

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:

Paul R. Sinderson, President
Clay County Commissioners
609 National Avenue
#106
Brazil, IN 47834
6. During an investigation conducted by a representative of IDEM, violations were found, as described below.
7. Pursuant to 327 IAC 2-1-6(a)(1), the following are minimum water quality conditions, all waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil, or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges:
 - (A) that will settle to form putrescent or otherwise objectionable deposits;
 - (B) that are in amounts sufficient to be unsightly or deleterious;
 - (C) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
 - (D) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or human; and
 - (E) which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

Pursuant to IC 13-30-2-1(1), no person may 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 or into any publicly owned treatment works in any form which causes or would cause pollution which violates or which would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws.

Pursuant to Indiana Code (IC) 13-18-4-5, it is unlawful for any person to throw, run, drain, or otherwise dispose into any of the streams or waters of this state, or to cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters, any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under IC 13-18-4-1 and IC 13-18-4-3.

Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the State, as a point source discharge, is prohibited unless in conformity with a valid NPDES permit obtained from IDEM prior to the discharge.

During inspections on August 26, 2021, and May 12, 2022, IDEM staff observed and documented that numerous septic systems in Coalmont appeared to be discharging untreated wastewater directly to waters of the State, causing, or contributing to, the contamination of the waters of the State, without appropriate authorization, and/or a NPDES permit, in violation of 327 IAC 5-2-2, 327 IAC 2-1-6(a)(1), and thus violating IC 13-30-2-1(1) and IC 13-18-4-5.

8. On August 26, 2021, and May 13, 2022, IDEM sent Inspection Summary Letters to Respondent outlining the violations. 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 responses did not adequately address the violations noted above.
9. 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 Paragraph 7 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 60 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP). The CP should identify how Respondent will address the violations cited in the Findings of Fact above. The CP shall include, but not be limited to, actions Respondent will take to:
 - A. Evaluate and implement a means to eliminate unpermitted discharges from the Site and minimize their environmental impact;
 - B. Apply for and obtain any necessary permits, which may include a construction permit and/or NPDES permit from IDEM, or approval from the Indiana State Department of Health;

- C. A schedule for securing financing for the project;
- D. A construction plan, which includes an implementation and completion schedule, including specific milestone dates.

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 that prohibited discharges have ceased from the Site (Compliance Demonstration), and Respondent complies with applicable rules and statutes. During the Compliance Demonstration, Respondent shall be subject to stipulated penalties, as specified below.
5. In the event that violation(s) occur during the Compliance Demonstration, within 60 days of the violation, Respondent shall develop and submit to IDEM, for approval, an AAP, which identifies the additional actions that Respondent will take to ensure that prohibited discharges cease from the Site. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
6. The plans required by Paragraphs 3 and 4 above 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 (3) 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. Failure by Respondent to submit any plan by the specified date, or to meet any of the milestones in the approved plan(s), will subject Respondent to stipulated penalties as described below.
8. Following completion of the actions included in the AAP, a Compliance Demonstration, as specified in Paragraph 4 above, will restart, and Respondent shall be subject to stipulated penalties, as specified below, for prohibited discharges from the Site. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.
9. Beginning with the first calendar quarter following the Effective Date, Respondent shall submit to IDEM a written progress report within 10 days of the end of each calendar quarter which identifies the compliance actions implemented during each quarter ending March 31st, June 30th, September 30th, and December 31st until completion of the CP or AAP.

10. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, minimize all wastewater discharges without a permit as possible.

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

Aletha Lenahan, Enforcement Case Manager
Office of Water Quality – IGCN N1255
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, IN 46204-2251

12. IDEM assessed a civil penalty of One Thousand, Nine Hundred Sixty-Eight (\$1,968). Said civil penalty will be waived, if Respondent completes the requirements for Order Paragraphs 3, 6, 7, and 9. If the Respondent fails to comply with the above Order requirements, then Respondent agrees to pay the civil penalty amount. Said penalty amount shall be due and payable to the "Environmental Management Special Fund" within 30 days of receipt of notification from IDEM that the civil penalty has been assessed.

13. 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 required time period.	\$250 per week late, or part thereof.
4 and 8	Failure to demonstrate 12-consecutive months without unpermitted discharges	\$200 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.
9	Failure to submit to IDEM a written progress report for each calendar quarter.	\$150 per week late, or part thereof.
10	Failure to minimize unpermitted discharges as much as possible prior to Compliance Demonstration.	\$200 per violation.

14. Civil and 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.

15. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2022-28798-W of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room N1340
100 N. Senate Avenue
Indianapolis, IN 46204

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. 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.
24. 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:

Amari Farren

Amari Farren, Chief
Water Enforcement Section
Office of Water Quality

Date: December 5, 2022

RESPONDENT:

Clay County Commissioners

By:

Bryan K. Allender

Printed:

Bryan Allender

Title:

Commissioner President

Date:

12-22-2022

COUNSEL FOR RESPONDENT:

By:

E. D. Sh...

Date:

12-22-2022

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 23rd DAY OF December, 2022

For the Commissioner:

Martha Clark Mettler

Martha Clark Mettler
Assistant Commissioner
Office of Water Quality