



**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204  
(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Eric J. Holcomb  
*Governor*

Brian C. Rockensuess  
*Commissioner*

March 22, 2024

Via Certified Mail No.:  
7019 2280 0001 5569 8522

Jason Grounds, Registered Agent  
Dessy Corp. d.b.a. Phyl's Corner  
23023 Marydale Drive,  
Elkhart, IN 46517

Dear Mr. Grounds:

Re: Notice of Violation and  
Proposed Agreed Order  
Indiana Department of  
Environmental Management

v.

Dessy Corp. d.b.a. Phyl's Corner  
PWSID No. IN2200192  
Case No. 2024-29915-D  
Elkhart, Elkhart County

This is to advise that the Indiana Department of Environmental Management (IDEM) has conducted an investigation of Dessy Corp d.b.a. Phyl's Corner. As a result of that investigation, IDEM has made a preliminary determination that violations exist. Pursuant to Indiana Code 13-30-3-3, enclosed please find a Notice of Violation and a proposed Agreed Order, setting forth IDEM's specific findings of violation and the actions necessary to resolve them.

You may request a settlement conference to discuss the allegations and the necessary corrective actions, which may include a compliance schedule. Payment of a civil penalty will also be discussed. The civil penalty amount noted in the proposed Agreed Order is a preliminary figure for settlement discussion purposes only and is based on the alleged violations set forth in the Notice of Violation.

To resolve this matter as provided for in the enclosed Agreed Order, sign, and return the entire document to me at the following address:

Office of Water Quality – IGCN 1255  
Indiana Department Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

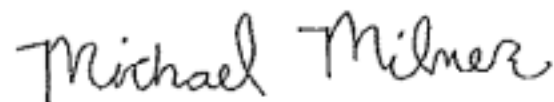
The enclosed proposed Agreed Order is subject to the final approval of IDEM. No Agreed Order is binding on IDEM until the Agreed Order has been approved and adopted by the appropriate IDEM official. IDEM retains the right to withdraw from the proposed Agreed Order if IDEM becomes aware of facts or considerations that indicate that the Agreed Order is unfair, inappropriate, or inconsistent with state law or the Safe Drinking Water Act.

IDEM is not required to extend the offer of entry into an Agreed Order for more than 60 days. You may enter into an Agreed Order without admitting that the violations occurred. If an Agreed Order is not entered into, IDEM may proceed to issue a unilateral Notice and Order of the Commissioner requiring compliance with the environmental laws, rules, and/or permits, including payment of a civil penalty.

Please be advised the local health department has been notified of these violations.

Please contact me at (317)-234-8467 or [mmilner@idem.in.gov](mailto:mmilner@idem.in.gov) within 15 days. At that time, we can discuss any questions or set up a settlement conference.

Sincerely,



Michael Milner, Case Manager  
Water Enforcement Section  
Office of Water Quality

Enclosures

cc: Elkhart County Health Department  
<http://www.in.gov/idem>



Jason Grounds, Registered Agent  
Dessy Corp. d.b.a. Phyl's Corner  
23023 Marydale Drive  
Elkhart, IN 46517

6. 327 Indiana Administrative Code (IAC) 8-2-2 states that each PWS shall comply with all provisions of this rule and 327 IAC 8-2.1.
7. Pursuant to 40 CFR 141.860(c)(1), failure to take every required routine or additional routine sample in a compliance period is a monitoring violation.

IDEM records indicate Respondent failed to monitor at least one total coliform sample from the PWS during the months of November and December 2022, and January, June, July, August, September, November, and December 2023, in violation of CFR 141.860(c)(1) and 40 CFR 141.860(d)(1).

8. Pursuant to 40 CFR 141.861(a)(4), a system that has failed to comply with a coliform monitoring requirement must report the monitoring violation to the State within 10 days after the system discovers the violation, and notify the public in accordance with 40 CFR 141 subpart Q.

Pursuant to 327 IAC 8-2.1-7, owners or operators of a PWS must give public notice for failure to perform water quality monitoring, as required by drinking water regulations.

IDEM records indicate that Respondent failed to notify persons served by the PWS of the failure to monitor at least one total coliform sample from the PWS for the months of November, December 2022, January, June, July, August, September, November, and December 2023, each in violation of 327 IAC 8-2.1-7.

9. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

## **II. ORDER**

1. This Agreed Order shall be effective (Effective Date) when it is adopted by Complainant or Complainant's delegate (as evidenced by signature), and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. In addition to addressing the violations cited in Paragraphs 7 and 8 of the Findings of Fact above, this Agreed Order also addresses any additional violations of these same rules that may have occurred subsequent to the issuance of the Notice of Violation and prior to the Effective Date.

2. Beginning immediately upon the Effective Date, Respondent shall, for the purposes of this Order, monitor and report at least one total coliform sample in the PWS per month for six (6) consecutive months of operation (Compliance Demonstration). During the Compliance Demonstration period, Respondent shall be subject to stipulated penalties.

It is the responsibility of Respondent to continue monitoring for total coliform monthly pursuant to 40 CFR 141.854(f).

3. If the results of any sample for total coliform required by Order Paragraph 2 indicate a positive result, the following actions shall be taken:
  - a. Further analyze the positive sample for E. coli; and
  - b. Contact Sandra Decastro, IDEM's Compliance Section, Drinking Water Branch, immediately at (317) 234-7444, for further instructions, and complete all requirements as instructed.

Respondent shall be subject to stipulated penalties for failure to complete any requirements in accordance with IDEM's notification(s), following a Maximum Contaminant Level (MCL).

4. Within 30 days of the Effective Date, Respondent shall provide public notice, for the past total coliform monitoring violations listed in Paragraph 7 of the Findings of Facts above, by following these steps:
  - a. Complete attached public notice and Certification form for public notice.
  - b. Post public notice where the public has ready access for viewing, and for as long as the violation persists, but in no case less than seven days, even if the violation is resolved.
  - c. Within 10 days of issuing the public notice, Respondent shall send to IDEM a signed Certification form for public notice and representative copy of the public notice issued. The forms that address the past total coliform monitoring violations accompany this Agreed Order.
5. Immediately upon the Effective Date, for future monitoring violations, Respondent shall provide public notice to the State within 10 days and notify the public pursuant to 40 CFR 141.861(a)(4) and 327 IAC 8-2.1-7.
6. Within 30 days of the Effective Date, Respondent shall update the enclosed "System Basic Information Summary" document by either marking corrections or stating that the information is accurate directly on the attached document. Once completed, the document shall be submitted to the address in Order Paragraph 7.

7. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Michael Milner, Enforcement Case Manager  
Office of Water Quality – IGCN 1255  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

8. Respondent is assessed and agrees to pay a civil penalty of Seven Hundred Thirty-Five Dollars (\$735). Respondent shall pay the civil penalty by the due date printed on the invoice, as attached.

Civil and stipulated penalties are payable to the "Environmental Management Special Fund" by mail, phone, or online following the instructions below:

Mail:

Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2024-29915-D of this action and shall be mailed to:

Indiana Department of Environmental Management  
Accounts Receivable  
IGCN, Room 1340  
100 North Senate Avenue  
Indianapolis, IN 46204

Online:

Accounts Receivable is accepting payments online by e-Check, Master Card, Visa, or Discover. Please visit [www.IN.gov/IDEM](http://www.IN.gov/IDEM). Under Online Services, click Online Payment options and follow the prompts. A processing fee of \$1 plus 1.99% will be charged for credit card payments. A processing fee of \$1 will be charged for e-Check payments. The Case Number 2024-29915-D of this action is required to complete the process.

Phone:

Accounts Receivable also accepts payments by phone at 317-234-3099. Follow the instructions for Master Card, Visa, or Discover payments. A processing fee of \$1 plus 1.99% will be charged for credit card payments. A processing fee of \$1 will be charged for e-Check payments. The Case Number 2024-29915-D is required to complete the process.

9. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess and Respondent shall pay a stipulated penalty in the following amount:

<b>Paragraph:</b>	<b>Violation:</b>	<b>Stipulated Penalty:</b>
2	Failure to monitor and report required samples.	\$250 per violation.
3	Failure to comply with any or all of the requirements of this paragraph.	\$250 per week, or part thereof, past the 30-day deadline.
4	Failure to comply with any or all of the requirements of this paragraph.	\$300 per week, or part thereof, past the 30-day deadline.
5	If applicable, failure to provide public notice.	\$250 per week, or part thereof.
6	Failure to submit the "System Basic Information Summary" document in the manner specified.	\$100 per week, or part thereof.

10. Stipulated penalties shall be due and payable no later than the 30<sup>th</sup> day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30<sup>th</sup> day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
11. This Agreed Order shall apply to and be binding upon Respondent, its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter their status or responsibilities under this Agreed Order.
12. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance and any accrued interest at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. The interest shall continue to accrue on the first of each month until the civil penalty and any interest accrued are paid in full. Such interest shall be payable to the "Environmental Management Special Fund." and shall be payable to IDEM in the manner specified above.

13. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
14. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
15. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of their obligation to comply with the requirements of their applicable permits or any applicable Federal or State law or regulation.
16. Complainant does not, by his approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
17. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the Notice of Violation.
18. Nothing in this Agreed Order shall prevent IDEM (or anyone acting on its behalf) from communicating with the United States Environmental Protection Agency (US EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the US EPA or any other agency or entity.
19. This Agreed Order shall remain in effect until Respondent has complied with the terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

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**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

By:

Amari Farren

Amari Farren, Chief  
Water Enforcement Section  
Office of Water Quality

Date: February 8, 2024

**RESPONDENT:**

Dessy Corp. d.b.a. Phyl's Corner

By:

Misty Grounds

Printed:

Title:

Misty Grounds

Manager

Date:

2-29-24

**COUNSEL FOR RESPONDENT:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS 11th DAY OF March, 2024.

For the Commissioner:

Martha Clark Mettler

Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality

**INVOICE**

**Please Remit To:**

INDIANA DEPT. OF ENVIRONMENTAL MANAGEMENT  
PO BOX 3295  
INDIANAPOLIS IN 46206-3295

Page: 1  
Invoice No: 000369312  
Invoice Date: 03/18/2024  
Customer Number: CST100004404  
Bill Type: 075  
Payment Terms: NET 30  
Due Date: 04/17/2024

**Bill To:**

PHYLS CORNER  
JASON GROUNDS  
23023 MARYDALE DRIVE  
ELKHART IN 46517

AMOUNT DUE: 735.00 USD

Amount Remitted

Note Address Changes Above  Email Address: \_\_\_\_\_

Write the invoice number on your check and return the upper portion of this invoice.

For billing questions, please email us at [BILLING@IDEM.IN.GOV](mailto:BILLING@IDEM.IN.GOV)

Line	Adj	Identifier	Description	Quantity	UOM	Unit Amt	Net Amount
1		2024-29915-D	AGREED ORDER	1.00	EA	735.00	735.00
<p>- Accounts Receivable is accepting payments online by e-Check, MasterCard, Visa, American Express or Discover. Please visit <a href="http://www.in.gov/idem">www.in.gov/idem</a>. Under Online Services, click Online Payment options and follow the prompts.</p> <p>-You may also call us at 317-234-3099 to pay by MasterCard, Visa, American Express or Discover.</p> <p>-A processing fee of \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 will be charged for eCheck payments.</p> <p>- Pursuant to the Agreed Order for the Case Number noted above in the identifier field, please remit the civil penalty within thirty (30) days of the effective date of the Agreed Order.</p>							
<b>TOTAL AMOUNT DUE :</b>						<b>735.00</b>	

Please write the invoice number on your check and return the upper portion of this invoice with remittance.