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

Michael R. Pence
Governor

Carol S. Comer
Commissioner

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. 2016-23906-D
Town of Whitestown, 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 Town of Whitestown (Respondent) which owns and operates Whitestown South, a community public water supply (PWS) system, with PWSID No. IN5206014, serving 3664 persons, located at 6210 South County Road 700 East in Whitestown, Boone County, Indiana (the Site).

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 *et seq.*, IDEM issued a Notice of Violation via Certified Mail to the Town of Whitestown.

5. Pursuant to 327 Indiana Administrative Code (IAC) 8-2.5-2(b) the maximum contaminant level (MCL) for Haloacetic Acid (HAA5) and total trihalmethanes (TTHM) are 0.060 mg/L and 0.080 mg/L respectively.

6. Pursuant to 8-2.5-2(b)(1), a PWS system must comply with the MCLs for TTHM and HAA5 as a locational running annual average (LRAA) at each monitoring location beginning at the date specified for compliance in section 11(c) of this rule.

   IDEM records indicate that Respondent designated monitoring locations for HAA5 and TTHM at 3900 300 South in Lebanon, Indiana (sampling point THM-1), and at 601 East Pierce Street in Whitestown, Indiana (sampling point HAA-1).

   Respondent's LRAA at sampling point THM-1 exceeded the MCL for HAA5 during the first, second, third, and fourth quarters of 2015, and the first quarter of 2016, each in violation of 327 IAC 8-2.5-2(b)(1).

   Respondent receives all of its source water from Citizens Water. According to Respondent, during the monitoring periods that resulted in each alleged violation, the LRAA of the source water, as measured at the entry points to Respondent's system, already exceeded the MCL for HAA5 for the same quarters.

7. Pursuant to 327 IAC 8-2.1-16, a PWS system which exceeds the MCL required pursuant to 327 IAC 8-2.5-2, is required to notify persons served by the PWS system of such exceedance, in the manner provided for in these rules.

   Pursuant to 327 IAC 8-2.1-9(b)(1), A PWS system shall provide a Tier 2 public notice as soon as practical, but not later than thirty (30) days after the system learns of the violation.

   IDEM records indicate that Respondent failed to provide public notice for exceedances of the MCL for HAA5 during first, second, third, and fourth quarters of 2015, and the first quarter of 2016, pursuant to 327 IAC 8-2.5-2, within the required time period; in violation of 327 IAC 8-2.1-16 and 327 IAC 8-2.1-9(b)(1).

   Respondent provided public notices to customers on June 30, 2016, for exceedances of the MCL for HAA5 during the first, second, third, and fourth quarters of 2015, and the first quarter of 2016. IDEM received copies of the public notices on July 7, 2016. The notices were distributed more than 30 days after the MCL violations, in violation of 327 IAC 8-2.1.9(b)(1).

8. IDEM sent Stage 2 Disinfection Byproducts MCL Violation Letters to Respondent on September 14, 2015, October 7, 2015, January 19, 2016, and March 23, 2016. The letters explained the violations, and required a detailed written explanation documenting whatever actions or remedial plan Respondent implemented to

return to compliance with the MCL. On September 25, 2015, IDEM received a response letter from Respondent detailing the issues resulting in the violation, and their efforts to return to compliance. The LRAA at sampling point THM-1 remained above the MCL for HAA5 during the fourth quarter of 2015 and the first quarter of 2016 following the response letter. The LRAA at sampling point THM-1 was in compliance with the MCL for HAA5 during the second quarter of 2016.

9. Subsequent to issuance of the NOV, IDEM received Respondent's sampling results for the third quarter of 2016, and the LRAA at sampling point THM-1 was also in compliance with the MCL for HAA5 during the third quarter of 2016.

10. 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 Paragraphs 6 and 7 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, for the purposes of this Order, demonstrate compliance (Compliance Demonstration) with the MCL(s) for HAA5 and TTHM as a LRAA at each monitoring location during the fourth quarter of 2016. It is the responsibility of Respondent to maintain compliance with the MCL for HAA5 as a LRAA, as required by 327 IAC 8-2.5-2(b)(1), after completion of the Compliance Demonstration. During the Compliance Demonstration period, Respondent shall be subject to stipulated penalties, as specified below, for exceedances of the MCL as a LRAA.

3. In the event a sample result for HAA5 causes a LRAA to exceed the MCL, Respondent shall, within 10 days of becoming aware that the LRAA exceeded the MCL, submit notification to IDEM of the exceedance. Within 30 days of becoming aware that the LRAA exceeded the MCL(s), Respondent shall submit an Additional Action Plan to IDEM outlining the additional actions Respondent will take to achieve and maintain compliance with the MCL(s) for TTHM and/or HAA5 as a LRAA. Failure to achieve compliance, as demonstrated by two (2) consecutive quarters of compliance with the MCL(s) for TTHM and HAA5 as a LRAA, at the conclusion of the work included in the Additional Action Plan may result in additional enforcement action.

4. The Additional Action Plan, if required, is subject to IDEM approval, in the event IDEM finds any plan submitted by Respondent deficient, Respondent shall revise

and resubmit the plan, in accordance with IDEM's notification(s). After three submissions of such plan by Respondent, IDEM may seek civil enforcement of this Order.

Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved 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 milestones in the approved plan, will subject Respondent to stipulated penalties as described below.

5. Respondent shall issue a Public Notice for any future HAA5 and/or TTHM LRAA MCL violations within 30 days of becoming aware of the violation. Within 10 days of issuing the public notice for any future HAAA and/or TTHM LRAA MCL violations, Respondent shall send to IDEM a signed certification form for public notice and representative copy of the public notice issued.

6. Respondent is assessed a civil penalty of Seven Hundred Fifty Dollars ($750). The civil penalty is due and payable to the Environmental Management Special Fund within 30 days of the Effective Date.

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

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

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:

Paragraph:	Violation:	Stipulated Penalty:
2	For any exceedance of the MCL for HAA5 as a LRAA during the Compliance Demonstration.	$200 per violation.
3, 4	Failure to submit or modify the Additional Action Plan, if required, within the required time period.	$200 per week late, of part thereof.
4	Failure to adhere milestone dates in an approved Additional Action Plan.	$200 per week late, or part thereof.
5	Failure to provide public notice for future violations within the required time period.	$200 per week late, or part thereof.

9. 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.

10. *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. Any extension granted due to force majeure does not extend the timeframe for completing the public notice requirements included in Order Paragraph 5.

11. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2016-23906-D, of this action and shall be mailed to:

Office of Legal Counsel
Indiana Department of Environmental Management
IGCN, Room N1307
100 North Senate Avenue
Indianapolis, IN 46204

12. This Agreed Order shall apply to and be binding upon Respondent, Respondent's 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 Notice of Violation.

19. 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 US EPA or any other agency or entity.

20. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

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TECHNICAL RECOMMENDATION:
Department of Environmental Management

By:

Dave Tennis, Chief
Water Enforcement Section
Surface Water, Operations & Enforcement Branch
Office of Water Quality

Date: September 13, 2016

RESPONDENT:
Town of Whitestown

By: _____

Title: _____

Date: _____

COUNSEL FOR RESPONDENT:

By: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT THIS _____ DAY OF _____ , 201_.

For the Commissioner:

Martha Clark Mettler
Assistant Commissioner
Office of Water Quality