INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live E-File

Frank O'Bannon
Governor

Lori F. Kaplan
Commissioner

100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 232-8603
(800) 451-6027
www.state.in.us/idem

November 05, 1999

VIA CERTIFIED MAIL: Z 376 777 745

Jill M. Wright-Denman
Matheny, Michael, Hahn & Bailey, L.L.P.
Attorneys at Law
45 West Market Street
P.O. Box 191
Huntington, Indiana 46750-0191

Dear Mrs. Wright-Denman:

Re: Adoption of Agreed Order and
Issuance of Final Order
Commissioner, Indiana Department
of Environmental Management
vs.
Kirk G. Caley and Kay Caley and,
Dawn Lakes Utilities, L.L.C.,
Cause No. B-2436

This letter is to inform you that the Commissioner of the Indiana Department of Environmental Management (the Department) has approved the Agreed Order negotiated between you and your client and members of my staff and has issued same as the Department's Final Order. A copy of the executed Final Agreed Order is enclosed.

As to civil penalties provided for in the document, for the first installment, please forward a check made payable to the Environmental Management Special Fund to: Cashier, Indiana Department of Environmental Management, P.O. Box 7060, Indianapolis, Indiana 46207-7060, within 60 days of your receipt of this document. The other 2 installments are due every 4 months thereafter. To insure proper processing, please reference the cause number of this action with your payments. You are no doubt familiar with the other terms of the Agreed Order necessary to ensure future compliance If there are any questions, please contact Terry Ressler, Environmental Manager, of my staff at 317/232-8433.

Sincerely,

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

Enclosure

cc: U.S. EPA, Region 5, Office of Water (w/enclosure)
Huntington County Health Department (w/enclosure)

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STATE OF INDIANA)
) **SS:**
COUNTY OF MARION)

BEFORE THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

KIRK G. CALEY AND KAY CALEY and, DAWN LAKE UTILITIES, L.L.C.,

Respondents.

CAUSE NO. B-2436

AGREED ORDER

The Complainant and the 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.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (hereinafter referred to as "Complainant") of the Indiana Department of Environmental Management, a department of the State of Indiana created by IC 13-13-1-1.

2. Respondents are Kirk G. Caley and Kay Caley, as owner of the Dawn Lake Estates Subdivision wastewater treatment plant (WWTP) from 1992 until January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999 (hereinafter referred to as "Respondents"). The Dawn Lake Estates Subdivision WWTP is located in Huntington County, Indiana.

3. The Indiana Department of Environmental Management ("IDEM") has jurisdiction over the parties and subject matter of this action.

4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation via Certified Mail on April 23, 1999, to:

Kirk G. Caley and Kay Caley
3120 W. 1000 N.
Huntington, IN 46750

and to: Dawn Lake Utilities, L.L.C.
Kirk G. Caley, C.E.O. and Sole Member
9176N - 300W
Huntington, IN 46750

5. Dawn Lake Utilities, L.L.C., Kirk G. Caley, C.E.O., and Sole Member, (Dawn Lake Utilities) has owned and operated the Dawn Lake Estates Subdivision WWTP since the assets of the utility, including the plant and the real estate surrounding it, were transferred from Kirk G. Caley and Kay Caley on or about January 21, 1999. Dawn Lake Utilities is authorized by its NPDES Permit No. IN 0051187 (the "Permit") to discharge from the WWTP to receiving waters named Clear Creek in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

6. The Permit was re-issued on March 3, 1995 to Gilbert Caley and Sons, Inc., Mr. Kirk G. Caley, President, with an Effective Date of April 1, 1995, and an Expiration Date of February 28, 2000. The Permit was re-issued based on information contained in an Application for Permit to Discharge submitted to IDEM by Gilbert Caley & Sons, Inc., Kirk G. Caley, President, on February 27, 1986. The Permit was public noticed on November 12, 1994 (Public Notice No. 94-11-A-RD-P), and no comments were received. Part II.B.2 of the current Permit, and Part II.N. of the prior Permit, require, in substance, that the permittee notify IDEM in the event of any change in control or ownership of the facility. IDEM has no record of any notification of change in ownership of the facility after the February 27, 1986 renewal application. However, a submittal to the Utility Regulatory Commission of Indiana on January 25, 1999, indicates that in 1986 Gilbert Caley transferred the real estate where the utility is situated to Kirk G. Caley and Kay Caley, husband and wife, and in 1992, Gilbert Caley & Sons, Inc. dissolved. Kirk G. Caley, at that time, began operating and managing the utility as a sole proprietorship. The Respondents have violated Part II.B.2. of the Permit by their failure to notify IDEM of changes in ownership of the Dawn Lake Estate Subdivision WWTP.

7. IC 13-30-2-1 states (in part) that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste into 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.

8. 327 IAC 5-2-8(1), and Part II.A.1. of the Permit require, in part, that the permittee must comply with all terms and conditions of the Permit. Part II.A.5.(a) of the Permit states that, at all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants. 327 IAC 5-2-8(3) states that the permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for 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.

9. Inspections of the Dawn Lake Estates Subdivision WWTP were conducted by IDEM staff on September 25, 1998, September 28, 1998, October 6, 1998, October 22, 1998, February 3, 1999, February 22, 1999, February 23, 1999, March 9, 1999, and March 12, 1999 (see attached NPDES Facility Inspection Reports). During each of these inspections IDEM staff noted that at

least three areas evaluated were unsatisfactory, including effluent, receiving waters, compliance schedule, facility site review, operation and maintenance, sludge disposal, and flow measurement. These inspections indicate that Kirk G. Caley and Kay Caley failed to comply with Part II.A.5.(a) of the Permit and 327 IAC 5-2-8(3) from September 25, 1998, until February 21, 1999, and that Dawn Lake Utilities, failed to comply with Part II.A.5.(a) of the Permit and 327 IAC 5-2-8(3) from February 21, 1999, until March 12, 1999.

10. Part II.A.4. of the Permit states that if, for any reason, the permittee does not comply with or will be unable to comply with any effluent limitation specified in the Permit, the permittee shall provide the Regional Administrator and IDEM with the following information, in writing, within five (5) days after becoming aware of such condition;

a. a description of the discharge and cause of noncompliance; and

b. the period of noncompliance, including exact dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

11. During the inspection conducted by IDEM staff on September 25, 1998, it was noted that the effluent appeared to be raw sewage and had a strong odor, contained paper, and there was a grayish scum at the outfall. The IDEM inspector attempted to contact Mr. Caley and left a message for him. During the inspection conducted by IDEM staff on September 28, 1998, the IDEM inspector noted that Mr. Caley stated that the facility went several inches underwater in late August due to heavy rains. The inspection report notes that the flooding of the WWTP caused numerous operational problems including causing all the electrical units to be out of service. It was also noted in the inspection report that Mr. Caley had not reported these violations to IDEM. On January 25, 1999, IDEM conducted a site visit to the WWTP and noted that the blowers and air compressor were out of service. It was observed that the aeration tank had settled out with large amounts of clumping sludge leaving the plant. The inspector noted that there was no treatment at that time. On January 28, 1999, IDEM staff was able to make contact with Mr. Caley and Mr. Caley stated that the blowers and air compressor went out of service over the previous weekend. IDEM has no record of any written report concerning this non-compliance event. Therefore, Dawn Lake Utilities violated 327 IAC 5-2-8(1), and Part II.A.1 and Part II.A.4 of the Permit in that it failed to report the events of noncompliance with the Permit within 5 days of becoming aware of the condition.

12. Part I.B.8. of the Permit states, in part, that all records and information resulting from the monitoring activities required by the Permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for a minimum of three (3) years. In cases where the original records are kept at another location, a copy of all such records shall be kept at the permitted facility.

13. During the inspections conducted by IDEM staff on January 25 and 29, 1999, and February 3, 1999 it was found that there were no records on site, and on the February 3, 1999, inspection report the records and reports were evaluated as unsatisfactory. The failure to retain records or copies of the records at the permitted facility for three years is a violation of 327 IAC 5-2-8(1), and Part II.A.1 and Part I.B.8. of the Permit.

14. 327 IAC 5-2-8(8) states, in part, that the permittee shall comply with monitoring, recording, and reporting requirements established in accordance with sections 13 through 15 of this rule. 327 IAC 5-2-15 provides that NPDES permittees shall report to the commissioner, using discharge monitoring reports as required by the permit. Part I.B.3. of the Permit states that the permittee shall submit monitoring reports to the Indiana Department of Environmental Management containing results obtained during the previous month and shall be postmarked no later that the 28th day of the month following each completed monitoring period.

15. The record review indicates that monthly reports for the Dawn Lake Estates Subdivision WWTP were not submitted to IDEM by the 28th day of the month following each completed monitoring period for the period from April 1996 through December 1998. On February 23, 1999, monthly reports were submitted to IDEM for the Dawn Lake Estates Subdivision WWTP for the months from April 1996 through December 1998. Therefore, Kirk G. Caley and Kay Caley, as owners of the WWTP before January 21, 1999, have violated 327 IAC 5-2-15 and Part I.B.3. of the Permit in that they failed to submit monthly reports to IDEM by the 28th day of the month follow each completed monitoring period for the period from April 1996 through December 1998.

16. 327 IAC 2-4-1 states, in part, that every person, firm or corporation that discharges wastewaters to the waters of the State of Indiana shall submit to the commissioner monthly reports of operation, which shall include flow measurements and wastewater characteristics. 327 IAC 5-2-13(2) states, in part, that all permittees shall monitor, as required in the permit, the volume of wastewater flow at monitoring points specified in the permit, including the final effluent flow from each point source. Part I.A. of the Permit requires the weekly average and the monthly average flow to be reported on monthly reports. Part I.B.1. states that samples and measurements taken as required in the permit shall be representative of the volume and nature of the monitored discharge. Part I.B.4.b.(4) which defines flow proportioned composite samples and requires, in part, that the discharge flow rate be recorded at the time each individual sample is taken.

17. The record review of monthly reports submitted by Kirk G. Caley and Kay Caley, as owners of the WWTP before January 21, 1999, indicates that on each monthly report for the period from April 1996 through December 1998, a flow of .006 million gallons per day (MGD) was reported, indicating: A) that the measurements for flow were estimated and not representative of the volume of the discharge, B) that the discharge flow rate was not recorded at the time of each individual sample taken as required for composite samples, C) that weekly

average and monthly average flow rates were not measured and reported as required by the Permit, and D) that the monthly reports of operation did not include flow measurements. These failures to monitor and report the flow are violations of 327 IAC 2-4-2, 327 IAC 5-2-13(2) and the above noted parts of the Permit.

18. Part I.D. of the Permit contains a schedule for the Dawn Lake Estates Subdivision WWTP to meet new effluent limitations for residual chlorine. The schedule required that a construction permit application was to be submitted within 14 months of the effective date of the Permit, the initiation of construction was to commence no later that 22 months of the effective date of the Permit, the construction was to be completed within 29 months of the effective date of the Permit, and the permittee was to comply with all final requirements no later that 30 months from the effective date of the permit. As of April 1, 1999, 48 months after the effective date of the Permit, the Dawn Lake Estates Subdivision WWTP has no dechlorination facilities and no means to meet its new effluent limitations for residual chlorine. Therefore Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, violated Part I.D. of the Permit in their failure to construct dechlorination facilities at the WWTP.

19. Part II.A.9. of the Permit states that in order to maintain compliance with the effluent limitations an prohibitions of the permit, the permittee shall either provide an alternative power source sufficient to operate the facilities, or halt, reduce or otherwise control the discharge in order to maintain compliance with the effluent limitations and conditions of the permit. The Dawn Lake Estates Subdivision WWTP has no alternative power source and no means to halt, reduce or otherwise control the discharge to maintain compliance if the primary power is lost, and during inspections conducted by IDEM staff on September 28, 1998, it was noted that there was no electricity at the facility. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, violated Part II.A.9. of the Permit.

20. 327 IAC 2-1-6(a) states, in part, "The following are minimum water quality conditions:

(1) All 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;

(A) that will settle to form putrescent or otherwise objectionable deposits;
(B) that are in amounts sufficient to be unsightly or deleterious;
(C) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
(D) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans...

(E) which 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."

21. During inspections conducted by IDEM staff on September 28, 1998, October 6, 1998, October 22, 1998, January 25, 1999, January 29, 1999, February 3, 1999, February 9, 1999, February 22, 1999, February 23, 1999, and March 15, 1999, solids were observed in the receiving stream. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999, have violated 327 IAC 2-1-6(a), in that they have cause violations of the minimum water quality conditions.

22. Part I.A. of the Permit requires, in part, that the permittee limit the discharge of $CBOD_5$ to a concentration of 10 mg/l for monthly average and 15 mg/l for maximum weekly average. It also requires that the permittee limit the discharge of TSS to 10 mg/l for monthly average and 15 mg/l for maximum weekly average.

23. Monthly reports submitted for the Dawn Lake Estates Subdivision WWTP reported the following concentration exceedences for $CBOD_5$ and TSS from May 1996 through January 1999, all of which are in violation of Part I.A. of the Permit, 327 IAC 5-2-8(1) and Part II.A. of the Permit, and IC 13-30-2-1 ("***" indicates values reported within the required limit):

Reporting Month	$CBOD_5$ Concentration (MG/L)		TSS Concentration (MG/L)	
	Monthly Ave.	Weekly Ave. Max.	Monthly Ave.	Weekly Ave. Max.
Limits	(10 mg/l)	(15 mg/l)	(10 mg/l)	(15 mg/l)
May 1996	13.8	24.8	40.4	100.0
June 1996	17.7	20.1	62.0	94.0
July 1996	26.8	45.0	52.2	85.0
August 1996	29.1	38.2	43.0	65.0
September 1996	30.3	46.2	48.0	88.0
October 1996	42.6	50.0	26.5	35.0
November 1996	33.8	46.0	24.0	36.0
December 1996	26.0	32.6	31.0	44.0
January 1997	20.9	26.0	26.2	29.2
February 1997	20.5	23.9	23.1	25.0
March 1997	37.8	50.0	51.5	102.0
April 1997	31.6	45.0	38.4	58.5
May 1997	15.1	30.0	44.4	55.0
June 1997	16.3	28.5	44.0	57.0
July 1997	22.5	46.0	37.8	58.0
August 1997	23.2	29.3	32.0	41.0
September 1997	23.0	25.8	20.9	26.0
October 1997	21.2	27.0	19.6	26.0

November 1997	22.1	34.7	15.6	24.0
December 1997	***	***	***	***
January 1998	***	***	13.6	18.0
February 1998	17.3	26.4	21.6	26.0
March 1998	30.5	70.5	24.7	49.0
April 1998	24.4	56.0	21.2	42.0
May 1998	116.0	200.0	93.8	160.0
June 1998	28.3	40.2	25.5	37.6
July 1998	26.1	63.0	34.6	43.0
August 1998	195.0	228.0	194.0	241.0
September 1998	193.0	220.0	157.0	185.0
October 1998	144.0	180.0	129.0	171.0
November 1998	97.3	145.0	79.0	93.0
December 1998	74.8	76.0	103.0	132.0
January 1999	44.2	53.6	78.3	108.0
February 1999	52.4	90.5	70.5	93.8
March 1999	30.0	74.0	55.0	210.0
July 1999	***	***	15.0	33.0

24. Part I.A.1. of the Permit requires the permittee to monitor the pollutant loading (mass) for $CBOD_5$ and TSS. No loading values were reported for nearly half of 1996 and all of 1997. Loading values reported in 1998 and 1999 were not based on accurate flow and were therefore not representative of the actual loadings for $CBOD_5$ and TSS. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999, have violated Part I.A.1. of the Permit by their failure to monitor the pollutant loadings.

25. 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 the Complainant or her delegate, and has been received by the Respondents. This Agreed Order shall have no force or effect until the Effective Date.

2. The Respondents are planning to transfer the utility, including the WWTP and sewers, to the Dawn Lake Subdivision Homeowner's Association. The Respondents will transfer the utility, including the WWTP and sewers, to the Dawn Lake Subdivision Homeowner's Association within three (3) months of the Effective Date. The Respondents are aware that no change in ownership, corporate, or partnership status of the Respondents shall in any way alter their status or responsibilities under this Agreed Order, as provided by paragraph 18 of this Order. The Respondents are aware that they must provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred, as provided by paragraph 20 of the Order.

3. If not having yet done so, then within ten days of the Effective Date, the Respondents will submit a permit renewal application, including notification to IDEM of changes in ownership, for the Dawn Lake Estates Subdivision WWTP NPDES Permit No. IN 0051187, as required by the Permit and 327 IAC 5-3-2(a)(2).

4. The Respondents shall assure that, at all times, all facilities are operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants as required by Part II.A.5.(a) of the Permit, and shall, at all times, maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for 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 as required by 327 IAC 5-2-8(3).

5. If for any reason, the WWTP does not comply with or will be unable to comply with any effluent limitation specified in the Permit, the Respondents shall provide IDEM with written notification within five days after becoming aware of such conditions as required by Part II.A.4 of the Permit.

6. The Respondents shall assure that all records and monitoring information, or copies of records and monitoring information, are maintained at the WWTP for a minimum of three years as required by Part I.B.8. of the Permit.

7. The Respondents shall assure that Discharge Monitoring Reports and Monthly Reports of Operation are submitted to IDEM postmarked by the 28th of the month following each completed monitoring period as required by Part I.B.3. of the Permit.

8. The Respondents shall monitor and record flows and report weekly average and monthly average flows and use actual flows to calculate and report composite samples as required by Part I.A., Part I.B.1, and Part I.B.4.b.(4) of the Permit. The Respondents shall calculate and report actual loadings for $CBOD_5$ and TSS as required by Part I.A.1. of the Permit.

9. In the case of a power outage, the Respondents shall timely provide an alternative power source at the WWTP by means of a portable generator of capacity to power the necessary WWTP treatment units.

10. The Respondents shall assure that, at all times, the discharge from the WWTP does not result in solids deposits in the receiving stream in violation of 327 IAC 2-1-6(a).

11. The Respondents shall not allow any new connections to the Dawn Lake Estates Subdivision WWTP without written approval from IDEM.

12. Beginning from the Effective Date, the Respondents shall be under a performance period during which it shall maintain monthly average $CBOD_5$, and TSS concentration limits contained in its NPDES effective at the time. Respondents will be liable for stipulated penalties for failure to comply with the requirements of the performance period until six (6) consecutive months of compliance with monthly average $CBOD_5$ and TSS concentration limits are demonstrated, or one (1) year, whichever comes first, and IDEM issues a letter of completion of the performance period. Should Respondents fail to demonstrate six (6) consecutive months of compliance with monthly average $CBOD_5$ and TSS limits within one (1) year, then IDEM, at its discretion, may initiate an additional enforcement action for continuing violations.

13. All submittals required by this Agreed Order, unless notified otherwise in writing, shall be sent to:

Terry Ressler, Case Manager, Water Enforcement Section
Office of Enforcement, IGCN, Rm. 1315
Indiana Department of Environmental Management
100 N. Senate Avenue
P. O. Box 6015
Indianapolis, IN 46206-6015

14. The Respondents are assessed a Civil Penalty of Six Thousand Dollars ($6,000). Within sixty (60) days of the Effective Date of this Agreed Order, the Respondents shall pay an initial installment penalty payment of Two Thousand Dollars ($2,000) to the Environmental Management Special Fund. The Respondents shall pay the second installment payment of Two Thousand Dollars ($2,000) six (6) months after the Effective Date of the Order. The Respondents shall pay the final installment payment of Two Thousand Dollars ($2,000) ten (10) months after the Effective Date of this Order. All installments are to be sent to the address in paragraph 17.

15. In the event the following terms and conditions are violated, the Complainant may assess and the Respondents shall pay a stipulated penalty in the following amounts:

Violation	***Penalty***
Paragraph 2:	$24,000 for the Respondents failure to transfer the utility, including the WWTP and sewers, to the Dawn Lake Subdivision Homeowner's Association within three (3) months of the Effective Date,
Paragraph 3:	$200 per day for failure to submit a permit renewal application, including notification to IDEM of changes in ownership,
Paragraph 4:	$200 per day for failure to operate all facilities efficiently or failure to maintain all facilities in good working order,
Paragraph 5:	$200 per day for failure to provide timely written notification to IDEM if unable to comply with effluent limitations,
Paragraph 6:	$200 per day for failure to maintain all required records or copies of records at the WWTP,
Paragraph 7:	$200 per day for failure to timely submit any required monthly report,
Paragraph 8:	$200 per day for failure to monitor, record, and report actual flows and loadings as required,
Paragraph 9:	$1,000 per day for failure to timely provide an alternative power source at the WWTP in case of a power outage,
Paragraph 10:	$1,000 per incident for discharging solids resulting in solids deposits in the receiving stream,
Paragraph 11:	$10,000 per occurrence for allowing any new connections without written approval,
Paragraph 12:	$500 per violation for failure to comply with monthly average $CBOD_5$ and TSS concentration limits during the performance period.

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

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

Cashier
Indiana Department of Environmental Management
100 N. Senate Avenue
P. O. Box 7060
Indianapolis, IN 46207-7060

18. In the event that the civil penalty required by paragraph 14 is not paid within thirty (30) days of the Effective Date of this Agreed Order, 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.

19. This Agreed Order shall apply to and be binding upon the Respondents, their officers, directors, principals, agents, successors, subsidiaries, and assigns. The Respondents' signatories to this Agreed Order certify that they are fully authorized to execute this document and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Respondents shall in any way alter its status or responsibilities under this Agreed Order.

20. In the event that any terms of the 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 the Agreed Order did not contain the invalid terms.

21. The 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.

22. This Agreed Order shall remain in effect until Respondents have complied with the requirements of paragraphs 2 through 13 of this Agreed Order or until the WWTP and sewers are transferred to and accepted by (with NPDES transfer request) the Dawn Lake Subdivision Homeowner's Association, whichever shall first occur. It is specifically noted, though, that Respondents' responsibilities under paragraph 14 of the Agreed Order shall survive the transfer of the WWTP and sewers to the Homeowner's Association.

Kay Caley
Kay Caley

Kirk Caley
Kirk Caley

TECHNICAL RECOMMENDATION:
Department of Environmental Management

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

Date: 9-7-99

RESPONDENTS:
Dawn Lake Utilities, LLC

By: Kirk Caley

Printed: Kirk Caley

Title: Sole Member

Date: 10-6-99

COUNSEL FOR COMPLAINANT:
Department of Environmental Management

By: Nancy A. Holloran
Nancy A. Holloran
Office of Legal Counsel
Department of Environmental Management

Date: 9/13/99

COUNSEL FOR RESPONDENTS:

By: Jeffrey M. Denman

Date: 10-26-99

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT THIS 1 DAY OF November, 1999.

For the Commissioner,

Felicia A. Robinson
Assistant Commissioner of Enforcement

Cashier
Indiana Department of Environmental Management
100 N. Senate Avenue
P. O. Box 7060
Indianapolis, IN 46207-7060

18. In the event that the civil penalty required by paragraph 14 is not paid within thirty (30) days of the Effective Date of this Agreed Order, 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.

19. This Agreed Order shall apply to and be binding upon the Respondents, their officers, directors, principals, agents, successors, subsidiaries, and assigns. The Respondents' signatories to this Agreed Order certify that they are fully authorized to execute this document and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Respondents shall in any way alter its status or responsibilities under this Agreed Order.

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21. The 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.

22. This Agreed Order shall remain in effect until Respondents has complied with the requirements of paragraphs 2 through 14 of this Agreed Order.

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John M. Hamilton
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(800) 451-6027
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CERITFIED MAIL - Z 339 937 131

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

STATE OF INDIANA	)	BEFORE THE INDIANA
	) SS:	DEPARTMENT OF
COUNTY OF MARION	)	ENVIRONMENTAL MANAGEMENT
	)	
COMMISSIONER, INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
Complainant,	)	CAUSE NO.
v.	)	
KIRK CALEY, AND DAWN LAKES UTILITIES, L.L.C	)	
Respondent.	)	

EMERGENCY ORDER OF THE COMMISSIONER

Follows is the Emergency Order of the Commissioner of the Indiana Department of Environmental Management issued against Mr. Kirk Caley and Dawn Lakes Utilities, L.L.C. (hereinafter referred to as "Respondent") for violations of the Indiana Code (IC), the Indiana Administrative Code (IAC), and NPDES Permit Number IN0051187 (the Permit). This Emergency Order (Order) is issued pursuant to IC 13-14-10-3 and IC 4-21.5-4.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (hereinafter referred to as "Complainant") of the Indiana Department of Environmental Management (hereinafter referred to as "IDEM"), a department of the State of Indiana created by Indiana Code (IC) 13-7-2-11.

2. Respondent owns the Dawn Lakes Utilities L.L.C. wastewater treatment plant,

(hereinafter referred to as the Dawn Lakes wastewater treatment plant) which is authorized by NPDES Permit Number 0051187 to discharge treated wastewater to waters of the State via Outfall 001. This wastewater treatment plant serves Dawn Lakes Estates which is located in Huntington, Indiana, Huntington County.

3. Complainant has jurisdiction over the Respondent and the subject matter of this action.

4. 327 IAC 5-2-8 states, in part:

(1) The permittee must comply with all terms and conditions of the NPDES permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Environmental Management Act (EMA) and is grounds for:

(A) enforcement action;

(B) permit termination, revocation and reissuance, or modification; or

(C) denial of a permit renewal application.

