



## 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

Brian C. Rockensuess  
Commissioner

April 14, 2023

**Via Certified Mail: # 7005 1160 0001 2610 0242**

Mark and Diane Kolish dba Kolish Farm  
280 N 700 W  
Winamac, Indiana 46996  
[Farmhouse1061@gmail.com](mailto:Farmhouse1061@gmail.com)

Dear Mr. and Mrs. Kolish:

Re: Notice of Violation and Proposed Agreed Order  
Mark and Diane Kolish dba Kolish Farm  
Case No. 2022-29047-C  
Farm No. 6637  
Winamac, Pulaski County

**Qualified offer of settlement: inadmissible per 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.**

IDEM conducted an investigation of the farm with ID #6637 and has made a preliminary determination that violations of environmental management rules exist. Per IC 13-30-3-3, enclosed please find a Notice of Violation that sets forth the alleged violations and a proposed Agreed Order which constitutes a qualified offer of settlement.

You may request a settlement conference to discuss the allegations and the actions necessary to correct and resolve the violations, which may include injunctive relief and the establishment of a compliance schedule. Payment of a civil penalty will also be discussed. The civil penalty amount noted in the proposed Agreed Order contains a preliminary penalty figure for settlement discussion purposes only and is based on penalty calculations associated with the alleged violations set forth in the Notice of Violation. A portion of the civil penalty may be offset by performing an approved Supplemental Environmental Project (SEP). Typical SEPs have included pollution prevention, pollution control, and environmental restoration projects. A copy of IDEM's SEP policy may be obtained from this office or at IDEM's website at [www.IN.gov/idem](http://www.IN.gov/idem).

The individual signing the enclosed Agreed Order should be fully authorized to execute the document and legally bind the parties. The timely entry into an Agreed Order, which saves you and IDEM time and resources, may lead to a reduction in the civil penalty.



IDEM is not required to extend the offer of entry into an Agreed Order for more than 60 days. You may enter into an Agreed Order without admitting that the violations occurred. Additionally, to encourage a timely agreement, IDEM may offer a onetime twenty percent reduction (20%) to the Civil Penalty for 60 days after receipt of this Notice of Violation.

If an Agreed Order is not entered into, IDEM may proceed to issue a unilateral notice and order requiring compliance with the environmental laws, rules, and/or permit, including payment of a civil penalty. Please contact me at 317-234-5208 or via email at [jpisula@idem.IN.gov](mailto:jpisula@idem.IN.gov) if you have any questions or if you wish to request a settlement conference.

Sincerely,



Case Manager  
Enforcement Section  
Office of Land Quality

Enclosures

cc: Pulaski County Health Department  
Corey Webb, IDEM OLQ, Deputy Assistant Commissioner  
Megan Espinda, IDEM OPS, Agricultural Liaison  
Mike Hall, Confined Feeding Compliance Inspector  
Fawn Patterson, Emergency Response  
IDEM Virtual File Cabinet



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*Commissioner*

### **NOTICE OF VIOLATION**

To: Mark and Diane Kolish dba  
Kolish Farm  
280 N. 700 W.  
Winamac, Indiana 46996  
[Farmhouse1061@gmail.com](mailto:Farmhouse1061@gmail.com)

Case No. 2022-29047-C

Pursuant to Indiana Code ("IC") 13-30-3-3, the Indiana Department of Environmental Management ("IDEM") issues this Notice of Violation. Based on an investigation including an inspection conducted on November 3, 2022 by an IDEM representative, IDEM has reason to believe Mark and Diane Kolish dba Kolish Farm ("Respondents") violated environmental rules. The violations are based on the following:

1. Respondents are Mark and Diane Kolish dba Kolish Farm who own and operate the Confined Feeding Operation ("CFO") with ID No. 6637, located at 100 N. 700 W., in Winamac, Pulaski County, Indiana ("Site").
2. Pursuant to 327 Indiana Administrative Code ("IAC") 19-3-1(d), all waste management systems must be designed, constructed, and maintained to minimize leaks and seepage and prevent manure releases or spills, as well as ensure compliance with the water quality standards in 327 IAC 2.

As noted during the inspection, storm damage to production buildings E1 and E2 allowed rainwater to come in contact with manure inside the structure and allowed the manure to be released outside of E1 and E2.

3. Pursuant to 327 IAC 19-13-1(c), manure at the production area must be stored in an approved waste management system until removed for land application in accordance with 327 IAC 19-14.

As noted during the inspection, manure was observed staged east of production building E1, outside of an approved waste management system.

4. Pursuant to 327 IAC 19-4-1(b)(1), the owner/operator must comply with all terms and conditions of the CFO approval and this article, 327 IAC 19.

As noted during the inspection, the earthen berm required by the CFO Approval to be located directly east of production building E2 was not constructed.

4. Pursuant to 327 IAC 19-1-2, (a) This article applies to all CFOs as defined in IC 13-11-2-40. (b) Under this article a person may not start: (1) construction of a CFO; or (2) expansion of a CFO that increases animal capacity or manure containment capacity, or both; without obtaining the prior approval of the department.

