



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.

Governor

Thomas W. Easterly

Commissioner

July 2, 2009

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

VIA CERTIFIED MAIL

7008 1830 0003 4262 5627

Ana Reyes
USA Family Restaurant, Inc
18304 Wicker Avenue
Lowell, Indiana 46356

Dear Ms. Reyes:

Re: Adoption of Agreed Order
Commissioner, Indiana Department
of Environmental Management
v.
USA Family Restaurant, Inc
Case No. 2009-18365-W

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence. Please note that the civil penalty is due within thirty (30) days after the effective date of the Agreed Order. Payment should be made payable to the Environmental Management Special Fund and sent to Cashier - Mail Code 50-10C, IDEM, 100 N. Senate Avenue, Indianapolis, Indiana 46204-2251. Please include the Case Number on the front of the check. If you have any questions, please contact Samantha Groce at 317/ 234-6233.

Sincerely,

Mark W. Stanifer, Chief
Water Enforcement Section
Office of Water Quality

Enclosure

4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") via Certified Mail to:

Javier Reyes
USA Family Restaurant, Inc.
18304 Wicker Avenue
Lowell, Indiana 46356

5. Pursuant to 327 Indiana Administrative Code ("IAC") 8-2-8(c), a non-community PWS system using ground water and serving no more than 1,000 persons must collect at least one routine total coliform sample during each calendar quarter.

IDEM records indicate Respondent failed to collect at least one routine total coliform sample from its PWS system during the second quarter 2008, the third quarter 2008, and the fourth quarter 2008; each in violation of 327 IAC 8-2-8(c).

6. Pursuant to 327 IAC 8-2.1-7, the owner or operator of a PWS system which fails to perform monitoring required pursuant to 327 IAC 8-2-8(c) is required to notify persons served by the PWS system, in the manner provided for in these rules, of such failure.

IDEM records indicate Respondent failed to notify persons served by its PWS system of the failure to perform the total coliform monitoring required pursuant to 327 IAC 8-2-8(c) during the second quarter 2008, the third quarter 2008, and fourth quarter 2008; each in violation of 327 IAC 8-2.1-7.

7. In recognition of the settlement reached, Respondent 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 approved by Complainant or Complainant's delegate, and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with rules listed in the findings above at issue.
3. 327 IAC 8-2-8(c) requires non-community systems to sample quarterly for total coliform bacteria. Beginning within 30 days of the Effective Date, Respondent shall, for the purpose of this Order, monitor at least one routine total coliform sample in its PWS system for four consecutive quarters. It is the responsibility of the Respondent to continue sampling quarterly, pursuant to 327 IAC 8-2-8(c), after completion of the four consecutive quarters of sampling required by this paragraph.

4. Within the shorter of either 10 days after Respondent receives any total coliform monitoring results or 10 days after the end of the applicable total coliform monitoring period, Respondent shall submit said monitoring results for its PWS system to the Drinking Water Branch ("DWB") of IDEM, pursuant to 327 IAC 8-2-13(a).
5. If the results of any sample for total coliform required by paragraph 3 indicate a "positive" result, the following actions shall be taken:
 - a. Further analyze the positive sample for fecal coliform and E. coli;
 - b. Contact the DWB immediately at 317-308-3286 for further instructions;
 - c. Collect four repeat samples for total coliform bacteria within 24 hours; and
 - d. In the following month, collect five routine samples rather than the usual one.
6. Upon the Effective Date, the Respondent shall demonstrate four consecutive quarters of compliance with the total coliform rule, including the maximum contaminant levels ("MCLs"), monitoring, reporting and public notification requirements (the "Compliance Demonstration") in accordance 327 IAC 8-2-8.1. In the event the Respondent fails to make the Compliance Demonstration for reasons attributed to a treatment technique issue, the Respondent shall within 60 days of becoming aware of such failure, develop and submit to IDEM a Compliance Plan ("CP") which identifies the actions that Respondent will take in order to achieve compliance. The CP shall include an implementation and completion schedule, including specific milestone dates. The CP shall be subject to the approval of IDEM. The approved CP shall be incorporated into this Agreed Order and shall be deemed an enforceable part hereof.
7. Within 30 days of the Effective Date, Respondent shall provide public notice pursuant to 327 IAC 8-2.1-7, for the past total coliform monitoring violations listed in Paragraph 5 of the Findings of Facts above, by following these steps:
 - a. Complete attached public notice and certification form for public notice; and
 - b. Post public notice where 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.
8. Within 10 days of issuing the public notice in Paragraph 7 of this Order, Respondent shall send to the Office of Water Quality Enforcement ("OWQE") of IDEM a signed certification form for public notice and representative copy of the public notice issued pursuant to 327 IAC 8-2-13(d).
9. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Samantha Groce, Enforcement Case Manager
Indiana Department of Environmental Management
Office of Water Quality – Mail Code 65-40
100 North Senate Avenue
Indianapolis, IN 46204-2251

10. Respondent is assessed a civil penalty of Two Hundred and Forty Dollars (\$240). Said penalty amount shall be due and payable to the Environmental Management Special Fund within thirty (30) days of the Effective Date. In the event that the civil penalty is not paid within thirty (30) days of the Effective Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101. The interest shall continue to accrue until the civil penalty is paid in full.
11. 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:

<u>Paragraph</u>	<u>Violation</u>	<u>Stipulated Penalty</u>
3	Failure to monitor total coliform for four consecutive quarters beginning with 30 days of the Effective Date.	\$500 per sample missed.
4	Failure to submit total coliform sample results to IDEM within the shorter of 10 days after receiving the total coliform monitoring results, or 10 days after the end of the applicable total coliform monitoring period	\$100 per week, or part thereof, past the 10-day deadline.
5	Failure to comply with any or all of the requirements of this paragraph, once a total coliform positive sample result is obtained.	\$250 per week for violation of any part of this requirement.
6	Failure to submit CP, or revised CP if either are required, or to respond to IDEM requests within the required timeframe.	\$250 per week for violation of any part of this requirement.
6	Failure to implement the CP once approved.	\$250 per week, or part thereof, that the CP is not implemented.
7	Failure to provide public notice for the monitoring violations listed in Paragraph 5 of the Findings of Fact within 30 days of the Effective Date.	\$250 per week, or part thereof, past the 30-day deadline.
8	Failure to send to IDEM within 10 days a representative copy of each public notice and its signed accompanying Certification form for the public notice.	\$100 per week, or part thereof, past the 10-day deadline.

12. Stipulated penalties shall be due and payable within thirty (30) days after Respondent receives written notice that Complainant has determined a stipulated penalty is due. Assessment and payment of stipulated penalties shall not preclude Complainant from seeking any additional relief against Respondent for violation of this Agreed Order. In lieu of any of the stipulated penalties set out above, Complainant may seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreed Order or Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.

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

Indiana Department of Environmental Management
Cashier – Mail Code 50-10C
100 North Senate Avenue
Indianapolis, IN 46204-2251
14. 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.
15. 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.
16. 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.
17. 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 its obligation to comply with the requirements of its applicable permit or any applicable Federal or State law or regulation.
18. Complainant does not, by its 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.
19. 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 NOV.
20. Nothing in this Agreed Order shall prevent IDEM [or anyone acting on its behalf] from communicating with the 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 EPA or any other agency or entity.

21. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of Order Paragraph Nos. 3 through 13 and IDEM issues a Resolution of Case letter.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: Mark W. Stanifer
Mark W. Stanifer, Chief
Water Enforcement Section
Office of Water Quality

Date: 6-18-09

RESPONDENT:
USA Family Restaurant, Inc.

By: [Signature]
Printed: Ana Reyes
Title: manager
Date: 6-12-09

COUNSEL FOR COMPLAINANT:
For the Department of Environmental
Management

By: Nancy A. Holman
Deputy Attorney General

Date: 6/19/09

COUNSEL FOR RESPONDENT:

By: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 2 DAY OF July, 2009.

For the Commissioner:

[Signature]
Bruno Pigott
Assistant Commissioner
Office of Water Quality

Tier 2
Public Notice Instructions for Noncommunity Systems

You are required to provide the enclosed public notice within 30 days upon learning of the violation. You must use one or more of the following methods to deliver the notice to consumers:

Noncommunity systems must use of the following methods:

- Posting in conspicuous locations
- Hand delivery
- Mail

You may need to use additional methods since notice must be provided in a manner reasonably calculated to reach all persons served. You may modify the enclosed public notice to tailor it to your specific situation, but you must still include all the required elements and the health effects language in italics must remain unchanged. This language is mandatory.

After issuing the notice

Send a copy of each type of notice and the enclosed certification form within ten (10) days from the time you issue the notice to the following address:

Indiana Department of Environmental Management (IDEM)
OWQ Enforcement Section – Mail Code 60-02-W
100 North Senate Avenue
Indianapolis, Indiana 46204-2251
Fax 317/232-8637

CERTIFICATION FORM FOR PUBLIC NOTICE

PWS Name: USA Family Restaurant, Inc.
(public water system name)

PWSID # 2450203

For Violation: Monitoring and reporting
(describe violation or situation)

Occurring on: _____
(insert date)

The public water system indicated above hereby affirms that public notice has been provided to consumers in accordance with the delivery, content, and format requirements and deadlines in 327 IAC 8-2.1-7.

- Consultation with primacy agency (if required) on _____
(insert date)
- Notice distributed by _____ on _____
(insert method) *(insert date)*
- Notice distributed by *(if needed)* _____ on _____
(insert method) *(insert date)*
- Content – required elements.

Signature of owner or operator

Date

**IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER
MONITORING REQUIREMENTS NOT MET FOR
USA FAMILY RESTAURANT, INC.**

Our water system recently violated a drinking water standard. Although this is not an emergency, as our customers, you have a right to know what happened, what you should do, and what we are doing to correct this situation.

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not our drinking water standards meets EPA's health standards. During the second, third, fourth quarters of 2008, and the first quarter 2009, we **did not complete the testing for total coliform** and therefore cannot be sure of the quality of our drinking water at that time.

What should I do?

There is nothing you need to do at this time.

What does this mean?

This is not an immediate risk. If it had been, you would have been notified immediately.

What Happened? What is being done? Explain below.

We anticipate resolving the problem within _____
estimated time frame

For more information, please contact _____ at
name of contact

_____ or _____
phone number *mailing address*

Please share this information with all other people who drinking this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent you by **USA Family Restaurant, Inc.** Public Water Supply ID **#2450203**

Date Distributed : _____