

**BEFORE THE
INDIANA UTILITY REGULATORY COMMISSION**

**VERIFIED PETITION OF CITIZENS WASTEWATER)
OF WESTFIELD, LLC FOR (1) AUTHORITY TO)
INCREASE RATES AND CHARGES FOR)
WASTEWATER UTILITY SERVICE AND)
APPROVAL OF A NEW SCHEDULE OF RATES AND) CAUSE NO. 44835
CHARGES; AND (2) APPROVAL OF CERTAIN)
REVISIONS TO ITS TERMS AND CONDITIONS)
APPLICABLE TO WASTEWATER UTILITY)
SERVICE)**

VERIFIED REBUTTAL TESTIMONY AND ATTACHMENTS OF

KORLON L. KILPATRICK II

**On
Behalf of
Petitioner,
Citizens Wastewater of Westfield**

*Original
Exhibit 11*

Petitioner's Exhibit 11

**IURC
PETITIONER'S** 11
EXHIBIT NO. 11
DATE 5-13-17 REPORTER ul

Description	Exhibit/ Attachment
Verified Rebuttal Testimony of Korlon L. Kilpatrick	11
Comparison of Revenue Increases Proposed by Petitioner and OUCC	KLK-R1
Revised Version of Revenue Requirements Exhibit	KLK-R2
Petitioner's Response to OUCC Data Request 6.23	KLK-R3
OUCC Response to Petitioner's Data Request 2.3	KLK-R4
OUCC Response to Petitioner's Data Request 2.4	KLK-R5
OUCC Response to Petitioner's Data Request 3.1	KLK-R6
System Development Charge Calculation	KLK-R7
Petitioner's NPDES Permit	KLK-R8

STATE OF INDIANA

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Petitioner's Exhibit 11

1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. Korlon L. Kilpatrick II. My business address is 2020 North Meridian Street,
4 Indianapolis, Indiana 46202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by the Board of Directors for Utilities of the Department of Public
7 Utilities of the City of Indianapolis d/b/a Citizens Energy Group. Citizens Energy
8 Group is the successor trustee of a trust related to the provision of energy utility
9 services and, acting by and through the Board owns, manages and controls a
10 number of utility assets. Citizens Energy Group also owns the stock of Citizens By-
11 Products Coal Company d/b/a Citizens Resources, which itself owns a number of
12 energy and utility related businesses. I currently serve as Citizens Energy Group's
13 Director, Regulatory Affairs. Citizens Westfield Utilities, LLC, which is a
14 subsidiary of Citizens Resources, owns the sole membership interest of the
15 Petitioner in this proceeding, Citizens Wastewater of Westfield ("Petitioner" or
16 "Citizens Wastewater of Westfield").

17 **Q. ARE YOU THE SAME KORLON L. KILPATRICK THAT PREVIOUSLY**
18 **TESTIFIED IN THIS PROCEEDING?**

19 A. Yes, I am.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AT THIS STAGE OF**
21 **THE PROCEEDING?**

1 A. My testimony responds to Indiana Office of Utility Consumer Counselor ("OUCC")
2 witness Margaret A. Stull's proposed adjustments to operating revenues as well as
3 her recommendation regarding the appropriate IURC fee adjustment, Indiana Utility
4 Receipts Tax, bad debt expense and gross revenue conversion factor. In addition, I
5 respond to Ms. Stull's criticisms regarding Petitioner's presentation of operating
6 revenues. My testimony also responds to OUCC witness Charles E. Patrick's
7 recommendations relating to Petitioner's rate case expenses. Finally, I address Ms.
8 Stull's objection to Petitioner's proposed change to Rule 12.3, as well as Ms. Stull's
9 recommendations regarding the imposition of a connection fee and system
10 development charge, rates for unmetered customers and the preparation of a cost of
11 service study in connection with Petitioner's next rate case. Failure to address any
12 aspect of the testimony of the foregoing witnesses or of the OUCC's testimony in
13 general does not constitute my agreement with such aspects.

14 **II. PRO FORMA REVENUES AND ASSOCIATED OPERATING EXPENSE ADJUSTMENTS**

15 **Q. PLEASE SUMMARIZE MS. STULL'S PROPOSED ADJUSTMENTS TO**
16 **PETITIONER'S PRO FORMA AT PRESENT RATES REVENUES.**

17 A. Ms. Stull proposes adjustments to Petitioner's pro forma at present rates revenues
18 during the test year for customer growth associated with metered residential
19 customers, unmetered residential customers and metered non-residential customers.
20 (See, Public's Exh. 1 at 39-46). In addition, Ms. Stull proposes adjustments to
21 Petitioner's pro forma at present rates revenues for customer growth following the

1 test year for metered residential customers, unmetered residential customers and
2 metered non-residential customers. (See, Public's Exh. 1 at 46-53). Finally, Ms.
3 Stull proposes an adjustment to reflect Petitioner's share of "disconnection fee
4 revenues recorded to Citizens Water of Westfield, LLC." (*See Id.* at 54-57.)

5 **Q. PLEASE SUMMARIZE YOUR RESPONSE TO MS. STULL'S PROPOSED**
6 **ADJUSTMENTS.**

7 A. As further discussed below, I disagree with most of Ms. Stull's proposed customer
8 growth adjustments but accept her adjustments related to test year customer growth
9 for metered and unmetered residential customers. I also accept the premise of Ms.
10 Stull's "disconnection fee" sharing adjustment. However, I note that neither
11 Petitioner, nor Citizens Water of Westfield, LLC, charges a "disconnection fee";
12 rather, they charge a reconnection fee. Accordingly, I agree an adjustment should
13 be made to operating revenues for reconnection fees. Because I do not accept all of
14 Ms. Stull's customer growth adjustments, I also disagree with her adjustments
15 relating to certain expense items that are driven by the amount of Petitioner's
16 operating revenues: IURC Fees, Indiana Utility Receipts Tax expense, bad debt
17 expense and the revenue conversion factor.

18 **Q. DOES MS. STULL OFFER ANY OTHER TESTIMONY REGARDING**
19 **PETITIONER'S OPERATING REVENUES?**

20 A. Yes. Ms. Stull offers a number of criticisms regarding Petitioner's presentation of
21 operating revenues. I disagree with those criticisms. However, since Ms. Stull's

criticisms do not impact the rate relief sought in this proceeding, I discuss them separately following my discussion of Ms. Stull's proposed adjustments to revenues and related operating expense adjustments.

Q. PLEASE DESCRIBE ATTACHMENTS KKK-R1 AND KKK-R2.

A. Attachment KKK-R1 is a comparison of the revenue increases proposed by Petitioner and the OUCC. Attachment KKK-R2 is a revised version of the revenue requirements exhibit that was included as Attachment KKK-1 to my direct testimony. Attachments KKK-R1 and KKK-R2 incorporate the adjustments to Petitioner's revenues and expenses described in my testimony and the testimony of Petitioner's witness Sabine E. Karner.

A. Customer Growth Adjustment

Q. PLEASE DESCRIBE FURTHER PETITIONER'S POSITION REGARDING MS. STULL'S CUSTOMER GROWTH ADJUSTMENTS .

A. I agree with Ms. Stull's adjustments relating to test year Residential customer growth only and have modified my billing determinants to reflect the following additions:

Adjustment	Billing Instances	Sales Volume
Metered Residential TY Customer Growth	3,476	17,380
Unmetered Residential TY Customer Growth	36	N/A

1 However, I disagree with Ms. Stull's adjustments related to post-test year customer
2 growth and test year Non-Residential customer growth and recommend that those
3 adjustments be rejected.

4 **Q. WHY DO YOU DISAGREE WITH MS. STULL'S POST-TEST YEAR**
5 **CUSTOMER GROWTH ADJUSTMENTS?**

6 A Ms. Stull's post-test year customer growth adjustments are not "fixed, known and
7 measurable". The adjustments she proposes are not based on any set of projects
8 scheduled to be completed by Petitioner. Rather, Ms. Stull uses a test year growth
9 number and presumes similar growth in the post-test year period. There is no basis
10 to assume that growth during the test year period will continue at the same pace
11 during the post-test year period. There is no evidence of any customer growth that
12 is fixed in time, known to occur, and measurable in amount during the twelve
13 month period following the test year aside from that presented in Petitioner's case-
14 in-chief. Ms. Stull's adjustment is solely based on her assumptions. Additionally,
15 the Non-Residential post-test year growth numbers are not based specifically on
16 commercial customers, but rather on all customers that are not Residential
17 customers. As I will discuss in more detail below, the inclusion of industrial
18 customers overstates the proposed adjustment and results in an adjustment that is
19 not fixed, known and measurable.

20 **Q. DOES PETITIONER BELIEVE THERE SHOULD BE ANY POST-TEST**
21 **YEAR CUSTOMER GROWTH ADJUSTMENTS?**

1 A Yes. Petitioner included post-test year customer growth adjustments in its case-in-
2 chief. Unlike the adjustments proposed by Ms. Stull, Petitioner's post-test year
3 customer growth adjustment was based on fixed, known and measurable numbers
4 derived from discussions with Petitioner's operations personnel. In particular,
5 Petitioner's pro forma Residential and Non-Residential customer numbers are based
6 on projects scheduled to be completed by the end of 2016, and are found in
7 Petitioner's workpaper #WS 630, which was filed with Petitioner's case-in-chief.

8 **Q. DID PETITIONER PROVIDE ADDITIONAL INFORMATION TO THE**
9 **OUCC REGARDING HOW PETITIONER CALCULATED ITS POST-TEST**
10 **YEAR CUSTOMER GROWTH ADJUSTMENT?**

11 A. Yes. In discovery, the OUCC asked for additional detail regarding the basis for the
12 pro forma increase of 207 customer counts per month (total of 2,484) for Rate Class
13 1 included in Petitioner's case-in-chief. In response to OUCC Data Request 6.23,
14 which is attached hereto as Attachment KKK-R3, Petitioner indicated that there are
15 six residential projects that were expected to be completed and connected to
16 Petitioner's system in 2016.

17 **Q. DOES MS. STULL EXPLAIN WHY SHE DID NOT USE PETITIONER'S**
18 **FIXED, KNOWN AND MEASUREABLE CUSTOMER GROWTH NUMBER**
19 **AND INSTEAD USED AN ESTIMATE?**

20 A. Not completely. Ms. Stull simply references Petitioner's case-in-chief testimony
21 describing how the City of Westfield has experienced significant growth. In my

opinion, that testimony is not a basis to disregard the actual number of construction projects expected to be completed in 2016 and substitute an estimate.

Q. WHY DO YOU DISAGREE WITH MS. STULL'S NON-RESIDENTIAL TEST YEAR CUSTOMER GROWTH ADJUSTMENT?

A Petitioner understands it is typical to calculate a test year growth adjustment for commercial customers.¹ However, Petitioner's Non-Residential customers include commercial and industrial customers. Given how data was classified in the legacy billing system, there is not sufficient data to discern the true test year customer growth related only to commercial customers. Ms. Stull testified in Cause No. 44305:

"Customer growth adjustments are not typically proposed for industrial customers. Instead, adjustments are proposed for the addition or loss of specific large customers..." (Public's Exhibit No. 1, page 32, lines 3-5)

Contrary to Ms. Stull's testimony in Cause No. 44305, the growth included in Ms. Stull's adjustment in this proceeding that is attributable to industrial customers is not based on "the addition or loss of specific large customers." Accordingly, Ms. Stull's adjustment is likely overstated. At a minimum, her adjustment is not a "fixed, known and measurable" adjustment as it is not based on specific growth that is known to occur at a fixed time.

B. Sharing of Disconnection Fees

¹ See adjustments proposed by utilities and/or the OUCC in Cause Nos. 42520, 43680 and 44305, to name a few.

1 Q. MS. STULL RECOMMENDS 50 PERCENT OF "DISCONNECTION FEE
2 REVENUES . . . RECORDED TO CITIZENS WATER OF WESTFIELD,
3 LLC" DURING THE TEST YEAR BE INCLUDED IN THE
4 DETERMINATION OF RATES IN THIS CAUSE. DO YOU AGREE?

5 A. Yes, with one clarification. Neither Citizens Water of Westfield nor Petitioner
6 charges a disconnection fee. The appropriate fee to be shared between the two
7 utilities is the Reconnection Fee. During the test year, Citizens Water of Westfield
8 recorded \$17,037 in Reconnection Fees. Thus, Petitioner is proposing a \$8,519
9 increase to its Other Revenue adjustment.

10 C. Summary of Revenue Adjustments

11 Q. PLEASE SUMMARIZE THE REVENUE ADJUSTMENTS YOU ARE
12 PROPOSING IN YOUR REBUTTAL TESTIMONY.

13 A. I am proposing the same seven revenue adjustments that I proposed in my direct
14 testimony. However, there have been some changes to the amounts of certain
15 adjustments based on my agreement with some of Ms. Stull's adjustments. The
16 table summarizes the adjustments as modified in rebuttal and how they compare to
17 the original case-in-chief filing.

Adjustment	Petitioner's Rebuttal	Petitioner's Case-in-Chief	Difference
Customer Number Volume Adjustment – Base Charge	\$ 124,153	\$ 51,612	\$ 72,541
Customer Number Volume Adjustment – Treatment Charge Adj	7,346,370	7,076,054	270,316

Change in Rate Adjustment – Chg in Minimum Chrg Revenue	(498,310)	(484,580)	(13,730)
Change in Rate Adjustment – chg in Monthly Treatment Rate	(6,464,428)	(6,315,772)	(148,656)
Unbilled	(237,994)	(237,994)	0
Billing Correction Adjustment	18,264	18,264	0
Other Revenue	8,519	0	8,519

D. IURC Fee Expense Adjustment

Q. WHAT DOES OUCC WITNESS STULL RECOMMEND WITH RESPECT TO PETITIONER'S IURC FEE EXPENSE?

A. Ms. Stull accepted the methodology by which Petitioner calculated IURC fee. However, Ms. Stull made an adjustment to the IURC fee based on the OUCC's proposed pro forma adjustments to present rate operating revenues. The result of Ms. Stull's adjustment is a \$341 increase in the pro forma IURC fee.

Q. DO YOU AGREE WITH MS. STULL'S ADJUSTMENT?

A. No. I disagree with the pro forma revenues Ms. Stull uses to calculate her IURC fee and associated adjustment.

Q. PLEASE DESCRIBE YOUR PROPOSED IURC FEE ADJUSTMENT.

A. The pro forma wastewater revenue at present rates subject to IURC fee of \$9,728,644 is reduced by pro forma miscellaneous revenue and pro forma bad debt expense. These adjustments net to ~~\$9,633,170~~ pro forma revenue at present rates

9,624,651

that is subject to the IURC fee. Multiplying this by the 0.1171996 percent IURC fee rate produces a pro forma IURC fee of ~~\$11,290~~^{11,280}. As there was no test year IURC fee, this amounts to an ~~\$11,290~~^{11,280} increase in Petitioner's IURC fee expense.

E. Indiana Utility Receipts Tax Adjustment

Q. DID OUCC WITNESS STULL OBJECT TO THE MANNER IN WHICH PETITIONER CALCULATED UTILITY RECEIPTS TAX?

A. No. Ms. Stull accepted the methodology by which Petitioner calculated Indiana Utility Receipts Tax ("IURT"). However, Ms. Stull made an adjustment to IURT based on the OUCC's proposed pro forma adjustments to present rate operating revenues.

Q. DO YOU AGREE WITH THE IURT ADJUSTMENT PROPOSED BY MS. STULL?

A. No. While we use the same methodology, Ms. Stull's pro forma revenue adjustments differ from Petitioner's adjustments. As I have indicated, I disagree with Ms. Stull's adjustments. Accordingly, my proposed IURT adjustment differs from Ms. Stull's adjustment.

Q. PLEASE DESCRIBE YOUR PROPOSED IURT ADJUSTMENT.

A. The pro forma wastewater revenue at present rates subject to IURT of \$9,728,644 is reduced by the \$1,000 exemption and pro forma bad debt expense. These adjustments net to \$9,679,001 pro forma revenue at present rates subject to IURT, which is multiplied by the 1.4 percent IURT rate. This calculation produces pro

1 forma IURT at present rates expense of \$135,506. This amounts to a \$4,450
2 increase in IURT expense at present rates.

3 ***F. Bad Debt Expense***

4 **Q. DO YOU AGREE WITH THE BAD DEBT EXPENSE ADJUSTMENT**
5 **PROPOSED BY MS. STULL?**

6 A. No. While Ms. Stull accepts Petitioner's proposed bad debt expense rate and I
7 agree with her calculation, I disagree with her proposed pro forma revenues, and
8 thus her proposed bad debt expense adjustment.

9 **Q. WHAT DO YOU BELIEVE TO BE THE APPROPRIATE PRO FORMA AT**
10 **PRESENT RATES BAD DEBT EXPENSE ADJUSTMENT?**

11 A. I believe the proposed pro forma at present rates bad debt expense adjustment
12 should be \$19,378. This is derived by applying the 0.5 percent bad debt expense
13 rate to Petitioner's proposed pro forma at present rates revenue of \$9,728,644 to
14 determine pro forma bad expense of \$48,643. Reducing this number by the test
15 year bad debt expense of \$29,265 yields the proposed adjustment of \$19,378.

16 **Q. MS. STULL RAISED ADDITIONAL CONCERNS REGARDING**
17 **PETITIONER'S CALCULATION OF ITS PRO FORMA BAD DEBT**
18 **EXPENSE. HOW DO YOU RESPOND?**

19 A. Ms. Stull's assertion that other operating revenues are received before or at the time
20 services are rendered is not completely correct. While it is true that some other
21 operating revenues, such as Reconnection Fees, are collected at the time or before

1 services are rendered, others, such as Late Payment and Return Check Fees, are not.
2 The bad debt expense is applicable to these revenues. As Ms. Stull points out in her
3 testimony, there were no Reconnection Fees recorded in the test year revenues or in
4 the pro forma revenues. As such, Ms. Stull's concern is unfounded based on
5 Petitioner's case-in-chief filing. However, Petitioner has agreed to an adjustment of
6 \$8,519 to account for Petitioner's share of Reconnection Fees recorded by Citizens
7 Water of Westfield. Applying Petitioner's proposed bad debt rate to the \$8,519
8 results in a \$45 potential decrease to Petitioner's bad debt expense. In my opinion,
9 this is a *de minimus* amount given the revenue requirement in question in this case.

10 **G. Gross Revenue Conversion Factor**

11 **Q. DO YOU AGREE WITH MS. STULL'S DETERMINATION OF THE**
12 **GROSS REVENUE CONVERSION FACTOR?**

13 A. Yes, I agree with Ms. Stull's method to calculate the Gross Revenue Conversion
14 Factor. I have incorporated that adjustment, as well as the other adjustments I
15 describe above, into Petitioner's Attachment KKK-R2.

16 **III. PETITIONER'S CASE-IN-CHIEF OPERATING REVENUE ADJUSTMENT**
17 **PRESENTATION**

18
19 **Q. PLEASE SUMMARIZE MS. STULL'S CRITICISMS OF PETITIONER'S**
20 **PRESENTATION OF OPERATING REVENUE ADJUSTMENTS.**

21 A. Ms. Stull contends there is a general lack of transparency in Petitioner's
22 presentation of its proposed revenue adjustments. In Ms. Stull's opinion, Petitioner
23 has not provided the information necessary to determine how much of its proposed

adjustments are related to the rate increase and how much are related to customer growth.

Q. DO YOU AGREE WITH MS. STULL'S CONTENTION THAT PETITIONER HAS NOT PROVIDED THE INFORMATION NECESSARY TO DETERMINE HOW MUCH OF ITS PROPOSED ADJUSTMENTS ARE RELATED TO THE RATE INCREASE AND HOW MUCH ARE RELATED TO CUSTOMER GROWTH?

A. No. In my direct testimony (page 7, line 4 through page 11, line 18), I describe each of the adjustments Petitioner made to arrive at its proposed pro forma revenues. A summary of the adjustments is reflected in the table below; however, the actual adjustments were made to each customer class. All of these adjustments by customer class can be viewed in Petitioner's workpapers, as set forth below:

Adjustment	Billing Instances	Workpaper / Attachment	Sales Volume	Workpaper / Attachment	Testimony
Minimum Charge Volumes – Residential	N/A	N/A	437,729	WS 630-5	p. 7
Minimum Charge Volumes – Non Residential	N/A	N/A	37,342	WS 630-6	p. 7
Pro Forma Customer Growth – Residential	2,484	WS 630-3	See note 1	N/A	p. 7
Pro Forma Customer Growth – Non Residential	61	WS 630-4	See note 1	N/A	p. 7
Total	2,545		475,071		

Note 1. The volumes associated with the pro forma customer growth are included in the minimum charge volume adjustments.

1 **Q. IS IT TRUE THAT PETITIONER DOES NOT IDENTIFY THE DOLLAR**
2 **IMPACT TO THE REVENUE REQUIREMENT OF EACH OF THE**
3 **ADJUSTMENTS IT MADE TO REVENUE?**

4 A. Yes. However, to my knowledge, there is no requirement that each individual
5 adjustment to revenue be reduced to a revenue adjustment for purposes of
6 determining a utility's pro forma revenues. This issue seems to be a difference in
7 opinion between Ms. Stull and me regarding how the pro forma revenue
8 adjustments should be described in testimony. In my opinion, in order to arrive at
9 the pro forma revenues, it is important to fully explain the billing instance and sales
10 volume adjustments that were made to arrive at pro forma billing instances and
11 sales volumes, not necessarily to fully explain the revenue impact of each individual
12 billing instance and sales volume adjustment. As described in my direct testimony
13 on page 8, lines 4 through 10, once the pro forma billing instances and sales
14 volumes are determined, they are multiplied by the rates currently in effect to
15 determine the pro forma revenue at present rates (see also Petitioner's Attachment
16 KLK-1, page 3, which was attached to my direct testimony). In each of Citizens
17 Energy Group's prior rate cases, pro forma revenues have been determined in this
18 manner.

19 **Q. PLEASE DESCRIBE THE PROCESS PETITIONER USED TO**
20 **DETERMINE THE PRO FORMA ADJUSTMENTS MADE TO REVENUES**
21 **REFLECTED ON ATTACHMENT KLK-1, PAGE 1.**

1 A. At the outset, it is critical to understand that the calculations on Attachment KLK-1,
2 pages 4 through 9 are only used after the pro forma revenue for each customer class
3 has been determined, as described above. The calculations on Attachment KLK-1,
4 pages 4 through 9 are only used for analysis purposes, and are not used to calculate
5 the pro forma revenue. Once the pro forma at present rates revenue is determined
6 by rate and customer class, a price/volume variance analysis is performed, as
7 reflected on Attachment KLK-1, pages 4 through 7. The analysis from Attachment
8 KLK-1, pages 4 through 7 is used to determine each of the adjustments on
9 Attachment KLK-1, page 1, lines 2 through 9.

10 **Q. HOW WAS THE \$51,612 “CUSTOMER NUMBER VOLUME**
11 **ADJUSTMENT – BASE CHARGE” ADJUSTMENT SHOWN ON**
12 **ATTACHMENT KLK-1, PAGE 1, LINE 2 DETERMINED, AND WHAT**
13 **DOES IT REPRESENT?**

14 A. The “Customer Number Volume Adjustment – Base Charge” adjustment of
15 \$51,612 reflected on Attachment KLK-1, page 1, line 2 can be found on
16 Attachment KLK-1, pages 4 and 5, line 3, columns C and H, respectively. The
17 “Customer Number Volume Adjustment – Base Charge” adjustment represents the
18 increase in base charge revenues due to projected customer growth. The analysis is
19 a simple calculation involving the average base charge from the test year and the
20 increase in the number of customers from test year to pro forma. As can be seen on
21 Attachment KLK-1, the increase in customers of 0; 2,484; and 61, respectively, for

Rate 1 (unmetered and metered Residential) and Rate 2 (Non-Residential) customers is on line 1 of pages 4 and 5. The average base charge is calculated using the test year revenues from the income statement related to base charges (denoted by expense type 4010) divided by the test year customer count. For Rate 1 customers, there are two average base charges calculated: (i) one average base charge for the unmetered Residential customers; and (ii) another average base charge for the metered Residential customers. The average charge for unmetered Residential customers is \$74.30. This equates exactly to the test year charge for unmetered customers. The average charge for the metered Residential customers is \$20.10. The average charge for Non-Residential customers is \$27.63. The sum of the three price-volume products yields the \$51,612 adjustment shown on Attachment KLK-1, page 1, line 2.

Q. HOW WAS THE \$7,076,054 “CUSTOMER NUMBER VOLUME ADJUSTMENT – TREATMENT CHARGE” ADJUSTMENT SHOWN ON ATTACHMENT KLK-1, PAGE 1, LINE 3 DETERMINED, AND WHAT DOES IT REPRESENT?

A. The “Customer Number Volume Adjustment – Treatment Charge” adjustment of \$7,076,054 reflected on Attachment KLK-1, page 1, line 3 can be found on Attachment KLK-1, pages 4 and 5, line 6, columns C and H, respectively. The “Customer Number Volume Adjustment – Treatment Charge” adjustment represents the increase in volumetric revenues due to projected customer growth.

1 Similar to the "Customer Number Volume Adjustment – Base Charge", the analysis
2 is a simple calculation involving the average treatment charge from the test year and
3 the increase in volume from test year to pro forma. The increase in volume of
4 437,729 and 37,342, respectively, for Rate 1 (metered Residential) and Rate 2
5 (Non-Residential) customers is on line 4 of pages 4 and 5 of Attachment KKK-1.
6 Since there are no metered volumes for unmetered customers, there likewise are no
7 values for these customers in the analysis. The average treatment charge is
8 calculated using the test year revenues from the income statement related to
9 volumetric charges (denoted by expense type 4011) divided by the test year metered
10 volumes. Petitioner charges a minimum charge to customers based on their rate
11 class and, for some, their meter size. A minimum volume amount is included in the
12 minimum charge. For those customers that discharge less than the minimum
13 volume amount, a differential charge is added to make up for the difference. For
14 Rate 1 customers, the average charge for the metered Residential customers is
15 \$15.55. The average charge for the Non-Residential customers is \$7.175. The sum
16 of the two price-volume products yields the \$7,076,054 adjustment shown on
17 Attachment KKK-1, page 1, line 2.

18 **Q. WHY IS THE "CUSTOMER NUMBER VOLUME ADJUSTMENT –**
19 **TREATMENT CHARGE" \$7,076,054?**

20 A. The magnitude of the adjustment is influenced by the minimum charge revenues
21 and the associated volumes. Because of the minimum charge, there are months

1 when those customers that discharge less than the minimum volume are billed for
2 more volume than they discharged. While the differential charge is added to the
3 revenue collected, there is no corresponding adjustment to customer volumes. As
4 such, the calculated average treatment charge will be higher than the test year
5 treatment charge because the revenue includes charges that don't have associated
6 volumes. Thus, the average treatment charges are \$15.55 and \$7.175 respectively,
7 which both are greater than the test year charge of \$6.86. More simply put, the test
8 year volumetric revenues include charges for metered volumes and charges for the
9 minimum charges. The test year volumes only reflect the metered volumes.

10 Furthermore, the increase in volumes of 437,729 and 37,342 includes an
11 adjustment for the minimum volume. With both the average treatment charge and
12 the increase in volumes accounting for minimum charges and volumes, there is a
13 skewing effect observed in this calculation. However, as I describe later, there will
14 be an offsetting effect related to the price variance analysis and associated
15 adjustments.

16 **Q. HOW WAS THE (\$484,580) "CHANGE IN RATE ADJUSTMENT – CHG IN**
17 **MINIMUM CHRG REVENUE" ADJUSTMENT AS SEEN ON**
18 **ATTACHMENT KLK-1, PAGE 1, LINE 4 DETERMINED, AND WHAT**
19 **DOES IT REPRESENT?**

20 A. The "Change in Rate Adjustment – Chg in Minimum Chrg Revenue" adjustment of
21 (\$484,580) reflected on Attachment KLK-1, page 1, line 4 can be found on

Attachment KKK-1, pages 6 and 7, line 5, columns C and H, respectively. The "Change in Rate Adjustment – Chg in Minimum Chrg Revenue" adjustment represents the change in base charge revenues due to the change in rates from the test year to pro forma. This portion of the price-volume analysis is a calculation involving the average base charge differential and the pro forma number of customers. As can be seen on Attachment KKK-1, the charge differentials of \$4.7979, (\$3.9994), and \$3.0172, respectively, for Rate 1 (unmetered and metered Residential) and Rate 2 (Non-Residential) customers are on line 3 of pages 6 and 7. The average test year base charges calculated on pages 4 and 5 are used here. The average pro forma base charges are calculated using the pro forma revenues from Attachment KKK-1, page 3 related to base charges divided by the pro forma customer count also found on page 3. The sum of the three price-volume products yields the (\$484,580) adjustment shown on Attachment KKK-1, page 1, line 4.

Q. HOW WAS THE (\$6,315,772) "CHANGE IN RATE ADJUSTMENT – CHG IN MONTHLY TREATMENT RATE" ADJUSTMENT AS SEEN ON ATTACHMENT KKK-1, PAGE 1, LINE 5 DETERMINED, AND WHAT DOES IT REPRESENT?

A. The "Change in Rate Adjustment – Chg in Monthly Treatment Rate" adjustment of (\$484,580) reflected on Attachment KKK-1, page 1, line 5 can be found on Attachment KKK-1, pages 6 and 7, line 10, columns C and H, respectively. The "Change in Rate Adjustment – Chg in Monthly Treatment Rate" adjustment

1 represents the change in volumetric revenues due to the change in rates from the
2 test year to pro forma. Similar to the "Change in Rate Adjustment – Chg in
3 Minimum Chrg Revenue", this price-volume analysis is a calculation involving the
4 average treatment charge differential and the pro forma volumes. As can be seen on
5 Attachment KKK-1, the charge differentials of (\$8.5533), and (\$0.1754),
6 respectively, for Rate 1 (metered Residential) and Rate 2 (Non-Residential)
7 customers are on line 8 of pages 6 and 7. The average test year treatment charges
8 calculated on pages 4 and 5 are used here. The average pro forma treatment
9 charges are calculated using the pro forma revenues from Attachment KKK-1, page
10 3 related to volumetric charges divided by the pro forma volumes also found on
11 page 3. The sum of the two price-volume products yields the (\$6,315,772)
12 adjustment shown on Attachment KKK-1, page 1, line 4.

13 **Q. WHY ARE THE TWO "CHANGE IN RATE ADJUSTMENTS" NEGATIVE?**

14 A. The negative adjustments are driven by the higher than expected test year average
15 charges primarily seen in the Rate 1 class. As I mentioned earlier, the minimum
16 charge had an upward effect on the average treatment in the test year. The negative
17 variance in the treatment charge is the offsetting effect that I spoke of earlier. The
18 negative variance essentially removes the compounding effect of the minimum
19 charge in the treatment rate.

20 **Q. IN YOUR OPINION, HAS PETITIONER SUFFICIENTLY EXPLAINED ITS**
21 **PROPOSED PRO FORMA REVENUE ADJUSTMENTS?**

1 A. Yes. I believe the adjustments were sufficiently shown in Attachment KKK-1.

2 **IV. RATE CASE EXPENSES**

3 **Q. WHAT RECOMMENDATIONS DOES THE OUCC MAKE WITH**
4 **RESPECT TO RATE CASE EXPENSES?**

5 A. OUCC witness Patrick recommends that the approved rate case expenses be shared
6 equally between Petitioner's parent company, Citizens Westfield Utilities, LLC
7 ("CWU"), and Petitioner's ratepayers. Mr. Patrick also recommends that Petitioner
8 be required to true-up its final rate case expenses to reflect only those actually
9 incurred. Specifically, Mr. Patrick suggests Petitioner be required to file a
10 "compliance filing at the time it files its revised tariff reflecting either the \$95,250
11 or half the actual rate case expense if it is less than \$95,250." Furthermore, Mr.
12 Patrick recommends rate case expenses be amortized over three years, and that
13 Petitioner file a revised tariff at the end of the amortization period to reflect the
14 complete amortization of rate case expenses. If Petitioner files a rate case before
15 the expiration of the three-year period, Mr. Patrick recommends that "Petitioner
16 should be allowed to add the unamortized balance of rate case costs to the rate case
17 costs to be amortized in its next rate case filing."

18 **Q. WHY IS MR. PATRICK SUGGESTING THAT CWU PAY A PORTION OF**
19 **PETITIONER'S RATE CASE EXPENSES?**

20 A. Mr. Patrick suggests a portion of rate case expenses should be paid by CWU
21 because it would receive "appreciable benefits" if Petitioner receives the relief

1 sought in this rate case. Mr. Patrick claims Petitioner's board "anticipated
2 Petitioner's parent would receive benefits from the filing of this case" and suggests
3 it would not have approved the filing of this case but for these prospective benefits.

4 **Q. DOES MR. PATRICK STATE WHAT THOSE BENEFITS MIGHT BE?**

5 A. Mr. Patrick only states that "one of those benefits would be to establish the rate of
6 return on Petitioner's rate base to reward the shareholder for its ownership interest."

7 **Q. WHY DID PETITIONER FILE THIS CASE?**

8 A. If Petitioner's board would not have approved the filing of this rate case, its existing
9 rates and charges would be considered unjust, unreasonable, insufficient and
10 confiscatory. Absent gathering information on appropriate operating expenses to be
11 included in the revenue requirement in a base rate case, and coming to the
12 Commission pursuant to public utility laws to seek Commission approval, Petitioner
13 would be unable to earn the reasonable return on the investment it has made in
14 facilities and recover the operating costs necessary to provide wastewater service to
15 its customers. In my opinion, rate case expense is merely the cost of doing business
16 as a regulated entity and should be fully recovered in this case.

17 **Q. DOES MR. PATRICK SUGGEST THE AMOUNT OF PETITIONER'S**
18 **PROPOSED RATE CASE EXPENSE IS EXCESSIVE?**

19 A. No.

20 **Q. DO YOU AGREE WITH MR. PATRICK'S PROPOSAL THAT RATE CASE**
21 **EXPENSES SHOULD BE SHARED WITH THE SHAREHOLDERS OF THE**

1 **UTILITY?**

2 A. No. Mr. Patrick cites no Indiana statute or rule that permits the sharing of rate case
3 expenses between a utility and its ratepayers. Moreover, Mr. Patrick fails to
4 recognize that the Commission has consistently rejected the same recommendation.
5 The most notable example is *Kokomo Gas and Fuel Company*, Cause No. 38096
6 (approved July 9, 1987).

7 **Q. PLEASE DESCRIBE THE *KOKOMO GAS AND FUEL COMPANY* CASE.**

8 A. In *Kokomo Gas and Fuel Company*, the OUCC proposed a 50/50 split of rate case
9 expense between the utility and the ratepayers. The rationale advanced by the
10 OUCC in that case is the same as that being advanced by Mr. Patrick. The OUCC
11 claimed both the ratepayers and utility were receiving a benefit from the filing of
12 the rate case, and therefore they should share the expense. The OUCC's witness in
13 *Kokomo Gas*, Mr. Krevda, admitted that it is impossible to determine what the
14 appropriate split should be between ratepayers and the utility, and that rate case
15 expenses have always been treated like any other operating expense.

16 **Q. WHAT DID THE COMMISSION ORDER IN *KOKOMO GAS*?**

17 A. The Commission rejected the OUCC's position. The Commission concluded:

18 "The receipt of benefits as a theoretical basis of the proposed
19 adjustment is not adequate. The Public's proposal to divide
20 Petitioner's rate case expense 50-50 on the basis that there is no way
21 to measure the relative benefits of rate case expenses to shareholders
22 and ratepayers amounts to the arbitrary disallowance of a portion of
23 Petitioner's known, fixed and measurable rate case expense. The rate
24 making process is not an appropriate forum to award fees and
25 expenses to a winner, or to the party which receives the benefit. A

1 petitioning utility before the Indiana Utility Regulatory Commission
2 has little control over what must be spent to justify reasonable rates
3 in the face of zealous adversaries like the Office of the Utility
4 Consumer Counselor. . .”

5 The Commission also found the proposal would be particularly disadvantageous to
6 small public utilities. The Commission noted that in-house counsel and experts at
7 larger utilities would necessarily be included in the utility's labor expense and be
8 automatically recoverable.

9 **Q. IN YOUR OPINION, IS MR. PATRICK'S PROPOSAL BASED ON**
10 **“THEORETICAL” BENEFITS TO CWU?**

11 A. Yes.

12 **Q. DOES MR. PATRICK QUANTIFY THE “BENEFITS” TO BE RECEIVED**
13 **BY CWU AS A RESULT OF THIS CASE?**

14 A. No. In response to Petitioner's Data Request No. 2.3, Mr. Patrick admits that he
15 has not quantified any benefits to shareholders as a result of filing this rate case.
16 Notably, Mr. Patrick inconsistently claims that “[g]iven the OUCC's determination
17 that there should be a rate decrease, it is possible more of the rate case costs should
18 be borne by shareholders. . . .” (See Petitioner's Attachment KKK-R4).

19 **Q. IS THE OUCC AWARE OF ANY RATE CASES IN WHICH**
20 **SHAREHOLDERS HAVE BEEN REQUIRED TO SHARE RATE CASE**
21 **EXPENSES WITH RATEPAYERS?**

22 A. Apparently not. In response to Petitioner's Data Request No. 2.4, the OUCC
23 indicated that “Mr. Patrick is not aware of any Commission decisions requiring

shareholders to share rate case expenses.” (See Petitioner’s Attachment KLK-R5).

Q. ARE THERE RATE CASES IN WHICH THE OUCC HAS UNSUCCESSFULLY PROPOSED THE SPLITTING OF RATE CASE EXPENSES?

A. Yes. In *Re Indiana Gas Company, Inc.*, Cause No. 38080 (September 18, 1987), the OUCC proposed that the Commission deny the utility’s request to recover its expenses associated with the presentation of its cost of equity testimony. OUCC witness Krevda admitted that such rate expenses have always been paid by ratepayers, like any other operating expense, but argued shareholders and ratepayers both benefit from the regulatory process. Mr. Krevda admitted “it is extremely difficult if not impossible to determine what percentage of benefit each party receives from a specific rate case expenditure.” Accordingly, the OUCC, in what it characterized as a “conservative position,” proposed that the ratepayer pay all rate case expenses except for the outside cost of equity consultant because “such a cost is clearly a shareholder benefit.” Mr. Krevda noted that “neither the Commission Economics Staff nor any party to this Cause is proposing a higher return on common equity than Petitioner's outside consultant.” Mr. Krevda “concluded that “a higher rate of return translates directly into shareholder profit.”

Q. IS MR. PATRICK MAKING THE SAME CONTENTION?

A. Yes. Mr. Patrick’s only claimed benefit is that a rate case establishes “the rate of return on Petitioner’s rate base to reward the shareholder for its ownership interest.”

(Public's Exh. 2 at 23.) Mr. Patrick's argument is no different than Mr. Krevda's contention that "a higher rate of return translates directly into shareholder profit."

Q. DID THE COMMISSION ACCEPT THE ARGUMENT MADE BY THE OUCC IN *RE INDIANA GAS COMPANY*?

A. No. The Commission again rejected the OUCC's position, and held that "reasonably necessary expenses incurred in offering cost of capital evidence should be included as a part of Petitioner's rate case expense." The Commission reasoned:

"In this proceeding, and in any rate proceeding before this Commission, *the petitioning utility has the burden of proving all material elements of its requested rate relief. Among these is the proposed cost of common equity.* This Commission, by statute, must grant a utility a fair return on the fair value of its property used and useful in furnishing service to the public. Throughout the years the courts have given the Commission specific guidelines and directives to be followed in accomplishing this task. . . This Commission is bound to base all of its findings upon substantial evidence of record. The determination of the cost to be assigned to a utility's common equity component of its capital structure is no exception. *Therefore, a utility seeking rate relief before this Commission and presenting the traditionally expected capital structure for consideration in the Commission's ratemaking deliberations has the burden of presenting evidence as to an appropriate cost of common equity.*"

"We are unclear as to Mr. Krevda's precise position. Mr. Krevda does not seem to imply that Petitioner should not present cost of capital evidence, but only that it should not recover the cost thereof. . . ." (*emphasis added*)

The Commission concluded that Mr. Krevda's "approach is contrary to long established practice of the treatment of reasonable rate case expenses," including necessary expenses incurred in offering cost of capital evidence. Accordingly, the Commission rejected the OUCC's argument.

1 **Q. HAS THE COMMISSION REJECTED THE OUCC'S ARGUMENT IN ANY**
2 **OTHER CASES?**

3 A. Yes. While I have not done an exhaustive search, a similar argument was rejected
4 again in *Gary-Hobart Water Corporation*, Cause No. 39585. In that case, OUCC
5 witness Eckert objected to the inclusion of appealing the utility's prior rate case in
6 the rate case expense adjustment made by the utility. Mr. Eckert said that the relief
7 sought on appeal "could only benefit Petitioner's shareholders and not its
8 ratepayers." The Commission rejected Mr. Eckert's argument and stated:

9 [T]he Commission cannot find that successful appeals by a utility
10 benefit only the shareholders. The application of appropriate Indiana
11 ratemaking principles and the maintenance of appropriate rate levels
12 benefit both the Company and the public. Indeed, satisfactory service
13 is dependent on the financial situation and capital attraction
14 capability of the utility which, in turn, are dependent on rates. This is
15 true both of Commission proceedings and appellate proceedings.

16 **Q. IN YOUR OPINION, IS THERE ANY BASIS FOR THE COMMISSION TO**
17 **CHANGE ITS POLICY IN THIS CASE?**

18 A. No. The OUCC's proposal continues to amount to an arbitrary disallowance of
19 known, fixed and measurable rate case expense. Mr. Patrick's argument is virtually
20 identical to those that have been rejected time and again by the Commission. I do
21 not find any reason for the Commission to ignore its prior holdings and change its
22 policy with respect to Petitioner. A utility's shareholders do not directly benefit
23 from rate cases though they do carry such expense until recovered in new rates. A
24 rate of return is recognition of the prior investment in used and useful property a

petitioning utility has already made.

Q. MR. PATRICK ALSO PROPOSED THAT PETITIONER BE REQUIRED TO TRUE-UP ITS FINAL RATE CASE EXPENSES TO REFLECT THOSE ACTUALLY INCURRED. PLEASE EXPLAIN YOUR REACTION TO THIS PROPOSAL.

A. I disagree with this proposal, especially to the extent that it is combined with a “cap.” The OUCC’s proposal is a one-way ratchet to decrease rate case expenses. To the extent Petitioner is required to true-up its rate case expenses, the “true-up” should work both ways. The OUCC was asked in discovery to identify all proceedings in which a utility has trued-up its rate case expenses. Mr. Patrick stated that he “is not aware of any Commission decisions requiring a true-up of rate case expenses.” The OUCC could only identify one case where it even made such a recommendation, which was Citizens Gas of Westfield’s most recent rate case, Cause No. 44731. A copy of the OUCC’s response to Data Request No. 3.1 is included as Attachment KLK-R6.

Q. MR. PATRICK ALSO PROPOSES THAT PETITIONER FILE A REVISED TARIFF AT THE END OF THE THREE YEAR AMORTIZATION PERIOD TO REFLECT COMPLETE AMORTIZATION OF THE RATE CASE EXPENSES. DO YOU AGREE WITH THIS PROPOSAL?

A. No. In my opinion, taking this step is inconsistent with the treatment of a multitude of expenses that likely will increase over the life of these rates, where no increase

will be allowed in Petitioner's rates. In addition, I would note that given the three-year amortization period, the impact on rates is likely to be *de minimis*.

V. RATE DESIGN

Q. PLEASE SUMMARIZE OUCC WITNESS STULL'S RECOMMENDATION WITH RESPECT TO RATE DESIGN.

A. OUCC witness Stull makes several recommendations relating to Petitioner's rate design. First, Ms. Stull recommends that unmetered customers be billed based on estimated monthly water consumption of no more than 5,000 gallons – rather than 9,000 gallons. Ms. Stull is not proposing that this change be implemented now. Rather, Ms. Stull suggests this proposal be implemented by Petitioner's conducting a cost of service study, including a review of rate design, and provide the results of this study in its next base rate case. Second, Ms. Stull recommends that Petitioner be required to implement a System Development Charge in the amount of \$2,100. Finally, Ms. Stull recommends that Petitioner add a connection fee to its tariff within sixty days of the Commission's issuance of this Order.

A. Unmetered Customer Charge

Q. DO YOU OPPOSE MS. STULL'S RECOMMENDATION THAT UNMETERED CUSTOMERS BE BILLED BASED ON ESTIMATED MONTHLY WATER CONSUMPTION OF NO MORE THAN 5,000 GALLONS – RATHER THAN 9,000 GALLONS?

A. In theory, no. I agree with Ms. Stull that the impact on Petitioner's other customers

1 appears to be small with a monthly impact per metered customer of approximately
2 \$1.00 or less, depending on the customer's water consumption. However, as noted
3 above, Ms. Stull recommends this change be implemented based on the results of its
4 cost of service study in its next rate case. Petitioner is willing to engage a
5 consultant to perform a cost of service study as part of its next rate case, as long as
6 the cost of conducting such a study would be recoverable as a rate case expense in
7 that rate case – and not split as Mr. Patrick recommends. Moreover, Petitioner may
8 recommend a different monthly consumption level than 5,000 gallons depending on
9 usage characteristics at the time.

10 ***B. System Development Charge***

11 **Q. DO YOU AGREE WITH MS. STULL THAT INEQUITIES HAVE BEEN**
12 **CREATED BECAUSE PETITIONER HAS NOT IMPOSED A SYSTEM**
13 **DEVELOPMENT CHARGE?**

14 **A.** Not necessarily. There are a number of complex issues at play in the
15 implementation of a System Development Charge. I suspect that developers and
16 families purchasing homes that must absorb the cost of a System Development
17 Charge might have a different perspective. I would note that developers pay for the
18 cost of the extension of any facilities to the development pursuant to Petitioner's
19 main extension rules. In addition, developers are responsible for the construction of
20 the infrastructure in the neighborhoods. I suspect that both of these costs are
21 ultimately passed on to the homebuyer through the purchase price.

1 **Q. COULD THERE BE ADVERSE IMPACTS FROM THE**
2 **IMPLEMENTATION OF A SYSTEM DEVELOPMENT CHARGE?**

3 A. Yes. Implementation of a System Development Charge could hinder development
4 in and around the City of Westfield. The City of Westfield is one of the fastest
5 growing cities in the State of Indiana. This growth in housing obviously stimulates
6 the economy in Westfield. Petitioner would not want to implement a charge that
7 would disrupt growth to the detriment of Westfield and the State. Notably, both the
8 Builders Association of Greater Indianapolis and Office of the Mayor of the City of
9 Westfield have submitted letters in this Cause that are supportive of Petitioner.
10 Their level of participation in this Cause may have been different had Petitioner
11 proposed to implement a System Development Charge.

12 **Q. DOES THE AWWA RATES MANUAL RECOGNIZE THAT THE**
13 **IMPLEMENTATION OF SYSTEM DEVELOPMENT CHARGES CAN**
14 **DETER GROWTH?**

15 A. Yes. The AWWA M1 Manual states:

16 The Utility should be aware of the possibility of deterring
17 growth in its service area or customer base. . . . Usually, SDCs have
18 the greatest negative economic impact on development projects that
19 are in the planning stage. This can be mitigated by phasing in the
20 SDCs over a period of time or setting an effective due date in the
21 future.

22
23 The practitioner must consider the effect of SDCs on
24 competition for new development. Some utilities serve an area that
25 is in competition with nearby regions or other major economic
26 centers. Whether competition is local or global, the utility, in
27 conjunction with the local or state government, may wish to promote

its competitive standing when considering the implementation of an SDC.

Q. IS THERE COMPETITION FOR NEW DEVELOPMENT AROUND PETITIONER'S SERVICE AREA?

A. Yes. The City of Westfield is competing with Carmel, Fishers and Noblesville for growth in the area. This is why we continue to see investment by the local governments of Carmel, Fishers, Noblesville and Westfield on public improvements such as roads, roundabouts, parks, trails and downtown living.

Q. DOES THE GROWTH IN THE COMMUNITY BENEFIT PETITIONER'S OTHER CUSTOMERS?

A. Absolutely. Petitioner's other customers are benefited by the fact that there are more customers over which to spread Petitioner's fixed costs.

Q. IN YOUR OPINION, IS THE SYSTEM DEVELOPMENT CHARGE PROPOSED BY MS. STULL APPROPRIATE?

A. No. I believe Ms. Stull's recommendation that Petitioner be required to impose a System Development Charge should be rejected. While I am not a lawyer, it is my understanding that System Development Charges are typically proposed by utilities in their case-in-chief. I am not aware of a proceeding where a utility has been unilaterally required to implement a System Development Charge absent its proposal to do so and simply based on a recommendation made by the OUCC or an Intervenor.

Q. IF PETITIONER WERE TO CALCULATE A SYSTEM DEVELOPMENT

CHARGE, DO YOU AGREE WITH MS. STULL'S PROPOSED CHARGE?

A. No. First, Ms. Stull is using the OUCC's version of utility plant in service and accumulated depreciation. At a minimum, Petitioner would use the appropriate amount of utility plant in service and accumulated depreciation, as set forth in the testimony of Petitioner's witness Sabine E. Karner. Attached as Attachment KLK-R7 is a calculation of the System Development Charge consistent with the AWWA M1 Manual and WEF MOP 27. As shown in the attachment, the System Development Charge would be \$ 2,000.

Q. MS. STULL RECOMMENDS THAT PETITIONER IMPLEMENT A CONNECTION FEE. DO YOU AGREE WITH MS. STULL'S RECOMMENDATION THAT PETITIONER IMPLEMENT A CONNECTION FEE?

A. No. I do not think a connection charge is necessary. As I indicated above, the developers (and ultimately the customers) are currently paying for the cost of the main extension and the collection facilities in the neighborhood, as well as the material and installation costs associated with the lateral connecting the customer to the system. The only direct cost supplied by the Petitioner for a customer connection is the cost of the meter, meter setting and meter vault on the water connection. This cost is an offset to any revenue allowance paid back to the developer. In other words, the developer is also paying for the meter. Accordingly, the only cost incurred by the utility is the expense associated with installing the

meter, which is at most a twenty minute process. I do not think an additional charge would be administratively appropriate under the circumstances.

Q. WHAT DO YOU RECOMMEND WITH RESPECT TO THE SYSTEM DEVELOPMENT AND CONNECTION FEE CHARGES PROPOSALS MADE BY MS. STULL?

A. I recommend that both be rejected.

VI. RULE 12.3 OF PETITIONER'S TERMS AND CONDITIONS FOR SERVICE

Q. WHAT DOES OUCC WITNESS STULL RECOMMEND WITH RESPECT TO PETITIONER'S TERMS AND CONDITIONS FOR SERVICE?

A. OUCC witness Stull recommends that the Commission reject Petitioner's proposed inclusion of Rule 12.3 in its terms and conditions for service.

Q. WHAT IS THE PURPOSE OF RULE 12.3?

A. Rule 12.3 was designed to give Petitioner access to the facilities of Industrial Customers to ensure that the facilities are being operated in conformance with applicable Federal, State and local laws and permits. Absent the Rule, Industrial Customers that discharge prohibited substances into the wastewater system or that do not comply with pretreatment standards can argue that they do not have to grant Petitioner's employees access to their facilities to ensure compliance. This jeopardizes the ability of Petitioner to comply with its National Pollutant Discharge Elimination System ("NPDES") permit and provide safe and dependable wastewater service.

1 **Q. PLEASE DESCRIBE WITH PARTICULARITY THE LAWS AND**
2 **PERMITTING REQUIREMENTS THAT MAKE IT NECESSARY FOR**
3 **PETITIONER TO HAVE ACCESS TO INDUSTRIAL CUSTOMER**
4 **PREMISES.**

5 A. The NPDES Permit for the City of Westfield Westside Treatment Plant, which was
6 transferred to Petitioner ("NPDES Permit") contains monitoring, reporting and
7 other obligations from Petitioner to the Indiana Department of Environment
8 Management ("IDEM"). Among other things, the NPDES Permit addresses Upset
9 Conditions. An Upset Condition occurs due to factors beyond the reasonable
10 control of the permittee. However, Petitioner is required to evaluate the Upset
11 Condition, ascertain its cause and submit the required Incident Report. In order to
12 provide the required analysis and complete the Incident Report, the permittee must
13 have access to its customers' facilities. Specifically, the Incident Report must
14 include a description of the cause, which in the case of an Upset Condition may be
15 the result of a customer action.

16 **Q. ARE THERE ANY OTHER SITUATIONS UNDER WHICH PETITIONER**
17 **WOULD HAVE A NEED TO ACCESS CUSTOMER PREMISES IN ORDER**
18 **TO COMPLY WITH ITS NPDES PERMIT?**

19 A. Yes. The NPDES Permit also contains provisions that impose a Duty to Mitigate
20 and a Duty to Provide Information. In order to meet these requirements and duties
21 of the NPDES Permit, Petitioner must be in a position to have the ability to address

1 the underlying cause of any noncompliance. This requires that Petitioner have an
2 express right to inspect its industrial customers that discharge into the wastewater
3 treatment facility. Specifically, Section C. 4 of Petitioner's NPDES Permit
4 provides that "Permittee shall report any instance of noncompliance..." and the
5 written submission shall contain "a description of the noncompliance and its
6 cause..." In order to understand the cause of a noncompliance, Petitioner must be
7 able to have a right of entry and inspection for its dischargers. A copy of
8 Petitioner's NPDES Permit is included as Attachment KKK-R8.

9 **Q. CAN A VIOLATION OF AN NPDES PERMIT BE CONSIDERED A**
10 **VIOLATION OF STATE LAW?**

11 A. Yes, that is my understanding.

12 **Q. CAN A VIOLATION OF AN NPDES PERMIT ALSO RESULT IN A**
13 **VIOLATION OF FEDERAL LAW?**

14 A. Yes, that is my understanding.

15 **Q. COULD INDUSTRIAL CUSTOMER DISCHARGES HAVE OTHER**
16 **ADVERSE IMPACTS ON THE SYSTEM?**

17 A. Yes. Certain discharges of pollutants and other harmful materials could have a
18 detrimental impact on the safe and reliable operation of the system.

19 **Q. IN YOUR OPINION IS PETITIONER'S PROVISION UNIQUE?**

20 A. No. CWA Authority, Inc. ("CWA") has a similar provision in its rules. However,
21 CWA is required to implement an industrial pretreatment program by the EPA

1 pursuant to the requirements of 40 CFR 403. Accordingly, the right to inspection
2 and entry is provided to CWA pursuant to the sewer user ordinance adopted by
3 CWA's Board as Resolution CWA 2-2011, Section 1.14.

4 **Q. DOES MS. STULL OPPOSE PETITIONER'S GAINING ACCESS TO**
5 **INDUSTRIAL CUSTOMER PREMISES FOR THE PURPOSES**
6 **MENTIONED IN YOUR DIRECT TESTIMONY?**

7 A. She does not say. Petitioner asked in discovery whether the OUCC was opposed to
8 Petitioner's having the ability to inspect the facilities of Industrial Customers to
9 ensure that they are not discharging wastewater to the system that contains
10 pollutants or otherwise could create a violation of Federal, State, or local law or
11 Petitioner's permits. The OUCC declined to answer the question stating that
12 "Federal, State, or local law or Petitioner's permits" are not "specifically defined."

13 **Q. IN ORDER TO PROMOTE CLARITY, WOULD PETITIONER BE**
14 **WILLING TO INSERT THE WORD "INDUSTRIAL" BEFORE THE**
15 **WORD CUSTOMERS, SO THAT THE RULE DOES NOT EXPOSE "ALL**
16 **CUSTOMERS" TO INSPECTION?**

17 A. Yes.

18 **Q. IN YOUR OPINION SHOULD RULE 12.3 BE FURTHER RESTRICTED?**

19 A. No. The rule as proposed gives Petitioner the right to inspect customer facilities to
20 ensure compliance with all "applicable Federal, State, and local" laws and permits.
21 Notwithstanding the OUCC's contention in response to Petitioner's discovery

1 request, I do not find the terms Federal, State and local law to ambiguous. In my
2 opinion, attempting to further restrict this language to particular statutes could
3 undercut Petitioner's ability to rely on this provision of its terms and conditions for
4 service. In situations where an industrial customer is discharging materials to
5 Petitioner's system, which result in a violation of its NPDES permit, and in turn
6 State and Federal law, Petitioner must be able to access their facilities.

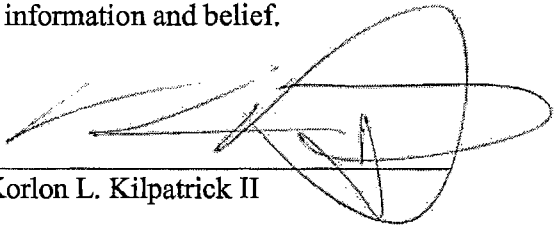
7 **VII. CONCLUSION**

8 **Q. MR. KILPATRICK, DOES THAT CONCLUDE YOUR REBUTTAL**
9 **TESTIMONY IN THIS PROCEEDING?**

10 **A.** Yes, it does.

VERIFICATION

The undersigned affirms under the penalties for perjury that the foregoing testimony is true to the best of his knowledge, information and belief.



Korlon L. Kilpatrick II

EXHIBIT B

Citizens Wastewater of Westfield, LLC
 Petitioner's Attachment KLK-R1

Citizens Wastewater of Westfield
 Cause No. 44835

Comparison of Petitioner's and the OUCC's Proposed Revenue Requirements
 Case-in-Chief and Rebuttal Positions

Line No.	Description	A	B	C
		Per Petitioner Case-in-Chief	Per OUCC Case-in-Chief	Per Petitioner Rebuttal
1	Rate Base	\$55,188,021	\$29,500,522	\$55,020,363
2	Times: Rate Of Return	8.76%	5.75%	8.76%
3	Net Operating Income	4,834,471	1,697,313	4,819,784
4	Return on Fair Value Increment	0	537,910	0
5	Return on Rate Base	4,834,471	2,235,223	4,819,784
6	Less: Adjusted Net Operating Income	2,470,195	3,085,146	2,831,479
7	Increase/(Decrease) In Net Operating Income	2,364,276	(849,923)	1,988,305
8	Divided by Revenue Conversion Factor	0.9798720	0.9799039	0.9799049
9	Recommended Revenue Increase (Decrease)	\$2,412,841	(\$867,354)	\$2,029,079
10	Overall Percentage Increase (Decrease)	25.42%	(8.86%)	20.98%
	Gross Revenue Conversion Factor			
11	Gross Revenue Change	100.0000%	100.0000%	100.0000%
12	Less: Bad Debt Rate	0.5000%	0.5000%	0.5000%
13	Subtotal	99.5000%	99.5000%	99.5000%
14	Less: IURC Fee	0.1172%	0.1166%	0.1166%
15	Income Before State Utility Receipts Tax	99.3828%	99.3834%	99.3834%
16	Less: Utility Receipts Tax	1.3956%	1.3930%	1.3929%
17	Gross Revenue Conversion Factor	97.9872%	97.9904%	97.9905%

EXHIBIT C

Citizens Wastewater of Westfield, LLC
Petitioner's Attachment KLK-R2

Citizens Wastewater of Westfield, LLC Summary of Pro Forma Revenue Requirement

Line No.	A Actual per Books	B Pro Forma Adjustments Increase (Decrease)	C Pro Forma Results Based on Current Rates	D Pro Forma Adjustments Increase (Decrease)	E Pro Forma Results Based on Proposed Rates	F Reference	G Change from Petitioner's Case-In-Chief
Operating Revenues							
1 Test Year Revenues	\$9,432,070					Income Statement	
2 Customer Number Volume Adjustment - Base Charge		\$124,153				page 4 & 5	\$72,541
3 Customer Number Volume Adjustment - Treatment Charge Adj		7,346,370				page 4 & 5	270,316
4 Change in Rate Adjustment - Chg in Minimum Chrg Revenue		(498,310)				page 6 & 7	(13,730)
5 Change in Rate Adjustment - Chg in Monthly Treatment Rate		(8,464,428)				page 6 & 7	(148,656)
6 Unbilled		(237,994)				page 8 & 9	
7 Rounding		(0)					
8 Billing Correction Adjustment		18,264				page 8 & 9	
9 Other Revenue		8,519				page 10	8,519
10 Revenue Requirement Increase				\$2,029,080		page 14	(\$383,761)
11 Total Operating Revenues	\$9,432,070	\$296,573	\$9,728,643	\$2,029,080	\$11,757,723		
Other Operating Expenses							
12 Test Year Other Operating Expenses	\$3,520,214					Income Statement	
13 Amortized Regulatory Expense		63,500				page 11	
14 Net Write-Off		19,378				page 11 & 15	(974)
15 Payroll		43,175		10,145		Attachment SEK-3	
16 Payroll Taxes		3,589				Attachment SEK-3	
17 Purchased Power		48,923				Attachment SEK-3	11,746
18 Purchased Wastewater Treatment		244,007				Attachment SEK-3	
19 Normalized Expenses		27,266				Attachment SEK-3	2,622
20 Out of Period Expenses		(86,230)				Attachment SEK-3	(57,869)
21 Non-Recurring Expenses		(88,510)				Attachment SEK-3	(6,800)
22 Non-Allowed Expenses		(950)				Attachment SEK-3	
23 IURC Fee		11,280		2,368		page 12 & 16	(252)
24 Total Other Operating Expenses	\$3,520,214	\$285,429	\$3,805,643	\$12,512	\$3,818,155		
Depreciation & Amortization							
25 Test Year Depreciation & Amortization	\$2,006,558					Income Statement	
26 Depreciation & Amortization Adjustment		482,983				Attachment SEK-3	
27 Pro Forma Depreciation & Amortization	\$2,006,558	\$482,983	\$2,489,539	\$0	\$2,489,539		
Taxes							
28 Test Year Taxes	\$723,122					Income Statement	
29 Pro Forma Change in IURT		\$4,450		\$28,263		page 13 & 17	(\$3,037)
30 Property Tax		(\$125,588)					(\$125,588)
31 Pro Forma Taxes	\$723,122	(\$121,139)	\$601,983	\$28,263	\$630,246		
32 Operating Income	\$3,182,178	(\$350,700)	\$2,831,479	\$1,998,305	\$4,819,784		

DATA REQUEST NO. 23:

Please explain the basis for the *pro forma* increase of 207 customer counts per month for Rate Class 1 (total of 2,484) as reflected on w/p WS630-3. Please provide all supporting calculations and documentation for this increase.

RESPONSE:

There are six residential projects that are expected to be completed and connected to Petitioner's system during CY2016. See the document identified as OUCC DR 6.23.

WITNESS:

Korlon L. Kilpatrick II

[illegible]

**CITIZENS WASTEWATER OF WESTFIELD DATA REQUEST
TO OUCC
Cause No. 44835**

Request No. 2-3. Reference page 24 of Public's Exhibit 2 lines 2 through 4, in which Mr. Patrick states: "while Petitioner's ratepayers will continue to be able to receive safe, reliable services from Petitioner as a result of this rate case, a significant outcome of this rate case will be rates imposed on all Petitioner's ratepayers designed to reward the shareholder with an appropriate return on its investment."

- a. Has Mr. Patrick or the OUCC quantified benefit to shareholders as compared to the aforementioned benefits to Petitioner's ratepayers?
- b. If the answer is yes, please provide a copy of the calculation used to derive the benefit to shareholders as opposed to ratepayers?
- c. If the answer is no, please explain how the OUCC determined to allocate half of rate case expenses to shareholders?

RESPONSE:

- a. No.
- b. N/A
- c. Petitioner made the decision to bring a rate case and sought an NOI of \$2,470,195. The OUCC's review determined there should be a rate decrease. There should be some incentive for Petitioner to keep rate case expense down. A sharing of the rate case expense between the ratepayers and the shareholder is a way to accomplish this. Given the OUCC's determination that there should be a rate decrease, it is possible more of the rate case costs should be borne by the shareholders, but a splitting of the cost evenly between the shareholder and the ratepayers was reasonable, as it may be sufficient to encourage avoiding unnecessary rate case expense.

**CITIZENS WASTEWATER OF WESTFIELD DATA REQUEST
TO OUCC
Cause No. 44835**

Request No. 2-4. Refer to Mr. Patrick's testimony on page 23 and his recommendation that rate cases be shared between Petitioner and its shareholders.

- (A) Identify by Cause number any and all IURC proceedings that Mr. Patrick or the OUCC is aware of in which shareholders have been required to share rate case expenses with ratepayers.
- (B) If Mr. Patrick or the OUCC has not done the research necessary to respond to subpart (A), please explain why not.
- (C) If Mr. Patrick or the OUCC are aware of any such cases, please explain why they were not discussed or disclosed in Mr. Patrick's testimony.

RESPONSE:

- (A) The OUCC does not maintain a list of the information requested. The OUCC objects to the extent it asks the OUCC to perform a study it has not done as such study would be unduly burdensome if it could be done. Without waiving the objection, Mr. Patrick is not aware of any Commission decisions requiring shareholders to share rate case expenses.
- (B) See above.
- (C) See above.

II. DATA REQUESTS

Request No. 3-1. Refer to Mr. Patrick's testimony on page 24 that: "Petitioner should be authorized the lesser of the OUCC's recommendation. . . or half the actual rate case incurred in this Cause."

- (A) Identify by Cause number any and all IURC proceedings that Mr. Patrick or the OUCC is aware of in which a utility has been required to "true-up" its rate case expenses as proposed by Mr. Patrick.
- (B) Identify any all proceedings in which the OUCC has made such a recommendation.
- (C) If Mr. Patrick or the OUCC has not done the research necessary to respond to subparts (A) and (B), please explain why not.

RESPONSE:

- (A) The OUCC does not maintain a list of the information requested. The OUCC objects to the extent it asks the OUCC to perform a study it has not done as such study would be unduly burdensome if it could be done. Without waiving the objection, Mr. Patrick is not aware of any Commission decisions requiring a true-up of rate case expenses. Mr. Patrick is aware that this was proposed by the OUCC in Cause No. 44731.
- (B) See above
- (C) See above

Calculation of System Development Charge

Citizens Wastewater of Westfield, LLC
 Petitioner's Attachment KLK-R7

Line No.		A	B
		Per OUCC Case-in-Chief	Per Petitioner's Rebuttal
1	Westfield Wastewater Treatment Plant Capacity	7,500,000	7,500,000
2	Capacity at Carmel's Wastewater Treatment Plant	2,840,000	2,840,000
3	Total System Capacity	10,340,000	10,340,000
4	Divided by: 310 gpd	310	310
5	Number of EDUs that can be served	33,355	33,355
6	Utility Plant in Service	89,685,212	88,841,680
7	Less: Accumulated Depreciation	(21,865,804)	(22,397,636)
8	Net Utility Plant in Service	67,819,408	66,444,044
9	System Development Charge	\$ 2,033	\$ 1,992
10	System Development Charge (rounded up to 100)	\$ 2,100	\$ 2,000



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.

Governor

Thomas W. Easterly

Commissioner

100 North Senate Avenue

Indianapolis, Indiana 46204

(317) 232-8603

Toll Free (800) 451-6027

www.idem.IN.gov

VIA ELECTRONIC MAIL

March 16, 2012

Mr. Kurt Wanninger, Director of Public Works
City of Westfield
2706 East 171st Street
Westfield, Indiana

Dear Mr. Wanninger:

Re: Final NPDES Permit No. IN0059544
City of Westfield Westside Wastewater Treatment Plant
Hamilton County

Your application for a National Pollutant Discharge Elimination System (NPDES) permit has been processed in accordance with Sections 402 and 405 of the Federal Water Pollution Control Act as amended, (33 U.S.C. 1251, et seq.), and IDEM's permitting authority under IC 13-15. The enclosed NPDES permit covers your discharges to Little Eagle Creek. All discharges from this facility shall be consistent with the terms and conditions of this permit.

One condition of your permit requires monthly reporting of several effluent parameters. Reporting is to be done on the Monthly Report of Operation (MRO) form. This form is available on the internet at the following web site:

<http://www.in.gov/idem/5104.htm>

You should duplicate this form as needed for future reporting.

Another condition which needs to be clearly understood concerns violation of the effluent limitations in the permit. Exceeding the limitations constitutes a violation of the permit and may bring criminal or civil penalties upon the permittee. (See Part II.A.1 and II.A.11 of this permit). It is very important that your office and treatment operator understand this part of the permit.

Mr. Kurt Wanninger, Director of Public Works
Page 2

Please note that this permit issuance can be appealed. An appeal must be filed under procedures outlined in IC 13-15-6, IC 4-21.5, and the enclosed public notice. The appeal must be initiated by you within 18 days from the date this letter is postmarked, by filing a request for an adjudicatory hearing with the Office of Environmental Adjudication (OEA), at the following address:

Office of Environmental Adjudication
Indiana Government Center North
100 North Senate Avenue, Room 501
Indianapolis, IN 46204

Please send a copy of any such appeal to me at IDEM, Office of Water Quality-Mail Code 65-42, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

The permit should be read and studied. It requires certain action at specific times by you, the discharger, or your authorized representative. One copy of this permit is also being sent to your operator to be kept at the treatment facility. You may wish to call this permit to the attention of your consulting engineer and/or attorney.

If you have any questions concerning your NPDES permit, please contact Bill Stenner at 317/233-1449. Questions concerning appeal procedures should be directed to the Office of Environmental Adjudication, at 317/232-8591.

Sincerely,



Martha Clark Mettler
Deputy Assistant Commissioner
Office of Water Quality

Enclosures

cc: Hamilton County Health Department
Mr. Randy Higginbotham, Certified Operator
Mr. Matthew H. Hobbs, P.E., HNTB
U.S. EPA, Region 5

STATE OF INDIANA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., the "Act"), Title 13 of the Indiana Code, and regulations adopted by the Water Pollution Control Board, the Indiana Department of Environmental Management (IDEM) is issuing this permit to the

CITY OF WESTFIELD


hereinafter referred to as "the permittee." The permittee owns and/or operates the **City of Westfield Westside Wastewater Treatment Facility**, a major municipal wastewater treatment plant located at 3303 West 166th Street, Westfield, Indiana, Hamilton County. The permittee is hereby authorized to discharge from the outfalls identified in Part I of this permit to receiving waters named Little Eagle Creek in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in the permit. This permit may be revoked for the nonpayment of applicable fees in accordance with IC 13-18-20.

Effective Date: June 1, 2012

Expiration Date: May 31, 2017

In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and application forms as are required by the Indiana Department of Environmental Management. The application shall be submitted to IDEM at least 180 days prior to the expiration date of this permit, unless a later date is allowed by the Commissioner in accordance with 327 IAC 5-3-2 and Part II.A.4 of this permit.

Issued on March 16, 2012, for the Indiana Department of Environmental Management.


Martha Clark Mettler
Deputy Assistant Commissioner
Office of Water Quality

TREATMENT FACILITY DESCRIPTION

The permittee currently operates a Class III, 3.0 MGD wastewater treatment facility consisting of a coarse bar rack, a mechanical fine bar screen, grit removal, three sequential batch reactors, phosphorus removal, ultraviolet light disinfection, post aeration, four aerobic digesters, and influent and effluent flow meters. The collection system is comprised of 100% separate sanitary sewers by design with no overflow or bypass points. Solids are land applied under Land Application Permit No. INLA000711.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

The permittee is authorized to discharge from the outfall listed below in accordance with the terms and conditions of this permit. The permittee shall take samples and measurements at a location representative of each discharge to determine whether the effluent limitations have been met. Refer to Part I.B of this permit for additional monitoring and reporting requirements.

- Beginning on the effective date of this permit, the permittee is authorized to discharge from Outfall 001, which is located at Latitude: 40° 01' 33" N, Longitude: 86° 13' 02" W. The discharge is subject to the following requirements:

TABLE 1

<u>Parameter</u>	<u>Quantity or Loading</u>			<u>Quality or Concentration</u>			<u>Monitoring Requirements</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Units</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow [1]	Report	----	MGD	----	----	----	5 X Weekly	24-Hr. Total
CBOD ₅								
Summer [2]	376	576	lbs/day	15	23	mg/l	5 X Weekly	24-Hr. Composite
Winter [3]	626	1,001	lbs/day	25	40	mg/l	5 X Weekly	24-Hr. Composite
TSS								
Summer [2]	451	676	lbs/day	18	27	mg/l	5 X Weekly	24-Hr. Composite
Winter [3]	751	1,127	lbs/day	30	45	mg/l	5 X Weekly	24-Hr. Composite
Ammonia-nitrogen								
Summer [2]	32.5	50.1	lbs/day	1.3	2.0	mg/l	5 X Weekly	24-Hr. Composite
Winter [3]	47.6	72.6	lbs/day	1.9	2.9	mg/l	5 X Weekly	24-Hr. Composite
Phosphorus [4]	----	----	----	1.0	----	mg/l	5 X Weekly	24-Hr. Composite

TABLE 2

<u>Parameter</u>	<u>Quality or Concentration</u>				<u>Monitoring Requirements</u>	
	<u>Daily Minimum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>	<u>Units</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
pH [5]	6.0	----	9.0	s.u.	5 X Weekly	Grab
Dissolved Oxygen [6]						
Summer [2]	6.0	----	----	mg/l	5 X Weekly	4 Grabs/24-Hrs.
Winter [3]	5.0	----	----	mg/l	5 X Weekly	4 Grabs/24-Hrs.
<i>E. coli</i> [7]	----	125 [8]	235 [9]	cfu/100 ml	5 X Weekly	Grab

- [1] Effluent flow measurement is required per 327 IAC 5-2-13. The flow meter(s) shall be calibrated at least once annually.
- [2] Summer limitations apply from May 1 through November 30 of each year.
- [3] Winter limitations apply from December 1 through April 30 of each year.
- [4] In accordance with 327 IAC 5-10-2(b), the facility must produce an effluent containing no more than 1.0 mg/l total phosphorus (P) any month that the average phosphorus level in the raw sewage is greater than 5 mg/l. Otherwise, a degree of reduction, as prescribed below, must be achieved. Such reduction is to be calculated based on monthly average raw and final concentrations.

<u>Phosphorus (P) Level in Raw Sewage (mg/l)</u>	<u>Required Removal (%)</u>
greater than or equal to 4	80%
less than 4, greater than or equal to 3	75%
less than 3, greater than or equal to 2	70%
less than 2, greater than or equal to 1	65%
less than 1	60%

- [5] If the permittee collects more than one grab sample on a given day for pH, the values shall not be averaged for reporting daily maximums or daily minimums. The permittee must report the individual minimum and the individual maximum pH value of any sample during the month on the Discharge Monitoring Report forms.
- [6] The daily minimum concentration of dissolved oxygen in the effluent shall be reported as the arithmetic mean determined by summation of the four (4) daily grab sample results divided by the number of daily grab samples. These samples are to be collected over equal time intervals.
- [7] The effluent shall be disinfected on a continuous basis such that violations of the applicable bacteriological limitations (fecal coliform or *E. coli*) do not occur from April 1 through October 31, annually.

The *Escherichia coli* (*E. coli*) limitations apply from April 1 through October 31 annually. IDEM has specified the following methods as allowable for the detection and enumeration of *Escherichia coli* (*E. coli*):

- 1. Coliscan MF® Method
- 2. EPA Method 1603 Modified m-TEC agar
- 3. mColi Blue-24®
- 4. Colilert® MPN Method

[8] The monthly average *E. coli* value shall be calculated as a geometric mean. Per 327 IAC 5-10-6, the concentration of *E. coli* shall not exceed one hundred twenty-five (125) cfu or mpn per 100 milliliters as a geometric mean of the effluent samples taken in a calendar month. No samples may be excluded when calculating the monthly geometric mean.

[9] If less than ten samples are taken and analyzed for *E. coli* in a calendar month, no samples may exceed two hundred thirty-five (235) cfu or mpn as a daily maximum. However, when ten (10) or more samples are taken and analyzed for *E. coli* in a calendar month, not more than ten percent (10%) of those samples may exceed two hundred thirty-five (235) cfu or mpn as a daily maximum. When calculating ten percent, the result must not be rounded up. In reporting for compliance purposes on the Discharge Monitoring Report (DMR) form, the permittee shall record the highest non-excluded value for the daily maximum.

2. Minimum Narrative Limitations

At all times the discharge from any and all point sources specified within this permit shall not cause receiving waters:

- a. including the mixing zone, to contain substances, materials, floating debris, oil, scum or other pollutants:
 - (1) that will settle to form putrescent or otherwise objectionable deposits;
 - (2) that are in amounts sufficient to be unsightly or deleterious;
 - (3) that produce color, visible oil sheen, odor, or other conditions in such degree as to create a nuisance;
 - (4) which are in amounts sufficient to be acutely toxic to, or to otherwise severely injure or kill aquatic life, other animals, plants, or humans;
 - (5) 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.
- b. outside the mixing zone, to contain substances in concentrations which on the basis of available scientific data are believed to be sufficient to injure, be chronically toxic to, or be carcinogenic, mutagenic, or teratogenic to humans, animals, aquatic life, or plants.

B. MONITORING AND REPORTING

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge flow and shall be taken at times which reflect the full range and concentration of effluent parameters normally expected to be present. Samples shall not be taken at times to avoid showing elevated levels of any parameters.

2. Data on Plant Operation

The raw influent and the wastewater from intermediate unit treatment processes, as well as the final effluent shall be sampled and analyzed for the pollutants and operational parameters specified by the applicable Monthly Report of Operation Form, as appropriate, in accordance with 327 IAC 5-2-13. Except where the permit specifically states otherwise, the sample frequency for the raw influent and intermediate unit treatment process shall be at a minimum the same frequency as that for the final effluent. The measurement frequencies specified in each of the tables in Part I.A. are the minimum frequencies required by this permit.

3. Monthly Reporting

The permittee shall submit accurate monitoring reports to the Indiana Department of Environmental Management containing results obtained during the previous month and shall be postmarked no later than the 28th day of the month following each completed monitoring period. The first report shall be submitted by the 28th day of the month following the month in which the permit becomes effective. These reports shall include, but not necessarily be limited to, the Discharge Monitoring Report (DMR) and the Monthly Report of Operation (MRO). All reports shall be mailed to IDEM, Office of Water Quality – Mail Code 65-42, Compliance Data Section, 100 North Senate Ave., Indianapolis, Indiana 46204-2251. The Regional Administrator may request the permittee to submit monitoring reports to the Environmental Protection Agency if it is deemed necessary to assure compliance with the permit.

A calendar week will begin on Sunday and end on Saturday. Partial weeks consisting of four or more days at the end of any month will include the remaining days of the week, which occur in the following month in order to calculate a consecutive seven-day average. This value will be reported as a weekly average or seven-day average on the MRO for the month containing the partial week of four or more days. Partial calendar weeks consisting of less than four days at the end of any month will be carried forward to the succeeding month and reported as a weekly average or a seven-day average for the calendar week that ends with the first Saturday of that month.

4. Definitions

a. Calculation of Averages

Pursuant to 327 IAC 5-2-11(a)(5), the calculation of the average of discharge data shall be determined as follows: For all parameters except fecal coliform and *E. coli*, calculations that require averaging of sample analyses or measurements of daily discharges shall use an arithmetic mean unless otherwise specified in this permit. For fecal coliform, the monthly average discharge and weekly average discharge, as concentrations, shall be calculated as a geometric mean. For *E. coli*, the monthly average discharge, as a concentration, shall be calculated as a geometric mean.

b. Terms

- (1) "Monthly Average" - The monthly average discharge means the total mass or flow-weighted concentration of all daily discharges during a calendar month on which daily discharges are sampled or measured, divided by the number of daily discharges sampled and/or measured during such calendar month. The monthly average discharge limitation is the highest allowable average monthly discharge for any calendar month.
- (2) "Weekly Average" - The weekly average discharge means the total mass or flow weighted concentration of all daily discharges during any calendar week for which daily discharges are sampled or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation is the maximum allowable average weekly discharge for any calendar week.
- (3) "Daily Maximum" - The daily maximum discharge limitation is the maximum allowable daily discharge for any calendar day. The "daily discharge" means the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to 327 IAC 5-2-11(e), the average concentration or other measurement of the pollutant specified over the calendar day or any twenty-four hour period that represents the calendar day for purposes of sampling.
- (4) "24-hour Composite" - A 24-hour composite sample consists of at least four (4) individual flow-proportioned samples of wastewater, taken by the grab sample method over equal time intervals during the period of operator attendance or by an automatic sampler, which are taken at approximately equally spaced time intervals for the duration of the discharge within a 24-hour period and which are combined prior to analysis. A flow proportioned composite sample shall be obtained by:

- (a) recording the discharge flow rate at the time each individual sample is taken,
 - (b) adding together the discharge flow rates recorded from each individual sampling time to formulate the "total flow value,"
 - (c) dividing the discharge flow rate of each individual sampling time by the total flow value to determine its percentage of the total flow value, and
 - (d) multiplying the volume of the total composite sample by each individual sample's percentage to determine the volume of that individual sample which will be included in the total composite sample.
- (5) CBOD₅: Five-day Carbonaceous Biochemical Oxygen Demand
- (6) TSS: Total Suspended Solids
- (7) *E. coli*: Escherichia coli bacteria
- (8) The "Regional Administrator" is defined as the Region V Administrator, U.S. EPA, located at 77 West Jackson Boulevard, Chicago, Illinois 60604.
- (9) The "Commissioner" is defined as the Commissioner of the Indiana Department of Environmental Management, located at the following address: 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.
- (10) Limit of Detection or LOD is defined as a measurement of the concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0) for a particular analytical method and sample matrix. The LOD is equivalent to the Method Detection Level or MDL.
- (11) Limit of Quantitation or LOQ is defined as a measurement of the concentration of a contaminant obtained by using a specified laboratory procedure calibrated at a specified concentration about the method detection level. It is considered the lowest concentration at which a particular contaminant can be quantitatively measured using a specified laboratory procedure for monitoring of the contaminant. This term is also called the limit of quantification or quantification level.
- (12) Method Detection Level or MDL is defined as the minimum concentration of an analyte (substance) that can be measured and reported with a ninety-nine percent (99%) confidence that the analyte concentration is greater than zero (0) as determined by the procedure set forth in 40 CFR Part 136, Appendix B. The method detection level or MDL is equivalent to the LOD.

5. Test Procedures

The analytical and sampling methods used shall conform to the current version of 40 CFR, Part 136, unless otherwise specified within this permit. Multiple editions of Standard Methods for the Examination of Water and Wastewater are currently approved for most methods, however, 40 CFR Part 136 should be checked to ascertain if a particular method is approved for a particular analyte. The approved methods may be included in the texts listed below. However, different but equivalent methods are allowable if they receive the prior written approval of the State agency and the U.S. Environmental Protection Agency.

- a. Standard Methods for the Examination of Water and Wastewater
18th, 19th, or 20th Editions, 1992, 1995 or 1998 American Public Health Association, Washington, D.C. 20005.
- b. A.S.T.M. Standards, Part 23, Water: Atmospheric Analysis
1972 American Society for Testing and Materials, Philadelphia, PA 19103.
- c. Methods for Chemical Analysis of Water and Wastes
June 1974, Revised, March 1983, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, 1014 Broadway, Cincinnati, OH 45202.

6. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record and maintain records of all monitoring information on activities under this permit, including the following information:

- a. The exact place, date, and time of sampling or measurements;
- b. The person(s) who performed the sampling or measurements;
- c. The dates and times the analyses were performed;
- d. The person(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of all required analyses and measurements.

7. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Monthly Discharge Monitoring Report and on the Monthly Report of Operation form. Such increased frequency shall also be indicated on these forms. Any such additional monitoring data which indicates a violation of a permit limitation shall be followed up by the permittee, whenever feasible, with a monitoring sample obtained and analyzed pursuant to approved analytical methods. The results of the follow-up sample shall be reported to the Commissioner in the Monthly Discharge Monitoring Report.

8. Records Retention

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for a minimum of three (3) years. In cases where the original records are kept at another location, a copy of all such records shall be kept at the permitted facility. The three-year period shall be extended:

- a. automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee; or
- b. as requested by the Regional Administrator or the Indiana Department of Environmental Management.

C. REOPENING CLAUSES

In addition to the reopening clause provisions cited at 327 IAC 5-2-16, the following reopening clauses are incorporated into this permit:

1. This permit may be modified or, alternately, revoked and reissued after public notice and opportunity for hearing to incorporate effluent limitations reflecting the results of a wasteload allocation if the Department of Environmental Management determines that such effluent limitations are needed to assure that State Water Quality Standards are met in the receiving stream.
2. This permit may be modified due to a change in sludge disposal standards pursuant to Section 405(d) of the Clean Water Act, if the standards when promulgated contain different conditions, are otherwise more stringent, or control pollutants not addressed by this permit.

3. This permit may be modified, or, alternately, revoked and reissued, to comply with any applicable effluent limitation or standard issued or approved under section 301(b)(2)(C), (D) and (E), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent limitation or standard so issued or approved:
 - a. contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
 - b. controls any pollutant not limited in the permit.

PART II

STANDARD CONDITIONS FOR NPDES PERMITS

A. GENERAL CONDITIONS

1. Duty to Comply

The permittee shall comply with all terms and conditions of this permit in accordance with 327 IAC 5-2-8(1) and all other requirements of 327 IAC 5-2-8. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action or permit termination, revocation and reissuance, modification, or denial of a permit renewal application.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

2. Duty to Mitigate

In accordance with 327 IAC 5-2-8(3), the permittee shall take all reasonable steps to minimize or correct any adverse impact to the environment resulting from noncompliance with this permit. During periods of noncompliance, the permittee shall conduct such accelerated or additional monitoring for the affected parameters, as appropriate or as requested by IDEM, to determine the nature and impact of the noncompliance.

3. Duty to Provide Information

The permittee shall submit any information that the permittee 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 that:

- a. could significantly change the nature of, or increase the quantity of, pollutants discharged; or
- b. the Commissioner may request to evaluate whether such cause exists.

In accordance with 327 IAC 5-1-3(a)(5), the permittee must also provide any information reasonably requested by the Commissioner.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must obtain and submit a renewal of this permit in accordance with 327 IAC 5-3-2(a)(2). It is the permittee's responsibility to obtain and submit the application. In accordance with 327 IAC 5-2-3(c), the owner of the facility or operation from which a discharge of pollutants occurs is responsible for applying for and obtaining the NPDES permit, except where the facility or operation is operated by a person other than an employee of the owner in which case it is the operator's responsibility to apply for and obtain the permit. The application must be submitted at least 180 days before the expiration date of this permit. This deadline may be extended if:

- a. permission is requested in writing before such deadline;
- b. IDEM grants permission to submit the application after the deadline; and
- c. the application is received no later than the permit expiration date.

As required under 327 IAC 5-2-3(g)(1) and (2), POTWs with design influent flows equal to or greater than one million (1,000,000) gallons per day and POTWs with an approved pretreatment program or that are required to develop a pretreatment program, will be required to provide the results of whole effluent toxicity testing as part of their NPDES renewal application.

5. Transfers

In accordance with 327 IAC 5-2-8(4)(D), this permit is nontransferable to any person except in accordance with 327 IAC 5-2-6(c). This permit may be transferred to another person by the permittee, without modification or revocation and reissuance being required under 327 IAC 5-2-16(c)(1) or 16(e)(4), if the following occurs:

- a. the current permittee notified the Commissioner at least thirty (30) days in advance of the proposed transfer date.
- b. a written agreement containing a specific date of transfer of permit responsibility and coverage between the current permittee and the transferee (including acknowledgment that the existing permittee is liable for violations up to that date, and the transferee is liable for violations from that date on) is submitted to the Commissioner.

- c. the transferee certifies in writing to the Commissioner their intent to operate the facility without making such material and substantial alterations or additions to the facility as would significantly change the nature or quantities of pollutants discharged and thus constitute cause for permit modification under 327 IAC 5-2-16(d). However, the Commissioner may allow a temporary transfer of the permit without permit modification for good cause, e.g., to enable the transferee to purge and empty the facility's treatment system prior to making alterations, despite the transferee's intent to make such material and substantial alterations or additions to the facility.
- d. the Commissioner, within thirty (30) days, does not notify the current permittee and the transferee of the intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

The Commissioner may require modification or revocation and reissuance of the permit to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act or state law.

6. Permit Actions

In accordance with 327 IAC 5-2-16(b) and 327 IAC 5-2-8(4), this permit may be modified, revoked and reissued, or terminated for cause, including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts in the application, or during the permit issuance process; or
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge controlled by the permittee (e.g., plant closure, termination of the discharge by connecting to a POTW, a change in state law or information indicating the discharge poses a substantial threat to human health or welfare).

Filing of either of the following items does not stay or suspend any permit condition: (1) a request by the permittee for a permit modification, revocation and reissuance, or termination, or (2) submittal of information specified in Part II.A.3 of the permit including planned changes or anticipated noncompliance.

The permittee shall submit any information that the permittee 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 permitted facility that:

1. could significantly change the nature of, or increase the quantity of, pollutants discharged; or
2. the commissioner may request to evaluate whether such cause exists.

7. Property Rights

Pursuant to 327 IAC 5-2-8(6) and 327 IAC 5-2-5(b), the issuance of this permit does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to persons or private property or an invasion of rights, any infringement of federal, state, or local laws or regulations. The issuance of the permit also does not preempt any duty to obtain any other state, or local assent required by law for the discharge or for the construction or operation of the facility from which a discharge is made.

8. Severability

In accordance with 327 IAC 1-1-3, the provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or applications of the permit which can be given effect without the invalid provision or application.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 of the Clean Water Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Clean Water Act or state law.

11. Penalties for Violation of Permit Conditions

Pursuant to IC 13-30-4, a person who violates any provision of this permit, the water pollution control laws; environmental management laws; or a rule or standard adopted by the Water Pollution Control Board is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation. Pursuant to IC 13-30-5, a person who obstructs, delays, resists, prevents, or interferes with (1) the department; or (2) the department's personnel or designated agent in the performance of an inspection or investigation commits a class C infraction.

Pursuant to IC 13-30-10, a person who intentionally, knowingly, or recklessly violates any provision of this permit, the water pollution control laws or a rule or standard adopted by the Water Pollution Control Board commits a class D felony punishable by the term of imprisonment established under IC 35-50-2-7(a) (up to one year), and/or by a fine of not less than five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) per day of violation. A person convicted for a violation committed after a first conviction of such person under this provision is subject to a fine of not more than one hundred thousand dollars (\$100,000) per day of violation, or by imprisonment for not more than two (2) years, or both.

12. Penalties for Tampering or Falsification

In accordance with 327 IAC 5-2-8(9), the permittee shall comply with monitoring, recording, and reporting requirements of this permit. The Clean Water Act, as well as IC 13-30-10, provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

13. Toxic Pollutants

If any applicable effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Clean Water Act for a toxic pollutant injurious to human health, and that standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition in accordance with 327 IAC 5-2-8(5). Effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants injurious to human health are effective and must be complied with, if applicable to the permittee, within the time provided in the implementing regulations, even absent permit modification.

14. Operator Certification

The permittee shall have the wastewater treatment facilities under the responsible charge of an operator certified by the Commissioner in a classification corresponding to the classification of the wastewater treatment plant as required by IC 13-18-11-11 and 327 IAC 5-22. In order to operate a wastewater treatment plant the operator shall have qualifications as established in 327 IAC 5-22-7. The permittee shall designate one (1) person as the certified operator with complete responsibility for the proper operations of the wastewater facility.

327 IAC 5-22-10.5(a) provides that a certified operator may be designated as being in responsible charge of more than one (1) wastewater treatment plant, if it can be shown that he will give adequate supervision to all units involved. Adequate supervision means that sufficient time is spent at the plant on a regular basis to assure that the certified operator is knowledgeable of the actual operations and that test reports and results are representative of the actual operations conditions. In accordance with 327 IAC 5-22-3(11), "responsible charge" means the person responsible for the overall daily operation, supervision, or management of a wastewater facility.

Pursuant to 327 IAC 5-22-10(4), the permittee shall notify IDEM when there is a change of the person serving as the certified operator in responsible charge of the wastewater treatment facility. The notification shall be made no later than thirty (30) days after a change in the operator.

15. Construction Permit

Except in accordance with 327 IAC 3, the permittee shall not construct, install, or modify any water pollution treatment/control facility as defined in 327 IAC 3-1-2(24). Upon completion of any construction, the permittee must notify the Compliance Data Section of the Office of Water Quality in writing.

16. Inspection and Entry

In accordance with 327 IAC 5-2-8(7), the permittee shall allow the Commissioner, or an authorized representative, (including an authorized contractor acting as a representative of the Commissioner) upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the permittee's premises where a point source, regulated facility, or activity is located or conducted, or where records must be kept pursuant to the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment or methods (including monitoring and control equipment), practices, or operations regulated or required pursuant to this permit; and
- d. Sample or monitor at reasonable times, any discharge of pollutants or internal wastestreams for the purposes of evaluating compliance with the permit or as otherwise authorized.

B. MANAGEMENT REQUIREMENTS

1. Facility Operation, Maintenance and Quality Control

- a. In accordance with 327 IAC 5-2-8(8), the permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment that are:

- (1) installed or used by the permittee; and
- (2) necessary for achieving compliance with the terms and conditions of the permit.

Neither 327 IAC 5-2-8(8), nor this provision, shall be construed to require the operation of installed treatment facilities that are unnecessary for achieving compliance with the terms and conditions of the permit. Taking redundant treatment units off line does not violate the bypass provisions of the permit, provided that the permittee is at all times: maintaining in good working order and efficiently operating all facilities and systems; providing best quality effluent; and achieving compliance with the terms and conditions of the permit.

- b. The permittee shall operate the permitted facility in a manner which will minimize upsets and discharges of excessive pollutants. The permittee shall properly remove and dispose of excessive solids and sludges.
- c. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance, and testing functions required to ensure compliance with the conditions of this permit.
- d. Maintenance of all waste collection, control, treatment, and disposal facilities shall be conducted in a manner that complies with the bypass provisions set forth below.
- e. Any extensions to the sewer system must continue to be constructed on a separated basis. Plans and specifications, when required, for extension of the sanitary system must be submitted to the Facility Construction Section, Office of Water Quality in accordance with 327 IAC 3-2-1. There shall also be an ongoing preventative maintenance program for the sanitary sewer system.

2. Bypass of Treatment Facilities

Pursuant to 327 IAC 5-2-8(11):

- a. Terms as defined in 327 IAC 5-2-8(11)(A):

- (1) "Bypass" means the intentional diversion of a waste stream from any portion of a treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. Bypasses, as defined above, are prohibited, and the Commissioner may take enforcement action against a permittee for bypass, unless:
- (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, as defined above;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The permittee submitted notices as required under Part II.B.2.d; or
 - (4) The condition under Part II.B.2.f below is met.
- c. Bypasses that result in death or acute injury or illness to animals or humans must be reported in accordance with the "Spill Response and Reporting Requirements" in 327 IAC 2-6.1, including calling 888/233-7745 as soon as possible, but within two (2) hours of discovery. However, under 327 IAC 2-6.1-3(1), when the constituents of the bypass are regulated by this permit, and death or acute injury or illness to animals or humans does not occur, the reporting requirements of 327 IAC 2-6.1 do not apply.
- d. The permittee must provide the Commissioner with the following notice:
- (1) If the permittee knows or should have known in advance of the need for a bypass (anticipated bypass), it shall submit prior written notice. If possible, such notice shall be provided at least ten (10) days before the date of the bypass for approval by the Commissioner.

- (2) The permittee shall orally report or fax a report of an unanticipated bypass within 24 hours of becoming aware of the bypass event. The permittee must also provide a written report within five (5) days of the time the permittee becomes aware of the bypass event. The written report must contain a description of the noncompliance (i.e. the bypass) and its cause; the period of noncompliance, including exact dates and times; if the cause of noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the bypass event.
- e. The Commissioner may approve an anticipated bypass, after considering its adverse effects, if the Commissioner determines that it will meet the conditions listed above in Part II.B.2.b. The Commissioner may impose any conditions determined to be necessary to minimize any adverse effects.
- f. The permittee may allow any bypass to occur that does not cause a violation of the effluent limitations in the permit, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II.B.2.b.,d and e of this permit.

3. Upset Conditions

Pursuant to 327 IAC 5-2-8(12):

- a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Paragraph c of this subsection, are met.
- c. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:
 - (1) An upset occurred and the permittee has identified the specific cause(s) of the upset;
 - (2) The permitted facility was at the time being operated in compliance with proper operation and maintenance procedures;
 - (3) The permittee complied with any remedial measures required under "Duty to Mitigate", Part II.A.2; and

- (4) The permittee submitted notice of the upset as required in the "Incident Reporting Requirements," Part II.C.3, or 327 IAC 2-6.1, whichever is applicable. However, under 327 IAC 2-6.1-3(1), when the constituents of the discharge are regulated by this permit, and death or acute injury or illness to animals or humans does not occur, the reporting requirements of 327 IAC 2-6.1 do not apply.

- d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof pursuant to 40 CFR 122.41(n)(4).

4. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed from or resulting from treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the State and to be in compliance with all Indiana statutes and regulations relative to liquid and/or solid waste disposal.

- a. Collected screenings, slurries, sludges, and other such pollutants shall be disposed of in accordance with provisions set forth in 329 IAC 10, 327 IAC 6.1, or another method approved by the Commissioner.
- b. The permittee shall comply with existing federal regulations governing solids disposal, and with applicable provisions of 40 CFR Part 503, the federal sludge disposal regulation standards.
- c. The permittee shall notify the Commissioner prior to any changes in sludge use or disposal practices.
- d. The permittee shall maintain records to demonstrate its compliance with the above disposal requirements.

5. Power Failures

In accordance with 327 IAC 5-2-10 and 327 IAC 5-2-8(13) in order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- a. provide an alternative power source sufficient to operate facilities utilized by the permittee to maintain compliance with the effluent limitations and conditions of this permit, or
- b. shall halt, reduce or otherwise control all discharge in order to maintain compliance with the effluent limitations and conditions of this permit upon the reduction, loss, or failure of one or more of the primary sources of power to facilities utilized by the permittee to maintain compliance with the effluent limitations and conditions of this permit.

6. Unauthorized Discharge

Any overflow or release of sanitary wastewater from the wastewater treatment facilities or collection system that results in a discharge to waters of the state and is not specifically authorized by this permit is expressly prohibited. These discharges are subject to the reporting requirements in Part II.C.3 of this permit.

C. REPORTING REQUIREMENTS

1. Planned Changes in Facility or Discharge

Pursuant to 327 IAC 5-2-8(10)(F) and 5-2-16(d), the permittee shall give notice to the Commissioner as soon as possible of any planned alterations or additions to the facility (which includes any point source) that could significantly change the nature of, or increase the quantity of, pollutants discharged. Following such notice, the permit may be modified to revise existing pollutant limitations and/or to specify and limit any pollutants not previously limited. Material and substantial alterations or additions to the permittee's operation that were not covered in the permit (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced) are also cause for modification of the permit. However those alterations which constitute total replacement of the process or the production equipment causing the discharge converts it into a new source, which requires the submittal of a new NPDES application.

2. Monitoring Reports

Pursuant to 327 IAC 5-2-8(9), 327 IAC 5-2-13, and 327 IAC 5-2-15, monitoring results shall be reported at the intervals and in the form specified in "Data On Plant Operation", Part I.B.2.

3. Incident Reporting Requirements

Pursuant to 327 IAC 5-2-8(10) and 327 IAC 5-1-3, the permittee shall orally report to the Commissioner information on the following incidents within 24 hours from the time permittee becomes aware of such occurrence. If the incident meets the emergency criteria of item b (Part II.C.3.b) or 327 IAC 2-6.1, then the report shall be made as soon as possible, but within two (2) hours of discovery. However, under 327 IAC 2-6.1-3(1), when the constituents of the discharge are regulated by this permit, and death or acute injury or illness to animals or humans does not occur, the reporting requirements of 327 IAC 2-6.1 do not apply.

- a. Any unanticipated bypass which exceeds any effluent limitation in the permit;
- b. Any emergency incident which may pose a significant danger to human health or the environment. Reports under this item shall be made as soon as the permittee becomes aware of the incident by calling 317/233-7745 (888/233-7745 toll free in Indiana). This number should only be called when reporting these emergency events;

- c. Any upset (as defined in Part II.B.3 above) that exceeds any technology-based effluent limitations in the permit; or
- d. Any release, including basement backups, from the sanitary sewer system (including satellite sewer systems operated or maintained by the permittee) not specifically authorized by this permit. Reporting of known releases from private laterals not caused by a problem in the sewer system owned or operated by the permittee is not required under Part II.C.3, however, documentation of such events must be maintained by the permittee and available for review by IDEM staff.

The permittee can make the oral reports by calling 317/232-8670 during regular business hours. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. For incidents involving effluent limit violations or discharges, the written submission shall contain: a description of the event and its cause; the period of occurrence, including exact dates and times, and, if the event has not concluded, the anticipated time it is expected to continue; and steps taken or planned to reduce, mitigate and eliminate the event and steps taken or planned to prevent its recurrence. For sewer releases which do not meet the definition of a discharge, the written submission shall contain: a description of the event and its believed cause; the period of occurrence; and any steps taken or planned to mitigate the event and steps taken or planned to prevent its recurrence. The permittee may submit a "Bypass Overflow/Incident Report" or a "Noncompliance Notification Report", whichever is applicable, to IDEM at 317/232-8637 or 317/232-8406 or to wwreports@idem.IN.gov. If a complete fax or email submittal is sent within 24 hours of the time that the permittee became aware of the occurrence, then that report will satisfy both the oral and written reporting requirements.

4. Other Noncompliance

Pursuant to 327 IAC 5-2-8(10)(D), the permittee shall report any instance of noncompliance not reported under the "Incident Reporting Requirements" in Part II.C.3 at the time the pertinent Discharge Monitoring Report is submitted. The written submission shall contain: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent the noncompliance.

5. Other Information

Pursuant to 327 IAC 5-2-8(10)(E), where the permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or in any report to the Commissioner, the permittee shall promptly submit such facts or corrected information to the Commissioner.

6. Signatory Requirements

Pursuant to 327 IAC 5-2-22 and 327 IAC 5-2-8(14):

- a. All reports required by the permit and other information requested by the Commissioner shall be signed and certified by a person described below or by a duly authorized representative of that person:
 - (1) For a corporation: by a principal executive defined as a president, secretary, treasurer, any vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making functions for the corporation or the manager of one or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - (3) For a federal, state, or local governmental body or any agency or political subdivision thereof: by either a principal executive officer or ranking elected official.
- b. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described above.
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - (3) The authorization is submitted to the Commissioner.
- c. Certification. Any person signing a document identified under paragraphs a and b of this section, shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. Availability of Reports

Except for data determined to be confidential under 327 IAC 12.1, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Indiana Department of Environmental Management and the Regional Administrator. As required by the Clean Water Act, permit applications, permits, and effluent data shall not be considered confidential.

8. Penalties for Falsification of Reports

IC 13-30 and 327 IAC 5-2-8(14) provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 180 days per violation, or by both.

9. Progress Reports

In accordance with 327 IAC 5-2-8(10)(A), reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

10. Advance Notice for Planned Changes

In accordance with 327 IAC 5-2-8(10)(B), the permittee shall give advance notice to IDEM of any planned changes in the permitted facility, any activity, or other circumstances that the permittee has reason to believe may result in noncompliance with permit requirements.

11. Additional Requirements for POTWs and/or Treatment Works Treating Domestic Sewage

- a. All POTWs shall identify, in terms of character and volume of pollutants, any significant indirect discharges into the POTW which are subject to pretreatment standards under section 307(b) and 307 (c) of the CWA.

- b. All POTWs must provide adequate notice to the Commissioner of the following:
- (1) Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants.
 - (2) Any substantial change in the volume or character of pollutants being introduced into that POTW by any source where such change would render the source subject to pretreatment standards under section 307(b) or 307(c) of the CWA or would result in a modified application of such standards.

As used in this clause, "adequate notice" includes information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of the effluent to be discharged from the POTW.

- c. This permit incorporates any conditions imposed in grants made by the U.S. EPA and/or IDEM to a POTW pursuant to Sections 201 and 204 of the Clean Water Act, that are reasonably necessary for the achievement of effluent limitations required by Section 301 of the Clean Water Act.
- d. This permit incorporates any requirements of Section 405 of the Clean Water Act governing the disposal of sewage sludge from POTWs or any other treatment works treating domestic sewage for any use for which rules have been established in accordance with any applicable rules.
- e. POTWs must develop and submit to the Commissioner a POTW pretreatment program when required by 40 CFR 403 and 327 IAC 5-19-1, in order to assure compliance by industrial users of the POTW with applicable pretreatment standards established under Sections 307(b) and 307(c) of the Clean Water Act. The pretreatment program shall meet the criteria of 327 IAC 5-19-3 and, once approved, shall be incorporated into the POTW's NPDES permit.

D. ADDRESSES

1. Cashiers Office

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

The following correspondence shall be sent to the Cashiers Office:

- a. NPDES permit applications (new, renewal or modifications) with fee
- b. Construction permit applications with fee

2. Municipal NPDES Permits Section

Indiana Department of Environmental Management
Office of Water Quality – Mail Code 65-42
Municipal NPDES Permits Section
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

The following correspondence shall be sent to the Municipal NPDES Permits Section:

- a. Preliminary Effluent Limits request letters
- b. Comment letters pertaining to draft NPDES permits
- c. NPDES permit transfer of ownership requests
- d. NPDES permit termination requests
- e. Notifications of substantial changes to a treatment facility, including new industrial sources
- f. Combined Sewer Overflow (CSO) Operational Plans
- g. CSO Long Term Control Plans (LTCP)
- h. Stream Reach Characterization and Evaluation Reports (SRCER)

3. Compliance Data Section

Indiana Department of Environmental Management
Office of Water Quality – Mail Code 65-42
Compliance Data Section
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

The following correspondence shall be sent to the Compliance Data Section:

- a. Discharge Monitoring Reports (DMRs)
- b. Monthly Reports of Operation (MROs)
- c. Monthly Monitoring Reports (MMRs)
- d. CSO DMRs
- e. Gauging station and flow meter calibration documentation

- f. Compliance schedule progress reports
- g. Completion of Construction notifications
- h. Whole Effluent Toxicity Testing reports
- i. Toxicity Reduction Evaluation (TRE) plans and progress reports

4. Pretreatment Group

Indiana Department of Environmental Management
Office of Water Quality – Mail Code 65-42
Compliance Data Section – Pretreatment Group
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

The following correspondence shall be sent to the Pretreatment Group:

- a. Organic Pollutant Monitoring Reports
- b. Significant Industrial User (SIU) Quarterly Noncompliance Reports
- c. Pretreatment Program Annual Reports
- d. Sewer Use Ordinances
- e. Enforcement Response Plans (ERP)
- f. Sludge analytical results

5. Enforcement Section

Indiana Department of Environmental Management
Office of Water Quality – Mail Code 65-40
Enforcement Section
100 N. Senate Avenue
Indianapolis, Indiana 46204-2251

- a. Bypass/Overflow Reports
- b. Anticipated Bypass/Overflow Reports