





**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

Eric J. Holcomb  
*Governor*

Brian C. Rockensuess  
*Commissioner*

STATE OF INDIANA	)		BEFORE THE INDIANA DEPARTMENT
	)	SS:	OF ENVIRONMENTAL MANAGEMENT
COUNTY OF MARION	)		
COMMISSIONER OF THE DEPARTMENT	)		
OF ENVIRONMENTAL MANAGEMENT,	)		
	)		
Complainant,	)		
	)		
v.	)	Case No. 2024-30373-D	
	)		
FOUNDATION COMMUNITY CHURCH INC,	)		
	)		
Respondent.	)		

**AGREED ORDER**

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (IC) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

**I. FINDINGS OF FACT**

1. Complainant is the Commissioner (Complainant) of the Indiana Department of Environmental Management (IDEM), a department of the State of Indiana created by IC 13-13-1-1.
2. Foundation Community Church Inc (Respondent) owns and/or operates a transient non-community public water system (PWS) with PWSID No. IN2200562, serving 50 persons. The PWS is located at 62499 State Road 13, Millersburg, Elkhart County, Indiana (the Site).
3. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.

4. Pursuant to IC 13-30-3 *et seq.*, IDEM issued a Notice of Violation via Certified Mail and E-Mail to:

Tobey Schwartz, Operator  
Foundation Community Church Inc  
2400 South 600 West  
Topeka, IN 46571  
[Tobeyschwartz1@gmail.com](mailto:Tobeyschwartz1@gmail.com)

Tobey Schwartz, Registered Agent  
Foundation Community Church Inc  
7565 West 400 South  
Topeka, IN 46571

and via Standard Mail to:

Foundation Community Church,  
Physical Address  
PO Box 400  
Millersburg, IN 46543

5. 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.
6. Pursuant to the Revised Total Coliform Rule at 327 IAC 8-2.4-1, 40 Code of Federal Regulations (CFR) 141, Subpart Y is incorporated by reference.
7. Pursuant to 40 CFR 141.854(f), a system on quarterly or annual monitoring that experiences any of the events identified in paragraphs (f)(1) through (f)(4) of this section must begin monthly monitoring the month following the event. The system must continue monthly or quarterly monitoring until the requirements in paragraph (g) of this section for quarterly monitoring or paragraph (h) of this section for annual monitoring are met.

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 February, March, May, June, July, and October 2023, and February, March, April, May, June, and September 2024, in violation of 40 CFR 141.854(f) and 40 CFR 141.860(c)(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:

- A. 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 February, March, May, June, July, and October 2023, and February, March, April, May, June, and September 2024, each in violation of 40 CFR 141.861(a)(4) and 327 IAC 8-2.1-7.
9. Orders of the Commissioner are subject to administrative review by the Office of Administrative Law Proceedings 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) exceedance.

4. Within 30 days of the Effective Date, Respondent shall provide public notice, for the past total coliform monitoring violations listed in Paragraph 8 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:

Tessa Scalzo, Enforcement Case Manager  
Office of Water Quality – IGCN 1255  
Indiana Department of Environmental Management  
100 N. Senate Avenue  
Indianapolis, IN 46204-2251
8. 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.	\$300 per week for violation of any part of this requirement.
4	Failure to comply with any or all of the requirements of this paragraph.	\$250 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.

9. 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.
10. 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 its status or responsibilities under this Agreed Order.
11. 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.

12. 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.
13. 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.
14. 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 permits or any applicable Federal or State law or regulation.
15. 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.
16. 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.
17. 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.
18. 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

**RESPONDENT:**  
Foundation Community Church Inc

By:

Jessica Irvine

Jessica Irvine, Chief  
Water Enforcement Section  
Office of Water Quality

Date: December 10, 2024

By:

Gerald Raber

Printed: Gerald Raber  
Title: Water Sample Collector  
I will be responsible  
to get the samples  
sent on time

Date:

1-22-25

**COUNSEL FOR RESPONDENT:**

By:

Gerald Raber

Date:

1-22-25

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS 17th DAY OF January, 2025.

For the Commissioner:

Paul Higginbotham for

Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality