

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

Brian C. Rockensuess
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. 2021-28390-D

WESTHAVEN MHP LLC,

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. Westhaven MHP LLC (Respondent) owns and/or operates a community public water system (PWS) with PWSID No. IN5243028, serving 417 persons. The PWS is located at 3762 West Old Road 30, in Warsaw, Kosciusko County, Indiana (the Site).
3. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.
4. Pursuant to IC 13-30-3 *et seq.*, IDEM issued a Notice of Violation via Certified Mail to:



A State that Works

Adam Schwerin, Registered Agent
Westhaven MHP LLC
29200 C.R. W 20
Elkhart, IN 46517

Michele Westmoreland, Manager
Westhaven MHP LLC
P.O. Box 4720
Troy, MI 48099

5. 327 Indiana Administrative Code (IAC) 8-2-2 states that each PWS shall comply with all provisions of this rule and 327 IAC 8-2.1.
6. A Community Water System (CWS) as defined by 327 Indiana Administrative Code (IAC) 8-2-1(12) is a PWS that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
7. 327 Indiana Administrative Code (IAC) 8-2-2 states that each PWS shall comply with all provisions of this rule and 327 IAC 8-2.1.
8. Pursuant to Indiana Code (IC) 13-18-16-6(a) and (b), all PWS shall be continuously operated and maintained so that water is safe in quality, clean and adequate in quantity, and chemically satisfactory for ordinary domestic consumption. The person responsible for the operation of a public water system shall take all measures that are necessary to protect the quality and quantity of the raw water supply from actual or threatened contamination.

An IDEM investigation revealed that on August 5, 11, and 12, 2021, October 25, 2021, November 15-16, 2021, and December 4-7 and 14-15, 2021, Respondent failed to provide continuous supply and failed to maintain the water distribution system in a way to prevent leaks and breaks, all in violation of IC 13-18-16-6.

9. 327 IAC 8-2-8.2 states IDEM shall evaluate each PWS during a sanitary survey to determine if deficiencies exist.
10. 327 IAC 8-2-8.2(f) states significant deficiencies are conditions found during a sanitary survey that have a potential to cause an immediate risk to human health; or any deficiency that was found during a previous sanitary survey but has not been corrected; or the PWS is not in compliance with a correction schedule approved by the commissioner.

Pursuant to 327 IAC 8-2-8.2(h), a PWS using ground water shall respond in writing to any deficiency found during a sanitary survey that is reported to the PWS using ground water by the commissioner. Response requirements are as follows:

1. The response must:
 - A. be made within thirty (30) days of receipt of the report; and
 - B. indicate:
 - i. how the PWS will address deficiencies found during the sanitary survey;

- and
- ii. on what schedule the PWS will address deficiencies found during the sanitary survey.

During the Sanitary Survey Inspection on September 9, 2021, IDEM staff documented the following outstanding significant deficiencies:

- A. Notifications were not made to customers for service interruptions; and
- B. The system did not have sufficient personnel.

To date, IDEM has not received an adequate response to the Sanitary Survey Inspection Summary Letter dated September 10, 2021, to correct all outstanding significant deficiencies, in violation of 327 IAC 8-2-8.2(h).

11. Pursuant to 327 IAC 8-2.1-7(a) and (b), the owner or operator of a CWS must give public notice for a violation or situation determined by the commissioner to require a public notice.

IDEM records indicate that Respondent failed to notify persons served by the PWS of the pressure and water loss and did not provide customers direction during the water and pressure loss events on August 5, 11, and 12, 2021, October 25, 2021, November 15-16, 2021, and December 4-7 and 14-15, 2021, in violation of 327 IAC 8-2.1-7(a) and (b).

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 11 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 Notice of Violation and prior to the Effective Date.
2. Immediately upon the Effective Date, Respondent shall provide its customers the attached Boil Water Advisory Public Notice (PN) per the attached IDEM Boil Water Procedure and submit a copy to IDEM.

For future public notices required for a violation or situation determined by the commissioner to require a public notice, Respondent shall provide public notice to the State within 24 hours and notify the public pursuant to 327 IAC 8-2.1-7(a) and (b).

3. Immediately upon the Effective Date, Respondent shall update and submit to IDEM for approval an Emergency Response Plan (ERP) to be used when any loss of water or pressure event occurs, including but not limited to implementing a notification process to IDEM and residents. Notifications to IDEM should be directed to Sophia Andrews at SoAndrew@idem.in.gov.

Respondent, upon receipt of written notification of approval to the ERP from IDEM, shall immediately implement the approved ERP for any future water or pressure loss events.

4. Within 10 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 retain an engineer to prepare a Professional Engineering Report (PER) which evaluates options to determine the optimal solution for Respondent to ensure and maintain a continuous supply of water that is safe in quality, clean, adequate in quantity, and chemically satisfactory for ordinary domestic consumption and prevent future water or pressure loss events. The PER shall evaluate the following options and provide a selected alternative:

- A. Installation of a new well;
- B. Increase in pumping capacity;
- C. Connection with the west side of the park;
- D. Connecting both sides of the park to a water utility; or
- E. Alternative technical solution approved by IDEM.

The CP shall include an implementation and completion schedule, including specific milestone dates. Once an alternative is selected, Respondent shall submit to IDEM for approval an updated CP which includes an implementation and completion schedule for the selected alternative.

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

5. Within 10 days of the Effective Date, Respondent shall respond in writing to all deficiencies noted in the Sanitary Survey conducted on September 10, 2021. The response must indicate:
 1. how Respondent will address deficiencies found during the sanitary survey; and
 2. on what schedule (milestone dates) Respondent will address deficiencies found during the sanitary survey.

6. Respondent shall, after completion of the work required pursuant to the approved plans from Order Paragraphs 4 and 5, demonstrate 12-consecutive months of compliance (Compliance Demonstration) with IC 13-18-16-6 and IAC 8-2.1-7(a) and (b).
7. 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 applicable environmental rules. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
8. The plans required by Order Paragraphs 3, 4, 5 and 7 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 revise the CP as necessary for approval and require implementation by Respondent.
9. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plans and adhere to the milestone dates therein. The approved plans 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 6-month Compliance Demonstration, as specified in Paragraph 6 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.

10. Within 10 days of the completion of each required milestone included in the CP, Sanitary Survey or AAP, Respondent shall submit to IDEM a written progress report or notification of completion for each milestone.
11. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

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

12. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess and Respondent shall pay a stipulated penalty in the following amount:

Paragraph:	Violation:	Stipulated Penalty:
2	Failure to comply with any or all of the requirements of this paragraph.	\$7,025 for the initial deadline and \$300 per week, or part thereof, past the 30-day deadline.
3	Failure to update and submit an ERP within the required time period.	\$7,025 for the initial deadline and \$250 per week late, or part thereof.
3	Failure to implement the ERP within the required time period.	\$7,025 for the initial deadline and \$500 per week late, or part thereof.
4	Failure to submit the CP within the required time period.	\$7,025 for the initial deadline and \$250 per week late, or part thereof.
5	Failure to submit a written response within the required time period.	\$7,025 for the initial deadline and \$250 per week late, or part thereof.
6	For violations of IC 13-18-16-6 and IAC 8-2.1-7(a) and (b) during the Compliance Demonstration.	\$400 per violation.
7, 8	Failure to submit or modify the plan(s) within the given time period.	\$500 per week late, or part thereof.
9	Failure to meet and/or implement any milestone date set forth in the approved CP, Sanitary Survey or AAP.	\$500 per week late, or part thereof.
10	Failure to submit to IDEM a written report of progress within 10 days of each required milestone.	\$150 per week late, or part thereof.

13. 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.

14. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2021-28390-D 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

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.

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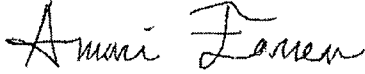
TECHNICAL RECOMMENDATION:

Department of Environmental Management

RESPONDENT:

Westhaven MHP LLC

By:



Amari Farren, Chief
Water Enforcement Section
Office of Water Quality

By:

Printed:

Title:

Date: January, 4, 2022

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