



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

February 8, 2016

Carol S. Comer
Commissioner

Via Certified Mail No.: **91 7190 0005 2710 0046 9298**

Greg Goodnight, Mayor
City of Kokomo
100 South Union St.
Kokomo, Indiana 46901

Dear Mayor Goodnight:

Re: Adoption of Agreed Order
Commissioner, Indiana Department of
Environmental Management

v.

City of Kokomo
Baseball Stadium Project
Case No. 2015-23011-Q
Kokomo, Howard County

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence. Please note that the civil penalty is due within 30 days after the effective date of the Agreed Order. Payment should be made payable to the Environmental Management Special Fund and sent to:

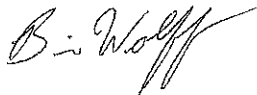
Office of Legal Counsel
Indiana Department of Environmental Management
IGCN, Rm N1307
100 N. Senate Avenue
Indianapolis, Indiana 46204

Please include the Case Number on the front of the check.

Adoption of Agreed Order Cover Letter
Case No. 2015-23011-Q
City of Kokomo
Kokomo Baseball Stadium Project
NPDES No. INR10J091
Kokomo, Howard County
Page 2

If you have any questions, please contact Amari Farren, Environmental Manager,
Water Enforcement Section, at (317) 232-8409.

Sincerely,

A handwritten signature in black ink that reads "Brian Wolff". The signature is written in a cursive style with a large, sweeping "B" and "W".

Brian Wolff, Branch Chief
Surface Water, Operations & Enforcement
Office of Water Quality

Enclosure

cc: Carey Stranahan, P.E.
Beth Garrison, Attorney
<http://www.in.gov/idem>



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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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. 2015-23011-Q	
)		
CITY OF KOKOMO,)		
)		
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 the City of Kokomo (Respondent), which owns and operates a construction project site consisting of the Kokomo Baseball Stadium Project located between Union Street and South Apperson Way, intersecting Murden Street, in Kokomo, Howard County, Indiana (the Site).
3. Respondent is authorized by National Pollutant Discharge Elimination System (NPDES) General Permit No. INR10J091 (the Permit), to discharge storm water associated with construction activity at the Site in compliance with the requirements of 327 IAC 15-5 (Rule 5), and local storm water permits, and following the measures identified in Respondent's Construction Plan (CP).

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 to the City of Kokomo.
1. Pursuant to 327 Indiana Administrative Code (IAC) 15-5-5, the information set forth in Rule 5 must be submitted by the project site owner with a complete Notice of Intent (NOI) letter under Rule 5.

Pursuant to 327 IAC 15-5-6, all NOI letter information required under section 5 of Rule 5 shall be submitted to the commissioner at least forty-eight (48) hours prior to initiation of land disturbing activities at the site. If the NOI letter is determined to be deficient, the project site owner must address the deficient items and submit an amended NOI letter to the commissioner at the address specified in section 5 of Rule 5. A copy of the completed NOI letter must also be submitted to all Soil and Water Conservation District(s) (SWCD)s, or other entity designated by the department (IDEM), where the land disturbing activities are to occur.

Based on inspections conducted by IDEM and Howard County SWCD staff on September 16, 2014, and a records review, IDEM determined that Respondent failed to submit a NOI letter for the Site prior to initiating land disturbing activities at the Site, in violation of 327 IAC 15-5-5, and 327 IAC 15-5-6.

Following the September 16, 2014 inspection, Respondent submitted a complete NOI letter for the Site on September 24, 2014.

2. Pursuant to 327 IAC 15-5-6(b)(1), a construction plan (CP) must be submitted according to the following:
 - A. Prior to the initiation of and land disturbing activities.
 - B. Sent to the appropriate SWCD or other entity designated by the department (IDEM).

Based on inspections conducted by IDEM staff on September 16, 2014, and a records review, IDEM determined that Respondent failed to develop and submit an adequate CP for the Site prior to commencing land disturbing activities at the Site in July 2014, in violation of 327 IAC 15-5-6(b)(1).

Following the September 16, 2014 inspection, IDEM received notification from Howard County SWCD staff that Respondent submitted a CP to SWCD staff for the Site on August 4, 2014, and submitted an amended CP on September 3, 2014. The CP for the Stadium Site was determined to meet the minimum requirements of the Rule by SWCD staff on September 4, 2014.

3. Pursuant to 327 IAC 15-5-7(a), all storm water quality measures and erosion and sediment controls necessary to comply with Rule 5 must be implemented in accordance with the construction plan and sufficient to satisfy subsection (b).

Pursuant to 327 IAC 15-5-7(b), a project site owner shall, at least meet the following requirements:

- A. Pursuant to 327 IAC 15-5-7(b)(4), public or private roadways shall be kept cleared of accumulated sediment that is a result of run-off or tracking. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.

During inspections conducted at the Site on September 16, 2014, and March 12, 2015, IDEM and Howard County SWCD staff observed and documented the presence of accumulated sediment and/or tracked soil on public and private roadways due to run-off and/or tracking from the construction Site. Respondent failed to keep public or private roadways cleared of accumulated sediment that is a result of run-off or tracking, in violation of 327 IAC 15-5-7(b)(4).

- B. Pursuant to 327 IAC 15-5-7(b)(17) all storm water quality measures necessary to meet the requirements of Rule 5 shall be maintained in working order.

During inspections conducted at the Site on September 16, 2014, and March 12, 2015, IDEM and Howard County SWCD staff observed and documented that Respondent failed to address the maintenance of existing storm water quality measures at the Site to ensure they were maintained in good working order, in violation of 327 IAC 15-5-7-(b)(17).

