

Madison Co.

IN THE
ENFORCEMENT SECTION OFFICE OF AIR QUALITY

IN RE: Alexandria muffler shop)	Enforcement Section
)	Office of Air Quality
Commissioner of the Department)	
of Environmental Management)	The Honorable, Bruno L. Pigott
<i>Complainant/Plaintiff,</i>)	Commissioner
)	
v.)	Alison Trabel,
)	Case Manager
Patrick, AJ)	
<i>Respondent/Defendant</i>)	Cause No.
)	<u>2021-27820-A</u>

NOTICE

Comes now, the Respondent Patrick, pursuant to Indiana Code § 13-14-5-6, and in response to Notice received on November 29th 2021 from the Indiana Department of Environmental Management (“IDEM”), provides and shows the Commissioner as follows:

1. Patrick was the Owner of real property located at 1702 N. SR. 9 in Alexandria, IN 46016; more commonly known as the “Alexandria muffler shop.”
2. Patrick received a Notice of Violation dated June 16, 2021.
3. Notice of Violation by certified mail was first received on November 29th 2021.
4. IDEM received an amended Agreement Order signed by Patrick on August 5, 2021.
5. Patrick received no written summary of oral report other than the “Notice of Violation” originally dated June 16, 2021.
6. Patrick received a Notice on November 29th 2021 denying the amended Agreement Order; though IDEM did not return the payment sent on August 5, 2021.
7. The property owner provides the following information in response:

- a. Inspections are governed by I.C. § 13-14-2-2, which states in relative part:

“... agent ... upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any...”

On April 22, 2021, the agent of the department that conducted an inspection and investigation did not present credential to enter upon the private property, as required by that section.

- b. Notice of the summary of oral report is governed by I.C. § 13-14-5 seq., states in relative part:

A written summary of the oral report shall be sent to the property owner not later than forty-five (45) calendar days from the inspection.

The first written notice that Patrick received was dated June 16, 2021. Fifty-five (55) calendar days after the inspection; the designated agent failed to comply with this chapter.

- c. Further, from the evidence provided it seems Patrick was in compliance, severally and jointly, including but not limited to 326 Ind. Admin. Code 4-1-0.5(3), 326 Ind. Admin. Code 4-1-3(a)(1)(C), and Code 4-1-3(a)(2), Code 4-1-3(c)(1).

8. The offered order is governed by I.C. § 13-30-3-3, which order shall:

“...[provid] for (A) the actions required to correct the violation; and (B) if appropriate, the payment of a civil penalty”

and that

“an alleged violator may enter into an agreed order without admitting that the violation occurred.”

The original proposed order unambiguously declared a list of violations occurred, as such it did not give Patrick the opportunity to “enter into an

agreed order without admitting that the violation occurred”; the order provided for numerous “other” terms not covered by I.C. 13-30-3-3, including covenants binding the owner and any future owner; removing owners right to administrative and judicial review; contained blatantly inaccurate claims included that the June 16th notice was issued via certified mail though notice was not provided via certified mail until on or about November 9th 2021; the only part of the agreement that seems that it may comply with the statutes section governing agreements was that a civil penalty may be assessed.

9. **Patrick would agree to have the issue resolved through the amended three (3) page Agreement and payment sent on August 5, 2021,** otherwise Patrick will proceed in contesting and appealing, administratively and judicially, any Order entered to the contrary for reasons including the departments failure to materially comply with the statutes; **further, if the August 5, 2021 amended agreement is mutually accepted Patrick will waive and indemnify IDEM if it chooses to not append this written information in the public file under I.C. § 13-14-5-6.**

Respectfully Submitted,

/S/ AJ Patrick

Andrew (AJ) Patrick
333 East 13th Street,
Anderson, IN, 46016

This Notice is NOT a Qualified Offer of Settlement. THE AUGUST 5, 2021 AMENDED AGREEMENT IS A QUALIFIED OFFER OF SETTLEMENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of December, 2021, a true and accurate copy of the foregoing document was deposited in the United States Mail Pre-Paid, served upon the following person(s) of record:

E-File & First-Class Mail:

IDEM

Attn: Alison Trabel
Enforcement Section Office of Air Quality
100 N Senate Ave RM N045
Indianapolis, IN 46204-2251

/S/ AJ Patrick

Andrew (AJ) Patrick
(317) 306 – 5330
333 East 13th Street,
Anderson, IN, 46016



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

November 9, 2021

VIA CERTIFIED MAIL: 7004 1160 0004 6517 8293

AJ Patrick,
Property Owner
333 East 13th Street
Anderson, Indiana 46016
1702.48@apcomputerworks.com

Re: Commissioner of the Department of
Environmental Management

v.

AJ Patrick
Case No. 2021-27820-A

Qualified offer of settlement: inadmissible pursuant to Rule 408 of the Ind. Rules of Evidence. IDEM asserts that any offer to compromise a claim or any acceptance of such offer does not bind or obligate the parties of this enforcement action in the absence of a final order of the agency.

Dear Mr. Patrick:

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 June 16, 2021. The 'signed' proposed Agreed Order, returned to IDEM on August 5, 2021, was significantly altered from the version IDEM provided, including the removal of various sections of the Order, and it lacked a signature from IDEM personnel. As it was not a copy of the document provided by IDEM, signing it was not an acceptable resolution to the case, and the case is not resolved. 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.

If you are willing to resolve this matter as provided for in the enclosed Agreed Order, sign and return it to me in an unaltered form other than your signature, at the address specified in the Agreed Order within fifteen (15) days of your receipt of the Agreed Order. The individual signing the enclosed Agreed Order should be the owner. If you would like to schedule a meeting to discuss the Agreed Order in more detail, please contact me as soon as possible at 317-233-0202 or ATrabel@idem.in.gov.

If this matter cannot be resolved through the enclosed Agreed Order or a mutually acceptable amended Agreed Order, a Commissioner's Order may be issued. It should be understood that the civil penalty for purposes of a Commissioner's Order



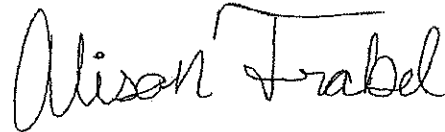
A State that Works

Recycled Paper

will be assessed pursuant to IDEM's Civil Penalty Policy adopted as a Nonrule Policy Document on April 5, 1999.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Alison Trabel". The signature is written in black ink and is positioned above the typed name and title.

Alison Trabel
Case Manager
Enforcement Section
Office of Air Quality

Enclosure

cc: Alison Trabel, Compliance and Enforcement, OAQ
John Clevenger, Compliance and Enforcement OAQ



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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

June 16, 2021

NOTICE OF VIOLATION

AJ Patrick,
Property Owner
333 East 13th Street
Anderson, Indiana 46016
1702.48@apcomputerworks.com

Case No. 2021-27820-A

Based on an inspection on April 22, 2021, the Indiana Department of Environmental Management ("IDEM") has reason to believe that AJ Patrick ("Respondent") has violated environmental rules. The violations are based on the following:

1. Respondent owns the vacant gas station located at 1702 North State Road 9 in Alexandria, Madison County, Indiana (the "Site").
2. Pursuant to environmental rule 326 IAC 4-1, open burning is prohibited unless exempted, allowed by rule, or an approval is obtained.

Respondent conducted open burning of non-approved materials at the Site on April 22, 2021, in violation of environmental rule 326 IAC 4-1.

3. Pursuant to environmental rule 326 IAC 14-10-3(a), each owner or operator of a demolition or renovation activity is required to provide IDEM with written notice of the intention to demolish or renovate and update the notice as necessary.

Respondent failed to provide IDEM with a demolition notification, in violation of environmental rule 326 IAC 14-10-3(a).

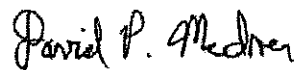
In accordance with IC 13-30-3-3, the Commissioner herein provides notice that a violation may exist and offers an opportunity to enter into an Agreed Order providing for the actions required to correct the violation and for the payment of a civil penalty for the violation. The Commissioner is not required to extend this offer for more than sixty (60) days. An Agreed Order for your consideration is attached. As noted on the attached Agreed Order, it is a qualified offer of settlement of this matter and, therefore, is inadmissible pursuant to Indiana's Rules of Evidence.

As provided in IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting that the violation occurred. IDEM encourages settlement by Agreed Order to quickly correct environmental violations and to avoid litigation.

If the Agreed Order is not entered into within sixty (60) days of receipt of this Notice of Violation, the Commissioner may proceed with additional enforcement action requiring compliance with environmental rules 326 IAC 4-1 and 326 IAC 14-10-3(a) and seek additional monetary penalties in accordance with IDEM's Civil Penalty Policy (ID No. Enforcement 99-0002-NPD). Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Alison Trabel, Case Manager, of my staff at 317-233-0202 or ATrabel@idem.in.gov if you have any questions.

For the Commissioner:



David P. McIver, Chief
Enforcement Section
Office of Air Quality

Date: June 15, 2021

cc: Madison County Health Department
Alison Trabel, Compliance and Enforcement Branch, Office of Air Quality
John Clevenger, Compliance and Enforcement Branch, Office of Air Quality



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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

Respondent Name: AJ Patrick
Case Number: 2021-27820-A

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 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 Indiana Code ("IC") 13-13-1-1.
2. Respondent is AJ Patrick ("Respondent"), who owns the vacant gas station located at 1702 North State Road 9 in Alexandria, Madison County, Indiana ("Site").
3. IDEM has jurisdiction over the parties and the subject matter of this action.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation ("NOV") via certified mail to:

AJ Patrick,
Property Owner
333 East 13th Street
Anderson, Indiana 46016
1702.48@apcomputerworks.com

5. At the time of an inspection conducted on April 22, 2021, the following violations were in existence or observed at the Site by a representative of IDEM's Office of Air Quality ("OAQ").
 - a. Pursuant to environmental rule 326 IAC 4-1, open burning is prohibited unless exempted, allowed by rule, or an approval is obtained.

Respondent conducted open burning of non-approved materials at the Site on April 22, 2021, in violation of environmental rule 326 IAC 4-1.

- b. Pursuant to environmental rule 326 IAC 14-10-3(a), each owner or operator of a demolition or renovation activity is required to provide IDEM with written notice of the intention to demolish or renovate and update the notice as necessary.

Respondent failed to provide IDEM with a demolition notification, in violation of environmental rule 326 IAC 14-10-3(a).

6. 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 via signature by Complainant or Complainant's delegate, and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. This offer to settle the allegations contained in this Agreed Order does not bind or obligate the parties of this enforcement action if the Agreed Order is not adopted.
2. Respondent is assessed a civil penalty of Five Hundred Dollars (\$500.00). Respondent shall pay said penalty amount no later than fifteen (15) days after the Effective Date ("Due Date"). In the event that the civil penalty is not paid by the Due Date, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101.
3. In the event the terms and conditions of this Agreed Order are violated, Complainant may seek additional relief.
4. Civil penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 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

5. This Agreed Order shall apply to and be binding upon Respondent and his 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 his status or responsibilities under this Agreed Order.

6. 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.
7. 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 his obligation to comply with the requirements of his applicable permit or any applicable Federal or State law or regulation.
8. 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.
9. 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.
10. 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 the EPA or any other agency or entity.
11. The parties were free to consult with their respective counsel regarding entry into this Agreed Order to the extent each deemed necessary.

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TECHNICAL RECOMMENDATION:
Department of Environmental
Management

By: David P. McIver
David P. McIver, Chief
Enforcement Section
Office of Air Quality

Date: June 15, 2021

RESPONDENT:*
AJ Patrick

By: _____

Printed: _____

Title: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT THIS

_____ DAY OF _____, 20_____.

For the Commissioner:

By: _____
Matthew Stuckey, Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental
Management

Denied 12/02/2021

* In the event that Respondent does not accept the settlement offer contained in this Agreed Order, IDEM notes that this document is a qualified offer of settlement, and therefore Rule 408 of Indiana Rules of Evidence applies to this document, rendering it inadmissible.



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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

Respondent Name: AJ Patrick
Case Number: 2021-27820-A

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 IC 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein.

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 Indiana Code ("IC") 13-13-1-1.
2. Respondent is AJ Patrick ("Respondent"), who owns the real property located at 1702 North State Road 9 in Alexandria, Madison County, Indiana ("Site").

II.

ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is adopted via signature by Complainant or Complainant's delegate, and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. This offer to settle the allegations contained in this Agreed Order does not bind or obligate the parties of this enforcement action if the Agreed Order is not adopted.
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Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

5. The parties were free to consult with their respective counsel regarding entry into this Agreed Order to the extent each deemed necessary.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

TECHNICAL RECOMMENDATION:
Department of Environmental
Management

By: _____
David P. McIver, Chief

Enforcement Section
Office of Air Quality

Date: _____

RESPONDENT: *
AJ Patrick

By: AJ Patrick

Printed: AJ Patrick

Title: Respondent

Date: August 5, 2021

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT THIS

_____ DAY OF _____, 20_21 .

For the Commissioner:

By: _____
Matthew Stuckey, Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental
Management

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