As noted during the inspection, silage was observed stored in an unapproved structure previously deemed unsuitable for storing silage for lack of leachate collection devices.

Pursuant to IC 13-30-3-3, the Commissioner herein provides notice that the violations may exist and offers an opportunity to enter into an Agreed Order providing for the actions required to correct the violations and, as necessary and appropriate, for the payment of a civil penalty. The Commissioner is not required to extend this offer for more than sixty (60) days.

Pursuant to IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting the violations occurred. IDEM encourages settlement by Agreed Order, thereby resulting in quicker correction of the environmental violations and avoidance of extensive litigation. Timely settlement by Agreed Order may result in a reduced civil penalty. Also, settlement discussions will allow Respondent the opportunity to present any mitigating factors that may be relevant to the violation.

If an Agreed Order is not entered into within sixty (60) days of receipt of this Notice of Violation, the Commissioner may issue a Notice and Order under IC 13-30-3-4 containing the actions that must be taken to correct the violations and requiring the payment of an appropriate civil penalty. Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Jodi Pisula at 317-234-5208 or [jpisula@idem.IN.gov](mailto:jpisula@idem.IN.gov) within fifteen (15) days of receipt of this Notice to discuss resolution of this matter.

Date: April 12, 2023

For the Commissioner:



Lori Freeman, Branch Chief  
Compliance Branch  
Office of Land Quality

# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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*Commissioner*

STATE OF INDIANA                    )   SS:   BEFORE THE INDIANA DEPARTMENT OF  
  )  
COUNTY OF MARION                )       ENVIRONMENTAL MANAGEMENT

COMMISSIONER OF THE DEPARTMENT )  
OF ENVIRONMENTAL MANAGEMENT, )

Complainant, )

V.

Case No. 2022-29047-C

MARK AND DIANE KOLISH DBA KOLISH FARM,

Respondents. )

**AGREED ORDER**

Complainant and Respondents 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. Respondents’ entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondents 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. Respondents are Mark and Diane Kolish dba Kolish Farm who own and operate the Confined Feeding Operation (“CFO”) with ID No. 6637, located at 100 N. 700 W., in Winamac, Pulaski 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:

Mark and Diane Kolish dba Kolish Farm



A State that Works

## An Equal Opportunity Employer

Please Reduce, Reuse, Recycle

280 N. 700 W.  
Winamac, Indiana 46996

5. Respondents operate an approximately 900 head beef cattle farm.
6. During an investigation including an inspection on November 3, 2022 conducted by a representative of IDEM, the following violations were found:
  - a. Pursuant to 327 Indiana Administrative Code (“IAC”) 19-3-1(d), all waste management systems must be designed, constructed, and maintained to minimize leaks and seepage and prevent manure releases or spills, as well as ensure compliance with the water quality standards in 327 IAC 2.

As noted during the inspection, storm damage to production buildings E1 and E2 allowed rainwater to come in contact with manure inside the structure and allowed the manure to be released outside of E1 and E2.

- b. Pursuant to 327 IAC 19-13-1(c), manure at the production area must be stored in an approved waste management system until removed for land application in accordance with 327 IAC 19-14.

As noted during the inspection, manure was observed staged east of production building E1, outside of an approved waste management system.

- c. Pursuant to 327 IAC 19-4-1(b)(1), the owner/operator must comply with all terms and conditions of the CFO approval and this article, 327 IAC 19.

As noted during the inspection, the earthen berm required by the CFO Approval to be located directly east of production building E2 was not constructed.

- c. Pursuant to 327 IAC 19-1-2, (a) This article applies to all CFOs as defined in IC 13-11-2-40. (b) Under this article a person may not start: (1) construction of a CFO; or (2) expansion of a CFO that increases animal capacity or manure containment capacity, or both; without obtaining the prior approval of the department.

As noted during the inspection, silage was observed stored in an unapproved structure previously deemed unsuitable for storing silage for lack of leachate collection devices.

7. 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, Respondents acknowledge 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 approved by Complainant or Complainant’s delegate and has been received by Respondents. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondents shall comply with the rules listed in the findings of fact above.
3. Effective Immediately, Respondents shall comply with 327 IAC 19-13-1(c). Specifically, Respondents shall cease use of any unapproved manure management structure.
4. Within thirty (30) days of the Effective Date, Respondents shall remove the manure from all unapproved manure management structures and land apply the manure according to land application requirements in 327 AC 19-14.
5. Effective Immediately, Respondents shall comply with 327 IAC 19-1-2. Specifically, Respondents shall cease use of any unapproved structure, including all unapproved silage pads.
6. Within thirty (30) days of the Effective Date, Respondents shall submit a request to amend the current CFO Approval to include proper construction of a silage pad.
7. Within thirty (30) days of the Effective Date, Respondents shall comply with 327 IAC 19-3-1(d). Specifically, Respondents shall repair the waste management systems in production buildings E1 and E2 in such a way to prevent leaks, seepage, or spills.
8. Until repairs to production buildings E1 and E2 have been completed, Respondents shall depopulate the buildings.
9. If repairs to E1 and E2 will change the structures as currently approved, Respondents shall submit a facility change request prior to completing any repairs.
10. Within thirty (30) days of the Effective Date, Respondents shall comply with 327 IAC 19-4-1(b)(1). Specifically, Respondents shall construct an earthen berm directly east of production building E2 as depicted in the Approval.
11. All submittals required by this Agreed Order, unless IDEM notifies the Respondents otherwise in writing, shall be sent to:

Jodi Pisula, Enforcement Case Manager  
Office of Land Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

12. Pursuant to IC 13-30-4-1, Respondents are assessed and agree to pay a civil penalty of Fourteen Thousand Sixty-Three Dollars (\$14,063), for which Respondents are jointly and severally liable. After this Agreed Order is adopted (signed by the Assistant

Commissioner of the Office of Land Quality), Respondents shall pay by the due date printed on the Invoice that will be attached to the adopted Agreed Order.

Civil and stipulated penalties are payable to the “Environmental Management Special Fund” by:

Mail:

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

Online:

Accounts Receivable is accepting payments online by e-Check, Master Card, Visa or Discover. Please visit [www.IN.gov/IDEM](http://www.IN.gov/IDEM). Under Online Services, click Online Payment options and follow the prompts. A processing fee of \$1 plus 1.99% will be charged for credit card payments. A processing fee of \$1.00 will be charged for eCheck payments. The Case Number is required to complete the process.

Phone:

You may also call us at 317-234-3099 and follow the instructions for Master Card, Visa or Discover payments. A processing fee of \$1 plus 1.99% will be charged for credit card payments. A processing fee of \$1.00 will be charged for eCheck payments. The Case Number is required to complete the process.

13. In the event the terms and conditions of the following paragraphs are violated, Complainant may assess, and Respondents shall pay stipulated penalties in the following amounts:

<b><u>Paragraph</u></b>	<b><u>Stipulated Penalty</u></b>
Order paragraph #4	\$100 per week
Order paragraph #5	\$100 per week
Order paragraph #6	\$100 per week
Order paragraph #7	\$100 per week
Order paragraph #8	\$100 per week
Order paragraph #9	\$100 per week
Order paragraph #10	\$100 per week

14. Stipulated penalties shall be due and payable after Respondents receive written notice that Complainant has determined a stipulated penalty is due; at which time, a separate invoice will be issued. Complainant may notify Respondents at any time that a stipulated penalty is due. Failure to notify Respondents in writing in a timely manner of a stipulated penalty assessment shall not waive Complainant’s right to collect such stipulated penalty



or preclude Complainant from seeking additional relief against Respondents for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude Complainant from seeking additional relief against Respondents 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. Respondents are jointly and severally liable for all stipulated penalty assessments.

15. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondents shall pay an additional penalty of 10 percent, payable to the "Environmental Management Special Fund", and shall be payable to IDEM in the manner specified in Paragraph 11, above.
16. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
17. This Agreed Order shall jointly and severally apply to and be binding upon Respondents and all successors and assigns. Respondents shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
18. No change in ownership, corporate, or partnership status of Respondents shall in any way alter the Respondents' status or responsibilities under this Agreed Order.
19. Respondents shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
20. 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.
21. 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 Respondents pursuant to this Agreed Order, shall not in any way relieve Respondents of the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.
22. Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that Respondents' 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 Respondents may incur as a result of Respondents' efforts to comply with this Agreed Order.
23. 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 violations specified in the NOV.

24. Nothing in this Agreed Order shall prevent IDEM or anyone acting on its behalf from communicating with the U.S. Environmental Protection Agency (U.S. 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 Respondents may incur as a result of such communications with the U.S. EPA or any other agency or entity.
25. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondents.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

**RESPONDENTS:**  
Mark and Diane Kolish

By: Jennifer Reno  
Jennifer Reno, Chief  
Land Enforcement Section  
Compliance Branch  
Office of Land Quality

Date: 3/17/2023

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**COUNSEL FOR RESPONDENT:**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

For the Commissioner:

\_\_\_\_\_  
Peggy Dorsey  
Assistant Commissioner  
Office of Land Quality

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

60-021 (1833) 29047-C

MARK & DIANE KOLISH  
DBA KOLISH FARM  
280 N 700 W  
WINAMAC IN 46996

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X** *Matt Kolish*☐ Agent☐ Address

B. Received by (Printed Name)

*Matt Kolish*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

Delivered April 19 2003

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. 7005 1160 0001 2610 0242

Tracking Number:

Remove X

70051160000126100242

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Latest Update

Your item was delivered to an individual at the address at 11:46 am on April 19, 2023 in WINAMAC, IN 46996.

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USPS Tracking Plus®

Delivered

Delivered, Left with Individual

WINAMAC, IN 46996

April 19, 2023, 11:46 am

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Text & Email Updates



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