9. 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. In addition to addressing the violations cited in Paragraphs 6 through 8 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 implement the erosion and sediment control measures contained in the CP for the Site and any other erosion and sediment control measures necessary to:
 - A. Ensure compliance with the requirements of 327 IAC 15-5-7 and 327 IAC 2-1-6(a)(1); and
 - B. prevent sediment from leaving the site and entering or threatening to enter waters of the state.

All erosion and sediment control measures shall be properly constructed, adequately sized and located to control the area of run-off and to prevent off-site sedimentation. This effort should include basin outlets identified in the on-site evaluations in accordance with the CP and the methods outlined in the *Indiana Storm Water Quality Manual*. This manual is currently available from the IDEM, Storm Water Program, and can be accessed via the internet at <http://www.in.gov/idem/stormwater/2363.htm>. Respondent will be deemed to have satisfied the requirements of this paragraph when IDEM or the SWCD verify that adequate storm water management principles and erosion and sediment control measures have been implemented, and Respondent has no “unsatisfactory” ratings in inspections from IDEM or the SWCD for one year, or until the project termination conditions of 327 IAC 15-5-8 have been met at the Site and a notice of termination (NOT) has been submitted and accepted by IDEM.

4. Respondent shall, within ten days of completion of the milestone dates above, submit documentation of completion of each milestone to IDEM’s Office of Enforcement at the address in Paragraph 9 below.
5. Respondent shall, upon the Effective Date, submit the written self-monitoring evaluation reports for the Site, as required by 327 IAC 15-5-7(18), for the period of May 1, 2015 through June 30, 2015.

Respondent shall continue to implement an adequate self-monitoring program at the Site, as required by 327 IAC 15-5-7(18), including assuring that a trained individual performs a written evaluation of the Site by the end of the next business day following each measurable storm event; and at a minimum of one time per week, in order to determine whether the erosion and sediment controls are:

- A. Properly installed and maintained; and
- B. Adequate to ensure compliance with the requirements of 327 IAC 15-5-7 and to prevent sediment from leaving the site and entering or threatening to enter waters of the state.

For the purposes of this Agreed Order, a “measurable storm event” is defined as a precipitation event that results in a total measured precipitation accumulation equal to or greater than 0.5 inches of rainfall.

6. In the event that deficiencies are found during the inspections conducted pursuant to Order Paragraph 5 above, Respondent shall immediately take all actions necessary to correct the deficiencies. Such actions may include, but are not limited to, correction of any installation inadequacies, implementation of necessary maintenance actions to ensure proper function of the control measures, and installation of additional erosion control measures if determined necessary.
7. Respondent shall maintain records of the inspections conducted pursuant to Order Paragraph 5 above and corrective actions taken pursuant to Order Paragraph 6 above. Respondent shall make the records available for inspection and copying by representatives of IDEM, and the Howard County SWCD, upon request. The records shall include, the following minimum information:
 - A. The date and time of inspection;
 - B. The weather conditions at the time of the inspection;
 - C. The name of the individual conducting the inspection;
 - D. A description of observations made during the inspection, specifically including a description of any deficiencies that were found; and
 - E. A description of the corrective actions taken as a result of deficiencies found during the inspection.
8. For the purposes of this Agreed Order, the requirements of Order Paragraphs 5 through 7 above shall remain in effect until Respondent satisfies the requirements of Paragraph 3, and IDEM issues a Resolution of Case (close out) letter. It is the Responsibility of Respondent to continue conducting an adequate self-monitoring program, in compliance with 327 IAC 15-5-7(18), after completion of the monitoring required by this paragraph, until a NOT has been submitted and accepted by IDEM.
9. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Amari Farren, Enforcement Case Manager
Office of Water Quality – IGCN 1255
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
10. Respondent is assessed and agrees to pay a civil penalty of Four Thousand Two Hundred Dollars (\$4,200). 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."
11. 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 implement the CP/SWPPP or take appropriate corrective action, including selection and implementation of additional/alternative erosion and sediment control measures beyond those specified in the SWPPP.	\$250 per violation
3	Unsatisfactory rating for erosion and sediment control measures during inspections conducted by IDEM and/or local SWCD.	\$250 per violation
5	Failure to submit written self-monitoring reports for the period of May 1, 2015 through June 30, 2015, within the required time period.	\$250 per week late, or part thereof.
5	Failure to implement an adequate self-monitoring program.	\$250 per violation
6	Failure to take all actions necessary to correct deficiencies noted during site inspections.	\$500 per violation
7	Failure to maintain required records at the Site, and/or failure to make required records available to IDEM and/or the SWCD.	\$500 per violation

12. 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.
13. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2015-23011-Q of this action and shall be mailed to:

Office of Legal Counsel
 Indiana Department of Environmental Management
 IGCN, Rm N1307
 100 North Senate Avenue
 Indianapolis, IN 46204


14. 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.
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 permit or any applicable Federal or State law or regulation.
19. 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.
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 NOV. Nothing in this Agreed Order shall

constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding.

21. 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.
22. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent, which shall not unreasonably be withheld.


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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By: 
Brian Wolff, Branch Chief
Surface Water, Operations and
Enforcement
Office of Water Quality

Date: December 29, 2015

RESPONDENT:
City of Kokomo
Kokomo Baseball Stadium Project


By: 

Printed: Greg Goodnight

Title: Mayor

Date: 1-28-16

COUNSEL FOR RESPONDENT:

By: 

Date: 1-28-16

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 8TH DAY OF FEBRUARY, 2016.

For the Commissioner:


Martha Clark Mettler
Assistant Commissioner
Office of Water Quality