(2) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(3) The permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for 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.

5. Part II.A.5 of the Permit states, in substance, the facilities shall at all times be operated as efficiently as possible and in a manner which will minimize upsets and the discharge of excessive pollutants.

6. 327 IAC 2-1-6(a)(1) states, in part, that all waters at all times and 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:

(A) that will settle to form putrescent or otherwise objectionable deposits;

(B) that are in amounts sufficient to be unsightly or deleterious

(C) that produce color, odor, or other conditions in such degree as to create a nuisance;

(D) which are in amounts sufficient to injure, be acutely toxic to, or otherwise

produce serious adverse physiological responses in humans, animals, aquatic life, or plants; and

(E) which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance be unsightly, or otherwise impair the designated uses.

7. IC 13-30-2-1 states, in part, that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste into 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.

8. IC 13-18-4-5 states, in part, that a person may not: (1) throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana, or (2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters, any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under section 1 and 3 of this chapter.

9. On September 28, 1998, IDEM representatives inspected the Dawn Lakes wastewater treatment facility. The inspection revealed that sewage solids and substantially untreated sewage had been discharged and were continuing to discharge to waters of the state via Outfall 001. Additionally, the inspection revealed that all electrical units, including the aeration tank air supply, were out of service.

10. On October 6, 1998, IDEM representatives inspected the Dawn Lakes wastewater treatment facility. The inspection revealed that the aeration tank air supply was operating. However, the mixed liquor in the aeration tank, the clarifier, the chlorine contact tank, and the effluent from Outfall 001 appeared black and septic. The Respondent committed to removing and properly disposing all excess sewage solids which were accumulated in the wastewater treatment plant within seven (7) days.

11. On October 22, 1998, IDEM representatives inspected the Dawn Lakes wastewater treatment facility. The inspection revealed that the aeration tank air supply was again not in operation. Additionally, the Respondent failed to remove and properly dispose all excess sewage solids which were accumulated in the wastewater treatment plant. Further, the inspection revealed that sewage solids and substantially untreated sewage had been discharged and were continuing to discharge to waters of the state via Outfall 001.

12. On November 23, 1998, IDEM issued a Warning of Noncompliance to the Respondent which addressed the above noted violations in addition to other NPDES permit violations.

13. On January 25, February 3, and February 9 of 1999, IDEM representatives conducted inspections of the Dawn Lakes wastewater treatment facility. The inspections revealed that the aeration tank air supply had again failed, resulting in the discharge of substantially

untreated wastewater and sewage solids to waters of the state via Outfall 001.

14. Sample results provided to IDEM by the certified operator of the Dawn Lakes wastewater treatment facility for January 15 and January 22 of 1999 reveal BOD results of 53.6mg/l and 53 mg/l, respectively. The NPDES permit effluent limitations for BOD are a monthly average limitation of 10 mg/l and a weekly average limitation of 15 mg/l.

15. On February 22,1999 IDEM representatives inspected the Dawn Lakes wastewater treatment facility. The inspection revealed the aeration tank air supply was operating. However, excess solids remain accumulated in the wastewater treatment plant and sewage solids and substantially untreated sewage continue to discharge to waters of the state via Outfall 001. Said discharge poses an imminent and substantial danger to public health or the environment.

16. On February 23, 1999 IDEM representatives inspected the Dawn Lakes wastewater treatment facility. The inspection revealed that the return activated sludge system has been disassembled and is inoperable. Additionally, excess solids remain accumulated in the wastewater treatment plant and sewage solids and substantially untreated sewage continue to discharge to waters of the state via Outfall 001. Said discharge poses an imminent and substantial danger to public health or the environment.

17. The failure to properly operate and maintain the aeration tank air supply and the return activated sludge system is in violation of Part II.A.5 of the Permit and 327 IAC 5-2-8(8).

18. The discharge of substantially untreated wastewater and sewage solids to waters of the state is in violation of 327 IAC 2-1-6(a)(1), IC 13-30-2-1, and IC 13-18-4-5.

II. ORDER

WHEREFORE, based upon the Findings of Fact, it is hereby ORDERED that:

1. Respondent shall, within seventy-two (72) hours of issuance of this Emergency Order, take all necessary steps to eliminate the unlawful discharge of sewage from the wastewater treatment plant. These steps should include, but not necessarily be limited to:

a. Ensure that the aeration tank air supply continuously remains in operable condition.

b. Properly dispose of excess sewage solids which have accumulated in the aeration tank, secondary clarifier, tertiary filters (rapid sand filters), and the chlorine contact tank.

c. Restore a viable biomass in the aeration tank to the extent that it is capable of producing an effluent quality which complies with the effluent limitations set forth in NPDES Permit No. IN 0051187.

d. Provide for an operating return activated sludge system.

2. Respondent shall submit to IDEM, within one hundred and twenty (120) hours of receipt of this Emergency Order, written verification that the steps described in Paragraph one (1) of this Order have been completed.

3. In the event that the Respondent does not immediately eliminate the unlawful discharge of sewage from the wastewater treatment plant, IDEM may take immediate steps to return the facility to compliance. Upon completion of any remedial action by IDEM, IDEM may, in addition to any civil (including maximum fine of up to $25,000 per day per violation) or criminal penalties under the environmental management laws, recover the cost of assistance provided from any person responsible for the emergency by commencing civil action in any court of competent jurisdiction.

THIS EMERGENCY ORDER IS EFFECTIVE UPON ISSUANCE.

1. A party affected by this Emergency Order may request a hearing under IC 4-21.5-4-4 by submitting a written request to the Commissioner at the aforementioned address.

2. This Emergency Order expires ninety (90) days from the date of issuance and is subject to renewal under IC 4-21.5-4-5.

Dated this 26th day of February, 1999.

John M. Hamilton
Commissioner

MWS TAR E-file
Entered in MOPS & sent to Data Management 8/10/00
TAR

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Idem2001A

100 North Senate Ave. Suite 1324
P.O. Box 7060
Indianapolis, IN 46207-7060

RECEIPT

DEPOSIT D...	RECEIPT #A:
8/3/2000	14249

RECEIVED FROM
Dawn Lakes/Kirk Caley 3120 W 100 N Huntington, IN 46750

PAYMENT METHOD	CHECK DATE	CASHIER	RECEIVED DA...	CAUSE #	CHECK #
Check	7/26/2000	VJW	8/2/2000	B-2436	024207

ITEM	DESCRIPTION	AMOUNT
3244210014060	Account Number: 3240 140600 Program: 421000 Okay to deposit per Chris Sorensen	2,000.00

RECEIVED
AUG 03 2000
By

Approved by State Board of Accounts - 2000
State Form 48785 (2-00)

TOTAL $2,000.00

IDEM 2000A

100 North Senate Avenue, Suite N1324
PO Box 7060
Indianapolis, Indiana 46207-7060

MJOS IDEM E-file

RECEIPT

Entered in MACTS & Copied to Data Mgmt.

DEPOSIT DATE	RECEIPT #A:
05/03/2000	12732

RECEIVED FROM
Dawn Lakes/Kirk Caley 3120 W 100 N Huntington, IN 46750

RECEIVED
MAY 04 2000
By _____

CHECK NO.	CHECK DATE	PAYMENT METHOD	CASHIER	RECEIVED DATE	CAUSE #
024082	04/26/2000	Check	VJW	05/01/2000	B-2436

ITEM	DESCRIPTION	AMOUNT
3244210014060	Account Number: 3240 140600 Program: 421000 Okay to deposit per Chris Sorensen	2,000.00

2 of 3

Approved by State Board of Accounts - 2000
State Form 48785 (2-00)

Total $2,000.00

IDEM 2000A

100 North Senate Avenue, Suite N1324
PO Box 7060
Indianapolis, Indiana 46207-7060

Mark Jeff Nancy E-file

RECEIPT

DEPOSIT DATE	RECEIPT #A:
01/07/2000	10026

RECEIVED FROM
Caley, Kirk 3120 W. 1000N Huntington, IN 46750 219-344-1555

CHECK NO.	CHECK DATE	PAYMENT METHOD	CASHIER	RECEIVED DATE	CAUSE #
5671973	01/03/2000	Check	VJW	01/06/2000	B-2436

ITEM	DESCRIPTION	AMOUNT
3244210014000	Account Number: 3240 140000 Program: 421000 Okay to deposit per Mark Stanifer	2,000.00

RECEIVED
JAN 07 2000
By

Approved by State Board of Accounts - 1998
State Form 48785 (4-98)

Total $2,000.00

E-9 ill

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(800) 451-6027
www.state.in.us/idem

August 11, 2000

Mr. Kirk G. Caley
3120 W. 1000 N.
Huntington, IN 46750

Dear Mr. Caley:

Re: Resolution of Cause and Close Out Notification
Commissioner, Indiana Department of
Environmental Management
vs.
Kirk g. Caley and Kay Caley and
Dawn Lake Utilities, L.L.C.
Cause No. B-2436

This letter is to advise you that it has been determined by this Office, subsequent to the issuance of the above-referenced Final Agreed Order on November 5, 1999, that the you have complied with the terms of the Order in Cause No. B-2436. IDEM received notification dated December 9, 1999, that you transferred the utility to the Dawn lakes Homeowner's Association, Inc. effective October 1, 1999, as required by Item 2 of the Order. On August 2, 2000, IDEM received the final installment of the Civil Penalty as required by Item 14 of the Order. Therefore, pursuant to Item 22 of the Order, the enforcement action may now be closed. A new enforcement action would be initiated if compliance is not maintained with applicable rules and regulations.

If you have any questions on this matter, please contact Terry Ressler at 317/232-8433.

Sincerely,

Mark W. Stanifer

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

cc: U.S. EPA, Region 5, Office of Water
Huntington County Health Department
Matheny, Michael, Hahn & Bailey, L.L.P.

E-file

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April 23, 1999

VIA CERTIFIED MAIL: Z495497264 **VIA CERTIFIED MAIL:** Z495497265

NOTICE OF VIOLATION

To: Kirk G. Caley and Kay Caley
3120 W. 1000 N.
Huntington, IN 46750

and To: Dawn Lake Utilities, L.L.C.
Kirk G. Caley, C.E.O. and Sole Member
9176N - 300W
Huntington, IN 46750

Cause No. B-2436

Designated representatives of the Indiana Department of Environmental Management (IDEM) conducted several inspections in 1998 and 1999, and a record review at the Dawn Lake Estates Subdivision wastewater treatment plant (the "WWTP") located in Huntington County, Indiana. The inspections and record review indicated that Kirk G. Caley and Kay Caley, as owner of the WWTP from 1992 until January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999, have violated requirements of the Indiana Code (IC), the Indiana Administrative Code (IAC), and the Dawn Lake Estates Subdivision WWTP's NPDES Permit. These violations are based on the following:

1. Dawn Lake Utilities, L.L.C., Kirk G. Caley, C.E.O., and Sole Member, (Dawn Lake Utilities) has owned and operated the Dawn Lake Estates Subdivision WWTP since the assets of the utility, including the plant and the real estate surrounding it, were transferred from Kirk G. Caley and Kay Caley on or about January 21, 1999. Dawn Lake Utilities is authorized by its NPDES Permit No. IN 0039691 (the "Permit") to discharge from the WWTP to receiving waters named Clear Creek in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

2. The Permit was re-issued on March 3, 1995 to Gilbert Caley and Sons, Inc., Mr. Kirk G. Caley, President, with an Effective Date of April 1, 1995, and an Expiration Date of February 28, 2000. The Permit was re-issued based on information contained in an Application for Permit to Discharge submitted to IDEM by Gilbert Caley & Sons, Inc., Kirk G. Caley, President, on February 27, 1986. The Permit was public noticed on November 12, 1994 (Public Notice No. 94-11-A-RD-P), and no comments were received. Part II.B.2 of the current Permit, and Part II.N. of the prior Permit, require, in substance, that the permittee notify IDEM in the event of any change in control or ownership of the facility. IDEM has no record of any notification of change in ownership of the facility after the February 27, 1986 renewal application. However, a submittal to the Utility Regulatory Commission of Indiana on January 25, 1999, indicates that in 1986 Gilbert Caley transferred the real estate where the utility is situated to Kirk G. Caley and

Kay Caley, husband and wife, and in 1992, Gilbert Caley & Sons, Inc. dissolved. Kirk G. Caley, at that time, began operating and managing the utility as a sole proprietorship. Kirk G. Caley and Kay Caley and Dawn Lake Utilities have violated Part II.B.2. of the Permit by their failure to notify IDEM of changes in ownership of the Dawn Lake Estates Subdivision WWTP.

