

Warrick Circuit Court

STATE OF INDIANA)
) IN THE WARRICK _____ COURT
) SS:
COUNTY OF WARRICK) CAUSE NO.

COMMISSIONER OF THE)
INDIANA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT,)
)
Petitioner,)
)
v.)
)
WARRICK NEWCO LLC,)
)
Respondent.)

**VERIFIED PETITION FOR CIVIL ENFORCEMENT
AND COMPLAINT**

Petitioner, the Commissioner of the Indiana Department of Environmental Management, by counsel, hereby petitions for civil enforcement of an Agreed Order and Compliant for ongoing violations of state and federal environmental laws, and in support thereof, states as follows:

1. IDEM is an agency of the State of Indiana established under Ind. Code § 13-13-1-1 and is duly authorized to enforce the environmental laws of the State of Indiana. Ind. Code §§ 13-14-1-1 *et seq.* IDEM's mailing address is 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

2. Warrick Newco LLC ("Respondent") owns/operates Warrick Newco LLC located at 4400 West State Road 66, Newburgh, Warrick County, Indiana (the "Site").

3. Respondent is authorized by its National Pollutant Discharge Elimination System Permit No. IN0001155, to discharge to receiving waters identified as the Ohio River and unnamed tributaries to Cypress Creek.

4. Respondent's address for service of process is:

CT Corporations System, Registered Agent
Warrick Newco LLC
334 North Senate Avenue
Indianapolis, IN 46204

5. Venue is proper in this Court as Respondent's principal place of business is in Warrick County.

6. An IDEM investigation revealed that Respondent violated state and federal environmental laws and the terms and conditions of the Permit. Respondent violated the following: 327 Indiana Administrative Code ("IAC") 5-2-8(1), Part I.A.1, 9, 10, and 11 of the Permit, Part I.A.6 and Part I.A.7 of the Permit, and Part IV.B.1 of the Permit.

7. An IDEM records review found the following violations:

a. Discharge Monitoring Reports ("DMRs") and Monthly Monitoring Reports ("MMRs") submitted by Respondent for the period of May 2015 through March 2020 revealed the following effluent limitations violations:

- i. For Outfall 001, the daily minimum limitation for pH was exceeded during October 2019 and January 2020.
- ii. For Outfall 603, the daily maximum loading limitation for Fluoride was exceeded during May 2015 and October 2019.
- iii. For Outfall 603, the monthly average loading limitation for Fluoride was exceeded in June 2015.
- iv. For Outfall 703, the monthly average concentration for Total Suspended Solids was exceeded during October 2019.
- v. For Outfall 004, the daily minimum or daily maximum limitation for pH was exceeded during May 2015, July 2016, and June 2019.

b. Unanticipated bypasses of treatment that did not result in exceedances of the effluent limitations occurred during June 2015, December 2017, October 2018, and February 2019.

c. DMRs were not submitted by the applicable reporting deadline for March 2017, May 2018, and December 2019.

d. For Outfall 023S, an unpermitted discharge occurred during August 2018.

e. For Outfall 064S, visible foam was observed in the discharge during February 2019.

f. For Outfall 001, some of the effluent is bypassing the collection sump and sampling station which results in unrepresentative monitoring results.

g. Monitoring results for free cyanide were incorrectly reported on the June 2019 DMR.

8. After waiving issuance of a Notice of Violation, the Respondent entered an Agreed Order resolving the violations noted above. The Agreed Order was approved and adopted by IDEM on March 3, 2021. A true and accurate copy of the Agreed Order is attached hereto and incorporated herein as Exhibit A.

9. In the Agreed Order, the Respondent agreed to (a) develop and submit to IDEM for approval a Compliance Plan ("CP") which identifies actions that Respondent will take to achieve and maintain compliance with its Permit; (b) within 10 days of completion of each milestone identified in the CP submit to IDEM a written progress report or notification of completion; and (c) pay a civil penalty of Eight Thousand Seven Hundred Fifty Dollars (\$8,750) to the Environmental Management Special Fund within 30 days.

10. Respondent submitted a Compliance Plan on May 13, 2021, which was approved by IDEM.

11. To date, Respondent has failed to fully comply with the terms and conditions of the Agreed Order. Specifically, the Compliance Plan has not been fully implemented; therefore, violations of state and federal laws and the Respondent's Permit continue.

12. The Respondent has committed the following effluent limitation violations since issuance of the Agreed Order on March 3, 2021:

- a. Outfall 001
 - i. daily maximum limitation for Copper in June 2023.
 - ii. monthly average of Copper in June 2023.
 - iii. daily maximum limitation for Mercury in June, September and December 2022 and March 2023.
 - iv. monthly average for Mercury in June, September and December 2022, and March and June 2023.
 - v. daily maximum for Zinc in June 2023.
 - vi. monthly average for Zinc in June 2023.
 - vii. daily maximum limitation for pH in September 2021, and June and September 2022.
- b. Outfall 002 – daily maximum limitation for Chlorine in May 2022.
- c. Outfall 003
 - i. daily maximum limitation for Mercury in December 2022.
 - ii. monthly average for Mercury in February and December 2022, and June 2023.
 - iii. daily maximum limitation for Chlorine in January 2023.
- d. Outfall 004
 - i. daily maximum limitation for Copper in June 2023.
 - ii. monthly average for Copper in June 2023.
 - iii. daily maximum limitation for Mercury in December 2022 and June 2023.
 - iv. monthly average for Mercury in December 2022 and June 2023.
 - v. daily maximum limitation for Zinc in June 2023.
 - vi. monthly average for Zinc in June 2023.
 - vii. daily maximum limitation for pH in June 2021.
- e. Outfall 005

- i. daily maximum limitation for Copper in March, June, and September 2022, and March 2023.
 - ii. monthly average for Copper in March, June, and September 2022, and March and June 2023.
 - iii. daily maximum limitation for Mercury in March, June, and September 2022, and March 2023.
 - iv. monthly average for Mercury in March, June, and September 2022, and March 2023.
 - v. monthly average for Zinc in June and September 2022.
- f. Outfall 006
 - i. daily maximum limitation for Chlorine in August, September, and October 2022.
 - ii. monthly average for Chlorine in August and September 2022.
- g. Outfall 008 - daily maximum limitation for Chlorine in December 2022.
- h. Outfall 010 – daily maximum limitation for Chlorine in August 2023.
- i. Outfall 203 – daily maximum limitation for *E.coli* in April 2021.
- j. Outfall 603
 - i. daily maximum limitation for Aluminum in March, April, June, July, August, and September 2022, and May and June 2023.
 - ii. monthly average for Aluminum in April, June, July, and August 2022, and May and June 2023.
 - iii. daily maximum limitation for Fluoride in April, June, July, August, and September 2022, and May 2023.
 - iv. monthly average for Fluoride in April, July, and August 2022, and May 2023.
 - v. daily maximum limitation for Nickel in July 2022 and May 2023.
 - vi. daily maximum limitation for Total Suspended Solids in May 2023.
 - vii. daily maximum limitation for Zinc in May 2023.

13. IDEM is authorized to seek civil enforcement of the Agreed Order under Ind. Code § 4-21.5-6.

14. Additionally, under Ind. Code § 13-30-1-1, the Indiana Attorney General may bring an action for declaratory and equitable relief in the name of the State against an individual or other entity for the protection of the environment from pollution, impairment, and destruction. The court may grant equitable relief or impose conditions upon Respondent that are required to protect the environment from pollution, impairment, and destruction. Ind. Code § 13-30-1-11; see also Ind. Code § 14-25.5-4-5.

WHEREFORE, IDEM respectfully requests that Respondent be ordered to comply with the Agreed Order and provide all other proper relief ordered by this Court.

I hereby affirm under the penalties of perjury that the foregoing representations are true and accurate to the best of my knowledge.



Grant Chaddock, Senior Environmental Manager
Water Enforcement Section
Office of Water Quality
Indiana Department of Environmental Management

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General
Attorney No. 18857-49

Date: January 11, 2024

By: /s/ Blake T. Erickson
Blake T. Erickson
Deputy Attorney General
Attorney No. 37627-44

OFFICE OF INDIANA ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 233-7311
Facsimile: (317) 232-7979
E-mail: Blake.Erickson@atg.in.gov