



# 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*

June 26, 2024

Via Certified Mail No.:  
7003 1010 0002 4706 4513  
Mercuria Investments US Inc.,  
Manager  
South Bend Ethanol, LLC  
20 E. Greenway Plaza, Suite 650  
Houston, TX 77046

Via Certified Mail No.:  
7018 1130 0001 7979 6174  
Corporation Service Company,  
Registered Agent  
South Bend Ethanol, LLC  
135 North Pennsylvania Street, Suite 1610  
Indianapolis, IN 46204

Dear Sirs:

Re: Revised Proposed Agreed Order  
Indiana Department of  
Environmental Management  
v.  
South Bend Ethanol, LLC  
NPDES Permit No. IN0049191  
Case No. 2023-29724-W  
South Bend, St. Joseph County

Enclosed please find the revised proposed Agreed Order (RPAO) that provides for the actions required to correct the violations outlined in IDEM's Notice of Violation issued to you in the above referenced case dated November 21, 2023. The enclosed proposed Agreed Order remains 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 Clean Water Act.

IDEM has reviewed South Bend Ethanol LLC's (Respondent) response to the proposed Agreed Order submitted to IDEM on April 26, 2024, and has incorporated the following revisions into the attached RPAO:

- A. Respondent's statement into Findings of Fact (FoF) paragraph 10 B.
- B. Respondent's statement into FoF paragraph 11.

Below are Respondent's suggested revisions that IDEM will not incorporate into the RPAO:

- A. The proposed Order paragraph 2.



1. Respondent shall include any corrective actions aimed at addressing temperature violations in the required compliance plan (CP) noted in the attached Order paragraph 2.

B. The proposed omission of Order paragraph 9.

The civil penalty noted in the proposed Agreed Order is for settlement purposes only. Entering into and timely compliance with the enclosed Agreed Order will constitute resolution of this case. To resolve this matter as provided for in the enclosed Agreed Order, sign and return the entire document to me at the following address within 15 days of your receipt:

IDEM Office of Water Quality  
Compliance and Enforcement Branch  
Water Enforcement Section, Mail Code 60-02W  
100 N. Senate Ave.  
Indianapolis, IN 46204-2251

If this matter cannot be resolved through the enclosed Agreed Order or a mutually acceptable revised Agreed Order, a Commissioner's Order may be issued. It should be understood that the civil penalty for purposes of a Commissioner's Order will be assessed pursuant to IDEM's Civil Penalty Policy adopted as a Non-rule Policy Document on April 5, 1999.

If you would like to schedule a meeting to discuss this matter in more detail, please contact me as soon as possible at (317) 233-5975 or [tscalzo@idem.in.gov](mailto:tscalzo@idem.in.gov). Please have this signed and returned either through email or mail within two weeks from the date of this letter. Thank you for your cooperation in this matter.

Sincerely,



Tessa Scalzo, Case Manager  
Water Enforcement Section  
Office of Water Quality

Enclosure: Revised Proposed Agreed Order

cc: <http://www.in.gov/idem>  
Terri Czajka, Ice Miller LLP  
Katelyn Edward, Environmental, Health & Safety Manager



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

COMMISSIONER OF THE DEPARTMENT    )  
OF ENVIRONMENTAL MANAGEMENT,    )

Complainant,                                )

v.    )

Case No. 2023-29724-W

SOUTH BEND ETHANOL, LLC,                )

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. South Bend Ethanol, LLC (Respondent), owns and/or operates the ethanol production facility, located at 3201 West Calvert Street in South Bend, St. Joseph County, Indiana (the Site).
3. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0049191 (the Permit), to discharge wastewater treated in accordance with the terms and conditions of the Permit from its ethanol production facility on the Site into receiving waters identified as a city-owned detention pond (City Pond) and Dixon West Place Ditch, via Outfalls 001 and 054.



4. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.
5. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) via Certified Mail/personal service to:

Mercuria Investments US Inc.,  
Manager  
South Bend Ethanol, LLC  
20 E. Greenway Plaza, Suite 650  
Houston, TX 77046

Corporation Service Company,  
Registered Agent  
South Bend Ethanol, LLC  
135 North Pennsylvania Street, Suite 1610  
Indianapolis, IN 46204

6. During an investigation conducted by a representative of IDEM, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part I.A.1 of the Permit, the permittee is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of October 2021 through April 2023 revealed violations of effluent limitations contained in Part I.A.1 of the Permit as follows:

- A. For Outfall 001, the daily maximum temperature was exceeded during October, November and, December 2021, January, February, March, April, October, November and, December 2022, and January, February, March, and April 2023.
- B. For Outfall 054, the daily maximum for pH was exceeded during February 2023.

Respondent failed to comply with the effluent limitations from Outfall 001 and Outfall 054 contained in the Permit, in violation of Part I.A.1 of the Permit.

9. Pursuant to IC 13-18-4-5, a person may not: (1) throw, run, drain, or otherwise dispose; or (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed; into any of the streams or waters of Indiana any organic or inorganic matter that causes or contributes to a polluted condition of any of the streams or waters of Indiana.

Pursuant to IC 13-30-2-1(1), it is unlawful for any person to discharge, emit, cause or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources in the environment in any form

that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws.

Pursuant to 327 IAC 2-1-6(a)(1), all surface waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil or scum attributable to municipal, industrial, agricultural, and other land use practices or other discharges that do any of the following:

- a. will settle to form putrescent or otherwise objectionable deposits;
- b. are in amounts sufficient to be unsightly or deleterious;
- c. produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
- d. are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses; or
- e. are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans.

Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the State, as a point source discharge, is prohibited unless in conformity with a valid NPDES permit obtained from IDEM prior to the discharge.

During the inspection on July 10, 2023, IDEM staff observed and documented Respondent discharged approximately 14,000 gallons of ethanol from the Site which ultimately reached waters of the State and resulted in odorous, black-colored water with scum observed in Dixon-West Place Ditch. The Permit only authorizes the discharge of once pass through noncontact cooling water.

On August 21, 2023, IDEM's Emergency Response (ER) received complaints from local farmers regarding the water quality of the ditch water used for irrigation. ER findings confirmed the presence of milky white greenish color downstream of the City Pond. A site investigation of the City Pond by ER revealed that the discharge from the City Pond was milky white and Respondent discharges directly into the City Pond.

During the inspection on August 23, 2023, IDEM staff identified that an unpermitted discharge from Outfall 054 which contained stormwater combined with process wastewater occurred and impacted the water quality in the City Pond.

The unpermitted impacts to water quality are in violation of IC 13-18-4-5, IC 13-30-2-1(1), 327 IAC 2-1-6(a)(1), and 327 IAC 5-2-2.

10. Pursuant to 327 IAC 5-2-8(9) and Part II.B.1 of the Permit, the permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for the collection and treatment which are

installed or used by the permittee and which are necessary for achieving compliance with the terms and conditions of the permit.

During the inspections on July 10, 2023, and August 23, 2023, IDEM staff observed and documented inadequate maintenance and operation of the facilities, specifically:

- A. A heat exchanger failed due to damaged seal plates within the Regen Cooling Condenser, which caused ethanol to mix and discharge with noncontact cooling water;
- B. Maintenance records or recent inspections of the heat exchanger were not readily available during the site inspection;
- C. Respondent's process wastewater pipe that discharges to the South Bend Publicly Owned Treatment Works (POTW) had a joint failure in the pipe which allowed process water to flow through the internal storm water collection system;

Each in violation of 327 IAC 5-2-8(9) and Part II.B.1 of the Permit.

Maintenance records were provided to IDEM in the Corrective Action Response letter dated July 27, 2023.

11. Pursuant to Part I.D.5 of the Permit, the permittee must review the selection, design, installation, and implementation of its control measures to determine if modifications are necessary to meet the effluent limitations in the Permit.

During the inspection on August 23, 2023, Respondent stated the facility had a single breach in a stormwater conveyance pipe that was thought to have been previously disconnected and bricked off as stated in Respondent's Stormwater Pollution Prevention Plan (SWPPP). Respondent's SWPPP was not reflective of the actual internal stormwater systems in the facility, in violation of Part I.D.5 of the Permit.

