimes referred to as “Black Mountain”. *FLM, LLC’s November 18, 2014 Response to IDEM’s Motion for Summary Judgment, Exs. 1, A and B, Affidavit of Paul Troy.*

2. Starting in 2003, IDEM Site inspections revealed a large pile of foundry sand stored at the Site. *IDEM September 29, 2014 Motion for Summary Judgment, Ex. A.*
3. On May 17, 2004, IDEM issued a Notice of Violation and Proposed Agreed Order to IRI, FLM and Chrysler (“Respondents”), citing violations of Ind. Code § 13-30-2-1-(4) and (5), 329 IAC 10-4-2 and 10-4-3. In sum, IDEM alleged that Respondents collectively caused or allowed foundry sand, a solid waste, to be open dumped at the Site, and caused or allowed the deposit of solid waste upon the ground.
4. After Respondents declined to enter into an Agreed Order, on April 16, 2006 the IDEM Commissioner issued a Notice and Order per I.C. § 13-30-3-4 (“Commissioner’s Order” or “CO”). The Commissioner’s Order stated that “Respondent International Recycling, Inc. is storing spent foundry sand generated by Respondent DaimlerChrysler Corporation’s Indianapolis foundry on property owned by Respondent FLM, LLC.” *Commissioner’s Order, ¶ 7, p. 2, FLM’s April 21, 2006 Petition for Administrative Review, Ex. 1; IDEM’s September 29, 2014 Motion for Summary Judgment, Ex. C.* The CO alleged that “Respondent FLM, LLC, owns the property at the Site on which International Recycling operated.” *Id.*, ¶ 5, p. 2. However, remaining provisions of the CO addressed Respondents collectively, without differentiating among them, when specifying facts supporting its Findings of Violation and when stating remedies sought in its Order. *Id.*
5. The IDEM Commissioner’s Order alleged the following Findings of Violation:
 9. Pursuant I.C. § 13-30-2-1-(5), a person may not dump, cause, or allow the open dumping of garbage or any other solid waste in violation of the rules adopted by the solid waste management board. Respondents caused and/or allowed waste foundry sand, a contaminant, to be open dumped at the Site in violation of 329 IAC 10-4-2 and 329 IAC 10-4-3, thus violating IC 13-30-2-1-(5).
 10. Pursuant to I.C. § 13-30-2-1(4), no person shall deposit or cause or allow the deposit of any contaminants or solid waste upon the land, except through the use of sanitary landfills, incineration, composting, garbage grinding, or another method acceptable to the solid waste management board. Respondent deposited, caused, or allowed the deposit of, waste foundry sand on the ground in a method which is unacceptable to the solid waste management board.

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11. Pursuant to 329 IAC 10-4-2, no person shall cause or allow the storage, containment, or disposal of solid waste in a manner which creates a threat to human health or the environment, including creating of a fire hazard, vector attraction, air or water pollution, or other contamination. Respondents caused or allowed the disposal of waste foundry sand in a manner which creates a hazard to human health or the environment.
 12. Pursuant to 329 IAC 10-4-3, open dumping or open dumps, as those terms are defined in I.C. § 13-11-2-146 and I.C. § 13-11-2-147, are prohibited. Respondents caused or allowed waste foundry sand, a solid waste, to be open dumped at the Site.
6. The IDEM Commissioner's Order sought the following remedies:
1. Respondents shall immediately comply with I.C. § 13-30-2-1(5). Specifically, Respondents shall cease causing and/or allowing waste foundry sand, a contaminant, to be open dumped at the site in violation of 329 IAC 10-4-2 and 329 IAC 10-4-3, thus violating IC 13-30-2-1(5).
 2. Respondents shall immediately comply with I.C. § 13-30-2-1(4). Specifically, Respondents shall cease depositing, causing, or allowing the deposit of waste foundry sand on the ground in a method which is unacceptable to the solid waste management board.
 3. Respondents shall immediately comply with 329 IAC 10-4-2. Specifically, Respondents shall cease allowing the storage of waste foundry sand in a manner which creates a threat to human health or the environment.
 4. Respondents shall comply with 329 IAC 10-4-3, I.C. § 13-11-2-146 and I.C. § 13-11-2-147. Specifically, Respondents shall cease open dumping or maintaining an open dump as defined in I.C. § 13-11-2-146 by removing and properly reusing or disposing of all the waste foundry sand located at the Site within ninety (90) days of the Effective Date of this Order.
 5. Within thirty (30) days following removal of the waste foundry sand, Respondents shall submit documentation attesting to the removal and proper reuse or disposal of waste foundry sand.

In its January 8, 2015 Reply Brief, Complainant IDEM withdrew its request for assessment of \$45,000 of civil penalties, *CO*, ¶ 7, p. 5.

7. Petitions for Administrative Review of the April 16, 2006 IDEM's Commissioner's Order were timely filed by FLM on April 21, 2006, and by Chrysler on April 25, 2006.

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8. IRI did not seek administrative review of the CO before OEA. On May 24, 2006, OEA issued a Final Order of Dismissal of IRI, finding that OEA did not have subject matter jurisdiction over IRI with regards to the Commissioner's Order because IRI never sought administrative review of the CO.
9. IRI's principal, Mike Zatkoff, filed a voluntary petition for relief under Chapter 7 of the U.S. Bankruptcy Code on August 18, 2005.
10. Chrysler's Voluntary Petition for Relief under Chapter 11 of the U.S. Bankruptcy Code was filed on May 18, 2009. *Case No. 09-50002 (AJG), U.S. Bankruptcy Court, Southern District of New York.*
11. IDEM sought summary judgment on the open dumping violations against FLM on September 29, 2014, seeking a finding that FLM is the owner of property upon which an open dump is located, and is thus responsible for remedying the open dump. *See IDEM Memorandum, p. 3; FLM Proposed Findings, ¶ 8, p. 3.* FLM responded on November 18, 2014, IDEM replied on January 8, 2014. The parties presented oral argument on January 29, 2015, and filed proposed findings of fact, conclusions of law and orders on March 12, 2015.
12. FLM engaged Troy Risk, Inc., to assess the Site. Troy Risk, by Paul Troy, Licensed Professional Geologist ("LPG"), its President and Principal Geologist, estimated that at the Site, Black Mountain, contained approximately 77,200 cubic yards of waste foundry sand and 105,000 tons of soil. *FLM, LLC's November 18, 2014 Response to IDEM's Motion for Summary Judgment, Exs. 1, A and B, Affidavit of Paul Troy.* As of September, 2007, IDEM had stated an estimate of 150,000 to 200,000 tons of waste foundry sand on-site, covering approximately 2 acres to a maximum depth of 50 feet. *Id., Ex. B, Sept. 21, 2007 IDEM Foundry Sand Reuse Determination.*
13. The parties do not dispute that the Site's waste foundry sand has a beneficial reuse. *Id.* In 2007, IDEM approved reuse of approximately 40,000 tons for backfill material for planned redevelopment of the former Ertel Manufacturing facility (BFD Site #4050027) at 2045 Dr. AJ Brown Avenue, Indianapolis, Marion County, Indiana. *Id.* LPG Troy estimated that, in 2013, that the costs associated with landfill disposal of the waste foundry sand would approximate \$2.3 million; the costs associated with reuse would approximate \$1.3 million. *Id., Ex.1, Affidavit of Paul Troy.* No evidence was presented that waste foundry sand was removed since 2013.
14. IDEM's Site inspections, last reported on February 13, 2012, document that the waste foundry sand pile has visible erosion rills, and that erosion has migrated off-site. *IDEM's September 29, 2014 Motion for Summary Judgment, Exs. A, D.*

