



# 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

June 20, 2023

**Via Certified Mail: # 7005 1160 0001 2629 0554**

**Via Certified Mail: # 7005 1160 0001 2629 0561**

Brian S. Furrer, President  
Bio Town Ag, Inc.  
402 W. 100 N.  
Reynolds, Indiana 47980  
[brian@biotownag.com](mailto:brian@biotownag.com)

Gutwein Ras LLC, Registered Agent  
Bio Town Ag, Inc.  
250 Main Street, Suite 590  
Lafayette, Indiana 47901

Dear Mr. Furrer:

Re: Notice of Violation and Proposed Agreed Order  
Bio Town Ag, Inc.  
Case No. 2023-29433-C  
Farm Permit No. 6091  
Reynolds, White 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 #6091 and has made a preliminary determination that a violation of an environmental management rule exists. 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 violation, 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 violation 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.



A State that Works

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 violation occurred. Additionally, to encourage a timely agreement, IDEM may offer a one-time 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 rule, 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,



Jodi Pisula, Senior Environmental Manager  
Land Enforcement Section  
Compliance Branch  
Office of Land Quality

Enclosures

cc: White County Health Department  
Corey Webb, IDEM, Deputy Assistant Commissioner  
Megan Espinda, OPS, Agricultural Liaison  
Charlie Grady, Confined Feeding Operation Section Chief  
Mike Hall, Confined Feeding Operation Inspector  
Joe Goetz, Confined Feeding Permits Section Chief  
Kraig Whitman, Confined Feeding Permits Manager  
IDEM Virtual File Cabinet



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**Eric J. Holcomb**  
Governor

**Brian C. Rockensuess**  
Commissioner

### **NOTICE OF VIOLATION**

Brian S. Furrer, President  
Bio Town Ag, Inc.  
402 W. 100 N.  
Reynolds, Indiana 47980  
[brian@biotownag.com](mailto:brian@biotownag.com)

Gutwein Ras LLC, Registered Agent  
Bio Town Ag, Inc.  
250 Main Street, Suite 590  
Lafayette, Indiana 47901

Case No. 2023-29433-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 a record review and an inspection conducted on July 11, 2022 and October 14, 2022 by an IDEM representative, IDEM has reason to believe Bio Town Ag, Inc. (“Respondent”) violated an environmental rule. The violation is based on the following:

1. Respondent is Bio Town Ag, Inc. which owns and operates the Confined Feeding Operation (“CFO”) with Permit ID No. 6091, located at 402 W. 100 N., in Reynolds, White County, Indiana (“Site”).
2. Pursuant to 327 Indiana Administrative Code (“IAC”) 19-13-1(g), all earthen berms for manure storage structures must:
  - (1) be stabilized with vegetation or alternative erosion control measures; and
  - (2) be maintained to allow visual inspection and prevent growth of trees and shrubs.

As noted during the July 11, 2022 and October 14, 2022 inspections, Respondent failed to remove fruit trees planted on the berm of lagoon P3.

Pursuant to IC 13-30-3-3, the Commissioner herein provides notice that the violation may exist and offers an opportunity to enter into an Agreed Order providing for the action required to correct the violation 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 violation occurred. IDEM encourages settlement by Agreed Order, thereby resulting in quicker correction of the environmental violation 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 violation 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: June 19, 2023

For the Commissioner:

A handwritten signature in black ink that reads "Lori Freeman". The signature is written in a cursive, flowing style.

Lori Freeman, Chief  
Compliance Branch  
Office of Land Quality



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**Eric J. Holcomb**  
Governor

**Brian C. Rockensuess**  
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. 2023-29433-C  
BIO TOWN AG, INC., )  
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 is Bio Town Ag, Inc. (“Respondent”), which owns and operates the Confined Feeding Operation (“CFO”) with Permit ID No. 6091, located at 402 W. 100 N., in Reynolds, White 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:

Brian S. Furrer, President of  
Bio Town Ag, Inc.

Guitwein Ras LLC, Registered  
Agent of

402 W. 100 N.  
Reynolds, Indiana 47980  
[brian@biotownag.com](mailto:brian@biotownag.com)

Bio Town Ag, Inc.  
250 Main Street, Suite 590  
Lafayette, Indiana 47901

5. Respondent operates a Confined Animal Feeding Operation permitted farm with livestock operations of 4,500-head beef cattle and 800-head sow and swine.
6. During an investigation including an inspection and a record review on July 11, 2022 and October 14, 2022 conducted by a representative of IDEM, the following violation was found:
  - a. Pursuant to 327 Indiana Administrative Code (“IAC”) 19-13-1(g), all earthen berms for manure storage structures must:
    - (1) be stabilized with vegetation or alternative erosion control measures; and
    - (2) be maintained to allow visual inspection and prevent growth of trees and shrubs.

As noted during the July 11, 2022 and October 14, 2022 inspections, Respondent failed to remove fruit trees planted on the berm of lagoon P3.

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, 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 approved by Complainant or Complainant’s delegate and has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with the rule listed in the findings of fact above.
3. Within thirty (30) days of the Effective Date, Respondent shall comply with 327 IAC 19-13-1(g). Specifically, Respondent shall remove all fruit trees from around the berm of lagoon P3 and submit documentation to IDEM.
4. All submittals required by this Agreed Order, unless IDEM notifies the Respondent 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

5. Pursuant to IC 13-30-4-1, Respondent is assessed and agrees to pay a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00). After this Agreed Order is adopted (signed

by the Assistant Commissioner of the Office of Land Quality), Respondent 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 “Indiana Department of Environmental Management” by:

Mail:

Civil penalties are payable by check to the “Indiana Department of Environmental Management.” Checks shall include the Case Number of this action and shall be mailed to:

Indiana Department of Environmental Management  
Accounts Receivable  
P.O. Box 3295  
Indianapolis, IN 46206

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 \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 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 \$0.40 plus 2.06% will be charged for credit card payments. A processing fee of \$0.15 will be charged for eCheck payments. The Case Number is required to complete the process.

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

<u>Paragraph</u>	<u>Stipulated Penalty</u>
Order paragraph #3	\$100.00 per week

7. Stipulated penalties shall be due and payable after Respondent receives written notice that Complainant has determined a stipulated penalty is due; at which time, a separate invoice will be issued. Complainant 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 Complainant’s right to collect such stipulated penalty or preclude Complainant from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude Complainant 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.

8. 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 an additional penalty of 10 percent, payable to "Indiana Department of Environmental Management," and shall be payable to IDEM in the manner specified in Paragraph 5, above.
9. Signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent.
10. This Agreed Order shall apply to and be binding upon Respondent and all successors and assigns. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners, successors, or assigns before ownership rights are transferred.
11. No change in ownership, corporate, or partnership status of Respondent shall in any way alter the Respondent's status or responsibilities under this Agreed Order.
12. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
13. 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.
14. 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 the obligation to comply with the requirements of any applicable permits or any applicable Federal or State laws or regulations.
15. 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. 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.
16. 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 violation specified in the NOV.
17. 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 Respondent may incur as a result of such communications with the U.S. EPA or any other agency or entity.



18. This Agreed Order shall remain in effect until IDEM issues a Resolution of Case letter to Respondent.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

**RESPONDENT:**  
Bio Town Ag, Inc.

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

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

Date: 6/12/2023

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.
- 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:

60-02L dbates (1833) 29433-C  
 BRIAN S FURRER PRESIDENT  
 BIO TOWN AG INC  
 402 W 100 N  
 REYNOLDS IN 47980



9590 9402 2483 6306 8412 49

2. Article Number (Transfer from service label)

7005 1160 0001 2629 0554

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

*K. Neuendorf*

☒ Agent  
☐ Address

B. Received by (Printed Name)

K. Neuendorf

C. Date of Delivery

6/23/23

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☒ No

## 3. Service Type

- ☒ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☒ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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:

60-02L dbates (1833) 29433-C  
 GUTWEIN RAS LLC REG. AGENT  
 BIO TOWN AG, INC  
 250 MAIN ST. STE. 590  
 LAFAYETTE IN 47901



9590 9402 2483 6306 8412 56

2. Article Number (Transfer from service label)

7005 1160 0001 2629 0561

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

*Stephanie Walsh*

☐ Agent  
☐ Address

B. Received by (Printed Name)

Stephanie Walsh

C. Date of Delivery

6-23-23

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☒ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☒ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

## SENDER: COMPLETE THIS SECTION

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## 1. Article Addressed to:

60-02L dbates (1833) 29433-C  
 BRIAN S FURRER PRESIDENT  
 BIO TOWN AG INC  
 402 W 100 N  
 REYNOLDS IN 47980



9590 9402 2483 6306 8412 49

## 2. Article Number (Transfer from service label)

7005 1160 0001 2629 0554

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X *K. Neuenhofer*

- ☒ Agent  
☐ Address

## B. Received by (Printed Name)

K. Neuenhofer

## C. Date of Delivery

6/23/23

- D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☒ No

## 3. Service Type

- ☒ Adult Signature ☐ Priority Mail Express®  
☐ Adult Signature Restricted Delivery ☒ Registered Mail™  
☐ Certified Mail® ☐ Registered Mail Restricted Delivery  
☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise  
☐ Collect on Delivery ☐ Signature Confirmation  
☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery  
☐ Insured Mail ☐ Restricted Delivery

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- 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:

60-02L dbates (1833) 29433-C  
 GUTWEIN RAS LLC REG. AGENT  
 BIO TOWN AG, INC  
 250 MAIN ST. STE. 590  
 LAFAYETTE IN 47901



9590 9402 2483 6306 8412 56

## 2. Article Number (Transfer from service label)

7005 1160 0001 2629 0561

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X *Stephanie Walz*

- ☐ Agent  
☐ Address

## B. Received by (Printed Name)

Stephanie Walz

## C. Date of Delivery

6-23-27

- D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☒ Adult Signature ☐ Priority Mail Express®  
☐ Adult Signature Restricted Delivery ☒ Registered Mail™  
☐ Certified Mail® ☐ Registered Mail Restricted Delivery  
☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise  
☐ Collect on Delivery ☐ Signature Confirmation  
☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery  
☐ Insured Mail ☐ Restricted Delivery

USPS TRACKING#



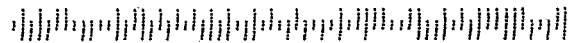
9590 9402 2483 6306 8412 49

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

60 02L DBATES 1833  
DEPT OF ENVIRONMENTAL MGMT  
OFFICE OF LAND QUALITY ENFORCEMENT  
100 N SENATE AVE RM N1101  
INDIANAPOLIS IN 46204

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10



USPS TRACKING#



9590 9402 2483 6306 8412 56

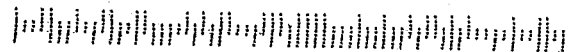
United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

60 02L DBATES 1833  
DEPT OF ENVIRONMENTAL MGMT  
OFFICE OF LAND QUALITY ENFORCEMENT  
100 N SENATE AVE RM N1101  
INDIANAPOLIS IN 46204

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

4-222245



USPS TRACKING #



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2483 6306 8412 49

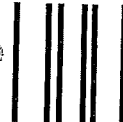
United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

60 02L DBATES 1833  
DEPT OF ENVIRONMENTAL MGMT  
OFFICE OF LAND QUALITY ENFORCEMENT  
100 N SENATE AVE RM N1101  
INDIANAPOLIS IN 46204



USPS TRACKING #



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2483 6306 8412 56

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

60 02L DBATES 1833  
DEPT OF ENVIRONMENTAL MGMT  
OFFICE OF LAND QUALITY ENFORCEMENT  
100 N SENATE AVE RM N1101  
INDIANAPOLIS IN 46204

4-222245