12. On July 18, 2023, August 11, 2023 and August 31, 2023, IDEM sent Inspection Summary Letter(s) to Respondent outlining violations at the WWTP.
13. 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 8 through 11 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 NOV and prior to the Effective Date.

2. Respondent shall comply with rules and statutes listed in the findings above at issue.
3. Within 30 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP) which identifies actions that Respondent will take to achieve and maintain compliance with its Permit, specifically including the actions Respondent will take to:
  - A. Achieve and maintain compliance with effluent limitations contained in the Permit, specifically temperature, by either:
    - i. Addressing any misalignment in monitoring provisions;
    - ii. Pursuing Permit modifications; or,
    - iii. Developing and submitting to IDEM for approval an updated CP identifying an alternative approach to modify its operations.
  - B. Evaluate sources of contamination that may commingle with the noncontact cooling water discharging from Outfall 001 and develop an Asset Management Plan, including:
    - i. A list of the facility equipment components that may cause or contribute to contamination;
    - ii. A schedule of maintenance for the listed equipment components, including schedules for preventative maintenance and potential repairs and/or replacements of the equipment components;
  - C. Review and revise the selection, design, installation, and implementation of the stormwater control measures to ensure that no unauthorized release or discharge occurs at the facility and modify the SWPPP as necessary.

The CP shall include an implementation and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing of variations to the approved CP.

4. Respondent shall, after completion of the work required pursuant to the approved CP from Paragraph 3 above, demonstrate 12 consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the Permit.
5. In the event that violation(s) occur during the Compliance Demonstration, within 30 days of the violation, Respondent shall develop and submit to IDEM, for approval, an Additional Action Plan (AAP) which identifies the additional actions that Respondent will take to achieve and maintain compliance with the terms and conditions of the Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.

6. The plans required by Order Paragraphs 3 and 5 are subject to IDEM approval. In the event IDEM determines that any plan or any modified plan submitted by Respondent is deficient or otherwise unacceptable, Respondent shall revise and resubmit the plan to IDEM in accordance with IDEM's notice. After three submissions of such plan by Respondent, IDEM may seek civil enforcement of this Order.
7. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved CP and AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.

Following completion of the actions included in the AAP, the 12 month Compliance Demonstration, as specified in Paragraph 4 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.

8. Beginning upon receipt of approval of the CP or AAP, and continuing until the successful completion of implementation of the approved CP or AAP, Respondent shall submit to IDEM regular progress reports identifying compliance actions implemented and completion of each required milestone in the CP or AAP. The frequency of progress report submittals shall be specified in IDEM's written notification to Respondent of the plan approval, and will be based on the proposed milestones in the approved plan(s).
9. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing WWTP as efficiently and effectively as possible.
10. 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 North Senate Avenue  
Indianapolis, IN 46204-2251

11. Respondent is assessed and agrees to pay a civil penalty of Twenty-Three Thousand Five Hundred Dollars (\$23,500). 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 2023-29724-W 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 2023-29724-W 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 2023-29724-W is required to complete the process.

12. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

Paragraph	Violation	Stipulated Penalty
3	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
4	For violations of terms and conditions of the Permit during the Compliance Demonstration.	\$400 per violation
5	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
6	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
7	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
8	Failure to submit to IDEM a written progress report as specified in the CP or AAP approval letter.	\$150 per week late, or part thereof.

9	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.
---	---	----------------------

13. 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.
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 its status or responsibilities under this Agreed Order.
15. 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.
16. 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.
17. 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.
18. 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.

19. 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.
20. 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.
21. 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.
22. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

**RESPONDENT:**  
South Bend Ethanol, LLC

By:



\_\_\_\_\_  
Jessica Irvine, Chief  
Water Enforcement Section  
Office of Water Quality

By:

\_\_\_\_\_  
Printed:

Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: June 26, 2024

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

**COUNSEL FOR RESPONDENT:**

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

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

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

For the Commissioner:

\_\_\_\_\_  
Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality