

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In Re:)	
)	Docket No. 06-08-C-2008DW
VICTORY MOTEL)	
JIANGONG (JAY) LEI & YUMEI PAN)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
ID No. 917174,)	AND FINAL ORDER
)	
Respondents.)	
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APPEARANCES:

Victory Motel, Jiangong (Jay) Lei & Yumei Pan (the Respondents), pro se

Department of Health Drinking Water Program (the Program) by
Office of the Attorney General, per
Dorothy H. Jaffe, Assistant Attorney General

PRESIDING OFFICER: Arthur E. DeBusschere, Health Law Judge

The Presiding Officer conducted a hearing on January 23, 2007. The Program had issued a Notice of Imposition of Penalties. Penalty Affirmed.

ISSUE

Should the Notice of Imposition of Penalties filed on August 23, 2006 be affirmed?

SUMMARY OF PROCEEDINGS

The Program presented the testimony of Robert James and Carol Stuckey. The Respondent, Mr. Jiangong (Jay) Lei, testified on his own behalf. The following twenty-two (22) Program exhibits were admitted:

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND FINAL ORDER

- Program's Exhibit No. 1: Letter from Program to Jay Lei, June 1, 1999, pp. 1-2.
- Program's Exhibit No. 2: Letter from Tacoma-Pierce County Health Department to Jay Lei, May 2, 2000, p. 1.
- Program's Exhibit No. 3: Letter from Program to Jay Lei, February 18, 2003, pp. 1-2.
- Program's Exhibit No. 4: Letter from Program to Jay Lei, February 11, 2004, pp. 1-2.
- Program's Exhibit No. 5: Letter from Program to Jay Lei, November 12, 2004, pp. 1-2.
- Program's Exhibit No. 6: Letter from Program to Jay Lei, December 6, 2004, pp. 1-2.
- Program's Exhibit No. 7: Water Facilities Inventory, December 20, 2004, pp. 1-2.
- Program's Exhibit No. 8: Notice of Violation, Re: Victory Motel, ID# 917174, March 11, 2005, pp. 1-3.
- Program's Exhibit No. 9: Letter from Denise Clifford to Jay Lei, June 29, 2005, p. 1.
- Program's Exhibit No. 10: Letter from Denise Clifford to Jay Lei, August 3, 2005, p. 1.
- Program's Exhibit No. 11: Letter from Program to Jay Lei, October 18, 2005, pp. 1-2.
- Program's Exhibit No. 12: Letter from Carol Stuckey to Jay Lei, December 1, 2005, p. 1.
- Program's Exhibit No. 13: Letter from Carol Stuckey to Jay Lei, December 22, 2005, p. 1.
- Program's Exhibit No. 14: Letter from Jay Lei to Governor Christine Gregoire and attachments, pp. 1-6.
- Program's Exhibit No. 15: Letter from Program to Jay Lei, January 17, 2006, p. 1.
- Program's Exhibit No. 16: Letter from Program to Jay Lei, February 9, 2006, p. 1.
- Program's Exhibit No. 17: Letter from Jay Lei to Program, February 23, 2006, p. 1.
- Program's Exhibit No. 18: Letter from Program to Jay Lei, February 23, 2006, pp. 1-2.
- Program's Exhibit No. 19: Letter from Program to Jay Lei, March 28, 2006, p. 1.

Program's Exhibit No. 20: Letter from Program to Jay Lei, April 28, 2006, and attachment, pp. 1-2.

Program's Exhibit No. 21: Letter from Program to Jay Lei, May 24, 2006, p. 1.

Program's Exhibit No. 22: Program's Order, Re: Victory Motel, Docket No. 06-SDO-009, June 28, 2006, and attachments, pp. 1-22.

The Respondents offered twelve (12) exhibits. It was not necessary to admit Respondents' Exhibit No. 1, which was a copy of the administrative rules and a federal statute. The Presiding Officer has access to the rules and statutes. Next, it was not necessary to admit Respondents' Exhibit No. 2, which the Respondents identified as the exhibits offered by the Program. The Program's exhibits shall also be part of his case in chief. The Respondents' Exhibits Nos. 3-12, which were admitted, are the following:

Respondent's Exhibit No. 3: Letter from Jay Lei to Program, November 19, 2004, p. 1.

Respondent's Exhibit No. 4: Letters from Jay Lei to Program (Brian Boyle and Shasta Guinn), both dated November 22, 2004, pp. 1-2.

Respondent's Exhibit No. 5: Letter from Jay Lei to Program, December 1, 2004, p. 1.

Respondent's Exhibit No. 6: Letter from Jay Lei to Program, January 13, 2005, and attachment, pp. 1-3.

