

RESOLUTION NO. 2003- 2

RESOLUTION APPROVING INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AGREED ORDER

WHEREAS, the Indiana Department of Environmental Management and the City of Rockport, Indiana propose to enter into the Agreed Order, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, the Common Council of the City of Rockport, Indiana deems it appropriate for the City of Rockport, Indiana to enter into the Agreed Order, Exhibit "A".

THEREFORE, THE COMMON COUNCIL OF THE CITY OF ROCKPORT, INDIANA ADOPTS THE FOLLOWING RESOLUTION:

BE IT RESOLVED that the City of Rockport, Indiana shall enter into the Agreed Order, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, and

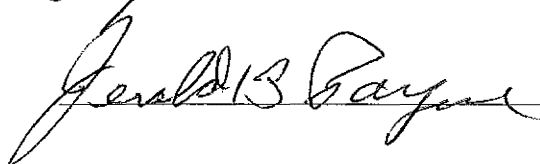
BE IT FURTHER RESOLVED that the Common Council of the City of Rockport hereby authorizes the Mayor of the City of Rockport and the City Attorney to execute the Agreed Order, Exhibit "A".

All of which is resolved this 16th day of January, 2003.

COMMON COUNCIL OF THE CITY OF ROCKPORT







Robert Lindsey

ATTEST:

B. L. Parker

Clerk-Treasurer



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Frank O'Bannon
Governor

Lori F. Kaplan
Commissioner

100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 232-8603
(800) 451-6027
www.in.gov/idem

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

COMMISSIONER OF THE DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,
Complainant,
v.
CITY OF ROCKPORT,
Respondent.
CASE NO. 2002-11313-W

AGREED ORDER

The Complainant and the 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.

I. FINDINGS OF FACT

- 1. Complainant is the Commissioner (hereinafter referred to as "Complainant") of the Indiana Department of Environmental Management, a department of the State of Indiana created by IC 13-13-1-1.
2. The Respondent is the City of Rockport ("Respondent"), which operates a 0.5 MGD activated sludge municipal wastewater treatment plant located at 210 Center Street, Rockport, in Spencer County, Indiana, authorized by NPDES Permit IN0021067 to discharge wastewater to the Ohio River.
3. The Indiana Department of Environmental Management ("IDEM") has jurisdiction over the parties and subject matter of this action.

Exh. "A"

Pursuant to 327 IAC 5-2-2, any discharge of pollutants into waters of the state as a point source discharge, except for exclusions made in 327 IAC 5-2-4, is prohibited unless in conformity with a valid NPDES permit obtained prior to the discharge.

Pursuant to 327 IAC 5-2-8 and Parts II.A.1 and 2 of the Permit, the Respondent is required to comply with all terms and conditions of the permit and take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

An IDEM wastewater inspection of the site on February 19, 2002 noted a sewer discharge point located approximately 100 feet south of CSO Outfall 002. The discharge point is not listed in the NPDES permit. At the time of the inspection a discharge was occurring, in violation of IC 13-30-2-1, IC 13-18-4-5, 327 IAC 5-2-8, 327 IAC 2-1-6(a)(1), 327 IAC 5-2-2, and Parts II.A.1 and 2 of the permit.

B. Pursuant to 327 IAC 5-2-8(1) and Part II.A.1 of the Permit, the Respondent is required to comply with all terms and conditions of the Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action.

Pursuant to 327 IAC 5-2-8(8) and Part II.B.1 of the Permit, the Respondent is required to, at all times, maintain in good working order and efficiently operate all waste collection, control, treatment, and disposal facilities.

During inspections by IDEM of Respondent's wastewater treatment plant the following observations were made, evidencing a failure to properly maintain and/or efficiently operate the waste collection, control, treatment, or disposal facilities:

On July 17, 2001, sludge was stockpiled in a manner that allowed runoff of sludge into the Ohio River, and the clarigester was out of service and was being bypassed.

On December 3, 2001, the clarigester remained out of service and was being bypassed.

On February 19, 2002, there was no grit removal, the clarigester remained out of service and was being bypassed; heavy sludge covered the surface of both clarifiers and straggler floc was going over the weirs of the north clarifier, and the Washington Street sewage lift station had overflowed recently, due to mechanical failure.

quantity and concentration and the weekly average maximum quantity and concentration effluent limitations were violated during December 2000.

These failures to meet effluent limitations contained in the Permit are in violation of IC 13-30-2-1, IC 13-18-4-5, 327 IAC 2-1-6(a)(1), 327 IAC 5-2-8(1), Part I.A.1 of the Permit and Part II.A.1. of the Permit.

- F. Pursuant to 327 IAC 5-2-15 and Part I.B.3 of the Permit, the Respondent is required to submit Discharge Monitoring Reports (DMRs) to the commissioner. In addition, because the facility is a publicly-owned treatment plant (POTW), the Respondent is also required to submit Monthly Reports of Operation (MROs) to the commissioner. These reports shall be submitted by the 28th day of the month following each monitoring period as required by the permit and shall include the results of any monitoring specified by the permit pursuant to 327 IAC 5-2-13. Failure to comply with any of these reporting requirements constitutes a violation of the permit.

The Respondent failed to submit the required DMRs and MROs for the month of August 2001 and submitted monthly reports late as follows: October 2000 (due by 11/28/00) and November 2000 (due by 12/28/00) were received January 30, 2001; March 2001 (due by 4/28/01) was received May 8, 2001; July, September, and October 2001 were received December 19, 2001; and November 2001 (due by 12/28/01) was received January 24, 2002, in violation of 327 IAC 5-2-15 and Part I.B.3 of the Permit.

- G. Pursuant to 327 IAC 5-2-15 and Part I.B.6.(f) of the NPDES permit, the Respondent must record specific information as described, for each measurement or sample taken pursuant to the requirements of the permit.

The Respondent failed to: a) record on the MRO any end of contact tank total residual chlorine data during April, May June, July, October and November 2001; b) record any residual chlorine data on the DMR or MRO for July 2001; and c) reported zero, which is less than the Limit of Detection (LOD) for final effluent total residual chlorine during April, May, June, September and October 2001, in violation of 327 IAC 5-2-15 and Part I.B.6.(f) of the permit.

6. In recognition of the settlement reached, the Respondent waives any right to administrative and judicial review of this Agreed Order.

Action Plan", if required, shall include an implementation and completion schedule, including specific milestone dates.

5. The plans required by Paragraphs 3 and 4 above are subject to IDEM approval. If IDEM deems a plan inadequate, a revised plan shall be submitted within fifteen (15) days of receipt of notice from IDEM of the inadequacies. If, after submission of the revised document, IDEM still finds the document to be inadequate, then IDEM will request further modification of the plan as necessary to meet IDEM's requirements. If the subsequently submitted modification of the plan does not meet IDEM's approval, IDEM will require specific modifications to be made to the plan and require re-submittal by a specific date. If the IDEM-suggested modifications are not incorporated into the plan by the Respondent or an alternative adequate plan is not submitted by the Respondent by the specified date, the Respondent will be subject to stipulated penalties as described below. The 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.
6. Beginning on the Effective Date of this Agreed Order and continuing until the completion of the Compliance Plan provided for by Paragraph 3 above, the Respondent shall operate its existing wastewater treatment plant as efficiently and effectively as possible, at all times.
7. All submittals required by this Agreed Order, unless notified otherwise in writing, shall be sent to:

Paul Cluxton, Enforcement Case Manager
IDEM, Office of Enforcement
100 North Senate Avenue
P.O. Box 6015
Indianapolis, IN 46206-6015

8. The Respondent is assessed a civil penalty of Two Thousand One Hundred Seventy-Five (\$2,175) Dollars. Said penalty amount shall be due and payable to the Environmental Management Special Fund within 30 days of the Effective Date of this Agreed Order.
9. In the event the terms and conditions of the following Order paragraphs are violated, the Complainant may assess and the Respondent shall pay a stipulated penalty in the following amount(s):

VIOLATION

PENALTY

Paragraph 3 Failure to submit complete Compliance Plan
within the required time frame

\$500 per week late

in ownership, corporate, or partnership status of the Respondent shall in any way alter its status or responsibilities under this Agreed Order.

14. In the event that any terms of the 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 the Agreed Order did not contain the invalid terms.
15. The Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. The Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
16. The provisions of this Agreed Order do not affect the limitations and requirements set forth in the Respondent's NPDES Permit. Efforts by the Respondent to comply with provisions of this Agreed Order shall not serve as justification for not complying with limitations and requirements set forth in its NPDES Permit.
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 the 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 the 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 changed business or economic conditions, financial inability to complete the work required by this Agreed Order, or increases in costs to perform the work.

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

TECHNICAL RECOMMENDATION:
Department of Environmental Management

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

Date: 9-17-2002

RESPONDENT:
City of Rockport

By: Joseph L. Greene
Printed: JOSEPH L. GREENE

Title: MAYOR

Date: 1/16/2003

COUNSEL FOR COMPLAINANT:
Department of Environmental Management

By: _____
Office of Legal Counsel

Date: _____

COUNSEL FOR RESPONDENT:

By: John A. Hartz

Date: 1/16/03

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 2002.

For The Commissioner:

Felicia A. Robinson
Deputy Commissioner for Legal Affairs