



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

February 28, 2012

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

Thomas W. Easterly
Commissioner

Krista S. Taggart, Corporation Counsel
City of Greenwood
225 S. Emerson Avenue, Suite B
Greenwood, IN 46143

Dear Ms. Taggart:

Re: Commissioner of the Department of
Environmental Management
v.
City of Greenwood
Case No. 2011-20446-W
Johnson County

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.

Enclosed please find the revised proposed Agreed Order that provides for the actions required to correct the violations outlined in IDEM's Notice of Violation issued to the City of Greenwood in the above referenced case dated December 15, 2011. The changes are in follow up to our communication on February 10, 2012. Entering into and timely compliance with the enclosed Agreed Order will constitute resolution of this case. To resolve this matter as provided for in the enclosed Agreed Order, please arrange for signature and return the entire document to me at the following address:

IDEM Office of Water Quality
Surface Water, Operations & Enforcement Branch
Water Enforcement Section, Mail Code 60-02W
100 N. Senate Ave.
Indianapolis, IN 46204-2251

If you would like to communicate further discussion of this matter, please contact me at (317)232-8432. Thank you for your cooperation in this matter.

Sincerely,
Paul Cluxton
Paul Cluxton, Case Manager
Water Enforcement Section
Office of Water Quality

Enclosure



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

COMMISSIONER OF THE DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,)

v.)

Case No. 2011-20446-W)

CITY OF GREENWOOD,)

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 the City of Greenwood (Respondent), which owns/operates a sanitary sewer system, including the Lone Pine sewage lift station located at 3265 SR 135 S in Greenwood, Johnson County, Indiana (the Site). Respondent's sewage lift stations pump the sewage to the Indianapolis Publicly Owned Treatment Works.

3. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.
4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation (NOV) on December 15, 2011, via Certified Mail to:

The Honorable Charles E. Henderson, Mayor
City of Greenwood
2 North Madison Avenue
Greenwood, IN 46142

5. During an investigation conducted by a representative of IDEM, the following violations were found:
 - a. Pursuant to 327 Indiana Administrative Code (IAC) 2-6.1-4(15), a spill is defined as any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage seepage, discharge or other loss of petroleum, hazardous and/or otherwise objectionable substance which enters or threatens to enter the waters of the state.

Pursuant to 327 IAC 2-6.1-4(11), "objectionable substances" means substances that are of a quantity and a type present for a duration and in a location so as to damage waters of the state.

Pursuant to 327 IAC 2-6.1-7, any person who controls any facility from which a spill occurs shall, upon discovery of a spill:

- a. Contain the spill, if possible, to prevent additional spilled material from entering the waters of the state.
- b. Undertake or cause others to undertake activities needed to accomplish a spill response.
- c. as soon as possible, but within two hours of discovery, communicate a spill report to the Department of Environmental Management, Office of Environmental Response at 1-888-233-7745.

On August 23, 2011, Respondent notified IDEM of a sewage overflow/spill into the local creek from its Lone Pine Lift Station at SR 135. Respondent did not know the actual time the sewage release began but estimated it occurred on August 22, 2011. Respondent became aware of the overflow when Respondent received a complaint call at 1:00 p.m. on August 23 from a person at an adjacent property who had observed sewage overflowing from manholes near the lift station. Respondent reported the cause of the lift station failure was that a fuse had blown. Respondent deployed a 300 gallon per minute trash pump with a 3-inch hose to pump some of the sewage out of the creek back into the sewer system from 3:00 p.m. to about 6:00 p.m. Respondent indicated that fish were evident near the surface and

Respondent opened a nearby fire hydrant to flush the creek with water from an estimated time of 6:00 p.m. through 10:00 p.m.

On August 24, 2011, Respondent notified IDEM of dead fish at the site. Respondent deployed an aerator in the creek in an attempt to raise the dissolved oxygen levels. The Indiana Department of Resources determined the fish kill count was a total of 259 fish.

On August 24, 2011, during an on-site review of spill response actions, Respondent confirmed to IDEM that there had been no containment of the sewage spill.

On or about August 23, 2011, Respondent spilled sewage, an objectionable substance, and the spill into Honey Creek was not contained, in violation of 327 IAC 2-6.1-7.

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

Pursuant to 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 Indiana; or 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 sections IC 13-18-4-1 and IC 13-18-4-3.

Pursuant to IC 13-30-2-1, 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 in any form which causes or would cause pollution which violates rules, standards, or discharge or emission requirements adopted by the appropriate board pursuant to this title.

Respondent's discharge of sewage into Honey Creek at the above site on August 22 and August 23, 2011, was not in conformity with a valid NPDES permit and caused pollution that resulted in a fish kill in violation of 327 IAC 5-2-2 (a rule adopted by the Water Pollution Control Board), and thus in violation of IC 13-18-4-5 and IC 13-30-2-1.

6. Respondent provided a summary report to IDEM, dated September 1, 2011, in which it detailed its response efforts. In response to the spill, Respondent deployed a 300 GPM pump at the creek site for three hours, conducted clean up with a vactor truck with a capacity of three cubic yards, and placed an aerator into the creek that was kept running for 3.5 days. The Respondent indicated that the spill covered 3,125

linear feet of Honey Creek. Respondent has completed installation of a third audible and visual alarm at the lift station.

7. 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 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 5 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. Respondent shall comply with statutes and rules listed in the findings above at issue.
3. Within 120 days of the Effective Date of this Agreed Order, Respondent shall develop and submit to IDEM for its approval a compliance plan (CP) that includes the following:
 - a. actions that Respondent will take to prevent discharges from its collection system including having functional alarms and back up pumps at all lift stations.
 - b. actions that Respondent will take to ensure that the collection system is at all times efficiently operated and maintained in good working order. Specific requirements that need to be included in this part of the CP are included in Attachment A which is hereby incorporated into this Agreed Order and deemed an enforceable part thereof.
 - c. an implementation and completion schedule, including specific milestone dates for developing and implementing the items required by items a and b above.
4. Respondent shall, within 18 months of the completion of the portion of the CP required by Paragraph 3.a. (Performance Period), demonstrate a period of 12 consecutive months that discharges from the collection system do not occur. During the Performance Period, Respondent shall be subject to stipulated penalties, as specified below. Within sixty days of the date that Respondent fails to achieve the Compliance Demonstration or it becomes aware that it will not be able to achieve the Compliance Demonstration within the Performance Period, it shall develop and submit to IDEM, for approval, a plan which identifies the additional actions that Respondent will take to eliminate discharges from the collection system. This "Additional Action Plan", if required, shall include a new implementation and completion schedule, including specific milestone dates.

5. 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. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan and adhere to the milestone dates therein. The approved Compliance Plan and Additional Action Plan 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 will subject Respondent to stipulated penalties as described below. Failure to achieve compliance at the conclusion of work under an Additional Action Plan will subject Respondent to additional enforcement action.

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

Paul Cluxton, Enforcement Case Manager
Indiana Department of Environmental Management
Surface Water, Operations & Enforcement Branch
Office of Water Quality – Mail Code 60-02W
100 North Senate Avenue, Room 1255
Indianapolis, IN 46204-2251

7. Respondent shall reimburse the Indiana Department of Natural Resources (IDNR) for the value of the damage to natural resources, under authority of IC 14-22-10-6. IDNR has determined this figure to be \$245.61. Payment shall be made to the Contaminants Account within thirty days of the Effective Date of this Order, and sent to Attn: Restoration Biologist, IDNR Division of Fish and Wildlife, Room W-273, IGCS, 402 West Washington Street, Indianapolis, Indiana 46204. Respondent shall provide Complainant with documentation of the reimbursement immediately upon payment.

8. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

<u>Paragraph</u>	<u>Violation</u>	<u>Stipulated Penalty</u>
3	Failure to submit the CP, as required, within the given time period.	\$250 per week late, or part thereof.
4	Sewer overflow events that occur during the Performance Period that are attributable to Respondent's failure to adhere to its Compliance Plan	\$1000 for each event
4	Failure to submit the Additional Action Plan, if required, within the	\$250 per each week or part thereof late

	given time period.	
5	Failure to submit or resubmit a revised CP or Additional Action Plan, if required, within the given time period.	\$250 per each week or part thereof late
5	Failure to meet any milestone date set forth in the approved CP or Additional Action Plan	\$500 per each week or part thereof late

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.

8. Stipulated penalties are payable when due 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
Cashier – Mail Code 50-10C
100 North Senate Avenue
Indianapolis, IN 46204-2251

9. This Agreed Order shall apply to and be binding upon Respondent and his/her/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.
10. 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 24-4.6-1-102. 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.

11. 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.
12. 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.
13. 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 any applicable Federal or State law or regulation.
14. 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.
15. 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.
16. Nothing in this Agreed Order shall prevent IDEM [or anyone acting on its behalf] from communicating with the 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.
17. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of Order Paragraph Nos. 3 through 8 and IDEM issues a Resolution of Case (close out) letter.

TECHNICAL RECOMMENDATION:
Department of Environmental
Management

By: Mark W. Stanifer
Mark W. Stanifer, Chief
Water Enforcement Section
Office of Water Quality

Date: 3-10-2012

COUNSEL FOR COMPLAINANT:
For the Department of Environmental
Management

By: [Signature]
Deputy Attorney General

Date: 2/13/2012

RESPONDENT:
City of Greenwood

By: Mark W. Myers
Printed: Mark W. Myers

Title: Mayor

Date: 3/08/2012

* as approved by Board of Public
Works Safety by Res. 12-10 on 3-8-12
COUNSEL FOR RESPONDENT:

By: Krista Staggart

Date: 3/8/2012

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT _____ DAY OF _____, 20 ____
THIS

For the Commissioner:

Bruno Pigott
Assistant Commissioner
Office of Water Quality

Attachment A

The portion of the Compliance Plan required pursuant to Order Paragraph 3b shall provide for the following:

1. Development and implementation of a Maintenance Program that includes, but is not necessarily limited to:
 - a. routine/ongoing preventive maintenance of facilities and equipment, using a predictive approach to continually review and update maintenance procedures;
 - b. identification of critical parts needed for system operation and maintenance;
 - c. establishment and maintenance of an adequate inventory of replacement parts; and
 - d. routine/ongoing efforts to identify sources of infiltration and inflow and to systematically eliminate those sources.

2. Development and implementation of an Operations and Capacity Management Program that includes, but is not necessarily limited to:
 - a. routine/ongoing assessment of the structural integrity and capacity of the collection system and treatment facilities;
 - b. evaluation of the impact of industrial and other non-domestic collection systems tributary to all overflow and/or bypass points, and identification and implementation of actions necessary to address such impacts;
 - c. Identification and prioritization of structural and hydraulic deficiencies (particularly those that allow for infiltration and inflow to the collection system and limit the capacity of the sewer lines to transport all collected water to the treatment plant for treatment and/or those that are causing or contributing to collection system discharges) and identification and implementation of rehabilitative actions needed to correct each deficiency,
 - d. monitoring of the collection system, both routinely and during all precipitation events, to identify discharges, and
 - e. Procedures for responding to and operating during conditions likely to result in collection system discharges, such as floods, equipment failure, and power failure.

3. Development and implementation of an Information Management Program that includes, but is not necessarily limited to:
 - a. Development and maintenance of an accurate and up-to-date map of the collection system,
 - b. Procedures for recording and reporting collection system discharge events, consistent with the requirements of the Permit,
 - c. Identification and illustration of trends in overflow occurrences,
 - d. Procedures for responding to overflows,

- e. Procedures for tracking collection system problems (including customer complaints).
 - f. Maintenance of all records resulting from work performed in the collection system including work orders associated with investigations, inspections, new installations, preventive and routine maintenance, and corrective actions;
 - g. Documentation of all activities taken in order to implement the portion of the CP required pursuant to Order Paragraph 3b.
4. Development and implementation of a Training and Review Program that includes, but is not necessarily limited to:
- a. Appropriate regular and refresher training on a routine basis for employees and other affected persons, on procedures for implementation of the provisions of the CP required pursuant to Order Paragraph 3b, and
 - b. Annual reviews by representatives of all levels of management and staff to assess the overall effectiveness of the portion of the CP required pursuant to Order Paragraph 3b, and recommend adjustments.
5. Development and implementation of a Monitoring and Modification Program that includes, but is not necessarily limited to:
- a. Ongoing monitoring of the implementation and effectiveness of the portion of the CP required pursuant to Order Paragraph 3b, and
 - b. Modification and update as necessary to ensure that the purpose of the CP required pursuant to Order Paragraph 3b is achieved.