



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

November 19, 2019

Bruno L. Pigott
Commissioner

Via Certified Mail No.: **7017 0190 0000 9502 3657**

Jane Gore, Town Council President
Town of Nashville
200 Commercial Drive
Nashville, IN 47448

Dear Ms. Gore:

Re: Revised Proposed Agreed Order
Indiana Department of
Environmental Management

v.

Town of Nashville
NPDES Permit No. IN0023876
Case No. 2019-26278-W
Nashville, Brown County

Enclosed please find the revised proposed Agreed Order that provides for the actions required to correct the violations outlined in IDEM's Notice of Violation issued to you in the above referenced case dated October 3, 2019. The enclosed proposed Agreed Order remains subject to the final approval of IDEM. No Agreed Order is binding on IDEM until the Agreed Order has been 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.

The civil penalty noted in the proposed Agreed Order is for settlement purposes only. Entering into and timely compliance with the enclosed Agreed Order will constitute resolution of this case. To resolve this matter as provided for in the enclosed Agreed Order, sign and return the entire document to me at the following address within 15 days of your receipt:

IDEM Office of Water Quality
Surface Water, Operations & Enforcement Branch
Water Enforcement Section, Mail Code 60-02W
100 N. Senate Ave.
Indianapolis, IN 46204-2251



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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 would like to schedule a meeting to discuss this matter in more detail, please contact me as soon as possible at (317) 232-8433 or dkoehler@idem.in.gov. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Koehler", with a stylized, flowing script.

David Koehler, Case Manager
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Enclosure

cc: <http://www.in.gov/idem>
Robin Wiliey, Certified Operator
Nathan Delisle, PE ms consultants, inc

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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. 2019-26278-W

TOWN OF NASHVILLE,

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. Town of Nashville (Respondent), which owns/operates the Nashville Wastewater Treatment Plant, located at 10 State Road 46 West, Nashville, Brown County, Indiana (the Site).
3. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0023876 (the Permit), to discharge wastewater treated in accordance with the terms and conditions of the NPDES Permit from its Wastewater Treatment Plant (WWTP) into North Fork Salt Creek from Outfall 001.
4. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.



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5. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) via Certified Mail/personal service to:

Jane Gore, Town Council President
Town of Nashville
200 Commercial Drive
Nashville, Indiana 47448

6. During an investigation including inspections on February 28, 2019, and March 8, 2019, conducted by a representative of IDEM, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part II. B. 6 of the Permit, any overflow or release of sanitary wastewater from the wastewater treatment facilities or collection system that results in a discharge to waters of the State and is not specifically authorized by the permit is expressly prohibited.

Respondent had an overflow on February 24, 2019, and unreported overflows to waters of the State, not specifically authorized by the Permit, in violation of Part II. B. 6 of the Permit..

9. Pursuant to 327 IAC 5-2-8(11)(C) and Part II. C. 3 of the Permit, permittee shall orally report information on any of the following types of noncompliance within twenty-four (24) hours from the time permittee becomes aware of such noncompliance:
- i. Any unanticipated bypass that exceeds any effluent limitation in the permit.
 - ii. Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the permit to be reported within twenty-four (24) hours.
 - iii. Any noncompliance that may pose a significant danger to human health or the environment. Reports under this item shall be made as soon as the permittee becomes aware of the noncomplying circumstances to (888) 233-7745.
 - iv. Any upset that exceeds any effluent limitation in the permit.

A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances.

Respondent failed to orally report noncompliance within 24 hours from the time Respondent became aware of such noncompliance and failed to provide a written

submission within five (5) days of the time Respondent became aware of the circumstance, in violation of 327 IAC 5-2-8(11)(C) and Part II. C. 3 of the Permit.

10. Pursuant to Part II. B. 1. F of the Permit, there shall be an ongoing preventative maintenance program (PMP) for the sanitary sewer system.

Based on an inspection on February 28, 2019, Respondent failed to develop and implement a PMP for the sanitary sewer system, in violation of Part II. B. 1. f of the Permit.

11. Pursuant to 327 IAC 5-2-10 and Part II. B. 4 of the Permit; solids, sludge, filter backwash, or other pollutants removed from or resulting from treatment or control of wastewater shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the State and to be in compliance with all Indiana statutes and regulations relative to liquid and/or solid waste disposal.

Respondent failed to dispose of sludge and solids in a manner that prevents materials from entering waters of the State, in violation of 327 IAC 5-2-10 and Part II. B. 4 of the Permit.

12. Pursuant to 327 IAC 5-22-10(1) and Part II. B. 1. e of the Permit, permittee is responsible for providing adequate funding for and oversight of the wastewater treatment plant and collection system to ensure proper operation, maintenance, management, and supervision.

Respondent has inadequate operating staff to ensure compliance with the conditions of the Permit, in violation of 327 IAC 5-22-10(1) and Part II. B. 1. e of the Permit.

13. Pursuant to IC 13-30-2-1(1), a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources 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.

During the inspection on February 28, 2019, IDEM staff observed and documented flooding had occurred on and around Respondent's salt stockpile causing salt laden water to discharge to Salt Creek, in violation of IC 13-30-2-1(1).

14. On March 18, 2019 and March 21, 2019, IDEM sent Inspection Summary Letters to Respondent outlining violations at the WWTP. 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 WWTP.

15. 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 13 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. Immediately upon the Effective Date, Respondent shall orally report noncompliance with 327 IAC 5-2-8(11)(C) and Part II. C. 3 of the Permit within 24 hours from the time of discovery and provide a written submission within five (5) days to Order Paragraph 15.
4. Within 30 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Preventative Maintenance Plan (PMP) for the sanitary sewer collection system, which includes methods and milestone dates for location and eliminating sources of inflow and infiltration (I/I) in the sewer system.

The PMP is subject to IDEM approval. In the event IDEM determines the PMP is deficient or otherwise unacceptable, Respondent shall revise and resubmit the PMP to IDEM in accordance with IDEM's Notices. After three (3) submissions of the PMP by Respondent, IDEM may seek civil enforcement of this Order.

Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved PMP.

5. Within 45 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP) which identifies actions that Respondent will take to achieve and maintain compliance with its Permit, specifically including the actions Respondent will take to:
 - A. Assure proper removal, storage and disposal of sludge solids;
 - B. Develop and implement a preventative maintenance program for WWTP equipment, and document all maintenance (preventative and repair) in a permanent record;
 - C. Evaluate and implement means to eliminate SSOs and bypasses;
 - D. eliminating sources of inflow and infiltration (I/I) in the sewer system;
 - E. Comply with reporting requirements of the permit;
 - F. Provide adequate influent flow measurement; and

G. Eliminate the potential discharge of salt laden water from the salt pile.

The CP shall include an implementation and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing of variations to the approved CP.

6. Within 30 days of the Effective Date, Respondent shall complete and provide to IDEM an evaluation of organization and staffing, which shall include clear and appropriate line of authority, identification of staff responsibilities, qualification of staff, staffing levels related to required work effort, coordination with other departments, and contract management (if required).
7. Respondent shall, after completion of the work required pursuant to the approved plans above, demonstrate 12 consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the Permit.
8. In the event that violation(s) occur during the Compliance Demonstration, within 30 days of the violation, Respondent shall develop and submit to IDEM, for approval, an Additional Action Plan (AAP) which identifies the additional actions that Respondent will take to achieve and maintain compliance with the terms and conditions of the Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
9. The plans required by Order Paragraphs 5, 6, and 9 are subject to IDEM approval. In the event IDEM determines that any 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.
10. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved CP and AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.
11. Following completion of the actions included in the AAP, the 12 month Compliance Demonstration, as specified in Paragraph 8 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.
12. Within 10 days of the completion of each required milestone included in the CP or AAP, Respondent shall submit to IDEM a written progress report or notification of completion for each milestone.
13. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing WWTP as efficiently and effectively as possible.

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

David Koehler, Enforcement Case Manager
Office of Water Quality – IGCN 1255
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251

15. Respondent is assessed and agrees to pay a civil penalty of Four Thousand, Seven Hundred Dollars (\$4,700). 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."
16. 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 orally report noncompliance and/or submit a written report within 5 days.	\$150 per week late, or part thereof.
4	Failure to develop and submit a PMP.	\$150 per week late, or part thereof.
4	Failure to implement the approved PMP.	\$250 per week late, or part thereof.
5	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
6	Failure to provide an evaluation of organization and staffing.	\$150 per week late, or part thereof.
7, 11	For violations of terms and conditions of the Permit during the Compliance Demonstration.	\$400 per violation
8	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
9	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
10	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
12	Failure to submit to IDEM a written report of progress within 10 days of each milestone.	\$150 per week late, or part thereof.
13	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.

17. 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 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.
18. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2019-26278-W of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204
19. 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. 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.
26. 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.
27. 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: November 18, 2019

RESPONDENT:
Town of Nashville

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:

Martha Clark Mettler
Assistant Commissioner
Office of Water Quality