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CONCLUSIONS OF LAW

1. The Indiana Department of Environmental Management (“IDEM”) is authorized to implement and enforce specified Indiana environmental laws, and relevant rules, per I.C. § 13-13, *et seq.* The Office of Environmental Adjudication (“OEA” or “Court”) has jurisdiction over the decisions of the Commissioner of IDEM and the parties to this controversy, per I.C. § 4-21.5-7, *et seq.*, and I.C. § 4-21.5-3-7(a)(1)(A). Matters before OEA are subject to procedures stated in I.C. § 4-21.5-3, *et seq.* and 315 IAC 1, *et seq.*
2. This is a final order pursuant to I.C. § 4-21.5-3-23, I.C. § 4-21.5-3-27 and 315 IAC 1-2-1(9). Findings of Fact that may be construed as Conclusions of Law, or Conclusions of Law that may be construed as Findings of Fact, are so deemed.
3. The OEA’s findings of fact must be based exclusively on the evidence presented to the Environmental Law Judge (“ELJ”) and deference to the agency’s initial factual determination is not allowed. I.C. § 4-21.5-3-27(d); *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E. 100 (Ind. 1993); *Indiana-Kentucky Electric v. Commissioner, Indiana Department of Environmental Management*, 820 N.E.2d 771, 781 (Ind. App. 2005). “*De novo* review” means that “all issues are to be determined anew, based solely upon the evidence adduced at the hearing and independent of any previous findings.” *Grisell v. Consol. City of Indianapolis*, 425 N.E.2d 247 (Ind. Ct. App. 1981).
4. OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806, 809 (Ind. 2004)(appeal of OEA review of NPDES permit); *see also* I.C. § 4-21.5-3-27(d). “Standard of proof generally has been described as a continuum with levels ranging from a “preponderance of the evidence test” to a “beyond a reasonable doubt” test. The “clear and convincing evidence” test is the intermediate standard, although many varying descriptions may be associated with the definition of this intermediate test.” *Matter of Moore*, 453 N.E.2d 971, 972, n. 2. (Ind. 1983). The “substantial evidence” standard requires a lower burden of proof than the preponderance test, yet more than the scintilla of the evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993). *Gas America 347*, 2004 OEA 123, 129. *See also Blue River Valley*, 2005 OEA 1, 11-12. *Objection to the Denial of Excess Liability Trust Fund Claim Marathon Point Service, ELF #9810570/FID #1054, New Castle, Henry County, Indiana; Winimac Service, ELF #9609539/FID #14748, Winimac, Pulaski County, Indiana; HydroTech Consulting and Engineering, Inc.*, 2005 OEA 26,41.

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5. Via summary judgment against FLM, Complainant IDEM seeks enforcement of its Commissioner's Order, as a matter of law, averring the lack of genuine issue of material fact that FLM is liable as cited for the unauthorized deposit of solid waste on its property, and is required to comply with ordered remedies. OEA is not addressing any allocation of potential culpability among all Respondents, as that question is not before it. The OEA may enter summary judgment for a party if it finds that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.C. § 4-21.-5-3-23; Ind. Trial Rule 56. The moving party bears the burden of establishing that summary judgment is appropriate. *Ramon v. Glenroy Construction Company, Inc.*, 609 N.E.2d 1123, 1127 (Ind. Ct. App. 1993). All facts and inferences must be construed in favor of the non-movant. *Gibson v. Evansville Vanderburgh Building Commission, et al.*, 725 N.E.2d 949, 952 (Ind. Ct. App. 2000). When the moving party sets out a prima facie case in support of the summary judgment, the burden shifts to the non-movant to establish a factual issue. *American management, Inc. v. MIF Realty, L.P.*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996). All doubts as to the existence of a material issue must be resolved against the moving party. *City of North Vernon v. Jennings Northwest Regional Utilities*, 829 N.E.2d 1, 3 (Ind. 2005), *Tibbs v. Huber, Hunt & Nichols, Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).
6. Respondent FLM does not dispute the material facts that it owns the Site, that the foundry sand was placed on the Site, that the foundry sand has been on-Site for six months or more, nor that the foundry sand is solid waste. The parties do not dispute that the foundry sand has been and may be eligible for beneficial reuse. Respondent FLM does dispute that Complainant IDEM met its burden of proof, on summary judgment, that the Site's waste foundry sand violated 329 IAC 10-4-2 by creating a threat to human health or the environment or was creating air or water pollution, or causing contamination. Respondent FLM further disputes that Complainant IDEM met its burden of proof, on summary judgment, that the Site's waste foundry sand violated 329 IAC 10-4-3's prohibition on open dumps, because the waste foundry sand had not been disposed, as it is stored for beneficial reuse. Respondent FLM further challenges that IDEM's CO did not meet content requirements stated in I.C. § 13-30-3-4. Specifically, Respondent FLM asserts that IDEM's CO failed to establish that it was a landowner culpable for correcting conditions resulting from an open dump, because IDEM's CO did not specify a violation of 329 IAC 10-4-4, which references landowner duties for an open dump on its property. Respondent FLM further claims that the IDEM CO did not comply with I.C. § 13-30-3-4(b)(2)(B)(i), as the CO's references to the collective Respondents failed to provide a statement directed specifically to FLM, as an alleged violator, identifying specific actions FLM was to take to correct the violation.

