



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

EJL

Mitchell E. Daniels, Jr.
Governor

September 26, 2005

100 North Senate Avenue
Indianapolis, Indiana 46204-2251
(317) 232-8603
(800) 451-6027
www.IN.gov/idem

Thomas W. Easterly
Commissioner

Via Certified Mail # 7000 0600 0027 2042 3322

Mr. Randal Plummer, Commissioner President
Wells County Board of County Commissioners
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Via Certified Mail # 7000 0600 0027 2042 3315

Mr. Peter Cole, Council President
Wells County Council
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Dear Mr. Plummer and Mr. Cole: Re: Adoption of Agreed Order
Commissioner of the Department of Environmental
Management
v.
Wells County Board of County Commissioners and
Wells County Council
Case No. 2002-11499-W

This is to inform you that the Agreed Order in the above-referenced case has been approved and adopted by the Indiana Department of Environmental Management. A copy of the Agreed Order is enclosed.

You are no doubt familiar with the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence.

Thank you for cooperation. If you have any questions, please contact Paul Cluxton at 317/232-8432..

Sincerely,

Mark W. Stanifer, Chief
Water Section
Office of Enforcement

Enclosure

cc: Trent Patterson, Attorney at Law
Wells County Health Department
Andy Dodzik, P.E.
<http://www.state.in.us/idem> (enclosure only)



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

COMMISSIONER OF THE DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,)

v.)

WELLS COUNTY BOARD OF COUNTY
COMMISSIONERS,)

and)

WELLS COUNTY COUNCIL,)

Respondents.)

CASE NO. 2002-11499-W

AGREED ORDER

The Complainant and the 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 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 the Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

- 1. The Complainant is the Commissioner (Complainant) of the Indiana Department of Environmental Management, a department of the State of Indiana created by Indiana Code (IC) 13-13-1-1.
2. The Respondents are the Wells County Board of County Commissioners and the

- Wells County Council (Respondents or the Board and/or Council). The Respondents have jurisdiction over and responsibility for the septic tank systems and county ditches in the unincorporated areas of Wells County, including the McKinney and Paxson Ditches located north of the Ouabache State Park and east of the City of Bluffton in Wells County, Indiana (Site). The Wells County Board of County Commissioners (Respondent or Board) has been delegated the executive and legislative authority within the structure of Wells County government. The Wells County Council (Respondent or Council) has been delegated the fiscal responsibility and authority within the structure of the Wells County government.
3. The Indiana Department of Environmental Management (IDEM) has jurisdiction over the parties and subject matter of this action.
 4. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation on March 22, 2005, via Certified Mail to Randal Plummer, President, Wells County Board of County Commissioners and Peter Cole, President, Wells County Council.
 5. 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 IC 13-18-4-1 and IC 13-18-4-3.
 6. Pursuant to 327 IAC 2-1-6(a)(1), all waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges:
 - (A) that will settle to form putrescent or otherwise objectionable deposits;
 - (B) that are in amounts sufficient to be unsightly or deleterious;
 - (C) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
 - (D) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants or humans; and
 - (E) which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.
 7. An IDEM investigation, which included a record review of Respondents' December 2002 Regional Sewer District Feasibility Study and accompanying Wells County Health Department bacterial sampling of local ditches, indicate septic tank systems of the unincorporated area of the McKinney and Paxson Ditches in Wells County discharge sewage into the McKinney and Paxson Ditches,

which are waters of the state. The sewage discharges contain E.coli bacteria in amounts sufficient to be deleterious and to produce conditions in such degree as to create a nuisance. Furthermore, because the Respondents allowed sewage to pollute waters of the state, and because the Respondents violated 327 IAC 2-1-6, which is a rule adopted by the Water Pollution Control Board pursuant to IC 13-18-3, the Respondents are in violation of IC 13-18-4-5.

