



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

June 23, 2008

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

VIA CERTIFIED MAIL

#7002 0510 0002 5823 3310
Mr. Robert Lee, President
Clark-Floyd Waste Services, LLC
P. O. Box 2128
Clarksville, IN 47129

VIA CERTIFIED MAIL

#7002 0510 0002 5823 3327
Ed Meyer, President
Clark County Board of Commissioners
501 East Court Avenue, Room 404
Jefferson, IN 47130

VIA CERTIFIED MAIL

#7002 0510 0002 5823 3334
Stephen Bush, President
Floyd County Board of Commissioners
311 Hauss Square-City County Bldg., Rm. 214
New Albany, IN 47150

Re: Adoption of Agreed Order
Commissioner, Indiana Department of Environmental Management
v.
Clark-Floyd Waste Services, LLC
Clark County Board of Commissioners
Floyd County Board of Commissioners
Case Nos. 2007-17514-S, 2007-17656-S
2007-17655-S

Dear Messrs Lee, Meyer & Bush:

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. If you have any questions, please contact Emmanuel Chike Okeke at 317/232-8517.

Sincerely,

Lori Kyle Endris
Chief
Office of Enforcement

Enclosure

Cc: Clark County Health Department
Floyd County Health Department
Rick Schroeder
Enforcement file
<http://www.in.gov/idem/enforcement>



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STATE OF INDIANA) SS: BEFORE THE INDIANA DEPARTMENT OF
COUNTY OF MARION) ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

Case Nos. 2007-17514-S, 2007-17656-S
2007-17655-S

CLARK-FLOYD WASTE SERVICES
CLARK COUNTY BOARD OF COMMISSIONERS
FLOYD COUNTY BOARD OF COMMISSIONERS

Respondents.

AGREED ORDER

Complainant and Respondents 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 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 Indiana Code ("IC") 13-13-1-1.
2. Respondents are Clark-Floyd Waste Services, LLC, Clark County Board of Commissioners, and Floyd County Board of Commissioners ("Respondents"), which own and/or operate the Clark-Floyd Landfill, Permit FP 10-01, located at 14304 Highway 60, in Borden, Clark County, Indiana ("Site").

3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) on March 7, 2008 via Certified Mail to:

Mr. Robert E. Lee, President Clark-Floyd Waste Services, LLC P.O. Box 2128 Clarksville, Indiana 47129	C T Corporation System 251 E. Ohio Street, Suite 1100 Indianapolis, Indiana 46204
Ed Meyer, President Clark County Board of Commissioners 501 East Court Avenue, Rm. 404 Jeffersonville, Indiana 47130	Stephen Bush, President Floyd County Board of Commissioners 311 Hauss Square-City County Bldg., Rm.214 New Albany, Indiana 47150
5. During an investigation conducted by a representative of IDEM on November 30, 2007, the following violations were found:
 - a. Pursuant to 329 IAC 10-20-11(c), all storm water run-off leaving an MSWLF must be discharged in a manner that does not cause or contribute to erosion or sedimentation or a violation of rules of the Water Pollution Control Board at 327 IAC 2-1-6(a).

Respondents caused and/or allowed the discharge of storm water run-off from MSWLF to Muddy Fork Creek, thus violating 329 IAC 10-20-11(c).
 - b. Pursuant to 329 IAC 10-20-12(a), erosion and sedimentation control measures must be instituted to minimize the off-site migration of any sediment. All run-off from disturbed acreage must pass through a sedimentation basin or an approved alternative sediment control practice.

Respondents bypassed sedimentation basin, and used tanker truck to pump/discharge contaminated water into Muddy Fork Creek, thus violating 329 IAC 10-20-12(a).
 - c. Pursuant to 329 IAC 10-20-26(a), the owner, operator, or permittee of an MSWLF shall not cause a discharge of pollutants into waters of the state, including wetland, that violates any requirement of the rules of the water pollution control board at 327 IAC and the Clean Water Act, including the National Pollutant Discharge Elimination System requirements, under Section 402 of the Clean Water Act, 33 U.S.C 1342, as amended October 31, 1992.

Respondents caused and/or allowed the discharge of pollutants into the waters of the state, thus violating 329 IAC 10-20-26(a).

- d. Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the state as a point source discharge, except for exclusions made in 327 IAC 5-2-4, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge.
Respondents' intentionally pumped/discharged storm run-off water from the landfill directly into Muddy Fork Creek, a water of the state, without a valid NPDES permit in violation of 327 IAC 5-2-2.
6. Upon the arrival of Clark County Health Department official at the Site on November 30, 2007, Respondents desisted from discharging contaminated run-off water into the Muddy Fork Creek.
7. IDEM's representative verified on December 3, 2007 that compliance had been achieved.
8. Respondents have complied with 329 IAC 10-20-11(c), 329 IAC 10-20-12(a), 329 IAC 10-20-26(a) and 327 IAC 5-2-2.
9. In recognition of the settlement reached, Respondents waive 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 Respondents. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondents are jointly and severally liable for a civil penalty of Nine Thousand Dollars (\$9,000). 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, Respondents 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.
3. Civil penalty is payable by check to the "Environmental Management Special Fund." Check 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
4. This agreed Order shall jointly and severally apply to and be binding upon Respondents and their successors and assigns. Respondents' 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 Respondents shall in any way alter their status or responsibilities under this Agreed Order.

5. 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.
6. Respondents shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondents shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
7. 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 Respondents pursuant to this Agreed Order, shall not in any way relieve Respondents of their obligation to comply with the requirements of their applicable permit or any applicable Federal or State law or regulation.
8. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondents' 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 Respondents may incur as a result of Respondents' efforts to comply with this Agreed Order.
9. 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.
10. 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 Respondents may incur as a result of such communications with the EPA or any other agency or entity.
11. This Agreed Order shall remain in effect until Respondents have complied with all terms and conditions of this Agreed Order.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: *Janet Arnold*
Janet Arnold, Section Chief
Office of Enforcement

Date: 4/29/08

COUNSEL FOR COMPLAINANT:
For the Department of Environmental Management

By: *Alan D. [Signature]*
Deputy Attorney General

Date: 5/5/08

RESPONDENTS: - SIGNATURES OF RESPONDENTS
ARE SUBJECT TO CHANGES MADE IN
SECTION II ORDER, #2 ONLY

By: *Robert E. Lee*
Robert E. Lee

Title: PRESIDENT, CLARK FLOYD LANDFILL LLC

Date: 5-28-08

By: *Ed Meyer*
Ed Meyer

Title: PRESIDENT, CLARK CO. COMMISSIONERS

Date: 6-3-08

By: *Stephen Bush*
Stephen Bush

Title: PRESIDENT, FLOYD CO. COMMISSIONERS

Date: 6-3-08

COUNSEL FOR RESPONDENTS:

By: _____

Printed: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 18th DAY OF June, 2008

For the Commissioner:

Robert B. Keene
Robert B. Keene
Assistant Commissioner
Office of Legal Counsel and Enforcement