



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:  
  
The Honorable Treva Hodges, Mayor  
City of Charlestown  
304 Main Cross Street  
Charlestown, Indiana 47111
6. During an investigation conducted by a representative of IDEM, alleged violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and Indiana Code (IC) 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part I.A.1 of the Permit, Respondent is required to comply with the monitoring requirements contained in the Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of October 2020 through December 2021 revealed violations of effluent limitations contained in Part I.A.1 of the Permit as follows:

- A. Outfall 001 – The weekly maximum average loading limitation for total suspended solids (TSS) was exceeded during October and December 2020 and July 2021.
- B. Outfall 001 – The monthly average loading limitation for TSS was exceeded during December 2020.
- C. Outfall 001 – The weekly maximum average concentration limitation for TSS was exceeded during December 2020 and February and July 2021.
- D. Outfall 001 – The monthly average concentration limitation for TSS was exceeded during December 2020.
- E. Outfall 001 – The daily maximum limitation for Escherichia coli (E.coli) was exceeded during March, July, and August 2021.
- F. Outfall 001 – The monthly geometric mean limitation for E.coli was exceeded during August 2021.
- G. Outfall 001 – The weekly maximum average concentration limitation for ammonia-nitrogen was exceeded during August 2021.
- H. Outfall 001 – The monthly average concentration limitation for phosphorus was exceeded during September 2021.
- I. Outfall 006 – The weekly maximum average concentration limitation for TSS was exceeded during February 2021.

- J. Outfall 006 – The daily maximum E.coli limit was exceeded during March 2021.
- K. Outfall 006 – The daily average minimum concentration limitation for dissolved oxygen was not met during March 2021.
- L. Outfall 006 – The monthly average concentration limitation for phosphorus was exceeded during September 2021.

Respondent failed to comply with the effluent limitations from Outfall 001 and Outfall 006 contained in the Permit, in violation of Part I.A.1 of the Permit.

- 9. Pursuant to Attachment A of the Permit, overflows in the sanitary sewer system or in a sanitary portion of a combined sewer system are expressly prohibited from discharging at any time. Two (2) Sanitary Sewer Overflow (SSO) flow points are identified and prohibited.

During the months of April 2020 through March 2021, Respondent reported SSO events that occurred on thirteen (13) different dates with twenty-two (22) locations noted over those dates, in violation of 327 IAC 5-2-8(1) and Attachment A of the Permit.

- 10. Pursuant to 327 IAC 5-2-8(4) and Part II.A.3 of the Permit, Respondent shall submit any information that Respondent knows or has reason to believe would constitute cause for modification or revocation and reissuance of the Permit at the earliest time such information becomes available, such as plans for physical alterations or additions to the facility.

During inspections on January 3, 2019, and May 24, 2021, IDEM staff observed and documented physical alterations or additions to the facility that were not part of the Permit. Specifically,

- a) The description of the Spring Street lift station (SSO 002) was not accurate. The lift station had been equipped with a retention pond prior to the discharge point and an aeration unit for the retention pond had been added on-site for use if needed;
- b) The facility had a two-cell lagoon not identified in the Permit which appears to be connected to the Biolac treatment system.

Respondent failed to submit information that would constitute a cause for modification or revocation and reissuance of the Permit, each in violation of 327 IAC 5-2-8(4) and Part II.A.3 of the Permit.

- 11. Pursuant to 327 IAC 5-2-8(9) and Part II.B.1.a of the Permit, Respondent shall at all times maintain in good working order and efficiently operate all facilities and systems for collection and treatment that are installed or used by Respondent; and necessary for achieving compliance with the terms and conditions of the Permit.

Pursuant to 327 IAC 5-22-10(1) and Part II.B.1.e of the Permit, Respondent is responsible for providing adequate funding for and oversight of the WWTP and

collection system to ensure proper operation, maintenance, management, and supervision.

During inspections on January 3, 2019, and May 24, 2021, IDEM staff observed and documented inadequate maintenance and operation of the facilities, specifically:

- A. The blowers to the digesters were not in operation due to mechanical and/or piping failure;
- B. Some of the aeration hoses in the Biolac Aeration basin were broken;
- C. The two aeration units in the SSO 002 retention pond were broken and not in operation;
- D. The Spring Street lift station retention pond contained approximately two feet of sludge on the East end;
- E. Many of the diffusers in the Biolac Aeration basin were not operational;
- F. The alarm system was inadequate. Many sections of the treatment system are not equipped with proper alarms and no procedures are in place to alert personnel of failures when personnel are not onsite; and
- G. The equipment associated with the treatment facility was beyond its useful life, including lift stations.

Each in violation of 327 IAC 5-2-8(9) and Part II.B.1.a of the Permit and 327 IAC 5-22-10-(1) and Part II.B.1.e of the Permit.

12. Pursuant to Part II.B.1.f of the Permit, there shall be an ongoing preventative maintenance program for the sanitary sewer system.

Based on inspections on January 3, 2019, and May 24, 2021, Respondent failed to develop and implement a written preventative maintenance program for the sanitary sewer system, in violation of Part II.B.1.f of the Permit.

13. On January 7, 2019, and June 2, 2021, IDEM sent Inspection Summary Letters to Respondent outlining violations at the WWTP. 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 at the WWTP.

During settlement discussions, Respondent informed IDEM that UV bulbs were replaced in August 2021 to address E.coli effluent violations.

14. Respondent waives issuance of a Notice of Violation and to the settlement period of sixty (60) days as provided for by IC 13-30-3-3 for the additional violations identified subsequent to issuance of the NOV on October 1, 2021 and cited in Paragraphs 8.E-H, K-L and 11.D above.
15. 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 Paragraphs 8 through 12 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 of Fact above at issue.
3. Within 90 days of the Effective Date, Respondent shall develop, implement, and submit to IDEM a Preventative Maintenance Plan (PMP) for the sanitary sewer collection system and lift stations, which identifies actions that Respondent will take to maintain the collection system. Specifically, the plan must include a regular cleaning schedule of lift stations, written procedures for documentation of all maintenance (preventative and repair) in a permanent record, and documentation of the age/remaining useful life of all equipment and appurtenances tied to an orderly capital asset replacement program.
4. Within 60 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP) that identifies actions Respondent will take to achieve and maintain compliance with its Permit, specifically including actions Respondent will take to:
  - A. Achieve and maintain compliance with effluent limitations contained in the Permit, specifically TSS, E.coli, ammonia-nitrogen, phosphorus, and dissolved oxygen for Outfalls 001 and 006;
  - B. Removal and proper disposal of excess sludge from the retention pond located at the Spring Street Lift Station;
  - C. Develop and implement a plan, including methods and milestone dates, for locating and eliminating sources of inflow and infiltration (I/I) in the sewer system;
  - D. A schedule for evaluating repair or replacement of existing WWTP processes and equipment, including lift stations in the collection system, that have exceeded their useful life or identification of alternative treatment methods;
  - E. Develop and implement a preventative maintenance program for the processes and equipment at the WWTP, including procedures for documenting all maintenance (preventative and repair) in a permanent

- record; and
- F. Comply with reporting requirements of the Respondent's Permit.

The CP shall include a proposed implementation, construction, and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing of any proposed modification to the approved CP.

5. Respondent shall include an accurate description of all existing treatment units in its next Permit renewal application.
6. Respondent shall, after completion of all work required pursuant to the approved CP from Paragraph 4 above, demonstrate 12 consecutive months of compliance (Compliance Demonstration) with the terms and conditions of Respondent's Permit cited in the Findings of Fact above.
7. If violation(s) occur during the Compliance Demonstration, Respondent shall notify IDEM of such violation in writing within 10 working days of the day Respondent first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken to address the violation. This paragraph does not supersede any reporting requirements in the Permit. If required by IDEM, Respondent shall develop and submit to IDEM for approval an Additional Action Plan (AAP) that identifies additional actions Respondent will take to achieve and maintain compliance with the terms and conditions of the Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates. IDEM shall specify the due date of the AAP in IDEM's written notification to Respondent that an AAP is required.
8. The plans required by Order Paragraphs 4 and 7 are subject to IDEM approval. If IDEM determines that any plan or modified 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 submissions of such plan by Respondent, IDEM may seek civil enforcement of this Agreed Order.
9. Respondent, upon receipt of written notification from IDEM, shall immediately implement all approved plan(s) and adhere to all milestone dates therein. The approved CP and any approved AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.

Following completion of the actions included in an approved AAP, the Compliance Demonstration, as specified in Paragraph 6 above, will continue for up to 12 additional months, as set by IDEM in writing to Respondent. Failure to achieve compliance after the work under an approved AAP is completed may subject Respondent to additional enforcement action.

10. Beginning with the first calendar quarter following the Effective Date and lasting

until completion of the CP and any necessary AAP, Respondent shall submit to IDEM a written quarterly progress report no later than 15 days prior to the end of each calendar quarter, identifying therein the compliance actions implemented during that quarter. For purposes of this Agreed Order, the four calendar months end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>.

11. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing WWTP as efficiently and effectively as possible.
12. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Jessica Irvine, Enforcement Case Manager  
 Office of Water Quality – IGCN 1255  
 Indiana Department of Environmental Management  
 100 North Senate Avenue  
 Indianapolis, IN 46204-2251

13. Respondent is assessed and agrees to pay a civil penalty of Nine Thousand Six Hundred Dollars (\$9,600). Said penalty amount shall be due and payable to the “Environmental Management Special Fund” within 30 days of the Effective Date, the 30<sup>th</sup> day being a “Due Date.”
14. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

<b>Paragraph</b>	<b>Violation</b>	<b>Stipulated Penalty</b>
3	Failure to develop and submit a PMP.	\$150 per week late, or part thereof.
3	Failure to implement the PMP.	\$250 per week late, or part thereof.
4	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
6	For violations of terms and conditions of the Permit cited in the Findings of Fact during the Compliance Demonstration.	\$400 per violation
7	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
8	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
9	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
10	Failure to submit to IDEM a written progress report within 10 days of each	\$150 per week late, or part thereof.

	calendar quarter.	
11	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$100 per violation.

15. Stipulated penalties shall be due and payable no later than the 30<sup>th</sup> day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30<sup>th</sup> 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.

16. Civil and stipulated penalties are payable by check to the “Environmental Management Special Fund.” Checks shall include the Case Number 2021-28002-W of this action and shall be mailed to:

Indiana Department of Environmental Management  
 Accounts Receivable  
 IGCN, Room 1340  
 100 North Senate Avenue  
 Indianapolis, Indiana 46204

17. *Force majeure*, for purposes of this Agreed Order, is defined as any event arising from causes totally beyond the control and without fault of Respondent that delays or prevents the performance of any obligation under this Agreed Order despite Respondent’s best efforts to fulfill the obligation. The requirement that Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (1) as it is occurring and (2) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include (1) changed business or economic conditions; (2) financial inability to complete the work required by this Agreed Order; or (3) increases in costs to perform the work.

Respondent shall notify IDEM by calling the case manager within three (3) calendar days and by writing no later than seven (7) calendar days after it has knowledge of any event which Respondent contends is a force majeure. Such notification shall describe: (1) the anticipated length of the delay; (2) the cause or causes of the delay; (3) the measures taken or to be taken by Respondent to minimize the delay; and (4) the timetable by which these measures will be



implemented. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by IDEM.

If a delay is attributable to a force majeure, IDEM shall extend, in writing, the time period for performance under this Agreed Order, by the amount of time that is directly attributable to the event constituting the force majeure. If IDEM does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, IDEM will notify Respondent in writing of its decision.

18. 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.
19. 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.
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. 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.
22. 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.
23. 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

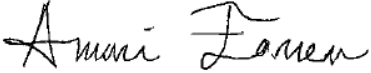
result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.

24. 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 that are resolved in this Agreed Order.
25. 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.
26. 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.
27. 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. After completion of the Compliance Demonstration, as specified in Paragraph 6 and 9 above, Respondent may send a letter to IDEM requesting a Resolution of Case letter and IDEM will promptly issue the Resolution of Case letter to terminate the Agreed Order, if after review the agency agrees that Respondent has met the conditions of the Agreed Order.

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**TECHNICAL RECOMMENDATION:**  
Department of Environmental Management

**RESPONDENT:**  
City of Charlestown

By:   
\_\_\_\_\_

Amari Farren, Chief  
Water Enforcement Section  
Office of Water Quality

Date: February 8, 2022

By: \_\_\_\_\_

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

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

**COUNSEL FOR RESPONDENT:**

By: \_\_\_\_\_

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

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

For the Commissioner:

\_\_\_\_\_

Martha Clark Mettler  
Assistant Commissioner  
Office of Water Quality