8. Pursuant to IAC 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 National Pollutant Discharge Elimination System (NPDES) permit obtained prior to the discharge.
9. Pursuant to IC 13-30-2-1, a person may not 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 under the environmental management laws.
10. An IDEM investigation, which included a record review of Respondents' December 2002 Regional Sewer District Feasibility Study and accompanying Wells County Health Department bacterial sampling of local ditches, indicate septic tank systems of the unincorporated area of the McKinney and Paxson Ditches in Wells County discharge sewage into the McKinney and Paxson Ditches, which are waters of the state, without an NPDES permit. Therefore, the Respondents are in violation of 327 IAC 5-2-2. Furthermore, because the Respondents allowed the discharge of sewage, a waste, into the environment in a manner that violated 327 IAC 2-1-6 and 327 IAC 5-2-2, which are rules that were adopted by the Water Pollution Control Board under environmental management laws, the Respondents are in violation of IC 13-30-2-1.
11. On March 23, 1999, a public meeting of McKinney Ditch residents and potentially affected landowners was held at the Ouabache State Park with 18 households represented. Presentations were made by the IDEM Regional Sewer District coordinator and the Rural Community Assistance Program. Follow up meetings were held December 1999, and March and April 2000. Eight Paxson area residents met June 13, 2000.
12. On July 11, 2001, IDEM sent a Warning of Noncompliance letter to the Wells County Commissioners concerning septic tank discharges to the McKinney & Paxson ditches documented by Wells County Health Department bacteria sampling on April 6, 1999, and follow up sampling on October 28, 1999 and November 9, 1999. A response to IDEM from the Commissioners, dated September 18, 2001, "deferred this issue to the Wells County Health Board". A study was arranged to

- be done by DLZ Indiana, LLC and included wastewater concerns in several areas east, north and west of Bluffton. Their report was presented to the Respondents in December 2002. Options for the McKinney/Paxson Watershed area include collecting the sewage and pumping it to either the Bluffton sewer system or the Vera Cruz sewer force main.
13. There is a need for current follow up planning for solution(s) and consideration of formation of a Wells County Regional Sewer District to address the McKinney/Paxson Ditch areas and other unincorporated areas in Wells County with problem septic systems that continue to discharge to ditches.
 14. On May 2, 2005, the Respondents and IDEM participated in a settlement conference to discuss the enforcement documents.
 15. In recognition of the settlement reached, the Respondents waive 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 the Complainant or his delegate, and has been received by the Respondents. This Agreed Order shall have no force or effect until the Effective Date.
 2. The Respondents shall comply with all applicable provisions of the Indiana Code (IC) and the Indiana Administrative Code (IAC), including, but not limited to, IC 13-30-2-1, IC 13-18-4-5, 327 IAC 2-1-6(a)(1), and 327 IAC 5-2-2.
 3. Within 180 days of the Effective Date of this Agreed Order, the Respondents shall take action to address the unlawful discharge of untreated sewage to waters of the state. Such action shall include, but not necessarily be limited to the following:
 - Signing a petition formally requesting the IDEM Commissioner to sign an order forming the Wells County Regional Sewer District to handle wastewater infrastructure needs and to cease the inadequately treated discharges from septic tank systems from discharging to the ground surface, entering ditches or other surface waters, beginning with the McKinney/Paxson Ditch area.
- The petition states the purpose of forming the district, the territory to be served, the public benefits, how the district board may be structured, estimates for project costs, potential rates and charges, and funding sources.

The Respondents shall notify IDEM's Office of Enforcement, in writing, within 10 days of the completion of the above action. The notification shall include a description of the action completed, the date it was completed, and shall be sent to:

Paul Cluxton, case manager
Indiana Department of Environmental Management
Office of Enforcement – Mail Code 60-02
100 North Senate Avenue
Indianapolis, IN 46204-2251

4. In the event the terms and conditions of the following Order paragraphs are violated, the Complainant may assess and the Respondents shall pay a stipulated penalty in the following amount:

Order Paragraph(s) Cited	Violation	Penalty due per violation
3	Failure to submit a complete and timely petition for the formation of a Regional Sewer District.	\$500 per each week or part thereof late
3	Failure to timely submit notification to the case manager	\$250 per each week or part thereof late

5. Stipulated penalties shall be due and payable within 30 days after the Respondents receive written notice that the Complainant has determined a stipulated penalty is due. Assessment and payment of stipulated penalties shall not preclude the Complainant from seeking any additional relief against the Respondents for violation of the Agreed Order. In lieu of any of the stipulated penalties given above, the Complainant may seek any other remedies or sanctions available by virtue of the Respondents' violation of this Agreed Order, or Indiana law, including but not limited to civil penalties pursuant to IC 13-30-4.
6. Stipulated penalties are jointly and severally payable by check to the Environmental Management Special Fund. Checks shall include the Case Number (2002-11499-W) of this action and shall be mailed to:

Indiana Department of Environmental Management
Cashiers Office – Mail Code 50-10C
100 N. Senate Avenue
Indianapolis, IN 46204-2251

7. In the event that any stipulated penalty amount assessed pursuant to Paragraphs 4 and 5 is not paid within 30 days of the receipt of notice that it is due, the Respondents shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101. The interest shall continue to accrue until the stipulated penalty is paid in full.
8. This Agreed Order shall apply to and be binding upon the Respondents, their successors, and assigns. The Respondents' signatories to this Agreed Order certify that they are fully authorized to execute this document and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Respondents shall in any way alter their status or responsibilities under this Agreed Order.
9. 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.
10. This Agreed Order is not and shall not be interpreted to be a Permit, nor shall it in any way relieve the Respondents of their obligation to comply with the requirements of any applicable federal or state law or regulation.
11. The Complainant does not, by its approval of this Agreed Order, warrant or aver in any manner that the Respondents' compliance with any aspect of this Agreed Order will result in compliance with the provisions of the Clean Water Act or state law.
12. The Respondents shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. The Respondents 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 shall remain in effect until the Respondents comply with the terms of Order Paragraphs 3-7 and until IDEM issues a Close-Out letter to the Respondents.

TECHNICAL RECOMMENDATION:

Department of Environmental Management

By: Mark W. Stanifer
Mark W. Stanifer
Section Chief, Water Section
Office of Enforcement
Date: 5-17-2005

RESPONDENTS:

Wells County Board of County Commissioners

By: Randal Plummer
Randal Plummer, President

Date: September 6, 2005

By: Paul Bonham
Printed: Paul Bonham
Title: Commission Vice President

Date: September 6, 2005

By: Kevin Woodward
Printed: Kevin Woodward
Title: Commissioner

Date: September 6, 2005

RESPONDENTS:

Wells County Council

By: Peter Cole
Printed: Peter Cole
Title: Council President

Date: September 12, 2005

COUNSEL FOR COMPLAINANT:

Department of Environmental Management

By: Joseph H. Merrick
Joseph H. Merrick
Office of Legal Counsel
Date: 9/21/05

COUNSEL FOR RESPONDENTS:

By: Trent Patterson
Trent Patterson, Attorney at Law

Date: 9/16/05

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 26th DAY OF SEPTEMBER, 2005.

For the Commissioner:

Matthew T. Klein
Matthew T. Klein, Assistant Commissioner
for Compliance & Enforcement



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

E-File
2002 11499-W

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

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

March 22, 2005

Via Certified Mail # 7002 0510 0004 0442 2773

Via Certified Mail # 7002 0510 0004 0442 2766

Mr. Randal Plummer, President
Wells County Board of County Commissioners
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Mr. Peter Cole, President
Wells County Council
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Re: Notice of Violation and Proposed Agreed Order
Wells County Board of County Commissioners
and Wells County Council
Case No. 2002-11499-W

Dear Mr. Plummer and Mr. Cole:

This is to advise you that the Indiana Department of Environmental Management (IDEM) has conducted an investigation of the status of the Wells County Board of County Commissioners' and Wells County Council's compliance with certain environmental laws and regulations. As a result of information obtained during that investigation, IDEM has made a preliminary determination that a violation of water pollution laws and regulations exist in unincorporated areas of Wells County. Pursuant to IC 13-30-3-3, enclosed please find a Notice of Violation that sets forth the alleged violations, and a proposed Agreed Order that sets forth IDEM's specific findings of violation and the actions necessary to resolve the violations.

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.

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. If an Agreed Order is not entered into, IDEM may proceed to issue a unilateral notice and order ("Commissioner's Order") requiring compliance with the environmental laws and rules, including payment of a civil penalty.

Please contact me at 317/232-8432 if you have any questions or if you wish to request a settlement conference.

Sincerely,



Paul Cluxton, case manager
Water Section
Office of Enforcement

Enclosures

cc: Wells County Health Department
Paul Bonham, Commissioner
Kevin Woodward, Commissioner

<http://www.IN.gov/idem> (w/NOV only)



Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

March 22, 2005

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

NOTICE OF VIOLATION

Via Certified Mail # 7002 0510 0004 0442 2773
Mr. Randal Plummer, Commissioner President
Wells County Board of County Commissioners
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Via Certified Mail # 7002 0510 0004 0442 2766
Mr. Peter Cole, Council President
Wells County Council
105 West Market Street, Suite 205
Bluffton, IN 47614-2032

Case No. 2002-11499-W

Based on investigations by the Wells County Health Department, the Indiana Department of Environmental Management (IDEM) has reason to believe the unincorporated area in the McKinney and Paxson Ditch watershed, and therefore the Wells County Board of Commissioners and the Wells County Council (Respondents) have violated environmental statutes and rules. The violations are based on the following:

1. Respondents have jurisdiction over and responsibility for the septic tank systems and county ditches in the unincorporated area of the McKinney and Paxson Ditches located north of the Ouabache State Park and east of the City of Bluffton in Wells County, Indiana (Site).
2. 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 IC 13-18-4-1 and IC 13-18-4-3.

Pursuant to 327 IAC 2-1-6(a)(1), all waters at all times and at all places, including the mixing zone, shall meet the minimum conditions of being free from substances, materials, floating debris, oil or scum attributable to municipal, industrial, agricultural, and other land use practices, or other discharges:

- (A) that will settle to form putrescent or otherwise objectionable deposits;
- (B) that are in amounts sufficient to be unsightly or deleterious;
- (C) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;

- (D) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants or humans; and
- (E) which are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such a degree as to create a nuisance, be unsightly, or otherwise impair the designated uses.

An IDEM investigation, which included a record review of Respondents' December 2002 Regional Sewer District Feasibility Study and accompanying Wells County Health Department bacterial sampling of local ditches, indicate septic tank systems of the unincorporated area of the McKinney and Paxson Ditches in Wells County discharge sewage into the McKinney and Paxson Ditches, which are waters of the state. The sewage discharges contain E.coli bacteria in amounts sufficient to be deleterious and to produce conditions in such degree as to create a nuisance. Furthermore, because the Respondents allowed sewage to pollute waters of the state, and because the Respondents violated 327 IAC 2-1-6, which is a rule adopted by the Water Pollution Control Board pursuant to IC 13-18-3, the Respondents are in violation of IC 13-18-4-5.

3. Pursuant to IAC 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 National Pollutant Discharge Elimination System (NPDES) permit obtained prior to the discharge.

Pursuant to IC 13-30-2-1, a person may not 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 under the environmental management laws.

An IDEM investigation, which included a record review of Respondents' December 2002 Regional Sewer District Feasibility Study and accompanying Wells County Health Department bacterial sampling of local ditches, indicate septic tank systems of the unincorporated area of the McKinney and Paxson Ditches in Wells County discharge sewage into the McKinney and Paxson Ditches, which are waters of the state, without an NPDES permit. Therefore, the Respondents are in violation of 327 IAC 5-2-2. Furthermore, because the Respondents allowed the discharge of sewage, a waste, into the environment in a manner that violated 327 IAC 2-1-6 and 327 IAC 5-2-2, which are rules that were adopted by the Water Pollution Control Board under environmental management laws, the Respondents are in violation of IC 13-20-2-1.

In accordance with IC 13-30-3-3, the Commissioner is required to notify an alleged violator in writing that a violation may exist and offer an opportunity to enter into an Agreed Order providing for the actions required to correct the violations and for the payment of an assessed civil penalty. The Commissioner is not required to extend this offer for more than 60 days. In this case, IDEM has not assessed a civil penalty at this time. According to the nature of the violations, only stipulated penalties have been set forth.

Entering into an Agreed Order will prevent the issuance of a Notice and Order of the Commissioner under IC 13-30-3-4, or the filing of a civil court action under IC 13-14-2-6. IDEM encourages settlement by Agreed Order, thereby saving time and resources. Timely settlement by Agreed Order may result in a reduced civil penalty. Settlement discussions will also allow the opportunity to present any mitigating factors that may be relevant to the violations. In addition, as provided in IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting that the violation occurred.

If settlement is not reached within 60 days of receipt of this Notice of Violation, the Commissioner may issue a Notice and Order containing the actions that must be taken to achieve compliance, the required time frames, and 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 Paul Cluxton, at 317/232-8432, within 15 days after receipt of this Notice regarding your intent to settle this matter.

For the Commissioner:

Date: March 16, 2005



Matthew T. Klein
Assistant Commissioner for Compliance
& Enforcement

cc: Wells County Health Department
Paul Bonham, Commissioner
Kevin Woodward, Commissioner
www.IN.gov/idem