



## 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](http://www.idem.IN.gov)

Eric J. Holcomb  
Governor

Bruno L. Pigott  
Commissioner

April 9, 2020

Via Certified Mail No.:  
7017 0190 0000 9502 4104

Jeff Harter, Plant Leader  
Indianapolis Power & Light Co.  
Petersburg Generating Station  
6925 North State Road 57  
Petersburg, IN 46567

Dear Mr. Harter:

Re: Proposed Agreed Order  
Indiana Department of  
Environmental Management  
v.  
Indianapolis Power & Light Co.  
NPDES Permit No. IN0002887  
Case No. 2019-26621-W  
Petersburg, Pike County

Enclosed please find the 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 January 13, 2020. 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:

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

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



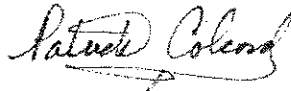
A State that Works

Cover Letter: Case No. 2019-26621-W  
Indianapolis Power & Light Co.  
NPDES No. IN0002887  
Petersburg, Pike County  
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assessed pursuant to IDEM's Civil Penalty Policy adopted as a Non-rule Policy Document on April 5, 1999.

Please contact me at 317.232.8432 or pcolcord@idem.in.gov within 15 days. At that time we can discuss any questions or set up a settlement conference.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Colcord", with a horizontal line underneath.

Patrick Colcord, Case Manager  
Water Enforcement Section  
Surface Water, Operations &  
Enforcement Branch  
Office of Water Quality

Enclosures

cc: Pike County Health Department  
<http://www.in.gov/idem>  
Nysa Hogue, AES Corp  
David Heger, AES Corp



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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. 2019-26621-W

INDIANAPOLIS POWER & LIGHT        )  
COMPANY, PETERSBURG GENERATING    )  
STATION,                                 )

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 owns/operates the Petersburg Generating Station, located at 6925 North State Road 57, Petersburg, Pike County, Indiana (the Site).
3. Respondent is authorized by National Pollutant Discharge Elimination System (NPDES) Permit Number IN0002887 (the Permit) to discharge wastewater treated in accordance with the terms and conditions of the NPDES Permit from multiple outfalls including:
  - a. the ash pond system discharge into Lick Creek via Outfall 001;
  - b. the sanitary wastewater treatment plant via internal Outfall 101;
  - c. the cooling tower blowdown into Lick Creek via Outfalls 005, 006, and 008;
  - d. the sludge disposal site runoff into Lick Creek via Outfall 007;



- e. the low volume wastewater discharge from internal Outfall 201; and
  - f. the storm water outfall into Lick Creek and White River via Outfalls 006S, 011S, 016S, 025S, 030S, and 031S.
- 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) on January 13, 2020, via Certified Mail/personal service to:

Jeff Harter, Plant Leader  
Indianapolis Power & Light Co.  
Petersburg Generating Station  
6925 North State Road 57  
Petersburg, IN 46567

- 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 the permittee shall comply with all terms and conditions 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 Part I.A.1 of the Permit, the permittee is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of October 2016 through October 2019 revealed violations of effluent limitations contained in Part I.A.1 of the Permit for Outfall 001 as follows:

- A. The monthly average concentration limitation for cadmium was exceeded in June 2018.
- B. The daily maximum average concentration limitation for copper was exceeded in November 2018.
- C. The monthly average concentration limitation for iron was exceeded in February 2018.
- D. The daily maximum average for iron was exceeded in November 2017 and February 2018.
- E. The monthly average concentration limitation for selenium was exceeded in September 2017, February 2019, and March 2019.
- F. The daily maximum concentration limitation for selenium was exceeded in September 2017, February 2019, and March 2019.

Respondent failed to comply with the effluent limitations from Outfall 001 contained in the Permit, in violation of Part I.A.1 of the Permit.

9. Pursuant to Part I.A.5 of the Permit, the permittee is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

DMRs and MROs submitted by Respondent for the period of October 2016 through October 2019 revealed violations of effluent limitations contained in Part I.A.5 of the Permit for Outfall 007 as follows:

- A. The monthly average concentration limitation for boron was exceeded in September 2017, July, August, September, October, and November 2018, and March, May, June, July, August, September, and October 2019.
- B. The daily maximum concentration limitation for boron was exceeded in September 2017, July, August, September, October, and November 2018, and May, June, July, August, September, and October 2019.
- C. The monthly average concentration limitation for cadmium was exceeded in June 2018 and May 2019.
- D. The daily maximum concentration limitation for cadmium was exceeded in May 2019.
- E. The monthly average concentration limitation for mercury was exceeded in June and August 2018, and August 2019.
- F. The monthly average concentration limitation for selenium was exceeded in September 2017, and July, August, September, and October 2018 and May, June, July, August, and October 2019.
- G. The daily maximum concentration limitation for selenium was exceeded in September 2017, and July, August, September, and October 2018 and May, June, July, August, and October 2019.
- H. The monthly average concentration limitation for Total Suspended Solids (TSS) was exceeded during January 2018.

Respondent failed to comply with the effluent limitations from Outfall 007 contained in the Permit, in violation of Part I.A.5 of the Permit.

10. Pursuant to Part I.A.2 of the Permit, the permittee is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

DMRs and MROs submitted by Respondent for the period of October 2016 through October 2019 revealed violations of effluent limitations contained in Part I.A.2 of the Permit for Outfall 101 as follows:

- A. The daily maximum concentration limitation for E. coli was exceeded in May 2019.
- B. The monthly average concentration limitation for Biological Oxygen Demand, Five Day was exceeded in October 2018, December 2018, January 2019, February 2019, and May 2019.
- C. The daily maximum average concentration limitation for Biological Oxygen Demand, Five Day was exceeded during September and October 2018, and January, February, and May 2019.

Respondent failed to comply with the effluent limitations from Outfall 101 contained in the Permit, in violation of Part I.A.2 of the Permit.

11. On February 18, 2019 and March 13, 2019, IDEM sent Inspection Summary/Noncompliance Letters to Respondent outlining violations at the facility. The letters required a response detailing actions taken to correct the violations. IDEM received responses to the letters explaining compliance actions Respondent took or would take to address the violations. However, the violations noted above continue at the WWTP.
12. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and 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. Within 30 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. Achieve and maintain compliance with effluent limitations contained in the Permit for Outfalls 001, 007, and 101.

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.

4. Respondent shall, after completion of the work required pursuant to the approved CP from Paragraph 3 above, demonstrate 12 consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the Permit.
5. 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.

6. The plans required by Order Paragraphs 3 and 5 are subject to IDEM approval. In the event IDEM determines that any plan or any modified 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.

7. 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.

Following completion of the actions included in the AAP, the 12 month Compliance Demonstration, as specified in Paragraph 5 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.

8. Within 10 days of each required milestone date included in the CP or AAP, Respondent shall submit to IDEM a written progress report or notification of completion for each milestone.
9. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing facility as efficiently and effectively as possible.
10. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

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

11. Respondent is assessed and agrees to pay a civil penalty of Seventy Eight Thousand Three Hundred Dollars (\$78,300). Said penalty amount shall be due and payable to the "Environmental Management Special Fund" within 30 days of the Effective Date, the 30<sup>th</sup> day being a "Due Date."
12. 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 the CP within the	\$250 per week late, or

	required time period.	part thereof.
4	For violations of terms and conditions of the Permit during the Compliance Demonstration.	\$400 per violation
5	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
6	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
7	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
8	Failure to submit to IDEM a written progress report within 10 days of each milestone date.	\$150 per week late, or part thereof.
9	Failure to operate the facility as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.

13. Stipulated penalties shall be due and payable no later than the 30<sup>th</sup> day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30<sup>th</sup> 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.
14. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2019-26221-W of this action and shall be mailed to:  
  
Indiana Department of Environmental Management  
Accounts Receivable  
IGCN, Room 1340  
100 North Senate Avenue  
Indianapolis, Indiana 46204
15. 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.



16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.

Agreed Order: Case No. 2019-26221-W  
IPALCO  
NPDES No. IN0002887  
Petersburg, Pike County  
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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 26, 2020

**RESPONDENT:**  
Indianapolis Power & Light Company

By:

Printed: \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

**COUNSEL FOR RESPONDENT:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_.

For the Commissioner:

\_\_\_\_\_  
Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality

