



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

July 3, 2024

Via Certified Mail No.:
7003 1010 0002 4706 4483
Vladimir Ganz, Registered Agent
Route 421 Partners, LLC
22 E. Atwater, Box 71
Beverly Shores, IN 46301

Dear Mr. Ganz:

Re: Route 421 Partners, LLC
IWIP 2022-474-46-MTM-A
Case No. 2023-29811-Q
Michigan City, LaPorte County

IDEM has reviewed your correspondence dated June 24, 2024, regarding the settlement conference on June 18, 2024. Your statements defending the unauthorized activity and proposal for settlement were addressed during the settlement conference. However, IDEM has attached written responses to the four (4) statements in your correspondence.

At this time, IDEM will continue to pursue enforcement actions based on the specific findings of violations described in the Notice of Violation dated April 22, 2024.

Please provide a response within 15 days after the receipt of this letter to Eunice Okhifo, Case Manager, Water Enforcement Section, at 317-232-8432 or eokhifo@idem.in.gov.

Sincerely,

Jessica Irvine, Chief
Water Enforcement Section
Office of Water Quality



1. Downed trees were cleared Pursuant to 327 IAC 2-1-6(a)(1) because not only was it an environmental problem, but the downed trees were in the amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants and humans. It was dangerous and a serious liability as we could not stop people from crawling over the downed trees to go fishing in the large pond to the North. Furthermore, de-watering and construction activity had caused significant damage to the property including a weather-related micro-burst that added even more damage. We believe that IDEM would have been in FULL AGREEMENT with this decision had there been a site visit to the property by IDEM when pipeline upgrades were being made.

IDEM Response: Trees being knocked down by the wind is a naturally occurring phenomena and is not regulated. However, the mechanical removal of the trees with their stumps in a wetland, regardless of the reason, is a regulated activity and required a permit from IDEM.

2. Route 421 Partners LLC is not willing to do an ATF Permit because we feel the wetland delineation is inaccurate as the wetlands on the property or all Class I wetlands due to the fact that Waste Management stripped topsoil from the property to use for fill on the garbage dump to the West. We feel our original delineation was 100% inaccurate. We would propose a new delineation based on current conditions.

IDEM Response: IDEM issued Waters of the State Determination (WOSD No 2022-58-46-MTM-Q) on January 6, 2022, which specified which of the delineated wetlands on the site were regulated under IC 13-18-22 and indicated the class for each wetland. The WOSD further included language explaining that the decision could be appealed in accordance with IC 4-21.5 and provided the procedure necessary to file an appeal of the decision. A petition for review must be filed within 18 days of the mailing date. A petition for review of the agency decision in the WOSD was not filed; therefore, the WOSD is final. Further, the delineation did indicate that topsoil was removed from some upland areas of the site, but there is no documentation indicating that topsoil was removed from the forested wetland areas on the site.

The wetland delineation used for the WOSD, which was not appealed, was the same wetland delineation used to issue Route 421 Partners IDEM Permits No. 2018-190-46-MTM-A and 2022-2022-474-46-MTM-A, which neither were appealed.

3. Route 421 Partners LLC is not in agreement to pay a penalty of \$45,000 based on the fact that we acted within our rights pursuant to 327 IAC 2-1-6(a)(1) to clear the property.

IDEM Response: 327 IAC 2-1-6(a)(1) does not grant any rights or authorization to work within waters of the state. As we explained during the settlement conference, IDEM imposes civil penalties as part of our Agreed Orders (AOs) for the purpose of encouraging voluntary compliance and deterring future violations. The civil penalty was calculated based on two violations: unauthorized wetland impact and failure to purchase mitigation credits before the due date of July 1, 2023.

IDEM is willing to negotiate the amount of the civil penalty consistent with the Civil Penalty Non-Rule Policy Document and may consider a reduction in the penalty if we can reach a timely settlement through an AO. However, please note that if we cannot reach an agreement through an AO, and it is necessary to pursue a Commissioners Order, the civil penalty will not be reduced or negotiated.

4. Route 421 Partners LLC is in agreement that the purchase of 1.80 acres of in-lieu fee wetlands credits is still due and such amount will be paid in full in conjunction with an agreed upon settlement that will include a new delineation of the current conditions on the subject property.

IDEM Response: IDEM will not agree to a new delineation as a part of an agreement to pay for wetland mitigation credits. All permits, the WOSD, and the violation were based on conditions prior to the mechanical clearing. The mechanical clearing does not change the existence and status of the wetlands as permitted and reviewed for the WOSD.