3. IC 13-30-2-1 states (in part) that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste into 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.

4. 327 IAC 5-2-8(1), and Part II.A.1. of the Permit require, in part, that the permittee must comply with all terms and conditions of the Permit. Part II.A.5.(a) of the Permit states that, at all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants. 327 IAC 5-2-8(3) states that the permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for 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.

5. Inspections of the Dawn Lake Estates Subdivision WWTP were conducted by IDEM staff on September 25, 1998, September 28, 1998, October 6, 1998, October 22, 1998, February 3, 1999, February 22, 1999, February 23, 1999, March 9, 1999, and March 12, 1999 (see attached NPDES Facility Inspection Reports). During each of these inspections IDEM staff noted that at least three areas evaluated were unsatisfactory, including effluent, receiving waters, compliance schedule, facility site review, operation and maintenance, sludge disposal, and flow measurement. These inspections indicate that Kirk G. Caley and Kay Caley failed to comply with Part II.A.5.(a) of the Permit and 327 IAC 5-2-8(3) from September 25, 1998, until February 21, 1999, and that Dawn Lake Utilities, failed to comply with Part II.A.5.(a) of the Permit and 327 IAC 5-2-8(3) from February 21, 1999, until March 12, 1999.

6. Part II.A.4. of the Permit states that if, for any reason, the permittee does not comply with or will be unable to comply with any effluent limitation specified in the Permit, the permittee shall provide the Regional Administrator and IDEM with the following information, in writing, within five (5) days after becoming aware of such condition;

a. a description of the discharge and cause of noncompliance; and

b. the period of noncompliance, including exact dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

7. During the inspection conducted by IDEM staff on September 25, 1998, it was noted that the effluent appeared to be raw sewage and had a strong odor, contained paper, and there was a grayish scum at the outfall. The IDEM inspector attempted to contact Mr. Caley and left a message for him. During the inspection conducted by IDEM staff on September 28, 1998, the IDEM inspector noted that Mr. Caley stated that the facility went several inches underwater in late August due to heavy rains. The inspection report notes that the flooding of the WWTP caused numerous operational problems including causing all the electrical units to be out of service. It was also noted in the inspection report that Mr. Caley had not reported these violations to IDEM. On January 25, 1999, IDEM conducted a site visit to the WWTP and noted that the blowers and air compressor were out of service. It was observed that the aeration tank had settled out with large amounts of clumping sludge leaving the plant. The inspector noted that there was no treatment at that time. On January 28, 1999, IDEM staff was able to make contact with Mr. Caley and Mr. Caley stated that the blowers and air compressor went out of service over the previous weekend. IDEM has no record of any written report concerning this non-compliance event. Therefore, Dawn Lake Utilities violated 327 IAC 5-2-8(1), and Part II.A.1 and Part II.A.4 of the Permit in that it failed to report the events of noncompliance with the Permit within 5 days of becoming aware of the condition.

8. Part I.B.8. of the Permit states, in part, that all records and information resulting from the monitoring activities required by the Permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for a minimum of three (3) years. In cases where the original records are kept at another location, a copy of all such records shall be kept at the permitted facility.

9. During the inspections conducted by IDEM staff on January 25 and 29, 1999, and February 3, 1999 it was found that there were no records on site, and on the February 3, 1999, inspection report the records and reports were evaluated as unsatisfactory. The failure to retain records or copies of the records at the permitted facility for three years is a violation of 327 IAC 5-2-8(1), and Part II.A.1 and Part I.B.8. of the Permit.

10. 327 IAC 5-2-8(8) states, in part, that the permittee shall comply with monitoring, recording, and reporting requirements established in accordance with sections 13 through 15 of this rule. 327 IAC 5-2-15 provides that NPDES permittees shall report to the commissioner, using discharge monitoring reports as required by the permit. Part I.B.3. of the Permit states that the permittee shall submit monitoring reports to the Indiana Department of Environmental Management containing results obtained during the previous month and shall be postmarked no later that the 28th day of the month following each completed monitoring period.

11. The record review indicates that monthly reports for the Dawn Lake Estates Subdivision WWTP were not submitted to IDEM by the 28th day of the month following each completed

monitoring period for the period from April 1996 through December 1998. On February 23, 1999, monthly reports were submitted to IDEM for the Dawn Lake Estates Subdivision WWTP for the months from April 1996 through December 1998. Therefore, Kirk G. Caley and Kay Caley, as owners of the WWTP before January 21, 1999, have violated 327 IAC 5-2-15 and Part I.B.3. of the Permit in that they failed to submit monthly reports to IDEM by the 28th day of the month follow each completed monitoring period for the period from April 1996 through December 1998.

12. 327 IAC 2-4-1 states, in part, that every person, firm or corporation that discharges wastewaters to the waters of the State of Indiana shall submit to the commissioner monthly reports of operation, which shall include flow measurements and wastewater characteristics. 327 IAC 5-2-13(2) states, in part, that all permittees shall monitor, as required in the permit, the volume of wastewater flow at monitoring points specified in the permit, including the final effluent flow from each point source. Part I.A. of the Permit requires the weekly average and the monthly average flow to be reported on monthly reports. Part I.B.1. states that samples and measurements taken as required in the permit shall be representative of the volume and nature of the monitored discharge. Part I.B.4.b.(4) which defines flow proportioned composite samples and requires, in part, that the discharge flow rate be recorded at the time each individual sample is taken.

13. The record review of monthly reports submitted by Kirk G. Caley and Kay Caley, as owners of the WWTP before January 21, 1999, indicates that on each monthly report for the period from April 1996 through December 1998, a flow of .006 million gallons per day (MGD) was reported, indicating: A) that the measurements for flow were estimated and not representative of the volume of the discharge, B) that the discharge flow rate was not recorded at the time of each individual sample taken as required for composite samples, C) that weekly average and monthly average flow rates were not measured and reported as required by the Permit, and D) that the monthly reports of operation did not include flow measurements. These failures to monitor and report the flow are violations of 327 IAC 2-4-2, 327 IAC 5-2-13(2) and the above noted parts of the Permit.

14. Part I.D. of the Permit contains a schedule for the Dawn Lake Estates Subdivision WWTP to meet new effluent limitations for residual chlorine. The schedule required that a construction permit application was to be submitted within 14 months of the effective date of the Permit, the initiation of construction was to commence no later that 22 months of the effective date of the Permit, the construction was to be completed within 29 months of the effective date of the Permit, and the permittee was to comply with all final requirements no later that 30 months from the effective date of the permit. As of April 1, 1999, 48 months after the effective date of the Permit, the Dawn Lake Estates Subdivision WWTP has no dechlorination facilities and no means to meet its new effluent limitations for residual chlorine. Therefore Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, violated Part I.D. of the Permit in their failure to construct dechlorination facilities at the WWTP.