Respondent's Exhibit No. 7: Letter from Jay Lei to Program, March 29, 2005, p. 1.

Respondent's Exhibit No. 8: Email from Jay Lei to Program, May 19, 2005, with attached memo dated May 18, 2005, pp. 1-3.

Respondent's Exhibit No. 9: Letter from Jay Lei to Governor Christine Gregoire, June 8, 2005, pp. 1-3.

Respondent's Exhibit No. 10: Water Bacteriological Analysis, Re: Victory Motel, October 18, 2005 and November 28, 2005, p. 1.

Respondent's Exhibit No. 11: Two letters from Jay Lei to Program, February 7, 2006 and February 23, 2006, pp. 1-2.

Respondent's Exhibit No. 12: Letter from Program to Jay Lei, May 24, 2006 with attachment, pp. 1-2.

Based upon the evidence presented, the Presiding Officer makes the following:

I. PROCEDURAL FINDINGS

Notice of "Group A" Water System.

1.1 On May 14, 1996, and based upon information submitted by the owners, the Program determined that Victory Motel Water System was a Group A water system.

1.2 On June 1, 1999, the Program notified the Respondents that they were a Group A public water system and they were required to have a sanitary survey completed every five (5) years. In this letter dated June 1, 1999, the Respondents were notified that they should contact the Tacoma-Pierce County Health Department, who has an agreement with the Program to conduct the sanitary surveys.

Notice of Violation.

1.3 On March 11, 2005, the Program issued to the Respondents a Notice of Violation. The Notice of Violation notified the Respondents that they have not had a sanitary survey within the previous five (5) years as required by regulation. The Notice of Violation notified the Respondents that the public water systems, which do not collect five or more routine water samples per month, must undergo a sanitary survey. In the Notice of Violation, the Respondents were notified that in the event that the Respondents failed to complete the sanitary survey within 15 days of the Notice, then the Respondents were required to monitor bacteriological quality at least five (5) times per month.

Notice of “Red” Operating Permit.

1.4 On October 18, 2005, the Program issued a “Red” operating permit for the Victory Motel Water System, because of the significant non-compliance with the water system requirements of the federal Safe Drinking Water Act. A category Red operating permit means that the water system is substantially out of compliance with safe drinking water regulations.

Program’s Order.

1.5 On June 28, 2006, the Program issued an Order, Docket No. 06-SDO-009, In Re: Victory Motel Water System, Pierce County, ID# 917174 (the Program’s Order). The Program’s Order was issued to Jiangong (Jay) Lei and Yumei Pan, who were identified as the owners of Victory Motel Water System. In Paragraph 2.2 of the Program’s Order, the Respondents were ordered to apply to the Program or the Tacoma–Pierce County Health Department for a sanitary survey and to ensure unrestricted availability of all facilities and records at Victory Motel Water System by July 31, 2006. Further, in Paragraph 2.1, the Program ordered the Respondents to monitor bacteriological quality five (5) times per month.

Notice of Imposition of Penalties.

1.6 On August 23, 2006, the Program filed a Notice of Imposition of Penalties, ASU No. 06-08-C-2008DW, Docket No. 2006-NIP-002, In Re Victory Motel Pierce County, ID# 917174 (Notice of Imposition of Penalties). The Notice of Imposition of Penalties was issued because the Respondents failed to comply with Paragraph 2.1 and Paragraph 2.2 of the Program’s Order. The Respondents were penalized pursuant

to RCW 70.119A.040 in the sum of three thousand one hundred fifty dollars (\$3,150.00).

II. FINDINGS OF FACT

2.1 The Victory Motel is located on 10801 Pacific Hwy SW, Tacoma, Washington. Victory Motel has a permanent well with no treatment to the water. The owners of Victory Motel are Jiangong (Jay) Lei and Yumei Pan.

2.2 The Victory Motel Water System provides water for one (1) residential connection, serving the Respondents' family members, and eighteen (18) service connections, serving a monthly population of approximately 378 to 418 occupants. Generally, the occupants of Victory Motel are day laborers staying at the motel.

Notice to Perform Sanitary Survey.

2.3 On June 1, 1999, the Program notified the Respondents that they were a Group A public water system and were required to have a sanitary survey completed every five (5) years.

2.4 A sanitary survey is an inspection of a water system facility and records. A sanitary survey is an inspection of the purveyor's well. The purpose of the sanitary survey is to see if the water system is capable of delivering safe drinking water. The inspector is to have unrestricted access to the water system, including the well. The inspector discusses with the owners about operations and maintenance. The inspector provides the results of the survey to the Program and the owner. As part of his results, the inspector would include photographs, drawings, and additional information. The Program would then determine if the sanitary survey requirement has been met and

determine if any follow-up action would be required. The cost for a sanitary survey would be about three hundred dollars (\$300.00).

2.5 On June 1, 1999, May 2, 2000, February 18, 2003, February 11, 2004, November 12, 2004, and on December 6, 2004, the Program informed the Respondents by correspondence that they should have a sanitary survey.

2.6 On May 18, 2005, the Program and the Tacoma-Pierce County Health Department met with Mr. Lei to discuss the sanitary survey requirement and to review any records that the Respondents wanted to show.

2.7 On June 29, 2005, August 3, 2005, October 18, 2005, and January 17, 2006, the Respondents were notified that they had not completed a sanitary survey.

Notice to Monitor Bacteriological Quality.

2.8 Since a sanitary survey had not been conducted and pursuant to the Notice of Violation, the Respondents were required to monitor bacteriological quality of the water at least five (5) times per month. To monitor bacteriological quality of their well, the Respondents would collect a small sample of well water and submit (send or deliver) it to a laboratory. The water sample (hereinafter called coliform sample) is used to test for coliform bacteria. The laboratory would perform a water bacteriological analysis to test for coliform bacteria to see if the well water was safe to drink. Usually, the laboratory sends the test results to the Program.

2.9 In letters dated December, 1, 2005, December 22, 2005, February 9, 2006, March 28, 2006, April 28, 2006, and May 4, 2006, the Respondents

were notified that they failed to submit coliform samples at least five (5) times per month. The letters addressed sampling period from October 2005 through April 2006.

2.10 On March 23, 2006 and on April 28, 2006, the Respondents took a coliform sample. The sample taken on April 28, 2006 was not tested, because the laboratory determined that it was too old or unsuitable for testing. The laboratory determined that the sample taken on March 23, 2006 was satisfactory.

Failure to Comply with Program's Order.

2.11 The Respondents failed to obtain a sanitary survey for their water system and failed to submit the required coliform samples. From June 1, 1999 (when the Respondents were first notified that a sanitary survey was required) through August 16, 2006 (when the Notice of Imposition of Penalties was issued), the Respondents failed to obtain a sanitary survey. From March 11, 2005 (when the Notice of Violation was issued) through August 16, 2006 (when the Notice of Imposition of Penalties was issued), the Respondents failed to collect and submit coliform samples five (5) times per month from representative points in the distribution system. Moreover, the Respondents failed to comply with the requirements in Paragraphs 2.1 and 2.2 of the Program's Order.

III. CONCLUSIONS OF LAW

3.1 The Program has the authority to adopt regulations relating to the operation of public water systems, pursuant to RCW 43.20.050 and 70.119.050. The regulations adopted are contained in chapter 246-290 WAC.

3.2 In this case, the Program ordered the Respondents to comply with its rules by having a sanitary survey performed and if not timely performed, to monitor bacteriological quality five (5) times per month. As a result of the Program's Order and the Respondents' conduct, the Program issued a Notice of Imposition of Penalties. The Respondents were penalized in the sum of three thousand one hundred fifty dollars (\$3,150.00). The Respondents filed a Request for Adjudicative Proceeding contesting the Notice of Imposition of Penalties.

3.3 To address the Respondents' appeal, the Presiding Officer takes evidence, listens to oral argument, and issues findings and conclusions. RCW 34.05.449(2) and .461(4). In accordance with the Department's rules, the Presiding Officer conducts the hearing de novo. WAC 246-10-602(2)(a).

3.4 The Program has the burden to prove the allegations by a preponderance of the evidence. WAC 246-10-606.

3.5 The Department has jurisdiction to regulate a "public water system," as defined in RCW 70.119A.020(4) and WAC 246-290-010.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

RCW 70.119A.020(4), and

Public water system shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. Such term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with such system.

WAC 246-290-020(1). In this case, the Program has jurisdiction to regulate Victory Motel Water System as a "public water system."

3.6 As part of its regulation of public water systems, the Program is required to work with the purveyor, who owns and operates it.

"Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

RCW 70.119A.020(6); and

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

WAC 246-290-010. As the owners of Victory Motel, Jiangong (Jay) Lei and Yumei Pan are “purveyors” of the Victory Motel Water System.

3.7 The Program’s rule defines a Group A water system:

(4) A **Group A** system shall be defined as a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b).

WAC 246-290-020(4) (emphasis added by underline).

3.8 The federal Safe Drinking Water Act defines a public water system:

(4) Public water system.

(A) In general. The term "public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

42 USCS 300f(4)(A) (emphasis added).

3.9 The Respondents did not dispute that they have eighteen (18) connections, but they argued that the term “service connections” under the rule means “residential connections.” For the basis of their argument, the Respondents referenced Table 1 included with the Program's rule, WAC 246-290-020. In Table 1, there is a box describing Group A, in which it stated “[s]ystem that regularly serves: 15 or more residential connections or 25 or more people for 60 or more days/yr.” Referencing this statement in Table 1, the Respondents pointed out that Victory Motel has only one

residential connection, which serves their family. Then, the Respondents argued that the other 18 water connections that serve the individual units in Victory Motel should not be considered. Thus, they argued that since Victory Motel Water System has less than 15 residential connections, they should not be classified as a Group A water system.

3.10 The Respondents' argument is in error. In interpreting the Program's rule and the federal statute, the Presiding Officer can obtain guidance from relevant case law:

The meaning of a statute is a question of law that is reviewed de novo. The Court's fundamental objective in determining what a statute means is to ascertain and carry out the Legislature's intent. If the statute's meaning is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislature intended. A statute that is clear on its face is not subject to judicial construction.

State v. J.M., 144 Wn.2d 472, 480 (2001) (citations omitted). The meaning of the applicable rule (WAC 246-290-020(4)) and federal statute (42 USCS 300f(4)(A)) regarding the term "service connections" are plain on their face. The Program's rule was intended to conform to the Federal Safe Drinking Water Act of 1974 and as amended in 1986 and as amended in 1996. WAC 246-290-001(4). The federal definition of a public water system referenced "service connections" and did not limit the term "service connections" to only "residential" connections. 42 USCS 300f(4)(A).

3.11 Table 1 included after the Program's rule in WAC 246-290-020, and referenced by the Respondents, was provided to explain the rule. The Program's rule under WAC 246-290-020(4) conforms with 42 USCS 300f(4)(A) and controls here. Under the plain reading of 42 USCS 300f(4)(A), a water system with at least fifteen (15)

service connections would be a Group A water system. Thus, the Respondents' eighteen (18) "service connections" would be included in the determination of a Group A water system.

3.12 In this case, Victory Motel Water System has eighteen (18) service connections and one residential connection. The Program correctly defined Victory Motel as a Group A transient non-community water system. WAC 246-290-020(4) and (5).

3.13 The Program requires public water systems to submit to a sanitary survey by a schedule described in its rules:

All public water systems shall submit to a sanitary survey conducted by the department, or the department's designee, based upon the following schedule:

...

(b) For transient noncommunity water systems, every five years unless the system uses only disinfected ground water and has an approved wellhead protection program, in which case the survey shall be every ten years.

WAC 246-290-416(1)(emphasis added).

3.14 In this case, the Respondents failed to have a sanitary survey completed. Based upon the above Procedural Findings and the above Findings of Fact, Paragraphs 2.1 through 2.7 and Paragraph 2.11, the Program proved by a preponderance of the evidence that the Respondents failed to comply with the Program's Order, Paragraph 2.2.

3.15 In the Notice of Violation, the Respondents were notified that in the event that the Respondents failed to complete the sanitary survey within 15 days, the

Respondents were required to collect and submit five (5) routine monthly coliform samples per month. This requirement was issued pursuant to WAC-246-290-300(1)(a), Table 2. See 40 CFR 141.21(d). In the Program's Order, the Respondents were ordered to collect and submit five (5) routine monthly coliform samples.

3.16 In this case, the Respondents failed to collect and submit five (5) routine monthly coliform samples per month. Based upon the above Procedural Findings and Findings of Fact, Paragraphs 2.1 through 2.11, the Program proved by a preponderance of the evidence that the Respondents failed to comply with the Program's Order, Paragraph 2.1.

3.17 The Program may impose penalties for failure to comply with an order of the Division, when the order requires a purveyor to cease violating any regulation pertaining to public water systems or to take specific actions within a specified time to place a public water system in compliance with such regulations. RCW 70.119A.030; RCW 70.119A.040. In this case, since the Respondents failed to complete a sanitary survey and to collect and submit five (5) coliform samples per month as required, the Program's Notice of Imposition of Penalties should be affirmed.

III. ORDER

Based upon the above, the Presiding Officer AFFIRMS the Notice of Imposition of Penalties, ASU No. 06-08-C-2008DW, Docket No. 2006-NIP-002, In Re Victory Motel Pierce County, ID# 917174. Accordingly, Jiangong (Jay) Lei and Yumei Pan,

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the owners of Victory Motel, shall pay the civil penalty of three thousand one hundred and fifty dollars (\$3,150.00). The civil penalty is due upon service of this Final Order.

Dated this 16____day of March 2007.

_____/s/
ARTHUR E. DeBUSSCHERE, Health Law Judge
Presiding Officer

NOTICE TO PARTIES

This Final Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Final Order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Drinking Water Program
Department of Health
PO Box 47822
Olympia, WA 98504-7822

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this Final Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

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The Final Order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Final Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).