

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

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

COMMISSIONER OF THE DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

Case No. 2019- 25921-W

HUNTINGBURG MUNICIPAL WATER,

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. Huntingburg Municipal Water (Respondent), owns and operates a municipal water treatment facility that uses wastewater treatment processes that discharges to surface waters of the State. The facility is located at 1101 West 6th Street, Huntingburg, Dubois County, Indiana (the Site).
3. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0003093 (the Permit), to discharge filter backwash wastewater treated in accordance with the terms and conditions of the NPDES Permit from its Wastewater Treatment Plant (WWTP) into Ell Creek from Outfall 001.



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

Honorable Dennis Spinner, Mayor
City of Huntingburg
508 East 4th Street
Huntingburg, IN 47542

6. During an investigation conducted by a representative of IDEM, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1) states that the permittee shall comply with all terms and condition of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and Indiana Code (IC) 13 and is grounds for enforcement action by IDEM.
8. Pursuant to 327 IAC 5-2-14(a) and Part I.C.5 of the Permit, for each measurement or sample taken pursuant to the requirements of this permit, the permittee shall maintain records of all monitoring information and monitoring activities, including:
 - a. The date, exact place and time of sampling or measurement;
 - b. The person(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The person(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such measurements and analyses.

A Compliance Evaluation Inspection was conducted at the Respondent's facility on November 1, 2018. The inspection determined that the bench sheets for the parameters, pH and Total Residual Chlorine (TRC), were lacking the dates, times, and the initials for the persons performing the analyses, the analytical techniques or methods used, and Quality Assurance/Quality Control (QA/QC) data, in violation of 327 IAC 5-2-14(a) and Part I.C.5 of the Permit.

9. Pursuant to 327 IAC 2-4-1, every person, firm, or corporation that operates a municipal, industrial, commercial, or agricultural waste treatment plant control facility or discharges wastewaters to the waters of the State of Indiana shall submit to the Commissioner, Monthly Reports of Operation (MROs), which shall include flow measurements and wastewater characteristics.

Pursuant to 327 IAC 5-2-15, the permittee shall report to the Commissioner, using Discharge Monitoring Reports (DMRs). The reports shall be submitted as often as required by the permit, and shall include the results of any monitoring specified by the Permit pursuant to 327 IAC 5-2-13.

Pursuant to Part I.C.2 of the Permit, the permittee shall submit accurate reports containing results obtained during the previous monitoring period, and shall be postmarked no later than the 28th day of the month following each completed monitoring period. These reports shall include, but not limited to, the MRO and the DMR. All reports shall be submitted electronically using the NetDMR website.

Respondent failed to submit MROs and DMRs for the months of May, June, July, August, September, and October of 2018, in violation of 327 IAC 2-4-1, 327 IAC 5-2-13, 327 IAC 5-2-15, and Part I.C.2 of the Permit.

10. Pursuant to IC 13-18-11-14, it is unlawful for any person, firm or corporation, both municipal and private, to operate a water or wastewater treatment plant or a water distribution system unless the operator in responsible charge is duly certified by the Commissioner under the provisions of this chapter. Furthermore, it shall be unlawful for any person to perform the duties of an operator in responsible charge of such works as defined herein without being duly certified under the provisions of this chapter.

Pursuant to 327 IAC 5-22-10, the owner or governing body of a WWTP shall be responsible for placing each WWTP under the direct supervision of one certified operator to be in responsible charge.

Pursuant to Part II A.13 of the Permit, the permittee shall have the wastewater treatment facilities under the responsible charge of an operator certified by the Commissioner in a classification corresponding to the classification of the wastewater treatment plant as required by IC 13-18-11-11 and 327 IAC 5-22. In order to operate a wastewater treatment plant the operator shall have qualifications as established in 327 IAC 5-22-7.

Respondent failed to place the WWTP under the direct supervision of one certified operator to be in responsible charge from July 2018 to the date of the inspection on November 1, 2018.

In February 2019, a review of the operator's license on the State website showed that the certification for the Operator had been updated with a new expiration date of June 30, 2019.

11. On October 26, 2016 and November 1, 2018, IDEM sent Compliance Evaluation Inspection Summary Letters and Reports to Respondent outlining violations at the facility. The letters required a response detailing actions taken to correct the violations. To date, IDEM has not received a response to the above noted violation and noncompliance letters, and the violations continue at the facility.
12. 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 8 through 10 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. Beginning immediately upon the Effective Date, Respondent shall monitor and submit DMRs and MROs electronically as required by Part I.C.2 of the Permit for six (6) consecutive months of operation (Compliance Demonstration).

After the six month compliance demonstration, Respondent must continue to monitor and submit DMRs and MROs electronically via NetDMR, monthly, as required by the Permit.

4. Within 30 days of the Effective Date, Respondent shall electronically submit the missing MROs and DMRs listed in Paragraph 9 of the Findings of Facts above.
5. Beginning on the Effective Date and continuing until the successful closure of the Agreed Order, Respondent shall, at all times, operate its existing wastewater treatment facilities as efficiently and effectively as possible.
6. Respondent is assessed and agrees to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4,800). 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."
7. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

Paragraph	Violation	Stipulated Penalty
3	Failure to submit MROs and DMRs electronically within the given time period.	\$250 per week late, or part thereof.
4	Failure to submit missing MROs and/or DMRs within the given time period.	\$250 per week late, or part thereof.

5	Failure to operate the WWTP as efficiently and effectively as possible during six (6) month Compliance Demonstration.	\$200 per violation.
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8. 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.
9. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2019-25921-W of this action and shall be mailed to:
- Office of Legal Counsel
Indiana Department of Environmental Management
IGCN, Room N1307
100 North Senate Avenue
Indianapolis, IN 46204
10. This Agreed Order shall apply to and be binding upon Respondent, its successors and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
11. 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.
12. 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.

13. 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.
14. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permits or any applicable Federal or State law or regulation.
15. Complainant does not, by his approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
16. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the Notice of Violation.
17. Nothing in this Agreed Order shall prevent IDEM (or anyone acting on its behalf) from communicating with the United States Environmental Protection Agency (US EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the US EPA or any other agency or entity.
18. This Agreed Order shall remain in effect until Respondent has complied with the terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By:



Samantha K. Groce, Chief
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Date: March 15, 2019

RESPONDENT:

City of Huntingburg Municipal Water

By:

Printed:

Title:

Date:

COUNSEL FOR RESPONDENT:

By:

Date:

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 201_.

For the Commissioner:

Martha Clark Mettler
Assistant Commissioner
Office of Water Quality