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7. To be valid, an IDEM Commissioner's Order must specify the environmental management laws or rules which IDEM alleges are being violated, and must state the manner and extent to which the alleged violation exists. I.C. § 13-30-3-4(b)(2).
8. IDEM's April 16, 2006 Commissioner's Order issued to FLM, IRI and Chrysler complies with I.C. § 13-30-3-4 (b)(2) as concerns FLM. The CO is based on facts and legal assertions common to all three Respondents, but sets out the unique roles in the relationship among the three Respondents by stating, "Respondent International Recycling, Inc. is storing spent foundry sand generated by Respondent DaimlerChrysler Corporation's Indianapolis foundry on property owned by Respondent FLM, LLC." *Commissioner's Order*, ¶ 7, p. 2, *FLM's April 21, 2006 Petition for Administrative Review, Ex. 1; IDEM's September 29, 2014 Motion for Summary Judgment, Ex. C.* The CO further specifies FLM's Site ownership role in its provision that "Respondent FLM, LLC, owns the property at the Site on which International Recycling operated." *Id.*, ¶ 5, p. 2. While remaining provisions of the CO address Respondents collectively, without differentiating among them, when specifying facts supporting its Findings of Violation, the CO specifies the environmental management laws or rules which IDEM alleges are being violated, and the manner and extent to which the alleged violation exists. As the CO states,
 - I.C. § 13-30-2-1(5) is directed to a person who dumps, cause, or allows the open dumping.
 - I.C. § 13-30-2-1(4) is directed to a person who deposits or causes or allows the deposit of contaminants or solid waste upon the land."
 - 329 IAC 10-4-2 is directed to a person who causes or allows the storage, containment, or disposal of solid waste.
 - 329 IAC 10-4-3, prohibits open dumping or open dumps, as those terms are defined in IC 13-11-2-146 and I.C. § 13-11-2-147; the CO alleges that the material was caused or allowed to be open dumped at the Site.

No genuine issue of material fact exists that FLM "caused or allowed" the waste foundry sand to be deposited on land owned by FLM, both directly, and through its business arrangement with the other two Respondents. As a matter of law, no genuine issue of material fact exists that IDEM's April 16, 2006 Commissioner Order complies with I.C. § 13-30-3-4(b)(2) as to FLM.

9. To be valid, an IDEM Commissioner's Order must include an order "requiring that the alleged violator take specific action to correct the violation." I.C. § 13-30-3-4 (b)(2)(B)(i), FLM challenges the CO as vague, for lack of a statement of specific correction action to be taken by FLM, as the specified corrective action is directed to all three Respondents, not just FLM.

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10. As a matter of law, no genuine issue of material fact exists that IDEM's April 16, 2006 Commissioner's Order issued to FLM, IRI and Chrysler complies with I.C. § 13-30-3-4 (b)(2)(B)(i) as to FLM. FLM argues that as IDEM's Commissioner's Order failed to specify and allege a violation of 329 IAC 10-4-4, then FLM's status as Site property owner does not compel it to perform any actions per 329 IAC 10-4-4. 329 IAC 10-4-4 requires that an owner of real estate upon which an open dump is located must correct and control nuisance conditions at the open dump, including removal and proper disposal of the solid waste. In construing different sections of a statute, the entire act is to be considered in order to arrive at the legislative intent. *See Cyrus v. State*, 145 N.E. 497 (Ind. 1924); *Nash v. State*, 184 N.E. 169 (Ind. 1933); *Western Machine Works v. Edwards Machine & Tool Corp.*, 223 Ind. 655 (Ind. 1945). The legislative intent stated by 329 IAC 10-4-4's specifications of a landowner's duties are echoed in 329 IAC 10-4-2 and -3 when applied to FLM, a landowner who caused or allowed the waste foundry sand to be placed on its land.
11. The CO's order provisions' collective references to Respondents do not render the provisions unenforceable for vagueness. These provisions consistently instruct that the Respondents are to cease depositing material, to cease maintaining the stockpiled waste foundry sand, and to remove it by disposal, beneficial reuse or other means approved by IDEM. FLM demonstrated the applicability of these provisions to FLM when sought approval to remove and removed 40,000 tons of the waste foundry sand for a beneficial use, and stated that is its intent for the remainder. As a matter of law, no genuine issue of material fact exists that IDEM's April 16, 2006 Commissioner's Order issued to FLM, IRI and Chrysler complies with I.C. § 13-30-3-4 (b)(2)(B)(i) as to FLM.
12. IDEM must meet its burden of proof on summary judgment that the FLM Site is an open dump. The waste foundry sand is a regulated solid waste, per I.C. § 13-11-2-205, and has specified legitimate uses. *See* I.C. § 13-19-3-7. A disposal of a solid waste at a single disposal site that does not fulfill the requirements of a sanitary landfill or other approved disposal method, or is established and maintained without cover and without regard to the possibilities of contamination of surface or subsurface water resources is an open dump. I.C. § 13-11-2-146. Open dumping is the act of disposing of solid waste at an open dump. I.C. § 13-11-2-147. In this case, there is no genuine issue of material fact that solid waste was placed on the single disposal site on land owned by FLM, without a permit. FLM claims that the waste foundry sand not open dumped because is stored, not disposed. FLM supports this claim on the waste foundry sand's past beneficial reuse in 2007 at the Ertel site, and on FLM's ongoing efforts to seek a beneficial reuse of the waste foundry sand. *See FLM, LLC's November 18, 2014 Response to IDEM's Motion for Summary Judgment, Exs. 1, A and B, Affidavit of Paul Troy*. Storage of solid waste, per 329 IAC 10-2-181, is ". . . the retention, containment, or accumulation of solid waste on a temporary basis . . . in such a manner as not to constitute disposal of the waste. It is a rebuttable presumption that storage of waste for more than six (6) months constitutes disposal." There is no genuine issue of material fact that the waste foundry sand deposit on FLM's property is an open dump. Waste foundry

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sand has been present on FLM's property since 2003; approximately 40,000 tons were removed to the Ertel site for beneficial reuse in 2007. Despite FLM's efforts to remove the remaining material for beneficial use, as of September, 2007, IDEM estimated that FLM's property contained an estimate of 150,000 to 200,000 tons of waste foundry sand on-site, covering approximately 2 acres to a maximum depth of 50 feet. LPG Paul Troy estimated that in June, 2013, FLM's property contained approximately 77,200 cubic yards of waste foundry sand and 105,000 tons of soil. The waste foundry sand deposit on FLM's property has remained *in situ* significantly longer than the six month presumption term 329 IAC 10-2-181 sets forth for disposal. While FLM's efforts to seek removal for beneficial use are commendable, efforts are not recognized in the applicable regulations. No evidence was presented that the waste foundry sand on FLM's property was established and maintained with cover. IDEM presented substantial evidence that the waste foundry sand pile was eroding and migrating offsite, thus providing substantial evidence that the waste foundry sand on FLM's property was placed without regard to the possibilities of contamination of surface or subsurface water resources, in contravention of I.C. § 13-11-2-146. As a matter of law, no genuine issue of material fact disputes that the waste foundry sand present on FLM's property is an open dump.

13. As a matter of law, Complainant IDEM has presented substantial evidence that no genuine issue of material fact exists, that FLM caused or allowed the waste foundry sand to be open dumped at the Site. Pursuant to 329 IAC 10-4-3, open dumping or open dumps, as those terms are defined in IC 13-11-2-146 and IC 13-11-2-147, are prohibited. As a matter of law, FLM violated 329 IAC 10-4-3, as alleged by IDEM's CO.
14. To succeed on summary judgment as to its alleged violation of 329 IAC 10-4-2, Complainant IDEM must prove that as a matter of law, no genuine issue of material fact exists that Respondent FLM violated 329 IAC 10-4-2. 329 IAC 10-4-2 provides that no person shall cause or allow the storage, containment, or disposal of solid waste in a manner which creates a threat to human health or the environment, including creating of a fire hazard, vector attraction, air or water pollution, or other contamination. IDEM presented unrefuted substantial evidence of erosion and off-site migration of material. Although it is likely, genuine issues of material fact exists as to the amount of erosion and material which migrated off-site, and whether it threatened human health or the environment and caused contamination. As a matter of law, genuine issues of material fact exist as to whether FLM violated 329 IAC 10-4-2, as alleged by IDEM's CO.
15. A person who violates a solid waste regulation, including 329 IAC 10-4-2, is in violation of I.C. § 13-30-2-1-(5), which provides that "a person may not dump, cause, or allow the open dumping of . . . solid waste in violation of the rules adopted by the solid waste management board." As Respondent FLM caused and/or allowed waste foundry sand, a contaminant, to be open dumped at the Site in violation of 329 IAC 10-4-3, FLM violated I.C. § 13-30-2-1-(5).

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16. As a matter of law, no genuine issue of material fact exists that FLM caused or allowed the deposit of unauthorized solid waste on its property, in violation of I.C. § 13-30-2-1(4), which provides:

no person shall deposit or cause or allow the deposit of any . . . solid waste upon the land, except through the use of sanitary landfills, incineration, composting, garbage grinding, or another method acceptable to the solid waste management board.

By allowing the deposit of the waste foundry sand on its property as an open dump, Respondent FLM violated I.C. § 13-30-2-1(4), as a matter of law.

17. Complainant IDEM met its burden of proof on summary judgment that April 16, 2006 Commissioner's Order as to FLM should be sustained.

FINAL ORDER

AND THE COURT, being duly advised, **FINDS** that, Complainant Indiana Department of Environmental Management has established, by substantial evidence, that no genuine issues of material fact exist, as a matter of law, that it properly issued a Commissioner's Order to Respondent FLM, LLC, for waste foundry sand disposal at 3515 East Washington Street, Indianapolis, Marion County, Indiana.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Complainant Indiana Department of Environmental Management's Motion for Summary Judgment is **GRANTED**. The Indiana Department of Environmental Management April 16, 2006 Commissioner's Order is sustained, except for withdrawn paragraph 7, regarding civil penalty. FLM, LLC is **ORDERED** to comply with the Indiana Department of Environmental Management April 16, 2006 Commissioner's Order, except for withdrawn paragraph 7, regarding civil penalty.

You are further notified that pursuant to provisions of 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. A party is eligible to seek Judicial Review of this Final Order as stated in applicable provisions of I.C. § 4-21.5-5, *et seq.* 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 Final Order is served.

IT IS SO ORDERED in Indianapolis, Indiana this 26th day of June, 2015.

Hon. Mary L. Davidsen
Chief Environmental Law Judge