



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

Michael R. Pence
Governor

April 23, 2015

Thomas W. Easterly
Commissioner

Via Certified Mail No.: **91 7190 0005 2710 0039 9922**

Pete Drumm, Attorney
2819 North Oakwood Ave.
Muncie, IN 47304

Dear Mr. Drumm:

Re: Notice of Final Settlement Offer
Indiana Department of
Environmental Management

v.

Larry & Carol Yeley Family Limited
Partnership
Case No. 2013-22079-Q
Yorktown, Delaware County

On May 2, 2014, the Indiana Department of Environmental Management (IDEM) issued to Larry Yeley a Notice of Violation. Subsequently, on August 15, 2014 IDEM issued to Larry Yeley a proposed Agreed Order for the purpose of resolving the outstanding violations specified within the Notice of Violation. IDEM has not received a response to the proposed Agreed Order to settle this enforcement action.

Please review the enclosed proposed Agreed Order, arrange signature(s) in the appropriate block(s) on the signature page, and return the entire document, within 10 business days of receipt, to the enforcement case manager, Edward Judson. Otherwise, IDEM will proceed, pursuant to Ind. Code § 13-30-3-4, with the issuance of a Notice and Order of the Commissioner to the Larry and Carol Yeley Family Limited Partnership.

The enclosed proposed Agreed Order is subject to the final approval of IDEM. No Agreed Order is binding on IDEM until the Agreed Order is 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.

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 have any questions regarding this notice, please Edward Judson,
Environmental Manager, Water Enforcement Section, at (317) 233-1190.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary E Hoover". The signature is fluid and cursive, with the first name "Mary" and last name "Hoover" clearly distinguishable.

Mary E Hoover, Chief
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Enclosure

cc: <http://www.in.gov/idep>

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

COMMISSIONER OF THE DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

V.

Case No. 2013-22079-Q

LARRY & CAROL YELEY FAMILY LIMITED
PARTNERSHIP,
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. Respondent is Larry & Carol Yeley Family Limited Partnership (Respondent), which owns the property, located at S CR 600 W, in Yorktown, Delaware County, Indiana (the Site).
3. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.



A State that Works

4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) via Certified Mail to Larry Yeley.
5. During an investigation conducted by representatives of IDEM, violations were found, as described below.
6. On April 28, 2008, IDEM staff conducted an inspection at the Site. During this inspection it was observed that forested wetland had been cleared, including the mechanical clearing of stumps to convert the land to agriculture.

In May, 2008, the Natural Resources Conservation Service (NRCS) confirmed to IDEM staff that 15.8 acres of isolated forested wetlands at the site were cleared for the purpose of agriculture.

On June 9, 2008, IDEM issued a Violation Letter to Respondent for impacts to 15.8 acres of isolated forested wetland converted to agriculture. The letter requested that Respondent either restore the area or apply for and receive an after-the-fact (ATF) certification. A wetland delineation was completed for the property in July 2008, but IDEM never received a restoration plan or an application for ATF certification. .

In December 2009, IDEM staff inspected the Site and observed the Site appeared to be restoring itself.

After a complaint report received in January 2013, IDEM inspected the site in February 2013, and found soybean stubble and un-harvested soybeans within the previously forested wetland area.

IDEM issued Violation Letters on March 14, 2013, May 23, 2013, and July 10, 2013 for the new clearing and lack of compliance with the original violation letter.

7. 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 will settle to form putrescent or otherwise objectionable deposits, that are in amounts sufficient to be unsightly or deleterious, that produce color, odor or other conditions in such degree as to create a nuisance, which 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 IC 13-30-2-1, 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.

During the above referenced inspections conducted at the Site by IDEM and the NRCS on April 28, 2008, May 2008, and February 2013, it was documented that Respondent placed fill material in wetland areas at the Site, resulting in objectionable deposits, and Respondent failed to maintain and protect existing beneficial uses, degraded the water quality, and interfered with the existing and potential uses of the wetlands at the Site, in violation of 327 IAC 2-1-6(a)(1) and IC 13-30-2-1.

8. In recognition of the settlement reached, Respondent 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.
2. Respondent must cease further activity in all waters of the state located on the site. Options for resolving this matter are: **(1)** restore the areas in question by removing all of the discharged material from the wetlands in question and placing the fill in an upland location (or other proper disposal) or **(2)** apply for and receive an after-the-fact (ATF) certification. Any formal review of an after-the-fact permit application may result in a permit denial and subsequent order for the wetlands to be restored.
3. Respondent shall provide written notice of his choice between restoration and ATF certification within thirty (30) days of the effective date.
4. If Respondent decides to restore the wetlands in question, Respondent must submit to IDEM written acknowledgement of its decision to restore the wetlands along with a restoration plan and schedule. The restoration plan must be submitted within sixty (60) days of the effective date for formal IDEM review and approval and must include the following information:
 - a. Appropriate figures, to scale, with landmarks and dimensions detailing the proposed restoration efforts.
 - b. Activities to be undertaken in the restoration efforts. Respondent must provide written information in narrative format on how the fill will be removed and erosion control measures to be installed during fill removal.

- c. A schedule of implementation with start and end dates for restoration activities.
- d. Information on replanting. The area must be replanted with native wetland vegetation. Respondent must provide information on the species to be replanted.
- e. Information on the permanent disposal location of the removed fill material.

The restoration plan is subject to IDEM approval. In the event IDEM determines the plan submitted by Respondent is deficient or otherwise unacceptable, Respondent shall revise and resubmit the plan to IDEM in accordance with IDEM's notice. Respondent shall not commence restoration work until IDEM has approved the restoration plan.

Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved restoration plan and adhere to the milestone dates therein. The approved restoration plan shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof. Failure by Respondent to submit the restoration plan by the specified date, or to meet any of the milestones in the approved plan, will subject Respondent to stipulated penalties as described below.

- 5. If Respondent chooses to apply for an ATF certification, the application and mitigation plan must be submitted within sixty (60) days from the Effective date for IDEM review and approval. IDEM will require a 3.25:1 ratio and ten years of monitoring at the mitigation site as part of any ATF certification.

The ATF certification application and mitigation plan are subject to IDEM approval. In the event IDEM determines the 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.

Respondent, upon receipt of written notification from IDEM of ATF certification approval, shall immediately implement the approved plan and adhere to the milestone dates therein. The approved plan shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof. Failure by Respondent to submit any plan by the specified date, or to meet any of the milestones in the approved plan, will subject Respondent to stipulated penalties as described below.

- 6. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Edward Judson, Enforcement Case Manager
 Indiana Department of Environmental Management
 Surface Water, Operations & Enforcement Branch
 Office of Water Quality – Mail Code 60-02W
 100 North Senate Avenue, Room 1255
 Indianapolis, IN 46204-2251

7. Respondent is assessed and agrees to pay a civil penalty of Twenty-Two Thousand Two Hundred Fifty Dollars (\$22,250). Said penalty amount shall be due and payable to the Environmental Management Special Fund within 30 days of the Effective Date; the 30th day being a "Due Date."
8. 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
2	Failure to cease further activity at the site	\$500 per event
3	Failure to provide written notice of choice between restoration and ATF mitigation within 30 days after effective date	\$500 per week late or part thereof.
4	Failure to submit restoration plan within the required time period.	\$500 per week late, or part thereof.
4	Failure to submit revised restoration plan, if necessary within the given time	\$500 per week late, or part thereof.
4	Failure to implement the approved restoration plan and/or adhere to milestone dates.	\$500 per violation, per day.
5	Failure to submit ATF certification and mitigation plan within the required time period.	\$500 per week late, or part thereof.
5	Failure to monitor mitigation area for ten years	\$1,000 per year monitoring does not occur
5	Failure to submit revised mitigation plan, if necessary within the given time	\$500 per week late, or part thereof.
5	Failure to implement the approved plan and/or adhere to milestone dates.	\$500 per violation, per day.

9. Stipulated penalties shall be due and payable no later than the 30th day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30th day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
10. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2013-22079-Q of this action and shall be mailed to:

Indiana Department of Environmental Management
Office of Legal Counsel
IGCN, Rm N1307
100 North Senate Avenue
Indianapolis, IN 46204
11. This Agreed Order shall apply to and be binding upon Respondent and 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.
12. 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.
13. 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.
14. 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.

15. 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 permit or any applicable Federal or State law or regulation.
16. Complainant does not, by its 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.
17. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the NOV.
18. Nothing in this Agreed Order shall prevent IDEM [or anyone acting on its behalf] from communicating with the United States Environmental Protection Agency (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 EPA or any other agency or entity.
19. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of Order Paragraphs 3 through 9 and IDEM issues a Resolution of Case (close out) letter.

TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: Mary Hoover
Mary Hoover, Chief
Enforcement Section
Office of Water Quality

Date: April 23, 2012

RESPONDENT:
Larry and Carol Yeley Family Limited
Partnership

By: _____

Printed: _____

Title: _____

Date: _____

COUNSEL FOR RESPONDENT:

By: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 20____.

For the Commissioner:

Bruno Pigott
Assistant Commissioner
Office of Water Quality