15. Part II.A.9. of the Permit states that in order to maintain compliance with the effluent limitations and prohibitions of the permit, the permittee shall either provide an alternative power source sufficient to operate the facilities, or halt, reduce or otherwise control the discharge in order to maintain compliance with the effluent limitations and conditions of the permit. The Dawn Lake Estates Subdivision WWTP has no alternative power source and no means to halt, reduce or otherwise control the discharge to maintain compliance if the primary power is lost, and during inspections conducted by IDEM staff on September 28, 1998, it was noted that there was no electricity at the facility. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, violated Part II.A.9. of the Permit.

16. 327 IAC 2-1-6(a) states, in part, "The following are minimum water quality conditions:

(1) All 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;

(A) that will settle to form putrescent or otherwise objectionable deposits;
(B) that are in amounts sufficient to be unsightly or deleterious;
(C) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
(D) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans...
(E) which 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."

17. During inspections conducted by IDEM staff on September 28, 1998, October 6, 1998, October 22, 1998, January 25, 1999, January 29, 1999, February 3, 1999, February 9, 1999, February 22, 1999, February 23, 1999, and March 15, 1999, solids were observed in the receiving stream. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999, have violated 327 IAC 2-1-6(a), in that they have caused violations of the minimum water quality conditions.

18. Part I.A. of the Permit requires, in part, that the permittee limit the discharge of $CBOD_5$ to a concentration of 10 mg/l for monthly average and 15 mg/l for maximum weekly average. It also requires that the permittee limit the discharge of TSS to 10 mg/l for monthly average and 15 mg/l for maximum weekly average.

19. Monthly reports submitted for the Dawn Lake Estates Subdivision WWTP reported the following concentration exceedences for $CBOD_5$ and TSS from May 1996 through January 1999,

all of which are in violation of Part I.A. of the Permit, 327 IAC 5-2-8(1) and Part II.A. of the Permit, and IC 13-30-2-1 ("***" indicates values reported within the required limit):

Reporting Month	$CBOD_5$ Concentration (MG/L)		TSS Concentration (MG/L)	
	Monthly Ave.	Weekly Ave. Max.	Monthly Ave.	Weekly Ave. Max.
Limits	(10 mg/l)	(15 mg/l)	(10 mg/l)	(15 mg/l)
May 1996	13.8	24.8	40.4	100.0
June 1996	17.7	20.1	62.0	94.0
July 1996	26.8	45.0	52.2	85.0
August 1996	29.1	38.2	43.0	65.0
September 1996	30.3	46.2	48.0	88.0
October 1996	42.6	50.0	26.5	35.0
November 1996	33.8	46.0	24.0	36.0
December 1996	26.0	32.6	31.0	44.0
January 1997	20.9	26.0	26.2	29.2
February 1997	20.5	23.9	23.1	25.0
March 1997	37.8	50.0	51.5	102.0
April 1997	31.6	45.0	38.4	58.5
May 1997	15.1	30.0	44.4	55.0
June 1997	16.3	28.5	44.0	57.0
July 1997	22.5	46.0	37.8	58.0
August 1997	23.2	29.3	32.0	41.0
September 1997	23.0	25.8	20.9	26.0
October 1997	21.2	27.0	19.6	26.0
November 1997	22.1	34.7	15.6	24.0
December 1997	***	***	***	***
January 1998	***	***	13.6	18.0
February 1998	17.3	26.4	21.6	26.0
March 1998	30.5	70.5	24.7	49.0
April 1998	24.4	56.0	21.2	42.0
May 1998	116.0	200.0	93.8	160.0
June 1998	28.3	40.2	25.5	37.6
July 1998	26.1	63.0	34.6	43.0
August 1998	195.0	228.0	194.0	241.0
September 1998	193.0	220.0	157.0	185.0
October 1998	144.0	180.0	129.0	171.0
November 1998	97.3	145.0	79.0	93.0
December 1998	74.8	76.0	103.0	132.0
January 1999	44.2	53.6	78.3	108.0

20. Part I.A.1. of the Permit requires the permittee to monitor the pollutant loading (mass) for $CBOD_5$ and TSS. No loading values were reported for nearly half of 1996 and all of 1997.

Loading values reported in 1998 and 1999 were not based on accurate flow and were therefore not representative of the actual loadings for $CBOD_5$ and TSS. Therefore, Kirk G. Caley and Kay Caley, as owner of the WWTP before January 21, 1999, and Dawn Lake Utilities, L.L.C, Kirk G. Caley, C.E.O., and Sole Member, owner of Dawn Lake Utilities after January 21, 1999, have violated Part I.A.1. of the Permit by their failure to monitor the pollutant loadings.

In accordance with IC 13-30-3-3, the Commissioner is required to notify you in writing that the Commissioner believes that violations exist and offer the company an opportunity to enter into an Agreed Order providing for the actions required to correct the violations and for the payment of a civil penalty. The Commissioner is not required to extend this offer for more than sixty (60) days.

If settlement is not reached within sixty (60) days of your receipt of this Notice, the Commissioner may issue an Order pursuant to IC 13-30-3-4, containing the actions you must take to achieve compliance, the required time frames, and an appropriate civil penalty. Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to $25,000 per day of any violation.

Entering into an Agreed Order will prevent the issuance of an Order of the Commissioner under IC 13-30-3-4 or the filing of a civil court action under IC 13-14-2-6. IDEM encourages timely settlement by Agreed Order, thereby saving time and resources. Timely settlement by Agreed Order may result in a reduced civil penalty. Settlement discussions will also give you the opportunity to present any mitigating factors that may be relevant to the violations. In addition, as provided in IC 13-30-3-3, you may enter into an Agreed Order without admitting that the violation occurred.

Please contact Terry Ressler, at 317/232-8433 within fifteen (15) days after receipt of this Notice regarding your intent to settle this matter. If you are willing to resolve this matter as provided for in the enclosed Agreed Order, please sign and return it to the Office of Enforcement at the above address within the sixty (60) day settlement period.

For the Commissioner:

Date: 4/22/99

Felicia Robinson George
Assistant Commissioner of Enforcement

cc: U.S. EPA Region V, Water Section
Huntington County Health Department