

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF AMERICAN SUBURBAN)
UTILITIES, INC. FOR APPROVAL OF) CAUSE NO. 44676 S1
COMPLIANCE FILING AND PHASE III RATES)

PUBLIC'S EXHIBIT NO. 1

TESTIMONY
OF
SCOTT A. BELL
ON
BEHALF OF
THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

February 24, 2021

Respectfully submitted,



Daniel M. Le Vay, Attorney No. 22184-49
Deputy Consumer Counselor
Scott Franson, Attorney No. 27839-49
Deputy Consumer Counselor
115 W. Washington St., Suite 1500 South
Indianapolis, IN 45204

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Public's Exhibit No. 1, Testimony of Scott A. Bell on Behalf of the Indiana Office of Utility Consumer Counselor* has been served on the following counsel of record in the captioned proceeding by electronic service on February 24, 2021.

Nicholas K. Kile
Hillary J. Close
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Email: nicholas.kile@btlaw.com
hillaryclose@btlaw.com

Robert Johnson
2454 Waldon Drive
Greenwood, IN 46143
Email: rjohnson@utilitylaw.us



Daniel M. Le Vay
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Phone
317/232-5923 – Facsimile

TESTIMONY OF OUCC WITNESS SCOTT A. BELL
CAUSE NO. 44676 S1
AMERICAN SUBURBAN UTILITIES, INC.

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: My name is Scott A. Bell, and my business address is 115 West Washington Street, Suite
3 1500 South, Indianapolis, Indiana 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by the Indiana Office of Utility Consumer Counselor ("OUCC") as the
6 Director of the Water/Wastewater Division. My qualifications and professional experience
7 are set forth in more detail in Appendix A.

8 **Q: What is the purpose of the sub-docket in Cause No. 44676?**

9 A: This sub-docket pertains to the compliance filing (Phase III) American Suburban Utilities,
10 Inc. ("ASU") made to secure higher rates associated with improvements it was to make to
11 its Carriage Estates Wastewater Treatment Plant ("CE-III WWTP"). In accordance with
12 the Indiana Utility Regulatory Commission's ("Commission") final order in consolidated
13 Cause Nos. 44676 and 44700, the OUCC made a timely objection to the compliance filing
14 and asked the Commission to establish a process for hearing its objection.

15 **Q: What is the purpose of your testimony?**

16 A: The purpose of my testimony is to support the OUCC's objection to ASU's compliance
17 filing and recommend findings with respect to the implementation of ASU's Phase III
18 rates. I provide evidence that at the time ASU filed its Submission of Compliance Filing
19 and Phase III Rates, dated November 7, 2019, ASU had not completed its CE-III WWTP
20 project or its Standby Chemical Phosphorus Removal project. Further, according to

1 information secured from the Indiana Department of Environmental Management
2 (“IDEM”) virtual file cabinet, ASU did not construct its CE-III WWTP project in
3 accordance with the construction permit¹ IDEM issued to ASU, which resulted in an
4 enforcement action. Accordingly, the OUCC recommends the Commission reject ASU’s
5 November 7, 2019 Compliance Filing. Further, the OUCC recommends the Commission
6 order ASU to provide a refund of all revenues paid through September 30, 2020 as a result
7 of ASU’s interim Phase III rate increase. In addition, the OUCC recommends ASU be
8 authorized and directed to charge Phase III rates effective as of September 30, 2020 that
9 reflect the cost of the preapproved project components ASU actually completed. Finally,
10 as ASU has been permitted to charge the full Phase III rates indicated in its original
11 compliance filing, subject to refund, ASU should be required to issue an appropriate refund
12 for the period from September 30, 2020 through the issuance of an order in this sub-docket.

13 **Q: What have you done to prepare your testimony?**

14 A: I reviewed many documents ASU prepared and/or filed in Cause Nos. 44272, 44676 and
15 44676-S1. I reviewed several documents from IDEM that address the operations of the
16 Carriage Estates WWTP and the ongoing construction of ASU’s CE-III WWTP project
17 and the Standby Chemical Phosphorus Removal project. I visited ASU’s Carriage Estates
18 WWTP on March 5, 2020 and October 8, 2020. I reviewed ASU’s responses to discovery
19 by the OUCC. A list of my attachments is included in Appendix B.

¹ IDEM Construction Permit Approval No. 20788, Carriage Estates III Wastewater Treatment Plant Expansion.

1 **Q: Please summarize the primary compliance filings made in Cause No. 44676 and**
2 **44676-S1 (sub-docket).**

3 A: On November 7, 2019 ASU filed its Submission of Compliance Filing and Phase III Rates
4 (“Compliance Filing”) in consolidated Cause Nos. 44676 and 44700. The OUCC reviewed
5 the Compliance Filing, and on December 9, 2019 the OUCC filed its Objection to ASU’s
6 Phase III Compliance Filing. On December 19, 2019, ASU filed Petitioner’s Response to
7 OUCC Objection to Phase 3 Tariff Compliance Filing. On December 23, 2019, the OUCC
8 filed with the Commission OUCC’s Reply to Petitioner’s Response to the OUCC’s
9 Objection to ASU’s Phase 3 Tariff Compliance Filing.

10 **Q: Please describe the initiation and procedural timeline of this proceeding.**

11 A: On January 8, 2020, the Commission issued a docket entry initiating this sub-docket
12 (Cause No. 44676 S1) to address the OUCC’s objection. On January 29, 2020, the
13 Commission issued its Prehearing Conference Order of the Commission, which established
14 a procedural schedule, but also by agreement granted ASU approval of interim rates,
15 subject to refund, pending the resolution of this sub-docket, which the OUCC had agreed
16 should be issued. On March 4, 2020, the Commission granted ASU’s Unopposed Motion
17 to Modify Procedural Schedule, which authorized and required ASU to file on or before
18 June 30, 2020, notification that all construction activities have been completed and provide
19 the OUCC the final inspection reports from TBird Engineering, final completion certificate
20 and notification that final payment has been made, Certified Record Documents as
21 submitted to IDEM's Facility Construction and Engineering Support Section, and the
22 application for renewal of the NPDES Permit as submitted to the IDEM NPDES Permit
23 Section. On July 2, 2020, the Commission granted ASU’s June 30, 2020 Unopposed
24 Motion to Modify Procedural Schedule, which authorized and required ASU to file on or

1 before September 30, 2020, the same information indicated in the March 4, 2020 Docket
2 Entry. On September 30, 2020, ASU filed its Notice of Completion of Construction. On
3 November 12, 2020, the Commission granted ASU's Unopposed Motion to Modify
4 Procedural Schedule, which established a new procedural schedule and hearing date (April
5 22, 2021). On January 29, 2012, the Commission approved the OUCC's Motion to Modify
6 Procedural Schedule (agreed), which extended filing dates for the parties by two weeks.
7 On February 15, 2021, the OUCC filed its Second Motion to Modify Procedural Schedule
8 (agreed), which extended filing dates for the OUCC and ASU by one week to February 24,
9 2020 and March 24, 2020 respectively.

II. RELEVANT CASE HISTORY - CAUSE NO. 44272

10 **Q: What relief did ASU seek in Cause No. 44272 as it relates to ASU's Phase 3 increase?**

11 A: In Cause No. 44272, ASU sought pre-approval pursuant to IC 8-1-2-23 to include in rate
12 base once completed expenditures for Construction of Additions and Improvements to
13 Petitioner's Wastewater Utility Properties, including an upgrade to and expansion of the
14 existing Carriage Estates Wastewater Treatment Plant (the "CE-III Project").

15 **Q: How was the request for preapproval of the CE-III Project resolved?**

16 A: After ASU had submitted its rebuttal case in Cause No. 44272, ASU informed the
17 Commission that new requirements from IDEM regarding phosphorus removal would
18 apply to the Carriage Estates WWTP. As a result, ASU filed supplemental testimony in
19 which Mr. Serowka recommended that the Carriage Estates WWTP should no longer be
20 converted to an extended aeration activated sludge treatment process (i.e., Mr. Serowka's
21 original design) but should remain a Continuous Sequencing Batch Reactor system
22 ("CSBR") with an average daily flow ("ADF") capacity of 4.0 million gallons per day

1 (“MGD”).² The switch to a CSBR system was expressly made for Enhanced Biological
2 Phosphorus Removal (“EBPR”). The OUCC filed testimony recommending a finding that
3 a 3.0 MGD ADF WWTP with 6.0 MGD peak wet weather flow (“PWWF”) would be
4 sufficient. Subsequently, ASU and the OUCC entered into a Stipulation and Settlement
5 Agreement that would authorize ASU a rate base addition for the CE-III Project subject to
6 the terms of that agreement. See Stipulation and Settlement Agreement between American
7 Suburban Utilities, Inc. and the Indiana Office of Utility Consumer Counselor. (See OUCC
8 Attachment SAB-1) On February 11, 2014, ASU filed the agreement, and the Commission
9 approved the settlement in its final order in Cause No. 44272 on April 9, 2014.

10 **Q: In addition to those requirements set forth in the Settlement Agreement, did the**
11 **Commission impose any post order requirements with respect to the CE-III Project.**

12 A: Yes. The Commission ordered ASU to annually file CE-III Project status reports:

13 5. Once any of the Proposed Improvements are in service,
14 Petitioner shall notify the Commission and the OUCC of the actual cost of
15 the Proposed Improvements. In regard to the CE-III Project, the Petitioner
16 shall also file project status reports annually beginning on the anniversary
17 date of this Order and continuing until the project is in service. The status
18 reports shall include such items as engineering and construction progress,
19 which option is being built, current total cost forecast, and the amount of
20 funds expended to date.

21 (Cause No. 44272, Order April 9, 2014, p. 16, emphasis added.)

I have attached ASU’s Compliance Reports as OUCC Attachment SAB-2.

22 **Q: Do provisions of the Stipulation and Settlement Agreement support the OUCC’s**
23 **objection to ASU’s compliance filing?**

24 A: Yes. The Commission approved the settlement agreement reached between ASU and the
25 OUCC in Cause No. 44272, which established the rights of the parties with respect to the

² Cause No. 44272, Supplemental Testimony of Edward J. Serowka (p. S5), dated March 17, 2017.

1 preapproval of the CE-III Project. ASU and the OUCC agreed to a preapproved amount
2 that was derived from one of the alternatives (Option 2) presented in Mr. Serowka's
3 supplemental rebuttal testimony and agreed that ASU “may choose to construct the plant
4 improvements as proposed in its supplemental case-in-chief (referred to as ‘Option 4’ in
5 Mr. Serowka's supplemental rebuttal testimony).” The OUCC and ASU also agreed that
6 “whether Petitioner constructs Option 2 or Option 4, inclusion of associated expenditure
7 in rate base for ratemaking purposes as preapproved in this Cause requires that the
8 constructed plant be completed and in service.”³ (Emphasis added.)

9 **Q: Why does it matter whether the project is both completed and in service?**

10 A: The OUCC agreed to preapproval that included a maximum amount for ASU constructing
11 one of the two options listed in the settlement. If ASU expended more than \$10,000,000
12 for completing Option 4, for instance, the rights and obligations of ASU would be affected.
13 If the construction cost exceeds \$10,000,000 then “to the extent actual expenditures exceed
14 the agreed amount, inclusion of such excess expenditures in rate base in future rate cases
15 shall be addressed in the same manner that utilities must address expenditures that have
16 not been preapproved.”

17 In order to include the excess expenditures in rate base for ratemaking
18 purposes, Petitioner will have the burden to demonstrate its expenditures
19 were reasonable and were prudently incurred. Further, to the extent actual
20 construction costs are greater than the preapproved amount, it will be
21 Petitioner's burden to show that the amount charged by its affiliate is fair
22 and reasonable and comparable to what an unaffiliated entity would have
23 charged.

24 (Emphasis added)

³ Cause No. 44272, Stipulation and Settlement Agreement Between American Suburban Utilities, Inc. and the Indiana Office of Utility Consumer Counselor. (p. 4)

1 By agreement, the status of ASU's rate base and the OUCC's rights as a party depends on
2 knowing the costs of the project that have been incurred through completion. The whole
3 cost cannot reasonably be known until the project has been completed and all costs have
4 been incurred.⁴ Another effect of the requirement that the project be complete is that it
5 affects the timing and amount of accumulated depreciation that should be applied to ASU's
6 rate base. OUCC witness Margaret Stull calculated and presents the amount of
7 accumulated depreciation that should be applied to ASU's rate base assuming a completion
8 date of October 1, 2020.

9 **Q: Why does it matter that the project is one of the two options (Option 2 or Option 4)?**

10 A: While the preapproval is for a particular maximum expenditure, that preapproval is tied to
11 a project. In this case, the preapproved amount of approximately \$10,000,000 was tied to
12 Option 2 or Option 4 for the CE-III WWTP project.

13 **Q: As ASU is only seeking to include \$10,000,000 for the CE II WWTP, doesn't that**
14 **eliminate any controversy?**

15 A: If ASU had completed Option 2 or Option 4 as delineated and it had done so at a cost of
16 no more than \$10,000,000, I don't believe the controversies in this compliance filing would
17 have occurred, other than whether the plant was in fact completed *and* in service at the
18 time of the compliance filing.

19 **Q: What option did ASU report it was constructing when it filed its annual status reports**
20 **in 2015 and 2016?**

21 A: In the Submission of Petitioner's Project Status Report, filed with the Commission on June

⁴ At the time the foregoing provision was agreed to by the parties and approved by the Commission, there was no statutory provision for forward-looking test periods. As such, when ASU sought approval to include its project in rate base, it would have been completed and all costs incurred before the Commission would have been asked to make a rate base determination. However, ASU chose to depend on a forward-looking hybrid test period that would end many months after the rate order. The evaluation that was originally conceived to occur as part of a rate case had to be done as a compliance filing.

1 12, 2015, ASU stated that it “intends to proceed with construction of the configuration
2 referred to as Option 4 in the Supplemental Rebuttal Testimony of Ed Serowka at an
3 estimated total cost of \$19,900,000.00.” Again, on October 11, 2016, ASU reported that
4 it “intends to proceed with construction of the configuration referred to as Option 4 in the
5 Supplemental Rebuttal Testimony of Ed Serowka in this Cause No. 44272, at an estimated
6 total cost of approximately \$19,938,273.00 (exclusive of the cost for phosphorus
7 removal).” After 2016, ASU did not state in its annual reports whether it was or was not
8 proceeding with Option 4. It certainly did not state it had chosen to build something
9 different than what it had been declaring in its prior reports.

10 **Q: Which project did ASU submit to IDEM for permitting?**

11 A: ASU submitted Option 4. And on February 21, 2014, IDEM issued Construction Permit
12 Approval No. 20788, which approved ASU’s proposed new 4.0 MGD ADF parallel
13 treatment system of the Carriage Estates WWTP. The permit included construction of four
14 new CSBR tanks for future treatment of 6.0 MGD but only three of the CSBR tanks were
15 equipped to treat 4.0 MGD initially. The permitted design included three phosphorus
16 removal systems including: 1) CSBRs with EBPR as the primary phosphorus removal
17 method (biological), 2) supernatant chemical phosphorus removal, and 3) a standby
18 chemical phosphorus removal system using the same chemical pumps, chemical tanks,
19 control system.

20 **Q: Did ASU construct one of the two options identified in the settlement agreement?**

21 A: In response to inquiries of the OUCC, ASU has not stated whether it has constructed

1 Option 2 or Option 4, as those projects were described in Cause No. 44272.⁵ Moreover,
2 ASU did not construct the CE-III WWTP project that IDEM permitted it to build pursuant
3 to its application for an IDEM permit. Again, the project being complete is an explicit
4 agreed precondition to its being included in rate base for ratemaking purposes pursuant to
5 the Stipulation and Settlement Agreement for preapproval in Cause No. 44272.

6 **Q: Besides being required by the preapproval Settlement Agreement, does whether ASU**
7 **constructed Option 2 or Option 4 have any other effect on the OUCC's rights under**
8 **the agreement?**

9 A: Yes. Because what ASU built was neither Option 2 nor Option 4, the OUCC has had to
10 investigate and evaluate what ASU actually built as well as the total reasonable cost or
11 value of what was actually built, whether any deviation should be considered prudent and
12 reasonable, and whether any future expenditures should be considered part of the approved
13 project costs. This information was not part of the proof ASU offered in its preapproval
14 and rate case. If ASU had constructed Option 2 or Option 4, as proposed, the issues in its
15 Phase III compliance filing would reasonably have been limited to simply whether ASU
16 had spent a total of at least \$10,000,000 to build the Option. Likewise, if ASU had installed
17 the Micro Star Tertiary filter it told the OUCC it needed for chemical phosphorus
18 treatment, that would not be an issue. Instead, this case has required significant review
19 and analysis because of ASU's decision to deviate from its timeline, from its indicated and
20 preapproved designs, and from the permit it acquired from IDEM.

III. EFFECT OF PREAPPROVAL

21 **Q: Did the Commission acknowledge the role of the preapproval case in the rate case?**

⁵ ASU responded on December 7, 2019 to informal discovery DR 3-7 asking ASU to indicate which option was built (1, 2, 3, or 4), that "ASU needs more clarification on this question."

1 A: Yes. In the final order in Cause No. 44676, the Commission explained that what made
2 ASU's unusually long test period acceptable was that the projects included in the test
3 period had been the subject of the preapproval in Cause No. 44272:

4 **4. Test Period.** Petitioner proposed a hybrid test period using
5 historic data for the 12-month period ending March 31, 2015, and further
6 historic and projected data through June 30, 2018, as authorized by Ind.
7 Code § 8-1-2-42.7(d)(3). At the Prehearing Conference held in Cause No.
8 44676, the OUCC opposed Petitioner's proposed test period, contending
9 that it is not consistent with Ind. Code § 8-1-2-42.7 ("Section 42.7") because
10 it would extend for too long. In the Prehearing Conference Order for Cause
11 No. 44676 issued November 18, 2015, we held:

12 In this case, the four major projects that Petitioner proposed
13 to implement through phased in rates were the subject of the
14 Commission's Order in *American Suburban Utilities*, Cause
15 No. 44272, 2014 WL 1477992 (IURC Apr. 9, 2014) ("44272
16 Order"). The 44272 Order granted pre-approval to all four
17 major projects. Thus, the pre-approval provides unique
18 circumstances which help alleviate some of our concerns
19 with having such a long test period and make the use of a
20 hybrid test period that is greater than 12 months appropriate
21 in this case. Furthermore, by using a hybrid test period
22 Petitioner would avoid incurring the additional expense of
23 filing an additional rate case to capture the preapproved
24 major projects occurring further out in the future.

25 44676 Prehearing Conference Order, p. 2.

26 As provided in the Prehearing Conference Order, the test year to be used for
27 determining Petitioner's projected operating revenues, expenses, and
28 operating income shall be the 12-month period ending March 31, 2015, and
29 further historic and projected data through June 30, 2018. This is the first
30 case filed under Section 42.7 utilizing a hybrid test period.

31 (Order – Cause No. 44676, pp. 3- 4, emphasis added by the OUCC.)

1 **Q: Did Mr. Serowka identify the component parts of Option 2 and Option 4 in Cause**
2 **No. 44272?**

3 A: Yes. Mr. Serowka provided detailed descriptions of each component part of Option 2 and
4 Option 4 and provided detailed cost estimates for each component part.^{6 7}

5 **Q: Did ASU significantly deviate from building all the components of Option 2 or Option**
6 **4 as detailed by Mr. Serowka?**

7 A: Yes. What ASU did build was very different from either Option 2 or Option 4. What was
8 constructed included reduced size / number of components or eliminated major
9 components it had included in its request for preapproval. For instance, ASU did not
10 rehabilitate its existing CSBR tanks. Likewise, ASU did not construct a biological
11 phosphorus removal system, which had been presented in all four options it presented to
12 the Commission,

13 **Q: Did ASU also significantly deviate from the planned Standby Chemical Phosphorus**
14 **Removal project?**

15 A: Yes. ASU did not construct its Standby Chemical Phosphorus Removal project using the
16 \$1,020,000 Micro Star Tertiary Filter and other identified components, which ASU used
17 to justify the \$1.5 million it was approved to include in rate base for Phase III rates. OUCC
18 witness James Parks describes the Chemical Phosphorus Removal project in his testimony.

19 **Q: Should the Commission approve ASU's request to include in rate base for phase III**
20 **the \$1.5 million for ASU's Standby Chemical Phosphorus Removal project?**

21 A: No. The constructed project is materially different than the project ASU based its pre-
22 approval of expenditures for Standby Chemical Phosphorus Removal. OUCC witness Jim
23 Parks has identified these components and is recommending that the ASU's cost associated

⁶ See Cause No. 44272, Supplemental Rebuttal Testimony of Edward J. Serowka, December 11, 2013, Exhibit EJS-SR3 for the Option 2 layout, components, and costs.

⁷ See Cause No. 44272, Supplemental Testimony of Edward J. Serowka, July 19, 2013, Exhibit EJS-S2 for the Option 4 layout and components and Exhibit EJS-S3 for the Option 4 project costs. See also Cause No. 44676, Direct Testimony of Edward J. Serowka, September 4, 2015 and Exhibit EJS-10 for the Option 4 layout and costs.

1 with those components be deducted from the requested relief.

2 **Q: Should the Commission approve ASU's request to include in rate base the remaining**
3 **\$8,024,800 of the amount preapproved for CE-III WWTP project?**

4 A: No. The project actually constructed is materially different than the projects ASU based
5 its pre-approval of expenditures. OUCC witness Jim Parks has identified the components
6 and is recommending that ASU's cost associated with those components of \$4,280,000 not
7 be included in the calculation of rate base as utility plant in service. Instead, the OUCC
8 recommends the Commission find utility plant in service of \$3,744,800 for this Phase of
9 the CE-III WWTP expansion project.

IV. PROJECT COMPLETION

10 **Q: How did ASU communicate to the Commission and the OUCC that its Carriage**
11 **Estates III Wastewater Treatment Plant was in service?**

12 A: In its November 7, 2019 Compliance Filing in consolidated Cause Nos. 44676 and 44700,
13 ASU stated that it "is submitting a certification that the Carriage Estates Wastewater
14 Treatment Plant is in service...." ASU also submitted an October 18, 2019 letter from
15 Edward J. Serowka, P.E. indicating that the "Carriage Estates III Wastewater Treatment
16 Plant Expansion has been placed into operation and started discharging effluent to Indian
17 Creek on Friday, October 18, 2019." This letter served as ASU's certification that the
18 Carriage Estates III Wastewater Treatment Plant Expansion is in service. Mr. Serowka did
19 not state in his letter whether construction of all facilities was complete or whether all
20 components of the projects are complete and in service.

21 **Q: Was the CE-III WWTP project complete as of November 7, 2019, the date ASU filed**
22 **its Compliance Filing?**

23 A: No. The OUCC obtained several documents from IDEM that indicate that not all
24 components of ASU's CE-III WWTP and Chemical Phosphorus Removal Plant were

1 complete and in service as of November 7, 2019. In addition, I have included pictures
2 from the OUCC's on-site inspections December 4, 2019 and March 5, 2020 documenting
3 the incomplete status of the CE-III WWTP Project and the Chemical Phosphorus Removal
4 System. The following documents are discussed below.

- 5 A. IDEM Extension of CE-III WWTP Construction Permit Deadline, dated May 17,
6 2019
- 7 B. IDEM Compliance Evaluation Inspection dated September 24, 2019
- 8 C. OUCC Onsite Inspection – December 4, 2019
- 9 D. IDEM Notice of Violation and Proposed Agreed Order, dated January 21, 2020
- 10 E. OUCC Onsite Inspection – March 5, 2020
- 11 F. IDEM Inspection Summary Letter, dated June 29, 2020
- 12 G. IDEM Inspection Summary / Noncompliance Letter, dated July 16, 2020

A. Extension of CE-III WWTP Construction Permit Deadline, dated May 17, 2019

13 **Q: Did ASU request an extension of the expiration date of its IDEM Construction Permit**
14 **for the CE-III WWTP project?**

15 **A:** Yes. On April 24, 2019, IDEM received a request from ASU for an extension of the CE-
16 III WWTP Construction Permit expiration date. On May 17, 2019 IDEM granted the
17 request for extension. (See OUCC Attachment SAB-3) The May 17, 2019 IDEM letter
18 included the following statement:

19 A Construction Permit (Approval No. 20788) was issued by the Indiana
20 Department of Environmental Management for the above referenced project
21 on February 21, 2014. The permit was valid for a period of five (5) years
22 from that date for full construction completion. Due to project delays,
23 construction has not yet been fully completed. On April 24, 2019, a request
24 for an extension of the construction permit was received by IDEM. Pursuant
25 to 327 IAC 3-2-3.5(a), IDEM has the authority to grant an extension of time
26 for the completion of construction. Upon review of the extension request,
27 IDEM has determined that it is necessary and justified to grant a permit time
28 extension until June 30, 2020, to allow for the full construction completion
29 of the project. All other conditions of approval for the original permit

1 remain valid.

2 (Emphasis added by the OUCC)

3 **Q: What justification did ASU provide to IDEM for the extension to June 30, 2020?**

4 A: ASU provided an April 24, 2019 letter from Timothy R. Balensiefer, President, TBIRD
5 Design Service Corp. and a construction schedule. Mr. Balensiefer included the following
6 items in his letter as justification for the extension of the construction permit expiration
7 date. (See OUCC Attachment SAB-4)

- 8 • Backfilling is on-going but should be completed in September 2019.
- 9 • Electrical work is expected to be completed during the same timeframe.
- 10 • Rough site grading is expected to be completed by early October 2019.
- 11 • Final grading and seeding will continue until November 2019.
- 12 • Site preparation for pavement to begin in early Spring 2020.
- 13 • Final pavement will occur in Spring of 2020 and be completed by June 2020. This
14 will allow for the soils to stabilize prior to pavement installation.
- 15 • Sidewalks, fencing and reseeding areas affected by pavement placement would be
16 completed by June 2020.

17 Mr. Balensiefer also included a construction schedule dated April 24, 2019 listing the
18 construction task name and finish date for twenty-five (25) construction tasks. Because
19 the original construction permit (Approval No. 20788) expired on February 21, 2019, it
20 appears that the requested extension was not just for the abovementioned items but for all
21 but three (3) construction tasks identified on the construction schedule that had not been
22 completed as of April 24, 2019.

23 **Q: Had any of the items listed above been completed by November 7, 2019?**

24 A: No. Based on the OUCC's December 4, 2019 and March 5, 2020 on-site inspections, the
25 above-mentioned items had not been completed on November 7, 2019. OUCC Attachment
26 SAB-5, includes pictures showing the above-mentioned items had not been completed.

B. IDEM Compliance Evaluation Inspection dated September 24, 2019

1 **Q: Did IDEM conduct an onsite “Compliance Evaluation Inspection” on September 24,**
2 **2019?**

3 A: Yes. An October 1, 2019 IDEM Inspection Summary/Noncompliance Letter (See
4 Attachment SAB-6) indicated that IDEM conducted a “Compliance Evaluation
5 Inspection” on September 24, 2019. The letter describes ASU’s violations of its NPDES
6 Permit No. IN0043273. The letter provides a description of the violations and indicates
7 ASU did not have all the construction completed on the upgraded system:

8 1. The Permit was rated as marginal due to the permittee deviating from
9 the final constructed flow design of 4.0 MGD as noted in the permit. The
10 permittee needs to request a modification of the permit to reflect the final
11 constructed flow design. Personnel for IDEM’s Construction Permit
12 section were also on site at the time of the inspection for evaluation of the
13 progress of the expansion of the treatment plant system. The construction
14 permit was evaluated during a separate inspection by Construction Permit
15 personnel, conducted concurrent to this inspection. A separate report
16 regarding the construction permit evaluation will be sent. In addition, the
17 permittee submitted their thirty day notice on 6-12-19 that construction
18 activities for upgraded plant would be completed by 7-11-19, so they could
19 start reporting under the new limits of violations in the permit. At the time
20 of the inspection the permittee did not have all the construction completed
21 on the upgraded system. The permittee was operating the two new SBR’s
22 manually during the day and shutting them off at night, while running the
23 four older SBRs automatically 24/7. In addition the permittee was still
24 disinfecting with chlorine following the four older SBRs through a pipe that
25 bypasses the new UV structure and then disinfecting with the new UV
26 system following the two new SBRs. The new influent train including a
27 macerator and lift station pumps were not completely constructed or
28 operating at the time of inspection. The facility still had the temporary
29 chemical Phosphorus treatment system installed due to the permanent
30 Phosphorus treatment system not being completely constructed. The
31 permittee must submit a report to IDEM on the completion of the
32 construction of the upgraded system and when the new limits can be
33 applied.

34 3. Operation was rated as unsatisfactory due to the facility’s temporary
35 chemical Phosphorus treatment system being out of service. Part II. B. 1 of
36 the permit requires all waste collection, control, treatment, and disposal

1 facilities to be operated as efficiently as possible and in a manner which will
2 minimize upsets and discharges of excessive pollutants. At the time of the
3 inspection the temporary chemical Phosphorus treatment system was not
4 operating due to chemical feed pump needing repaired. The facility
5 personnel noted that they were dumping in Phosphorus removal chemical.
6 This is not an efficient treatment for Phosphorus or a permitted way to
7 introduce the chemical.

8 In addition, IC 13-30-2-1, states in part, that a person may not discharge,
9 emit, cause, allow, or threaten to discharge, emit, cause, or allow any
10 contaminant or waste, including any noxious odors either alone or in
11 combination with contaminants from other sources, into the environment in
12 any form that causes or would cause pollution that violates or would violate
13 rules, standards, or discharge or emission requirements adopted by the
14 appropriate board under the environmental management laws. At the time
15 of the inspection the one Sodium Aluminate tote in the building being used
16 for Phosphorus removal and the two spare full totes of Sodium Aluminate
17 sitting on the ground beside the generator had no secondary containment in
18 the event of a spill or leak. The facility needs to utilize a secondary
19 containment system to help prevent the Sodium Aluminate from entering
20 the environment. Operation was rated marginal due to facility operating the
21 two new SBR's manually. At the time of the inspection the facility did not
22 have all the construction completed on the plant upgrade. The facility was
23 operating the two new SBRs manually during the day and shutting them off
24 at night, while running the four older SBRs automatically 24/7. In addition
25 the permittee was still disinfecting with chlorine following the four older
26 SBRs through a pipe that bypasses the new UV structure and then
27 disinfecting with the new UV system following the two new SBRs. The
28 programming contractor was onsite and has been on-site several days trying
29 to program the new SBRs to run automatically at the time of the inspection.

30 (Emphasis added by the OUCC)

31 **Q: Did IDEM's October 1, 2019 Inspection Summary/Noncompliance Letter indicate**
32 **whether ASU's influent train facilities had been completely constructed?**

33 A: Yes. The IDEM Noncompliance Letter states that as of September 24, 2019 ASU's "new
34 influent train including a macerator and lift station pumps were not completely constructed
35 or operating at the time of inspection." (emphasis added by the OUCC.) In its October 21,
36 2019 response to this issue identified in IDEM's October 1, 2019 Inspection Summary /
37 Noncompliance Letter, ASU stated that it "was given an extension of time on May 17,

1 2019 by IDEM's Construction Section until June 30, 2020 to finalize all phases of
2 construction including the final site grading and seeding.”⁸ (See OUCC Attachment SAB-
3 7.) It should be noted that the new influent train or headworks project had been certified to
4 the Commission as complete in ASU's March 17, 2017 filing, which included a February
5 24, 2017 letter from Edward J. Serowka, P.E. and a February 27, 2017 letter from Keith R.
6 O'Brien, Contract Manager, TBird Design Services Corporation. (See OUCC Attachment
7 SAB-8.) Based on this documentation from ASU in 2017, the Commission approved Phase
8 II rates, which included \$1,975,200 that was placed in rate base, and customers have been
9 paying rates that include a return on these facilities that may have not actually been in
10 service for close to four years. I provide several pictures of the headworks influent
11 structure documenting the completion status as of December 4, 2019, March 5, 2020, and
12 October 8, 2020. (See OUCC Attachment SAB-9) This warrants explanation by ASU.

13 **Q: Did the October 1, 2019 IDEM Inspection Summary/Noncompliance Letter indicate**
14 **whether ASU had completed all the permitted construction?**

15 A: The IDEM letter indicated that “at the time of the inspection the facility did not have all
16 the construction completed on the plant upgrade.” ASU's October 21, 2019 response to
17 IDEM's October 1, 2019 Inspection Summary/Noncompliance Letter addressed IDEM's
18 concern by stating “ASU addressed the above concerns in their responses to 1d. and 1e.”
19 ASU's response to 1d. noted a problem with the IDEM's 2019 Net DMR Form. ASU's
20 response to 1e. was that “ASU was given an extension of time on May 17, 2019 by IDEM's
21 Construction Section until June 30, 2020 to finalize all phases of construction including
22 final site.” Thus, ASU did not dispute that not all the construction was completed on the

⁸ OUCC Attachment SAB-7, ASU Response to IDEM Inspection 2019-09-24, IDEM Concern 1e.

1 plant upgrade. (See OUCC Attachment SAB-7).

2 **Q: Did IDEM representatives photograph ASU's facilities during the September 24,**
3 **2019 reconnaissance inspection?**

4 A: Yes. On January 29, 2020, OUCC staff met with representatives from IDEM to obtain a
5 status on ASU's compliance with its CE-III WWTP Construction Permit and its
6 Phosphorus Construction Permit. During that meeting, IDEM representatives indicated
7 they had taken pictures of ASU's Carriage Estates WWTP facilities during a site visit. The
8 OUCC obtained copies of the pictures taken by IDEM representatives during the
9 September 24, 2019 Compliance Evaluation Inspection. OUCC Witness Jim Parks has
10 included in his testimony pictures taken by IDEM representatives that substantiate IDEM's
11 determination that "At the time of inspection [September 24, 2019] the permittee did not
12 have all the construction completed on the upgraded system."

C. OUCC Onsite Inspection – December 4, 2019

13 **Q: Did the OUCC visit ASU's Carriage Estates III Wastewater Treatment Plant to verify**
14 **that the Carriage Estates III WWTP project was complete and in service?**

15 A: Yes. On December 4, 2019, representatives from the OUCC met with ASU owner, Scott
16 Lods, to view the CE-III WWTP Project. At that meeting, OUCC representatives observed
17 the facilities that had been constructed at that time and took pictures of some of the
18 facilities. However, due to ongoing construction and the inaccessibility to some structures,
19 we could not observe the inner workings of the Auxiliary manhole, the Macerator structure,
20 the new influent Lift Station and the valve vault. ASU had certified that all these listed
21 structures were completed in 2017. Based on the visual inspection and discussions with
22 Mr. Lods, the OUCC concluded not all components of the CE-III WWTP project had been
23 completed. I have included photos, including descriptions of the December 4, 2019 OUCC

1 inspection as OUCC Attachment SAB-10. These pictures show the state of the facilities
2 as of that date, and they indicate the facilities are not complete.

D. IDEM Notice of Violation and Proposed Agreed Order, dated January 21, 2020

3 **Q: Did IDEM issue a Notice of Violation (“NOV”) and Proposed Agreed Order?**

4 A: Yes. On January 21, 2020, IDEM sent a letter to ASU with an attached NOV and Proposed
5 Agreed Order (See OUCC Attachment SAB-11). The letter states that “Pursuant to IC 13-
6 30-3-3, enclosed please find a Notice of Violation and a proposed Agreed Order, setting
7 forth IDEM’s specific findings of violation and the actions necessary to resolve them.”

8 **Q: Where numerous violations identified in the NOV?**

9 A: Yes. First, the NOV discusses the results of two IDEM inspections as follows:

10 During inspections conducted on March 13, 2019 and September 24, 2019,
11 IDEM’s representatives observed and documented that Respondent has
12 constructed facilities significantly different than what was approved in the
13 original 2014 construction permit without submitting revised plans and
14 specifications, and without obtaining a revised construction permit, in
15 violation of 327 IAC 3-2-1 and 327 IAC 3-2-2(d).

16 **Q: What do 327 IAC 3-2-1⁹ and 327 IAC 3-2-2(d) state?**

17 A: The NOV describes the specific administrative code cites as follows:

18 Pursuant to 327 IAC 3-2-1, no person shall cause or allow the construction,
19 installation, or modification of any water pollution treatment/control
20 facility or sanitary sewer without a valid construction permit issued by the
21 commissioner.

22 Pursuant to 327 IAC 3-2-2(d), construction shall not commence until all
23 necessary state approvals and permit are obtained.

24 **Q: What other violations were addressed in the NOV?**

25 A: The NOV addressed ASU’s failure to notify IDEM of the significant changes to the

⁹ 327 IAC 3-2-1 has expired. 327 IAC 3-2-1.5, Valid Permit Requirement, contains the same language as was in 327 IAC 3-2-1.

1 approved project. The following describes the violation:

2 Respondent failed to submit the corrected information to IDEM regarding
3 significant changes to design and capacity what were made during the
4 WWTP expansion. These changes would have warranted revision of the
5 discharge limitations and treatment facility description contained in the
6 issued NPDES Permit. Respondent failed to provide information related to
7 these changes in the approved construction plan, and failed to request an
8 NPDES Permit modification, in violation of 327 IAC 5-2-8(11)(E).

9 **Q: Were additional violations identified in the NOV?**

10 A: Yes. The NOV identified additional violations, including violations of 327 IAC 5-2-8(1).¹⁰
11 327 IAC 5-2-8(11) and Part II.B.2.b and Part II.B.1.e of the NPDES Permit.

12 **Q: Did ASU enter into an Agreed Order with IDEM?**

13 A: Yes. On December 1, 2020, IDEM approved and adopted an Agreed Order where ASU
14 agreed to pay a civil penalty of \$63,800. ASU agreed to develop and submit to IDEM for
15 approval a Compliance Plan ("CP"), which identifies actions that Respondent will take to
16 achieve and maintain compliance with the NPDES Permit. (See OUCC Attachment SAB-
17 12).

E. OUCC Onsite Inspection – March 5, 2020.

18 **Q: Did the OUCC inspect ASU's Carriage Estates WWTP on March 5, 2020 to**
19 **determine whether the Carriage Estates III WWTP project and Phosphorus Removal**
20 **Project were complete and in service?**

21 A: Yes. On March 5, 2020, representatives from the OUCC met with a representative from
22 ASU to view the CE-III WWTP Project. At that meeting, OUCC representatives observed

¹⁰ 327 IAC 5-2-8(1) The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the environmental management laws and is grounds for: (A) enforcement action; (B) permit termination, revocation and reissuance, or modification; or (C) denial of a permit renewal application. A permittee may claim an affirmative defense to a permit violation if the circumstances of the noncompliance meet the criteria of an upset as defined in subsection (13).

1 the facilities that had been constructed at that time and took pictures of some of the
2 facilities. However, due to ongoing construction and the inaccessibility to some structures,
3 the inter-workings of some facilities could still not be observed. Based on the visual
4 inspection and discussions with the utility representative, the OUCC concluded not all
5 components of the CE-III WWTP project and the Chemical Phosphorus Removal Project
6 had been completed. I have included photos of the March 5, 2020 OUCC on-site inspection
7 as OUCC Attachment SAB-13.

F. IDEM Inspection Summary Letter, dated June 29, 2020

8 **Q: Did IDEM conduct an onsite “Reconnaissance Inspection” on June 24, 2020?**

9 A: Yes. The OUCC obtained a copy of a June 29, 2020 IDEM Inspection Summary Letter
10 (See OUCC Attachment SAB-14). The June 29, 2020 letter indicated that IDEM conducted
11 a “Reconnaissance Inspection” on June 24, 2020. The June 29, 2020 letter documents the
12 inspection results. The letter includes the following statement:

13 The Permit section was rated as marginal due to the facility potentially not
14 completing all construction activities associated with the treatment plant
15 expansion construction permit No. 20788. On May 17, 2019 the facility was
16 granted an extension of construction permit No. 20788 that extended the
17 completion timeline until June 30, 2020. At the time of the inspection it was
18 noted that the facility still has to finish installing second influent macerator,
19 finish sludge pond closure through Office of Land, finish gravity sewer
20 pipng for drains for tanks, finish air piping to old sludge holding tanks,
21 finish cat walks and stairs for new tanks, install gravel driveway, and finish
22 final grading and seeding. The facility was aware of the extension
23 completion date of June 30, 2020, but noted they may not complete
24 construction by then depending on the weather and the closure approval of
25 the sludge holding pond.

26 In addition to the treatment plant expansion (construction permit No.
27 20788), the facility is in the process completing construction associated
28 with the installation of a phosphorus removal system through a separate
29 construction permit, No. 22977. The facility has completed the chemical

1 feed building and is still in the process of installing chemical feed lines to
2 the SBRs. The treatment plant improvements for phosphorus removal
3 system through construction permit No. 22977 is valid for five years from
4 the approval letter dated February 21, 2019.

5 (Emphasis added by the OUCC)

6 This IDEM letter and NPDES Wastewater Facility Inspection Report further documents
7 that the CE-III WWTP project was not complete at the time of this June 24, 2020
8 Reconnaissance Inspection. Therefore, the Commission may properly conclude the project
9 had not been completed on or before November 7, 2019, the date of ASU's original
10 compliance filing.

G. IDEM Inspection Summary / Noncompliance Letter, dated July 16, 2020

11 **Q: Did IDEM conduct another onsite "Reconnaissance Inspection" on July 7, 2020?**

12 A: Yes. The OUCC obtained a copy of a July 16, 2020 IDEM Inspection Summary /
13 Noncompliance Letter. (See OUCC Attachment SAB-15.) The July 16, 2020 letter
14 indicated that IDEM conducted a "Reconnaissance Inspection" on July 7, 2020 and
15 observed violations. The July 16, 2020 letter also documents the inspection results. The
16 letter includes the following statement:

17 The Compliance Schedules evaluation generated an unsatisfactory rating
18 due to the facility still conducting construction activities associated with the
19 treatment plant expansion construction permit No. 20788 that expired on
20 June 30, 2020. This is a violation of 327 IAC 3-2-1 that states in part, no
21 person shall cause, or allow construction, installation, or modification of
22 any water pollution treatment/control facility or sanitary sewer without a
23 valid construction permit issued by the commissioner. This violation is
24 addressed in the facility's existing Agreed Order Case No. 2019-26314-W.

25 At the time of inspection, the facility had not completed all construction
26 activities associated with the treatment plant expansion construction permit
27 No. 20788. On May 17, 2019 the facility was granted an extension of
28 construction permit No. 20788 that extended the completion timeline until

1 June 30, 2020. The facility was in the process of installing the second
2 influent macerator. The facility has completed sludge pond closure through
3 Office of Land. The facility still needs to finish gravity sewer piping for
4 drains for tanks, finish air piping to old sludge holding tanks, finish cat
5 walks and stairs for new tanks, install gravel driveway, and finish final
6 grading and seeding.

7 In addition to the treatment plant expansion (construction permit No.
8 20788), the facility is in the process completing construction associated
9 with the installation of a phosphorus removal system through a separate
10 construction permit, No. 22977. The facility has completed the chemical
11 feed building and is still in the process of installing chemical feed lines to
12 the SBRs. The treatment plant improvements for phosphorus removal
13 system through construction permit No. 22977 is valid for five years from
14 the approval letter dated February 21, 2019.

15 (Emphasis added by the OUCC)

16 The July 16, 2020 letter further documents ASU had not completed all construction
17 activities for the CE-III WWTP project and the Standby Chemical Phosphorus Removal
18 project as of July 7, 2020, a full seven months after ASU's initial compliance filing on
19 November 7, 2019.

20 **Q: What is your conclusion regarding the completeness of the CE-III WWTP Project**
21 **and the Phosphorus Removal Project as of November 7, 2019?**

22 A: Based on the IDEM documents I reviewed and my on-site inspection of the ASU's
23 facilities, I conclude that not all the components of the CE-III WWTP Project or the
24 Chemical Phosphorus Removal Project were complete and in service on November 7,
25 2019.

26 **Q: What is your recommendation about the November 7, 2019 Compliance filing?**

27 A: Since neither project was totally complete and in service, I recommend the Commission
28 reject ASU's November 7, 2019 Compliance Filing and order ASU to provide a refund of
29 all revenues paid as a result of the interim Phase III rate increase charged by ASU to its
30 customers for service provided through September 30, 2020. In addition, the I recommend

1 ASU be authorized to charge Phase III rates effective as of September 30, 2020 that reflect
2 the cost of the projects ASU actually completed, which materially differ from those
3 projects presented in its preapproval and its rate case. Finally, as ASU has been permitted
4 to charge the full Phase III rates indicated in its original compliance filing, subject to
5 refund, ASU should issue an appropriate refund from September 30, 2020 to the effective
6 implementation date of rates established by an order in this sub-docket.

V. ADEQUACY OF ASU'S RECORDS

7 **Q: Are there other matters that affect whether ASU has complied with the final order in**
8 **consolidated Cause Nos. 44676 and 44700?**

9 A: Yes. In the Final Order in Cause Nos 44676 and 44700, the Commission indicated its
10 "review of the invoices provided through Petitioner's Exhibit 6, CX-2 and CX-3 also raises
11 serious concerns regarding Petitioner' relationship with its affiliate companies.¹¹ On page
12 41 and 42 of the order the Commission made the following statement:

13 We believe the documentation Petitioner maintains from its affiliate lacks
14 sufficient details for an auditor to determine the reasonableness of the
15 amount requested for recovery. Further, we are concerned with the lack of
16 documentation maintained by Petitioner. Therefore, Petitioner shall require
17 First Time or any other affiliate company to submit detailed invoices for all
18 costs including unit costs for structures, materials, labor, equipment, and
19 engineering, which should be compared to the cost estimate or contract
20 entered into by Petitioner to complete work. We expect to receive this level
21 of detail regardless of whether the work performed was done under a lump
22 sum or time and materials contract. (p. 41)

23 The Commission concludes that the affiliate transaction process prescribed
24 for Petitioner in the final order for Cause No. 43294 (Jan 23, 2008) may not
25 be adequate in insuring that the affiliated transactions are competitive,
26 reasonable, and in the public interest. The affiliate contract between
27 Petitioner and First Time Development Corp. is set to expire in January of
28 2017. The Commission shall address these issues upon the filing of

¹¹ Commission Order in Cause Nos. 44676 and 44700, dated November 30, 2016. (p. 41)

1 Petitioner's next affiliate contract provided to the Commission for review
2 pursuant to Ind. Code § 8-1-2-49(2)(g). (p.42)

3 (Emphasis added by the OUCC)

4 **Q: In its final order in consolidated Cause Nos. 44676 and 44700, did the Commission**
5 **also address accounting and affiliate transactions issues?**

6 A: Yes. In its final order, Section H.(1) Accounting Records (pages 40-41), the Commission
7 expressed concerns with the adequacy of ASU's records. The Commission made the
8 following statement regarding their expectations about providing sufficient records:

9 We expect Petitioner to comply with NARUC's Accounting Instruction 2.
10 Furthermore, in all future proceedings, Petitioner shall provide records
11 sufficient to support all major plant investments, including, but not limited
12 to a detailed project description, the basis or need for the project, cost
13 estimates (including material quantities), bids, and invoices that are broken
14 out in sufficient detail to allow an auditor adequate information to verify
15 the reasonableness of the project and the amounts paid. (p. 41)

16 (Emphasis added by the OUCC)

17 **Q: After the Order consolidated Cause Nos. 44676 and 44700 was issued, did ASU submit**
18 **revised affiliate agreements to the Commission's General Counsel?**

19 A: Yes. On January 13, 2017, ASU submitted to the Commission the revised affiliate
20 agreements with its affiliate, FTDC.

21 **Q: Did the Commission express its concerns with the affiliate agreements submitted by**
22 **ASU?**

23 A: Yes. In a February 15, 2017 letter from the Commission's Assistant General Counsel,
24 Brad J. Pope, to Nickolas K. Kile, Barnes & Thornburg LLP, regarding Affiliate Contracts
25 Nos. 2017-1, 2017-2, 2017-3, and 2017-4 between American Suburban Utilities, Inc. and
26 First Time Development Corporation ("First Time"), dated Jan. 13, 2017, the Commission
27 expressed its concern that compensation to First Time is set at the project caps, rather than
28 the actual costs. (See OUCC Attachment SAB-16) The following language sets out the
29 concerns:

1 Affiliate Contract No. 2017-1 (Headworks), Affiliate Contract No. 2017-2
2 (Phosphorus Removal), and Affiliate Contract No. 2017-3 (CE-III
3 Expansion) provide that ASU shall pay First Time the costs as reflected in
4 the contracts' respective Schedule of Values. The Activity Descriptions in
5 the Schedule of Values total \$1,975,200, \$1,500,000, and \$8,024,000 for
6 each contract respectively. However, these amounts represent the project
7 caps approved in the Final Order. While First Time may be compensated
8 up to those amounts, its compensation should be based on the work it
9 performs and the actual costs incurred and not set automatically at the
10 maximum amount authorized by the Commission.

11 **Q: What other concerns did the Commission indicate in the February 15, 2017 letter?**

12 A: Some of the other Commission concerns include the following:

- 13 • The compensation scheme in the affiliate contracts is neither transparent nor
14 verifiable.
15 • The contracts do not appear to require that detailed records be retained (and
16 provided upon request) regarding the work performed.
17 • The percentage adder appears to be excessive.
18 • The contracts do not appear to contain appropriate accounting requirements.
19 • More reliable cost estimates need to be obtained.

20 **Q: Did ASU respond to the Commission's February 15, 2017 letter?**

21 A: Yes. On March 30, 2017, Mr. Kile provided a response to the Commission's February 15,
22 2017 letter (See OUCC Attachment SAB-17).

23 **Q: Did the Commission respond to Mr. Kile's March 30, 2017 letter?**

24 A: Yes. On April 21, 2017, the Commission's General Counsel, Beth E. Heline, provided a
25 five-page response to Mr. Kile's March 30, 2017 letter. (See OUCC Attachment SAB-18)

26 There are several statements that are instructive for this case. The Commission's General
27 Counsel stated the following about the need to sufficient record-keeping and evidence:

28 The record-keeping and evidence required by statute and by the
29 Commission can help ASU demonstrate that its relationship with its affiliate
30 is above board and appropriate. As you are aware, in its November 2016
31 order in ASU's rate case, the Commission expressed its concerns about
32 ASU and its affiliates, the lack of records and inspector reports about the
33 work being done for ASU by the affiliates, the lack of detail about the work
34 being performed by First Time (including personnel and equipment used

1 and specific activities performed, and the inadequacy of ASU's records and
2 its failure to follow required accounting procedures. The Commission's
3 November order also required ASU to provide verification of construction
4 costs incurred and paid, as well as require ASU's affiliates, such as First
5 Time, to "submit detailed invoices for all costs including unit costs for
6 structure, materials, labor, equipment, and engineering." The reports,
7 records, and accurate accounting procedures referenced in the
8 Commission's order are necessary to protect ratepayers and help assure that
9 ASU and First Time are accurately reporting the costs of construction to be
10 included in ASU's rates.

11 (Emphasis added by the OUCC)

12 **Q: Was a meeting held to discuss the affiliate agreements on April 24, 2017?**

13 A: Yes. Based on the meeting on April 28, 2017, Mr. Kile wrote a letter to the Commission's
14 General Counsel regarding ASU's Affiliate Contracts. Mr. Kile included attachments to
15 the letter, which included executed copies of Affiliate Contracts 2017-1, 2017-2 and 2017-
16 3.

17 **Q: Did the Commission's General Counsel respond to Mr. Kile's April 28, 2017 letter?**

18 A: Yes. In an email dated May 1, 2017, the Commission's General Counsel responded to Mr.
19 Kile's letter. (See OUCC Attachment SAB-19.) The Commission's General Counsel
20 made the following statement:

21 Nick,

22 Thank you for providing the draft revisions to the affiliate contracts between
23 American Suburban Utilities, Inc. ("ASU"), and First Time Development
24 Corporation. Based on these revisions, and upon the receipt of the executed
25 revised contracts, the Commission staff will not be recommending the
26 opening of a proceeding regarding these contracts under Ind. Code § 8-1-2-
27 49.

28 As a disclaimer, this staff decision does not indicate pre-determination by
29 the Indiana Utility Regulatory Commission regarding future ASU
30 proceedings, its compliance with Commission orders, or the need to provide
31 sufficient evidence on which the Commission may base its determinations.

32 (Emphasis Added by the OUCC)

1 The Commission's General Counsel is clear in her statement that the staff's decision to not
2 open an investigation (pursuant to Ind. Code § 8-1-2-49) is not a pre-determination of
3 compliance with Commission orders or with the need to provide sufficient evidence on
4 which the Commission may base its determinations. ASU has not complied with the
5 explicit language on page 41 of the November 30, 2016 order in Cause Nos. 44676 and
6 44700, which orders ASU to require "First Time or any other affiliated company to submit
7 detailed invoices for all costs..." Therefore, ASU's evidence in support of its Compliance
8 filing is insufficient and inadequate, hindering the OUCC's and Commission's task of
9 determining whether the costs to be included in rate base are reasonable and prudent. ASU
10 was reminded by the Commission's counsel of its need to comply with the Commission's
11 directive. ASU's adherence to the Commission's directive to make its affiliate's costs
12 transparent would have provided a means for the OUCC to recommend a rate base addition
13 based on the actual costs that were incurred by its affiliate. ASU's insistence that it need
14 not share the cost information of its closely held affiliated construction company is
15 inconsistent with the flexibility it asks of the Commission, the OUCC and its own
16 ratepayers to pay rates based on a preapproved amount for projects with components that
17 deviate materially from what was presented to receive that approval. The OUCC based
18 its valuation of what ASU didn't build on ASU's own 2013 and 2016 cost estimates that
19 were used to justify its plan additions. If the rate base valuations proposed by the OUCC
20 are unacceptable to the Commission or the ASU, ASU rates should revert to its Phase 2
21 rates and it should seek to support its rate base additions through a rate case with cost
22 support as described in and required by the final order in Cause No. 44676.

23 **Q: What is the effect of ASU not disclosing the actual cost incurred by its closely held**

1 **affiliate First Time in constructing the CE-III WWTP Project and the Phosphorus**
2 **Removal Project?**

3 A: ASU not disclosing its affiliate's actual costs to construct the CE-III WWTP Project and
4 the Phosphorus Removal Project prevents the Commission, the OUCC and ASU's
5 ratepayers from being assured that the rate base added represents the reasonable cost of the
6 projects and do not include an unusual or excessive affiliate profit. Any savings resulting
7 from ASU's deviation from the preapproved projects, whether authorized or not, should
8 benefit the ratepayers. The Settlement Agreement entered into by ASU and the OUCC and
9 the Commission's orders with respect to the CE-III WWTP Plant expansion and the
10 standby chemical phosphorus removal system provided protections and assurances that are
11 eliminated by ASU's deviation from the projects as presented and preapproved. ASU's
12 deviation from the designs on which it based its preapproval makes the utility's adherence
13 to the cost transparency the Commission ordered both necessary and essential. Mr. Parks'
14 estimate of the values to be removed from ASU's preapproved additions to rate base are
15 the most reasonable alternative to ASU's affiliate's lack of cost transparency.

16 **Q: Through discovery, has the OUCC sought to obtain copies of the actual costs incurred**
17 **to construct the CE-III WWTP Project and the Phosphorus Removal project by**
18 **FTDC?**

19 A: Yes. The OUCC asked for the following information in informal OUCC Data Request No.
20 1-3 (November 27, 2019):

21 Detailed invoices First Time or any other contractor or supplier submitted
22 for all costs including unit costs for (a) structures, (b) materials, (c) labor,
23 (d) equipment, and (e) engineering. (See Final Order, p. 41, Cause No.
24 44676).

25 ASU responded that First Time invoices have already been submitted. ASU's response
26 also included an explanation for its answer that I have included as OUCC Attachment

1 SAB-20.

2 **Q: Did the OUCC send other data request questions seeking to obtain the actual cost**
3 **incurred by First Time Development to construct the CE-III WWTP Project?**

4 A: Yes. The OUCC asked more questions in Data Request Nos. 2-7, 2-8 and 2-11. ASU's
5 responses to these three (3) data requests all indicate that ASU had a meeting with the
6 Commission where the Commission's concerns over the affiliate agreements were resolved
7 and new affiliate agreements were submitted and accepted on May 2, 2017.

8 **Q: Did the Commission modify its Order in Cause Nos. 44676 and 44700 as a result of**
9 **its meeting with ASU?**

10 A: No. The Commission's order has not been modified. Neither was the Commission's order
11 in Cause No. 44272, which approved the settlement agreement between ASU and the
12 OUCC.

VI. RECOMMENDATIONS

13 **Q: What are your recommendations?**

14 A: I recommend the Commission deny approval of ASU's Phase III Compliance Filing and
15 Phase III rates and order ASU refund to customers all revenues generated from
16 implementation to September 30, 2020. In addition, I recommend ASU be authorized and
17 directed to charge Phase III rates effective as of September 30, 2020 that reflect the cost of
18 the preapproved project components ASU actually completed. As ASU has been permitted
19 to charge the full Phase III rates indicated in its original compliance filing subject to refund,
20 I recommend ASU be required to issue an appropriate refund for the period from
21 September 30, 2020 through the issuance of an order in this sub-docket.

22 **Q: Does this conclude your testimony?**

23 A: Yes.

APPENDIX A

1 **Q: Please describe your educational background and experience.**

2 A: I have a Bachelor of Science degree in Industrial Management, with a minor in Industrial
3 Engineering from Purdue University. I began working for the Indiana Utility Regulatory
4 Commission ("Commission") in 1988 as a Staff Engineer. In 1990, I transferred to the
5 OUCC at the time of the reorganization of the Commission and the OUCC. In 1999, I was
6 promoted to the position of Assistant Director and in 2005 I was promoted to the position
7 of Director of the Water / Wastewater Division. During my term as Director, I have served
8 on the Water Shortage Task Force, created by SEA 369 in the 2006 General Assembly and
9 the Water Resources Task Force, created by HEA 1224 in the 2009 General Assembly. I
10 am a member of the American Water Works Association ("AWWA") and have attended
11 numerous utility related seminars and workshops including the Western Utility Rate
12 Seminar sponsored by the National Association of Regulatory Utility Commissioners
13 ("NARUC"). I also completed additional coursework regarding water and wastewater
14 treatment at Indiana University-Purdue University at Indianapolis ("IUPUI").

15 **Q: Have you previously testified before the Commission?**

16 A: Yes. I have testified in many causes relating to telecommunications, natural gas, electric,
17 water, and wastewater utilities. During the past twenty (20) years, I have testified
18 exclusively on water and wastewater utility issues. Some of those issues included the
19 reasonableness of cost of service studies, rate design, fair value, Replacement Cost New
20 Less Depreciation ("RCNLD") studies, engineering-related operation and maintenance
21 expenses, capital improvement projects, non-revenue water and water conservation.

APPENDIX B

- 1 List of Attachments:
- 2 OUCC Attachment SAB-1 Stipulation and Settlement Agreement between American Suburban
3 Utilities, Inc. and the Indiana Office of Utility Consumer Counselor,
4 Cause No. 44272.
- 5 OUCC Attachment SAB-2 ASU's Project Status Reports dated June 12, 2015, October 11,
6 2016, August 29, 2017, and May 15, 2019.
- 7 OUCC Attachment SAB-3 IDEM grant of Extension of Time for ASU's Construction Permit
8 (Approval No. 20788) for the Carriage Estates III Wastewater
9 Treatment Plant Expansion. (May 17, 2019)
- 10 OUCC Attachment SAB-4 April 24, 2019 Letter from TBird Design Service Corporation in
11 support of ASU's Request for Extension of IDEM Construction
12 Permit (Approval No. 20788) Deadline.
- 13 OUCC Attachment SAB-5 OUCC photographs of Carriage Estates WWTP construction site.
14 (March 5, 2020)
- 15 OUCC Attachment SAB-6 IDEM Inspection Summary / Noncompliance Letter dated October
16 1, 2019 regarding ASU's Carriage Estates WWTP NPDES Permit
17 No. IN0043273.
- 18 OUCC Attachment SAB-7 ASU's October 28, 2019 response to IDEM Inspection Summary /
19 Noncompliance Letter dated October 1, 2019 regarding ASU's
20 Carriage Estates WWTP NPDES Permit No. IN0043273.
- 21 OUCC Attachment SAB-8 ASU's Submission of Compliance Filing and Phase II Rates in
22 consolidated Cause Nos. 44676 and 44700. (March 17, 2017)
- 23 OUCC Attachment SAB-9 OUCC photographs of Carriage Estates WWTP headworks
24 facilities dated December 4, 2019, March 5, 2020, and October 8,
25 2020.
- 26 OUCC Attachment SAB-10 OUCC photographs of Carriage Estates WWTP construction site.
27 (December 4, 2019)
- 28 OUCC Attachment SAB-11 IDEM Notice of Violation and Proposed Agreed Order vs.
29 American Suburban Utilities, Inc. NPDES Permit No. IN0043273,
30 Case No. 2019-26314-W, West Lafayette, Tippecanoe County.
31 (January 21, 2020)

- 1 OUCC Attachment SAB-12 Adoption of Agreed Order IDEM vs. American Suburban Utilities,
2 Inc. NPDES Permit No. IN0043273, Case No. 2019-26314-W,
3 West Lafayette, Tippecanoe County. (December 1, 2020)
- 4 OUCC Attachment SAB-13 OUCC photographs of Carriage Estates WWTP construction site.
5 (March 5, 2020)
- 6 OUCC Attachment SAB-14 IDEM Inspection Summary Letter dated June 29, 2020 regarding
7 ASU's Carriage Estates WWTP NPDES Permit No. IN0043273.
- 8 OUCC Attachment SAB-15 IDEM Inspection Summary / Noncompliance Letter dated July 7,
9 2020 regarding ASU's Carriage Estates WWTP NPDES Permit No.
10 IN0043273.
- 11 OUCC Attachment SAB-16 February 15, 2017 letter from Brad J. Pope, Assistant General
12 Counsel, IURC, to ASU legal counsel, Nicholas K. Kile, Barnes &
13 Thornburg LLP regarding Affiliate Contracts Nos. 2017-1, 2017-2,
14 2017-3, and 2017-4 between American Suburban Utilities, Inc. and
15 First Time Development Corporation, dated January 13, 2017.
- 16 OUCC Attachment SAB-17 March 30, 2017 letter from Nicholas K. Kile, Barnes & Thornburg
17 LLP to Brad Pope, Assistant General Counsel, IURC, regarding
18 Affiliate Contracts Nos. 2017-1, 2017-2 and 2017-3 for American
19 Suburban Utilities, Inc. dated January 13, 2017.
- 20 OUCC Attachment SAB-18 April 21, 2017 letter from Beth E. Heline, General Counsel, IURC,
21 to Nicholas K. Kile, Barnes & Thornburg LLP regarding American
22 Suburban Utilities, Inc. and First Time Development Corporation
23 2017 Affiliate Contracts
- 24 OUCC Attachment SAB-19 May 1, 2017 email from Beth E. Heline, General Counsel, IURC, to
25 Nicholas K. Kile, Barnes & Thornburg LLP regarding American
26 Suburban Utilities, Inc. Affiliate Agreements
- 27 OUCC Attachment SAB-20 ASU response to OUCC DR 1-3 in Cause No. 44676, dated
28 November 27, 2019.

EXHIBIT A

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF AMERICAN SUBURBAN UTILITIES,)
 INC. FOR APPROVAL OF (1) EXPENDITURES FOR)
 CONSTRUCTION OF ADDITIONS AND)
 IMPROVEMENTS TO PETITIONER'S)
 WASTEWATER UTILITY PROPERTIES,)
 CONSISTING OF (A) AN UPGRADE TO AND)
 EXPANSION OF THE EXISTING CARRIAGE)
 ESTATES II WASTEWATER TREATMENT PLANT)
 (THE "CE-III PROJECT"), (B) REPLACEMENT OF)
 SEWER INFRASTRUCTURE IN THE VICINITY OF)
 KLONDIKE ROAD (THE "KLONDIKE ROAD)
 PROJECT"), (C) CONSTRUCTION OF SEWER) CAUSE NO. 44272
 INFRASTRUCTURE IN THE VICINITY OF)
 CUMBERLAND ROAD AND U.S. 231 (THE)
 "CUMBERLAND ROAD PROJECT"), AND (D))
 CONSTRUCTION OF SEWER INFRASTRUCTURE)
 IN THE VICINITY OF COUNTY ROAD 50 WEST)
 AND COLE DITCH (THE "BIG 3 SEWER)
 PROJECT"); AND (2) THE INCLUSION OF SUCH)
 NEW FACILITIES IN PETITIONER'S RATE BASE)
 IN FUTURE CASES.)

**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN
 AMERICAN SUBURBAN UTILITIES, INC. AND THE
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

American Suburban Utilities, Inc. ("ASU" or "Petitioner") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively, the "Parties"), by their respective counsel, respectfully request the Indiana Utility Regulatory Commission ("Commission") approve this Stipulation and Settlement Agreement ("Stipulation") with respect to Petitioner's requested relief for the Carriage Estates Wastewater Treatment Plant (the "CE-III Project") as defined herein. Petitioner and the OUCC stipulate and agree as follows:

1. Petitioner filed its Petition initiating this Cause on November 15, 2012. On December 15, 2012, Petitioner filed its case-in-chief in this Cause, consisting of the direct testimony and exhibits of Edward J. Serowka, President of Lakeland InnovaTech and Timothy A. Beyer, both consultants retained by ASU in connection with this Cause. A technical conference was held on January 29, 2013. Petitioner filed updates to its direct testimony and exhibits immediately following the Technical Conference. On February 18, 2013, Petitioner filed an additional update to the exhibits constituting its case-in-chief. On March 19, 2013, the OUCC filed the testimony and exhibits of Larry W. McIntosh, a Utility Analyst in the OUCC's Water/Wastewater Division and Edward R. Kaufman, a Chief Technical Advisor in the OUCC's Water/Wastewater Division. On April 9, 2013, ASU filed rebuttal testimony of Mr. Serowka and Mr. Beyer, as well as rebuttal testimony of William R. Davis, a retired professional engineer retained by ASU as a consultant and John R. Skomp, a Partner with Crowe Horwath LLP, a certified public accounting and consulting firm.

2. Shortly after filing its rebuttal testimony in this Cause, Petitioner became aware of new requirements from the Indiana Department of Environmental Management ("IDEM") for phosphorus removal, which would apply to the Carriage Estates Wastewater Treatment Plant. Petitioner believed those new requirements necessitated a substantial re-design of the CE-III Project and changes to the expenditures to be preapproved. Accordingly, counsel for the parties participated in an Attorneys' Conference to establish a new procedural schedule for the submission of supplemental evidence with respect to the CE-III Project. Petitioner filed the supplemental direct testimony of Mr. Serowka regarding the CE-III Project on July 19, 2013. A third party construction estimate for the project

prepared by HWC Engineering was submitted by Petitioner on September 16, 2013. The OUCC filed supplemental testimony of Mr. McIntosh on November 15, 2013 and Petitioner filed Mr. Serowka's supplemental rebuttal testimony on December 11, 2013.

3. In its supplemental testimony, the OUCC expressed concern about (1) the size of the proposed expansion to the Carriage Estates Wastewater Treatment Plant; and (2) construction of the proposed improvements by an affiliate of ASU and the ability to obtain assurance that the costs are reasonable. As a result, the parties have agreed to a stipulated preapproved amount that is derived from one of the alternatives (Option 2) presented in Mr. Serowka's supplemental rebuttal testimony and exhibits in this Cause. The stipulated amount of \$10,000,000 is materially lower than Petitioner's cost estimate for Option 2 and represents a compromise on the part of both parties. In entering into this stipulation, Petitioner is not agreeing that the CE-III Project can be completed for this amount, but rather the agreed preapproved amount provides sufficient assurance to allow Petitioner to proceed with a project.
4. Option 2 differs from Petitioner's proposal in its supplemental case-in-chief (referred to in Mr. Serowka's supplemental rebuttal testimony as "Option 4") in that the latter includes a capacity expansion to 4.0 MGD (instead of 3.0 MGD) as well as the installation of additional tanks that would permit the plant to be readily expanded to treat 6.0 MGD if in the future ASU installs additional equipment. To the extent Petitioner builds something with a capacity greater than Option 2 and seeks to include such incremental costs in rate base in a future rate case, it will be Petitioner's burden, as in all

cases to the extent plant additions have not been preapproved, to demonstrate the expenditures were reasonable and prudently incurred.

5. The Parties stipulate and agree that Petitioner's request for (i) approval of expenditures related to the CE-III Project, and (ii) inclusion of the new facilities resulting from this project in Petitioner's rate base in future rate cases, should be approved up to \$10,000,000, which amount is for construction only (inclusive of any allowance for funds used during construction ("AFUDC")). The Parties acknowledge and agree that Petitioner may choose to construct the plant improvements as proposed in its supplemental case-in-chief (referred to as "Option 4" in Mr. Serowka's supplemental rebuttal testimony). Whether Petitioner constructs Option 2 or Option 4, inclusion of associated expenditures in rate base for ratemaking purposes as preapproved in this Cause requires that the constructed plant be completed and in service. However, to the extent the plant is completed and in service, the OUCG agrees that no less than \$10,000,000 of expenditures actually incurred shall be considered to have produced plant that is used and useful. The parties agree that, while Petitioner may include in its rate base expenditures of no less than \$10,000,000 spent on completing Option 4, the OUCG does not otherwise waive any position with respect to the inclusion in rate base of Option 4 expenditures exceeding \$10,000,000 including but not limited to the reasonableness, prudence, necessity or scope of Option 4. . Petitioner seeks no relief at this time to the extent actual expenditures of the CE-III Project exceed the agreed preapproval amount of \$10,000,000. Whether Petitioner constructs Option 2 or Option 4, to the extent actual expenditures exceed the agreed amount, inclusion of such excess expenditures in rate base in future rate cases shall be addressed in the same manner that utilities must address expenditures

that have not been preapproved. In order to include the excess expenditures in rate base for ratemaking purposes, Petitioner will have the burden to demonstrate its expenditures were reasonable and were prudently incurred. Further, to the extent actual construction costs are greater than the preapproved amount, it will be Petitioner's burden to show that the amount charged by its affiliate is fair and reasonable and comparable to what an unaffiliated entity would have charged.

6. The amount agreed to in Paragraph 3 above does not include reasonable engineering costs or costs for removal of phosphorus in compliance with the IDEM requirements referred to in Paragraph 2. To the extent not already included in Option 2, construction cost expenditures for phosphorus removal and engineering in rate base in future rate cases will be addressed in the same manner as other rate base additions that have not been preapproved.
7. Petitioner shall file a request with the Commission for a system development charge within twelve (12) months of the date of this Stipulation. The Parties agree that, to the extent granted by an Order of the Commission, amounts collected through the system development charge will be recorded as contributions in aid of construction (CIAC) and Petitioner will amortize those amounts.
8. The Parties stipulate and agree that an affiliate of ASU shall be permitted to complete the construction work on the CE-III Project, and that, for purposes of the preapproval requested in this Cause as agreed to herein, Petitioner has satisfied the requirements of Petitioner's existing affiliate agreement. Petitioner agrees that satisfaction of the affiliate

agreement is not a defense to any argument by the OUCC that, to the extent the CE-III project exceeds \$10,000,000, prudence dictates the project could have been and should have been procured through some other means at a lower cost. Nothing herein prohibits Petitioner from acquiring its contractor through a competitive bidding process.

9. Evidence Admitted. All testimony and evidence prefiled by either party up to and including the date of this Stipulation shall be admissible. The Parties shall jointly offer this Stipulation together with all attachments. The Parties hereby waive cross-examination of each other's witnesses with respect to the CE-III Project.

10. Mutual Conditions on Settlement Agreement. Petitioner and the OUCC agree that the terms and conditions set forth in this Stipulation are supported by sufficient evidence and, based on the Parties' independent review of the evidence, represent a fair, reasonable and just resolution of the issues in this Cause related to the CE-III Project, subject to their incorporation into a final Commission order in substantially the form attached hereto as *Attachment 1*, which is no longer subject to appeal. If the Commission does not approve this Stipulation in its entirety without modification that is unacceptable to either Party, the entire Stipulation shall be deemed withdrawn, unless otherwise agreed by the Parties. Petitioner and the OUCC represent that there are no other agreements in existence between them relating to the matters covered by this Stipulation that in any way affect this Stipulation.

11. Non-Precedential. The Parties stipulate and agree that this Stipulation and the Order approving it shall not be used as an admission or as a precedent against the signatories

hereto except to the extent necessary to implement or enforce the terms of the settlement agreement. The Parties agree that this Stipulation shall not be construed as an admission by any party in any other proceeding, except as necessary to enforce its terms before the Commission, or before any court of competent jurisdiction on these particular issues. This Stipulation is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that either of the Parties may take with respect to any or all the items resolved herein in any future regulatory or other proceedings and, failing approval by this Commission, shall not be admissible in any subsequent proceedings.

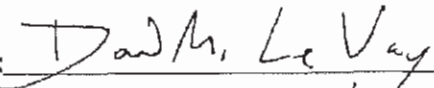
12. Authority to Stipulate. The undersigned have represented and agreed that they are fully authorized to execute this Stipulation on behalf of the designated parties, who will be bound thereby.

(signature page follows)

By: 
Nicholas K. Kile, Atty No. 15203-53
Hillary J. Close, Atty No. 25104-49
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 231-7768
Fax: (317) 231-7433
Email: nicholas.kile@btlaw.com
hillary.close@btlaw.com

Attorneys for Petitioner
American Suburban Utilities, Inc

Indiana Office of Utility Consumer
Counselor

By: 
Dan Le Vay

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

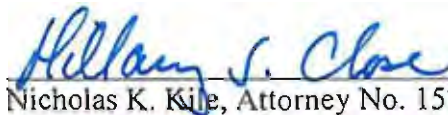
PETITION OF AMERICAN SUBURBAN UTILITIES,)
INC. FOR APPROVAL OF (1) EXPENDITURES FOR)
CONSTRUCTION OF ADDITIONS AND)
IMPROVEMENTS TO PETITIONER'S)
WASTEWATER UTILITY PROPERTIES,)
CONSISTING OF (A) AN UPGRADE TO AND)
EXPANSION OF THE EXISTING CARRIAGE)
ESTATES II WASTEWATER TREATMENT PLANT)
(THE "CE-III PROJECT"), (B) REPLACEMENT OF)
SEWER INFRASTRUCTURE IN THE VICINITY OF)
KLONDIKE ROAD (THE "KLONDIKE ROAD)
PROJECT"), (C) CONSTRUCTION OF SEWER) CAUSE NO. 44272
INFRASTRUCTURE IN THE VICINITY OF)
CUMBERLAND ROAD AND U.S. 231 (THE)
"CUMBERLAND ROAD PROJECT"), AND (D))
CONSTRUCTION OF SEWER INFRASTRUCTURE)
IN THE VICINITY OF COUNTY ROAD 50 WEST)
AND COLE DITCH (THE "BIG 3 SEWER)
PROJECT"); AND (2) THE INCLUSION OF SUCH)
NEW FACILITIES IN PETITIONER'S RATE BASE)
IN FUTURE CASES.)

SUBMISSION OF PETITIONER'S PROJECT STATUS REPORT

Petitioner American Suburban Utilities, Inc. ("ASU"), by counsel, hereby submits its annual project status report for Petitioner's Carriage Estates Wastewater Treatment Plant Project ("CE-III Project") pursuant to the Order of the Indiana Utility Regulatory Commission ("Commission") in this Cause dated April 9, 2014. As of the date of this report, ASU is awaiting a ruling from the Indiana Office of Environmental Adjudication ("OEA") with respect to its Construction Permit No. 20788 issued by the Indiana Department of Environmental Management ("IDEM") on February 21, 2014, to which an objection was filed with the OEA on August 22, 2014 (Cause No. 14-W-J-4710). A copy of the OEA's most recent Order in that Cause is attached hereto.

Pending resolution of the Construction Permit before the OEA, ASU has ceased construction of the CE-III Project. The total amount expended on the project to date is \$547,539.37. Currently ASU intends to proceed with construction of the configuration referred to as Option 4 in the Supplemental Rebuttal Testimony of Ed Serowka at an estimated total cost of \$19,900,000.00.

Respectfully submitted,



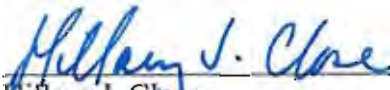
Nicholas K. Kile, Attorney No. 15203-53
Hillary J. Close, Attorney No. 25104-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Kile Telephone: (317) 231-7768
Close Telephone: (317) 231-7785
Facsimile: (317)231-7433
Email: nkile@btlaw.com
hclose@btlaw.com

Attorneys for Petitioner American Suburban
Utilities, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 12th day of June 2015, by electronic transmission, upon the following counsel of record:

Daniel M. LeVay, Deputy Consumer Counselor
Office of the Utility Consumer Counselor
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov



Hillary J. Close

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF AMERICAN SUBURBAN UTILITIES,)
INC. FOR APPROVAL OF (1) EXPENDITURES FOR)
CONSTRUCTION OF ADDITIONS AND)
IMPROVEMENTS TO PETITIONER'S)
WASTEWATER UTILITY PROPERTIES,)
CONSISTING OF (A) AN UPGRADE TO AND)
EXPANSION OF THE EXISTING CARRIAGE)
ESTATES II WASTEWATER TREATMENT PLANT)
(THE "CE-III PROJECT"), (B) REPLACEMENT OF)
SEWER INFRASTRUCTURE IN THE VICINITY OF)
KLONDIKE ROAD (THE "KLONDIKE ROAD)
PROJECT"), (C) CONSTRUCTION OF SEWER) CAUSE NO. 44272
INFRASTRUCTURE IN THE VICINITY OF)
CUMBERLAND ROAD AND U.S. 231 (THE)
"CUMBERLAND ROAD PROJECT"), AND (D))
CONSTRUCTION OF SEWER INFRASTRUCTURE)
IN THE VICINITY OF COUNTY ROAD 50 WEST)
AND COLE DITCH (THE "BIG 3 SEWER)
PROJECT"); AND (2) THE INCLUSION OF SUCH)
NEW FACILITIES IN PETITIONER'S RATE BASE)
IN FUTURE CASES.)**

SUBMISSION OF PETITIONER'S PROJECT STATUS REPORT

Petitioner American Suburban Utilities, Inc. ("ASU"), by counsel, hereby submits its annual project status report for Petitioner's Carriage Estates Wastewater Treatment Plant Project ("CE-III Project") pursuant to the Order of the Indiana Utility Regulatory Commission ("Commission") in this Cause dated April 9, 2014. As of the date of this report, ASU is awaiting a ruling from the Indiana Office of Environmental Adjudication ("OEA") with respect to its Construction Permit No. 20788 issued by the Indiana Department of Environmental Management ("IDEM") on February 21, 2014, to which an objection was filed with the OEA on August 22, 2014 (Cause No. 14-W-J-471 0). That proceeding remains pending.

Pending resolution of the Construction Permit before the OEA, ASU has pursued construction of the portions of the CE-III Project unrelated to expansion of the plant, described by Ed Serowka in his Direct Testimony in Cause No. 44676 as constituting Phase I of the CE-III Project in that Cause (see Attachment EJS-9 to Mr. Serowka's Direct Testimony in that Cause). This phase includes modifications to the plant headworks, new macerator structure, new lift station and valve pit, and a standby generator. The total amount expended on the project to date is \$1,642,692.62. Currently ASU intends to proceed with construction of the configuration referred to as Option 4 in the Supplemental Rebuttal Testimony of Ed Serowka in this Cause No. 44272, at an estimated total cost of approximately \$19,938,273.00 (exclusive of the cost for phosphorus removal).

Respectfully submitted,



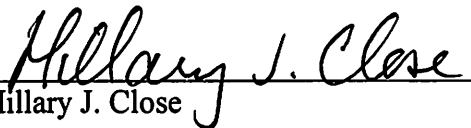
Nicholas K. Kile, Attorney No. 15203-53
Hillary J. Close, Attorney No. 25104-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Kile Telephone: (317) 231-7768
Close Telephone: (317) 231-7785
Facsimile: (317)231-7433
Email: nkile@btlaw.com
hclose@btlaw.com

Attorneys for Petitioner American Suburban
Utilities, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 11th day of October, 2016 by electronic transmission, upon the following counsel of record:

Daniel M. LeVay, Deputy Consumer Counselor
Office of the Utility Consumer Counselor
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov


Hillary J. Close

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FILED

August 29, 2017

INDIANA UTILITY
REGULATORY COMMISSION

PETITION OF AMERICAN SUBURBAN UTILITIES,)
INC. FOR APPROVAL OF (1) EXPENDITURES FOR)
CONSTRUCTION OF ADDITIONS AND)
IMPROVEMENTS TO PETITIONER'S)
WASTEWATER UTILITY PROPERTIES,)
CONSISTING OF (A) AN UPGRADE TO AND)
EXPANSION OF THE EXISTING CARRIAGE)
ESTATES II WASTEWATER TREATMENT PLANT)
(THE "CE-III PROJECT"), (B) REPLACEMENT OF)
SEWER INFRASTRUCTURE IN THE VICINITY OF)
KLONDIKE ROAD (THE "KLONDIKE ROAD)
PROJECT"), (C) CONSTRUCTION OF SEWER) CAUSE NO. 44272
INFRASTRUCTURE IN THE VICINITY OF)
CUMBERLAND ROAD AND U.S. 231 (THE)
"CUMBERLAND ROAD PROJECT"), AND (D)
CONSTRUCTION OF SEWER INFRASTRUCTURE)
IN THE VICINITY OF COUNTY ROAD 50 WEST)
AND COLE DITCH (THE "BIG 3 SEWER)
PROJECT"); AND (2) THE INCLUSION OF SUCH)
NEW FACILITIES IN PETITIONER'S RATE BASE)
IN FUTURE CASES.)

PETITIONER'S SUBMISSION OF PROJECT STATUS REPORT

Petitioner American Suburban Utilities, Inc. ("Petitioner" or "ASU"), by counsel, hereby submits its annual project status report for Petitioner's Carriage Estates Wastewater Treatment Plant Project ("CE-III Project") and the Klondike Road Project (as defined in Cause No. 44272 and modified as described in Cause No. 44676) pursuant to the Order of the Indiana Utility Regulatory Commission ("Commission") in this Cause dated April 9, 2014. The status of the CE-III Project is as stated in the In-Service Certification filed in Cause No. 44676 on March 17, 2017, reflecting that Phase I of the CE-III Project was placed in service on February 23, 2017. The status report of the Klondike Road Project is as stated in the In-Service Certification filed in Cause No. 44676 on March 17, 2017, reflecting that the Klondike Road Project was placed in service on February 28, 2017. The additional documents provided in connection with

Petitioner's Submission of Compliance Filing and Phase II Rates filed March 17, 2017 in Cause No. 44676 provide additional detail about the status of the CE-III Project and the Klondike Road Project. The total construction costs for Phase 1 of the CE-III Project were \$1,974,600. The total construction costs for the Klondike Road Project included in rate base were \$1,716,000.¹

Respectfully submitted,


Nicholas K. Kile, Attorney No. 15203-53
Hillary J. Close, Attorney No. 25104-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Kile Telephone: (317) 231-7768
Close Telephone: (317) 231-7785
Facsimile: (317)231-7433
Email: nkile@btlaw.com
hclose@btlaw.com

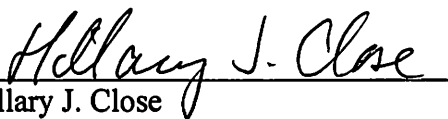
Attorneys for Petitioner American Suburban
Utilities, Inc.

¹ This does not represent actual total costs for Klondike Road Project.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 29th day of August, 2017 by electronic transmission, upon the following counsel of record:

Daniel M. LeVay, Deputy Consumer Counselor
Office of the Utility Consumer Counselor
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov


Hillary J. Close

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

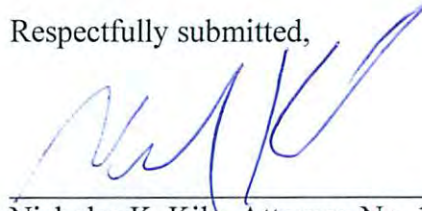
PETITION OF AMERICAN SUBURBAN UTILITIES,)
INC. FOR APPROVAL OF (1) EXPENDITURES FOR)
CONSTRUCTION OF ADDITIONS AND)
IMPROVEMENTS TO PETITIONER'S)
WASTEWATER UTILITY PROPERTIES,)
CONSISTING OF (A) AN UPGRADE TO AND)
EXPANSION OF THE EXISTING CARRIAGE)
ESTATES II WASTEWATER TREATMENT PLANT)
(THE "CE-III PROJECT"), (B) REPLACEMENT OF)
SEWER INFRASTRUCTURE IN THE VICINITY OF)
KLONDIKE ROAD (THE "KLONDIKE ROAD)
PROJECT"), (C) CONSTRUCTION OF SEWER) CAUSE NO. 44272
INFRASTRUCTURE IN THE VICINITY OF)
CUMBERLAND ROAD AND U.S. 231 (THE)
"CUMBERLAND ROAD PROJECT"), AND (D))
CONSTRUCTION OF SEWER INFRASTRUCTURE)
IN THE VICINITY OF COUNTY ROAD 50 WEST)
AND COLE DITCH (THE "BIG 3 SEWER)
PROJECT"); AND (2) THE INCLUSION OF SUCH)
NEW FACILITIES IN PETITIONER'S RATE BASE)
IN FUTURE CASES.)

PETITIONER'S SUBMISSION OF PROJECT STATUS REPORT

Petitioner American Suburban Utilities, Inc. ("Petitioner" or "ASU"), by counsel, hereby submits its annual project status report for 2018 and 2019 for Petitioner's Carriage Estates Wastewater Treatment Plant Project ("CE-III Project") and the Klondike Road Project (as defined in Cause No. 44272 and modified as described in Cause No. 44676) pursuant to the Order of the Indiana Utility Regulatory Commission ("Commission") in this Cause dated April 9, 2014. The status of the CE-III Project remains unchanged from what was stated in the In-Service Certification filed in Cause No. 44676 on March 17, 2017, reflecting that Phase I of the CE-III Project was placed in service on February 23, 2017. It was anticipated that Phase II of the CE-III Project would be complete and placed in service on or about July 1, 2018. However, for the reasons set forth in Petitioner's "Motion to Extend Implementation of Phase III Rates" filed

in Cause 44676/44700 on January 26, 2018, the timeline for completion of that project has been delayed. The plant itself is in service, however, the final piece to complete is the permanent structure to house the phosphorous removal equipment. Petitioner has not started the Cumberland Road Project but intends to go out to bid for the project in the fall. The status report for the Klondike Road Project is as stated in the In-Service Certification filed in Cause No. 44676 on March 17, 2017, reflecting that the Klondike Road Project was placed in service on February 28, 2017. There are no additional phases of the Klondike Road Project and that project was complete as of the February 28, 2017 in service date.

Respectfully submitted,



Nicholas K. Kile, Attorney No. 15203-53
Hillary J. Close, Attorney No. 25104-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Kile Telephone: (317) 231-7768
Close Telephone: (317) 231-7785
Facsimile: (317)231-7433
Email: nkile@btlaw.com
hclose@btlaw.com

Attorneys for Petitioner American Suburban
Utilities, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 15th day of May, 2019 by electronic transmission, upon the following counsel of record:

Daniel M. LeVay, Deputy Consumer Counselor
Office of the Utility Consumer Counselor
PNC Center
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov



Nicholas K. Kile



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

May 17, 2019

Bruno Pigott
Commissioner

Mr. Scott Lods, President
American Suburban Utilities, Inc.
3350 West 250 North
West Lafayette, Indiana 47906

Dear Mr. Lods:

Re: Extension of Time for
Construction Permit
Carriage Estates III Wastewater
Treatment Plant Expansion
Permit Approval No. 20788
West Lafayette, Indiana
Tippecanoe County

A Construction Permit (Approval No. 20788) was issued by the Indiana Department of Environmental Management for the above referenced project on February 21, 2014. The permit was valid for a period of five (5) years from that date for full construction completion. Due to project delays, construction has not yet been fully completed. On April 24, 2019, a request for an extension of the construction permit was received by IDEM. Pursuant to 327 IAC 3-2-3.5(a), IDEM has the authority to grant an extension of time for the completion of construction. Upon review of the extension request, IDEM has determined that it is necessary and justified to grant a permit time extension until June 30, 2020, to allow full construction completion of the project. All other conditions of approval for the original permit remain valid.

If you have any questions regarding this permit time extension, please contact Mr. Don Worley at 317-232-5579 or by e-mail at dworley@idem.in.gov.

Sincerely,

Dale T. Schnaith, Chief
Facility Construction and
Engineering Support Section
Office of Water Quality

cc: Edward J. Serowka, P.E., Lakeland InnovaTech, Inc.



Engineering • Surveying • Environmental • Construction Management

April 24, 2019

IDEM
Facility Construction and Engineering Support Section
Office of Water Quality
100 North Senate Avenue, Room N1255
Indianapolis, IN 46204-2251

ATTN: Dale Schnaith, Section Chief

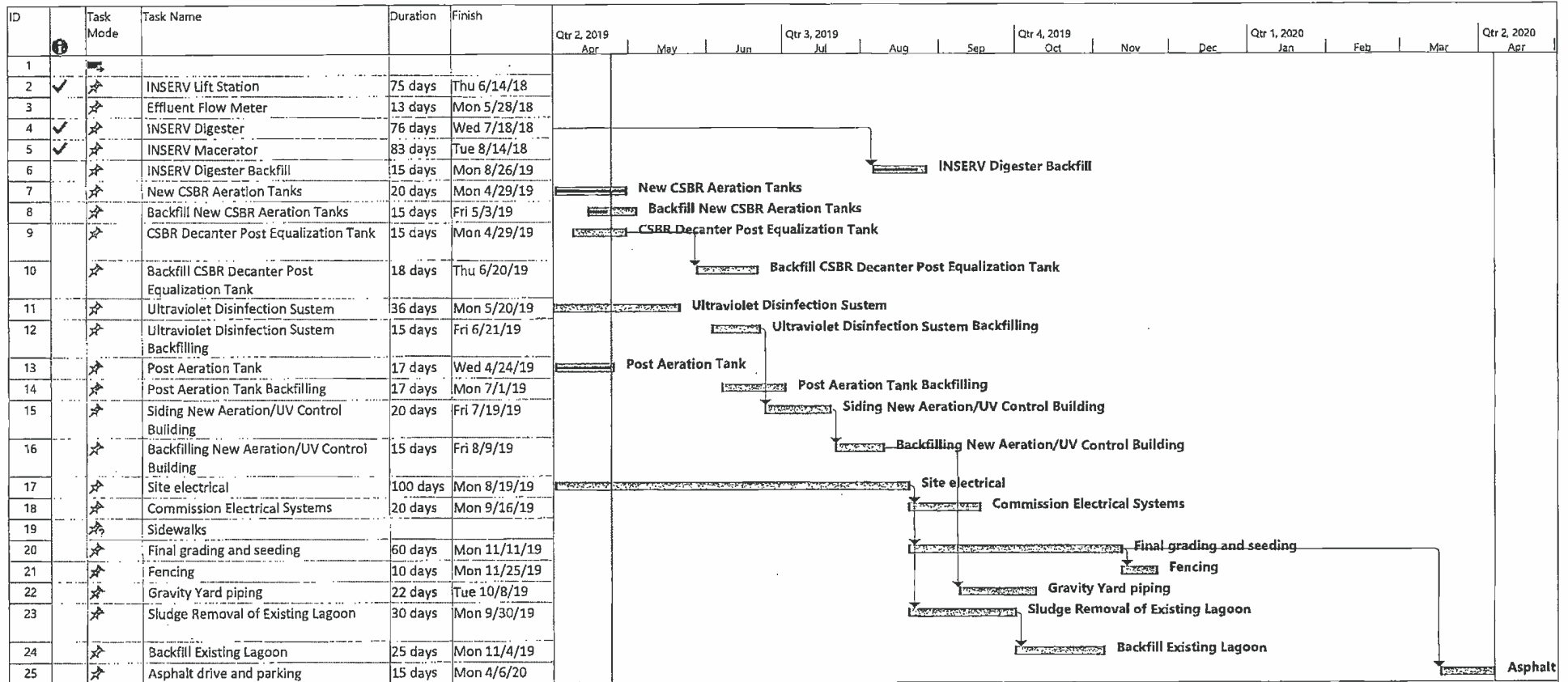
PROJECT: Request for Extension of Construction Permit Deadline

1. Permit Issued on February 21, 2014. Approval #20788.
2. Construction Schedule – See attached schedule for details.
 - a. Additional items have been added to show completed/in-service items.
 - b. Backfilling is on-going but should be completed in September 2019.
 - c. Electrical work is expected to be completed during the same timeframe.
 - d. Rough site grading is expected to be completed by early October 2019.
 - e. Final grading and seeding will continue until November 2019.
 - f. Site preparation for pavement to begin in early Spring 2020.
 - g. Final pavement will occur in Spring of 2020 and be completed by June 2020. This will allow for the soils to stabilize prior to pavement installation.
 - h. Sidewalks, fencing and reseeding areas affected by pavement placement should be completed by June 2020.
3. This schedule allows for some weather delays and seasonal construction. We believe this is ample time to complete the project, although it will most likely be completed prior to June of 2020.

Sincerely
TBIRD Design Service Corp.

A handwritten signature in black ink, appearing to read "Timothy R. Balensiefer".

Timothy R. Balensiefer, President



Project: CE III Phase 2 Construc
Date: Wed 4/24/19

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

Page 1



03/05/2020 – Backfilling headworks influent structures (Status: Not Complete)



03/05/2020 – Backfilling headworks influent structures (Status: Not Complete)



03/05/20 Backfilling headworks influent structures (Status: Not Complete)



03/05/2020 Backfilling headworks influent structures (Status: Not Complete)



03/05/2020 Electrical work (Status: Not Complete)



03/05/2020: Rough Site Grading (Status: Not Complete)



03/05/2020: Backfilling Digesters (Status: Not Complete)



03/05/2020 Backfilling and site grading (Status: Not Complete)



03/05/2020 Backfilling and site grading (Status: Not Complete)



March 5, 2020, Sludge Lagoon removal and site grading (Status: Not complete)



03/05/2020 Rough site grading, final grading, final pavement, sidewalks, fencing (Status: Not Complete)



03/05/2020 Rough site grading, final grading, final pavement, sidewalks (Status: Not Complete)



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

Bruno Pigott
Commissioner

October 01, 2019

Via Email to: inbox@asutilities.com
Mr. Scott Lods, Owner
American Suburban Utilities, Inc.
3350 W 250 N
West Lafayette, Indiana 47906

Dear Mr. Lods:

Re: **Inspection Summary/ Noncompliance Letter**
American Suburban Utilities-Carriage Estates
WWTP
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County

An inspection of the above-referenced facility or location was conducted by a representative of the Indiana Department of Environmental Management, Office of Water Quality, pursuant to IC 13-18-3-9. A summary of the inspection is provided below:

Date(s) of Inspection: September 24, 2019
Type of Inspection: Compliance Evaluation Inspection
Inspection Results: Violations were observed.

The following concerns were noted:

1. The Permit was rated as marginal due to the permittee deviating from the final constructed flow design of 4.0 MGD as noted in the permit. The permittee needs to request a modification of the permit to reflect the final constructed flow design. Personnel for IDEM's Construction Permit section were also on site at the time of the inspection for evaluation of the progress of the expansion of the treatment plant system. The construction permit was evaluated during a separate inspection by Construction Permit personnel, conducted concurrent to this inspection. A separate report regarding the construction permit evaluation will be sent. In addition, the permittee submitted their thirty day notice on 6-12-19 that construction activities for upgraded plant would be completed by 7-11-19, so they could start reporting under the new limits of violations in the permit. At the time of the inspection the permittee did not have all the construction completed on the upgraded system. The permittee was operating the two new SBRs manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7. In addition the permittee was still disinfecting with chlorine following the four older SBRs through a pipe that

bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs. The new influent train including a macerator and lift stations pumps were not completely constructed or operating at the time of the inspection. The facility still had the temporary chemical Phosphorus treatment system installed due to the permanent Phosphorus treatment system not being completely constructed. The permittee must submit a report to IDEM on the completion of the construction of the upgraded system and when the new limits can be applied. .

2. The Collection System was rated as unsatisfactory due to the facility still having inflow and infiltration (I/I) in the sanitary collection system causing SSO events. This is a violation of Part II. B. 1. e of the permit which requires the facility to have an ongoing preventative maintenance program for the sanitary sewer system. A review of the facility's MROs showed that the facility was above 115% of its plant capability in all twelve months of the MROs reviewed. The facility is still in the process of upgrading the treatment plant, but still needs to identify possible sources of I/I in the sanitary collection system and eliminate them from the system. The Collection System evaluation generated a marginal rating due to the facility reporting three SSO events. Part II. B. 2 of the permit states, in part, that pursuant to 327 IAC 5-2-8(11) overflows are prohibited. A records review indicates that three SSO events occurred during the last twelve months. The facility's SSOs events all occur at the second manhole before the main lift stations during wet weather. Each SSO event was reported and mitigated by the facility. The facility is still in the process of upgrading the treatment system to handle and treat more flow.

3. Operation was rated as unsatisfactory due to the facility's temporary chemical Phosphorus treatment system being out of service. Part II. B. 1 of the permit requires all waste collection, control, treatment, and disposal facilities to be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants. At the time of the inspection the temporary chemical Phosphorus treatment system was not operating due to chemical feed pump needing repaired. The facility personnel noted that they were dumping in Phosphorus removal chemical. This is not an efficient treatment for Phosphorus or a permitted way to introduce the chemical.
In addition, IC 13-30-2-1, states in part, that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor either alone or in combination with contaminants from other sources, into the environment in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws. At the time of the inspection the one Sodium Aluminate tote in the building being used for Phosphorus removal and the two spare full totes of Sodium Aluminate sitting on the ground beside the generator had no secondary containment in the event of a spill or leak. The facility needs to utilize a secondary containment system to help prevent the Sodium Aluminate from entering the environment. Operation was rated as marginal due to facility operating

the two new SBRs manually. At the time of the inspection the facility did not have all the construction completed on the plant upgrade. The facility was operating the two new SBRs manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7. In addition the facility was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs. The programming contractor was onsite and has been on-site several days trying to program the new SBRs to run automatically at the time of the inspection.

Part II. A. 1. of your permit requires you to comply with its terms and conditions. Any noncompliance with the terms of your permit may subject you to an enforcement action which can include the imposition of penalties. You are required to immediately take all necessary measures to comply with the terms and conditions of your NPDES Permit, specifically those violations identified above.

Within 30 days of receipt of this letter, a written detailed response documenting correction of the concerns listed above and/or a plan for assuring future compliance must be submitted to this office. Failure to respond adequately to this letter may result in formal enforcement action. Please direct your response to this letter to the attention of Bridget S. Murphy, at our letterhead address or via email to wwViolationResponse@idem.IN.gov. Any questions should be directed to Aaron Deeter at 317-691-1915 or by email to adeeter@idem.IN.gov. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Bridget S. Murphy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Bridget S. Murphy, Inspections Section Chief
Compliance Branch
Office of Water Quality

Enclosure



NPDES Wastewater Facility Inspection Report
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NPDES Permit Number: IN0043273		Facility Type: Mixed Ownership		Facility Classification: Major		TEMPO AI ID 55359	
Date(s) of Inspection: September 24, 2019							
Type of Inspection: Compliance Evaluation Inspection							
Name and Location of Facility Inspected: American Suburban Utilities-Carriage Estates WWTP 4100 Bridgeway Drive West Lafayette IN 47906				Receiving Waters: Indian Creek		Permit Expiration Date: 1/31/2021	
County: Tippecanoe				Design Flow: 1.5MGD			
On Site Representative(s):							
First Name	Last Name	Title	Email	Phone			
Eric	Klopfenstein	Maintenance	inbox@asutilities.com	765-463-3856			
Amy	Harper	Accounting	accounting@asucorp.com	765-463-3856			
Was a verbal summary of findings presented to the on-site representative? Yes							
Certified Operator: Dennis Crandell	Number: 15007	Class: IV	Effective Date: 7-1-18	Expiration Date: 6-30-21	Email: dc0866@yahoo.com		
Cyber Security Contact:							
Name: Scott Lods				Email: inbox@asutilities.com			
Responsible Official: Mr. Scott Lods, Owner 3350 W 250 N West Lafayette, Indiana 47906				Permittee: American Suburban Utilities, Inc. Email: inbox@asutilities.com Phone: 765-463-3856 Fax:			
				Contacted? No			
INSPECTION FINDINGS							
<input type="radio"/> Conditions evaluated were found to be satisfactory at the time of the inspection. (5) <input type="radio"/> Violations were discovered but corrected during the inspection. (4) <input type="radio"/> Potential problems were discovered or observed. (3) <input checked="" type="radio"/> Violations were discovered and require a submittal from you and/or a follow-up inspection by IDEM. (2) <input type="radio"/> Violations were discovered and may subject you to an appropriate enforcement response. (1)							
AREAS EVALUATED DURING INSPECTION							
<i>(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)</i>							
S	Receiving Waters	S	Facility/Site	S	Self-Monitoring	S	Compliance Schedules
S	Effluent Appearance	U	Operation	S	Flow Measurement	N	Pretreatment
M	Permit	S	Maintenance	M	Laboratory	M	Effluent Limits Compliance
U	Collection System	N	Sludge	S	Records/Reports	N	Other:
DETAILED AREA EVALUATIONS							
Receiving Waters:							
S 1. The receiving stream was visibly free of excessive deposits of settled solids, floating debris, oil, scum, or billowy foam.							
Comments: The receiving stream was observed at the concrete outfall structure and it was free of notable foam, algae, sheen, or solids.							
Effluent Appearance:							
S 1. Treated effluent was free of excessive solids, floating debris, oil, scum, or billowy foam.							
Comments: The effluent was observed at the final flow meter weir and at the outfall structure and was clear and free of color at the time of the inspection.							
Permit:							

- S 1. Did the facility have a current copy of the permit available for reference?
- N 2. If the permit expires within 180 days, has a renewal application been submitted?
- S 3. Receiving waters were accurately described in permit.
- N 4. The permit has been properly transferred if there is a new owner.

Comments:

The Permit was rated as **marginal** due to the permittee deviating from the final constructed flow design of 4.0 MGD as noted in the permit. The permittee needs to request a modification of the permit to reflect the final constructed flow design. Personnel for IDEM's Construction Permit section were also on site at the time of the inspection for evaluation of the progress of the expansion of the treatment plant system. The construction permit was evaluated during a separate inspection by Construction Permit personnel, conducted concurrent to this inspection. A

separate report regarding the construction permit evaluation will be sent.

In addition, the permittee submitted their thirty day notice on 6-12-19 that construction activities for upgraded plant would be completed by 7-11-19, so they could start reporting under the new limits of violations in the permit. At the time of the inspection the permittee did not have all the construction completed on the upgraded system. The permittee was operating the two new SBRs manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7. In addition the permittee was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs. The new influent train including a macerator and lift stations pumps were not completely constructed or operating at the time of the inspection. The facility still had the temporary chemical Phosphorus treatment system installed due to the permanent Phosphorus treatment system not being completely constructed. The permittee must submit a report to IDEM on the completion of the construction of the upgraded system and when the new limits can be applied.

Collection System:

- N 1. CSO's were found to be adequately monitored and maintained.
- S 2. Evaluation of maintenance-related (clogged or blocked lines) overflow events in last 12 months.
- M 3. Evaluation of hydraulic (I&I) overflow events in last 12 months.
- N 4. Facility has met SSO and dry weather CSO reporting requirements
- N 5. Any adverse impacts from SSO and CSO events have been properly mitigated.
- S 6. Lift stations were found to be adequately inspected, cleaned, and maintained, with adequate documentation of activities.
- U 7. Collection system maintenance activities appeared to be adequate.

Comments:

The Collection System was rated as **unsatisfactory** due to the facility still having inflow and infiltration (I/I) in the sanitary collection system causing SSO events. This is a violation of Part II. B. 1. e of the permit which requires the facility to have an ongoing preventative maintenance program for the sanitary sewer system. A review of the facility's MROs showed that the facility was above 115% of its plant capability in all twelve months of the MROs reviewed. The facility is still in the process of upgrading the treatment plant, but still needs to identify possible sources of I/I in the sanitary collection system and eliminate them from the system.

The Collection System evaluation generated a **marginal** rating due to the facility reporting **three** SSO events. Part II. B. 2 of the permit states, in part, that pursuant to 327 IAC 5-2-8(11) overflows are prohibited. A records review indicates that three SSO events occurred during the last twelve months. The facility's SSOs events all occur at the second manhole before the main lift stations during wet weather. Each SSO event was reported and mitigated by the facility. The facility is still in the process of upgrading the treatment system to handle and treat more flow.

The Copper Beach, Willowbrook, and Kimberly Estates lift stations were evaluated at the time the inspection. The lift stations all appeared to be well maintained with the exception of the Copper Beach lift station needing cleaned out soon. The facility checks the lift stations daily and cleans out the lift stations at least twice a year unless needed more frequently.

Facility/Site:

- S 1. The facility was found to have standby power or equivalent provision.
- S 2. An adequate alarm or notification system for power or equipment failure was available for the treatment facility and lift stations.
- S 3. Safe and adequate access was provided for inspection of all units and outfalls.
- S 4. Facilities and equipment did not appear beyond their useful life.
- 5. List any safety concerns:

Comments:

The facility grounds were still a construction zone at the time of the inspection, but access to the units of treatment, lift stations, and to the outfall was adequate. The facility has an onsite generator that is tested every Tuesday for its readiness during power outages. The units of treatment at the sewage plant are monitored by an auto-dialer system that contacts operator when problems occur. The three lift stations in the collection system all have visual alarms with the Copper beach and Willow Creek lift stations having auto-dialers that alerts personnel when problems occur. The Copper beach and Willow Creek Lift stations have on-site generators that are tested on Tuesday or Thursday for their readiness during power outages. The Kimberly Estates lift station has a quick connect for a portable generator.

Operation:

- U 1. All facilities and systems necessary for achieving compliance with the terms and conditions of the permit were operated efficiently, including a report for an anticipated bypass report for steps of treatment taken out of service.
- S 2. An adequate, qualified operating staff was found to be provided to carry out the operation of the facility, including:
 - a. Certified Operator's on-site attendance and/or qualified operations personnel attendance was adequate.
 - b. Adequate documentation of operational activities, including system monitoring and cleaning.
 - c. Adequate funding to ensure proper operation.
- S 3. Solids handling procedures include:
 - a. Sufficient solids wasted from the treatment system, in a timely manner, to maintain process efficiency.
 - b. Wasting of solids based on appropriate operational targets and valid process control testing.
 - c. Adequate documentation of solids removal, handling, or control was available for review.
- N 4. The facility was found to be operated efficiently during wet weather events.

Comments:

Operation was rated as **unsatisfactory** due to the facility's temporary chemical Phosphorus treatment system being out of service. Part II. B. 1 of the permit requires all waste collection, control, treatment, and disposal facilities to be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants. At the time of the inspection the temporary chemical Phosphorus treatment system was not operating due to chemical feed pump needing repaired. The facility personnel noted that they were dumping in Phosphorus removal chemical. This is not an efficient treatment for Phosphorus or a permitted way to introduce the chemical.

In addition, IC 13-30-2-1, states in part, that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor either alone or in combination with contaminants from other sources, into the environment in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws. At the time of the inspection the one Sodium Aluminate tote in the building being used for Phosphorus removal and the two spare full totes of Sodium Aluminate sitting on the ground beside the generator had no secondary containment in the event of a spill or leak. **The facility needs to utilize a secondary containment system to help prevent the Sodium Aluminate from entering the environment.**

Operation was rated as **marginal** due to facility operating the two new SBRs manually. At the time of the inspection the facility did not have all the construction completed on the plant upgrade. The facility was operating the two new SBRs manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7. In addition the facility was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs. The programming contractor was onsite and has been on-site several days trying to program the new SBRs to run automatically at the time of the inspection.

Maintenance:

- S 1. A maintenance record system has been established and includes maintenance/repair history and preventative maintenance plan.
- S 2. Facility maintenance activities appeared to be adequate.

Comments:

Maintenance records for treatment facility reviewed during inspection. Daily maintenance activities, such as cleaning and daily checks, are documented on a daily maintenance log sheet and all activities appeared adequate. The facility documents major repairs on a repair log sheet. Blower preventative maintenance is record on each blowers log sheet. The maintenance documentation all appeared to adequate at the time of the inspection.

Sludge:

- 1. Sludges, screenings, and slurries were found to be handled and disposed of properly.

N

Comments:

The Sludge section of this report was not rated due to the facility having no sludge, screenings, or slurries to dispose of in the last year. The facility personnel noted that they will soon be disposing sludge from the new digesters.

Self-Monitoring:

- S 1. Samples were found to be taken at pre-designated locations and were found to be representative.
- S 2. Flow-proportioned samples were found to be obtained where needed.
- S 3. The facility was found to conduct sampling of all waste streams, including type and frequency, as required in the permit.
- S 4. Sample collection procedures, including automatic sampling, were found to include:
 - a. Samples refrigerated during compositing.
 - b. Proper preservation techniques used.
 - c. Containers and holding times conformed to 40 CFR 136.3.
- S 5. Sample documentation was found to be adequate and included:
 - a. Dates, times, and locations of sampling.
 - b. Name of individual performing sampling.
 - c. Instantaneous flow for flow-weighted aliquots.
 - d. Chain of Custody records.
- N 6. NPDES Permit Whole Effluent Toxicity (WET) testing requirements were found to be met.

Comments:

The Self-Monitoring Program was rated as satisfactory. All sampling practices, including raw and intermediate unit process testing, are conducted accurately and at the frequency required by the permit. Raw, intermediate unit treatment and final sampling locations is representative of the waste stream. Final effluent samples are accurately flow proportioned composites with a 24 hour composite sampler. The sampler is set up to take 48 samples on a time interval basis over a twenty-four hour.

Flow Measurement:

- S 1. Flow was found to be properly monitored as required by the permit.
- S 2. Flow data and calibration records were available for review.

Comments:

The facility's flow measurement program, including all documentation, was found to be adequate and representative. The effluent flow meter was last calibrated on 3-28-19 by B.L. Anderson.

Laboratory:

The following laboratory records were reviewed:

D. O. Bench Sheets	Chlorine Bench Sheets	Influent Sampling Log
CBOD Bench Sheets	TSS Bench Sheets	Ammonia Bench Sheets
pH Bench Sheets	Phos. Bench Sheets	E. coli Bench Sheets
Final Sampler Log Sheet	pH/DO Calibration Log	

- M 1. The laboratory practices and protocol reviewed were adequate, including:
 - a. A written laboratory QA/QC manual was available.
 - b. Samples were found to be properly stored.
 - c. Approved analytical methods were found to be used.
 - d. Calibration and maintenance of instruments was found to be adequate.
 - e. QA/QC procedures were found to be adequate.
 - f. Dates of analyses (and times where required) were recorded.
 - g. Name of person performing analyses was recorded.
- M 2. Review of lab records and/or on-site field testing equipment and protocols was found to be adequate.

Contract Lab Information

West Lafayette, IN

American Suburban Utilities-County Home
WWTP Lab

Comments:

The Laboratory evaluation generated a **marginal** rating due to the facility needing to improve the Total Suspended Solids procedures. The facility's lab is not consistently meeting the minimum TSS residue requirement of 0.0025 g for the final effluent samples. The sample volume must be increased to meet the minimum residue requirement of 0.0025 g. The maximum sample volume increase for the final effluent is up to 1000 mL.

The Laboratory evaluation generated a **marginal** rating due to the facility needing to improve the procedure for CBOD analyses. The facility's lab is not conducting a GGA analyses and is not documenting the temperature of the CBOD incubator. The facility must conduct a GGA analyses weekly and document the CBOD incubator temperature each time samples are put in and taken out of the incubator.

Analyses for pH, DO, and Chlorine residue are performed on-site with all other parameters of the permit being performed at the facility's sister WWTP's lab.

Records/Reports:

The following records/reports were reviewed:

DMRs for the period of August 2018 to July 2019 were reviewed as part of the inspection.

- S 1. All facility records for the period including the previous three years were available for review.
- S 2. DMRs and MROs were found to be completed properly and accurately including:
 - a. "No Ex" column was accurate.
 - b. Signatory requirements were met.
 - c. Reports were prepared by or under the direction of a certified operator.
- N 3. Bypass and Noncompliance reporting were found to be adequate.

Comments:

The requested records were available and appeared to be complete and accurate.

Compliance Schedules:

- S 1. The NPDES Permit Schedule of Compliance monitoring and reporting milestones have been met.
- N 2. Agreed Order compliance milestones have been met.

Comments:

The facility has meet all the requirements of the Schedule of Compliance for phosphorus in the permit since noted in last inspection.

Pretreatment:

- N 1. No evidence of interference from industrial or other sources of toxic substances was noted.
- N 2. For both Delegated and Non-Delegated pretreatment programs:
 - a. Industrial or commercial dischargers were found to be regulated as required.
 - b. The permittee was found to enforce the Sewer Use Ordinance (SOU) and the Enforcement Response Plan (ERP).
- N 3. If the non-delegated permittee accepts hauled waste:
 - a. Does the POTW provide written permission to haulers?
 - b. Does the POTW obtain samples from each hauled waste load and retain them for at least 48 hours?
 - c. Does the POTW retain records of each load?

Comments:

The facility has no industrial sources.

Effluent Limits Compliance:

Yes 1. Were DMRs reviewed as part of the inspection?

DMRs for the period of August 2018 to July 2019 were reviewed as part of the inspection.

Yes 2. Were violations noted during the review of DMRs?

Comments:

The Effluent Limits Compliance area was rated **marginal** due to self-reported violations of the limits detailed in Part I. A. of the NPDES Permit. Review of DMRs revealed the facility reported **two** TSS, **six** Ammonia-nitrogen, and **two** *E. coli* effluent loading violations in the last twelve months.

IDEM REPRESENTATIVE

Inspector Name:

Aaron Deeter

Email:

adeeter@idem.IN.gov

Phone Number:

317-691-1915

Other staff participating in the inspection:

Name(s)	Phone Number(s)
Kim Rohr-IDEM	317-719-1666
Rob Mclaughlin-IDEM	NA
Dale Schnaith-IDEM	317-232-8657
Dharmendra Parikshak-IDEM	317-232-8660
Kevin Czerniakowski-IDEM	317-234-8226
Robert Synko	317-232-8658

IDEM MANAGER REVIEW	
IDEM Manager:	Date:
Bridget S. Murphy	10/1/2019

Inspection Photographs



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: clean and clear effluent at outfall pipe



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: receiving stream clean and clear at outfall structure



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: receiving stream clean and clear downstream of outfall



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: receiving stream upstream of outfall is low in flow



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: Sodium Aluminate tote in building with no secondary containment



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter or Dharmendra Parikshak,
Date: 9/24/2019 Time:
Others Present:
Location/Description: Sodium Aluminate totes on ground with no secondary containment

**American Suburban Utilities, Inc
Letter of Transmittal**

DO #19326

To: IDEM
100 North Senate Ave, Room N1255
Indianapolis, IN 46204-22

Date: 28-Oct-2019

Phone: 317-233-0470

Fax:

Pages (incl. top sheet) 38

RE: Response to IDEM Inspection 24-Sep-19

Sent: 28-Oct-2019

Attn: Aaron Deter, Dale Schnaith

Int: _____

File: _____

VIA: FedEx Hand Delivery Mail Carrier Fax X Email

THE FOLLOWING ITEMS:

 Plans Copy of Invoice Specifications Change Order
 Permit Other _____
 For Your Information For Your Use For Review and Comment
 For Your Approval X As Requested For Bid Due _____, 20____

Copies	Date	No.	Description
1	28-Oct-19		ASU Response to IDEM Inspection

REMARKS: Thank You.

Signed: Amy Harper

If enclosures are not as noted, please kindly notify us at once.

CONFIDENTIALITY NOTICE

The documents accompanying this transmittal contain confidential information. The information is intended only for the use of the individual(s) or entity named above. If you are not the intended recipient, you are notified that any disclosure, copying, or distribution of the transmittal information is not permissible. If you have received this transmittal in error, please immediately notify us by telephone at the number above to arrange for return of the original documents. Thank you.

Project 19-016

Date: October 21, 2019

Subject: Inspection Summary/Noncompliance Letter
American Suburban Utilities-Carriage Estates WWTP
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County

Date of Inspection: September 24, 2019

Date of Inspection Summary/Noncompliance Letter: October 1, 2019

The following are American Suburban Utilities (ASU) responses to the various concerns stated in IDEM's Inspection Summary/Noncompliance Letter.

1a.

IDEM Concern:

The Permit was rated as marginal due to the permittee deviating from the final constructed flow design of 4.0 MGD as noted in the permit. The permittee needs to request a modification of the permit to reflect the final constructed flow design.

ASU Response:

IDEM's Construction Permit for the Carriage Estates III Wastewater Treatment Plant Expansion Permit Approval No. 20788 dated February 21, 2014 approved the expansion of the plant from 1.5 MGD to 4.0 MGD with a future expansion to 6.0 MGD.

The permit allowed for the construction of the following major structures, which were designed and constructed for 4.0 MGD with a future expansion to 6.0 MGD.

1. New Influent Lift Station (add a third pump for 6.0 MGD)
2. New Influent Macerator structure (add a second unit for 6.0 MGD)
3. Three new CSBR 1.5 MGD reactor tanks (add a fourth tank for 6.0 MGD)
4. Convert the existing CSBR tanks to aerobic digesters for the expansion to 6.0 MGD.

5. New aerobic digesters for the expansion to 4.0 MGD.
6. UV Disinfection system designed for 6.0 MGD.
7. Post aeration tank designed for 6.0 MGD.
8. New air blowers required for 4.0 MGD (Additional blowers for 6.0 MGD)
9. Electrical systems designed not only for 4.0 MGD but easily modified for 6.0 MGD.

ASU requested a rate increase from the IURC for funds to construct the 6.0 MGD plant expansion; however, the OUCC objected to the size of this expansion and therefore ASU reduced its request to a rate increase to fund a 4.0 MGD plant expansion. The OUCC, once again, disapproved of this compromise and insisted on a rate increase for only a 3.0 MGD plant expansion. The IURC agreed with the OUCC assessment and issued the Order of the Commission for Cause No. 44676 on November 30, 2016 allowing ASU a rate increase only sufficient to fund the 3.0 MGD expansion.

In order to accomplish this in such a manner that would allow for a quick expansion to 6.0 MGD, ASU decided to construct all the structures approved in its construction permit except for the following minor changes: (Refer to Engineer plans in Exhibit 1)

1. Only two of the four new CSBR Reactor Tanks were constructed for a total ADF of 3.0 MGD.
2. The existing four CSBR reactor tanks were maintained (current design capacity 1.5 MGD) and will be enlarged to handle a future flow of 3.0 MGD. Therefore, the current CEIII plant can handle an average design flow of 4.5 MGD (1.5 MGD Existing CSBR and 3.0 MGD new CSBR). Since the current

average daily plant flow is 2.0 MGD (2019), ASU is designing the modifications to the existing CSBR tanks to increase their capacity to 3.0 MGD and also provide new aerobic digester tanks and any additional pumps, blowers, controls, etc, required to meet 6.0 MGD ADF. ASU is preparing design manuals, specifications, and engineering plans to be submitted to IDEM's Facility Construction and Engineering Support Section of the Office of Water Quality for a construction permit. ASU is planning to submit its application for the construction permit in the summer of 2020.

1b.

IDEM Concern:

Personnel for IDEM's Construction Permit section were also on site at the time of the inspection for evaluation of the progress of the expansion of the treatment plant system. The construction permit was evaluated during a separate inspection by Construction Permit personnel, conducted concurrent to this inspection. A separate report regarding the construction permit evaluation will be sent.

ASU Response:

ASU will promptly respond to any and all requests for information and data it receives from IDEM's Construction Permit Section.

1c.

IDEM Concern:

In addition, the permitted submitted their thirty day notice on 6-12-19 that construction activities for upgraded plant would be completed by 7-11-19, so they could start reporting under the new limits of violations in the permit. At the time of the inspection the permittee did not have all the construction completed on the upgraded system. The permittee was operating the two new SBR's manually during the day and shutting them off at night, while running the four older SBR's automatically 24/7.

ASU Response:

Project 19-016

It states in CEIII WWTP's NPDES Permit No. IN0043273 with an effective date of February 1, 2016; in section C "Monitoring and Reporting", part F, "Notification Required" on Page 15 of 38 the following:

"The permittee is proposing to upgrade the existing facility from a Class III, 1.5 MGD facility to a Class III, 4.0 MGD facility. The permittee received Construction Approval No. 20788 for the aforementioned construction activities on February 21, 2014. The permittee shall submit a written notice to the Compliance Data Section of the Office of Water Quality at 100 N. Senate Avenue, Indianapolis, IN 46204-2251 which specifies the expected facility construction completion date. This notice shall be submitted a minimum of thirty (30) days **prior** to completion of facility construction. Any deviation from the completion date specified in this notice will require a revised notice to be submitted to the same office. Notification of the facility construction completion date is necessary to ensure that the final effluent limitations contained in this permit become effective at the correct time."

ASU, in an attempt to be proactive, in response to the NPDES notification requirement sent on June 12, 2019 to the attention of Jason House with a copy to Aaron Deter the (30) day notice of discharging from the plants new systems (copy attached as Exhibit 2). In the notice, ASU did state, as required in Part F, that it would notify IDEM of "...deviation from the completion date..."

On August 13, 2019 ASU sent a second update notice informing IDEM that it would start up testing the system and discharging to Indian Creek. (Copy attached as Exhibit 3).

ASU only became aware of the CEIII plants effluent limit changes from Interim Table I on Page 2 of 38 to the limits in the Final Table on Page 6 of 38 at the end of August, 2019 when it filled out the Net DMR form for July 2019.

The Average Daily Flow for July 2019 was 1.74 MGD and for August 2019, it was 1.72 MGD and there were no effluent limit violations.

1d.

IDEM Concern:

In addition the permittee was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs.

ASU Response:

In reviewing the July 2019 Net DMR, it was noted that the requirement for listing residual chlorine was unavailable. Therefore, ASU notified IDEM's Permit Section on August 15, 2019 and asked them "How are we required to handle this situation?" (See attached Exhibit 4). The permit section responded on August 22, 2019 by adding the chlorine residual requirement to the Net DMR Form and stated that it will remain in the form until the summer of 2020 when the plant will be finished.

1e.

IDEM Concern:

The new influent train including a macerator and lift stations pumps were not completely constructed or operating at the time of the inspection.

ASU Response:

ASU was given an extension of time on May 17, 2019 by IDEM's Construction Section until June 30, 2020 to finalize all phases of construction including final site grading and seeding.

1f.

IDEM Concern:

Project 19-016

The facility still had the temporary chemical Phosphorus treatment system installed due to the permanent Phosphorus treatment system not being completely constructed.

ASU Response:

ASU has received a separate construction permit for the CEIII plant's phosphorus removal system. The Phosphorus Removal Permit Approval No. 22977 was issued on February 21, 2019 and the new phosphorus removal system will be completed and the temporary system will be removed the first week of November, 2019.

1g.

IDEM Concern:

The permittee must submit a report to IDEM on the completion of the construction of the upgraded system and when the new limits can be applied.

ASU Response:

IDEM's NPDES Permit Section has placed the final limits in NPDES Permit No. IN0043273 in effect starting July 2019 and this is acceptable to ASU.

2.

IDEM Concern:

The Collection System was rated as unsatisfactory due to the facility still having inflow and infiltration (I/I) in the sanitary collection system causing SSO events. This is a violation of Part II.B.1.E of the permit which requires the facility to have an ongoing preventative maintenance program for the sanitary sewer system. A review of the facility's MROs showed that the facility was above 115% of its plant capability in all twelve months of the MROs reviewed. The facility is still in the process of upgrading the treatment plant, but still needs to identify possible sources of I/I in the sanitary collection system and eliminate them from the system. The collection System evaluation generated a marginal rating due to the facility reporting three SSO events. Part II.B.2 of the permit states, in part, that pursuant to 327 IAC 5-2-8(11) overflows are prohibited. A records review indicates that three SSO events occurred during the last twelve months. The facility's SSOs events all occur at the second manhole before the main lift stations during wet weather. Each SSO event was reported and mitigated by the facility. The

facility is still in the process of upgrading the treatment system to handle and treat more flow.

ASU Response:

The IURC Order of the Commission for Cause No. 44676 dated November 30, 2016 stated that ASU must conduct an Inflow and Infiltration study in order to “improve the minimal levels of collection system maintenance and management through the formal development and implementation of an ongoing I & I reduction program to identify and address I & I sources.” ASU had conducted a four (4) month I & I systems flow monitoring study and is now currently evaluating all of the data and preparing an I & I report which will identify the areas requiring extra evaluating, such as sewer cleaning, televising, flow measuring, etc to determine repair options including, if required, sewer replacement.

3a.

IDEM Concern:

Operation was rated as unsatisfactory due to the facility’s temporary chemical Phosphorus treatment system being out of service. Part II.B.1 of the permit requires all waste collection, control, treatment, and disposal facilities to be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants. At the time of the inspection the temporary chemical Phosphorus treatment system was not operating due to chemical feed pump needing repaired. The facility personnel noted that they were dumping in Phosphorus removal chemical.

In addition, IC 13-30-2-1, states in part, that a person may not discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor either alone or in combination with contaminants from other sources, into the environment in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws. At the time of the inspection the one Sodium Aluminate tote in the building being used for Phosphorus removal and the two spare full totes of Sodium Aluminate sitting on the ground beside the generator had no secondary containment in the event of a spill or leak. The facility needs to utilize a secondary containment system to help prevent the Sodium Aluminate from entering the environment.

Project 19-016

ASU Response:

The two (2) metering pumps which were non-operational at the time of the visit were replaced with two (2) new metering pumps the next day. Since these pumps only recently failed, the operator, using his initiative, manually added bulk sodium aluminate at the inlet structure. Even though this is not a permitted method of adding this chemical, it was effective and the effluent limit for phosphorus was met for these days when the pumps were out of service. This was an emergency situation and will not be repeated since the Utility has established additional pump monitoring procedures.

3b.

IDEM Concern:

Operation was rated as marginal due to facility operating the two new SBRs manually. At the time of the inspection the facility did not have all the construction completed on the plant upgrade. The facility was operating the two new SBRs manually during the day and shutting them off at night, while running the four older SBRs automatically 24/7. In addition the facility was still disinfecting with chlorine following the four older SBRs through a pipe that bypasses the new UV structure and then disinfecting with the new UV system following the two new SBRs. The programming contractor was onsite and has been on-site several days trying to program the new SBRs to run automatically at the time of the inspection.

ASU Responses:

ASU addressed the above concerns in their responses 1d and 1e.

END OF ASU RESPONSES

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF AMERICAN SUBURBAN)
UTILITIES, INC. FOR (1) AUTHORITY)
TO INCREASE ITS RATES AND) CAUSE NO. 44676
CHARGES FOR SEWER UTILITY)
SERVICE, (2) APPROVAL OF NEW)
SCHEDULES OF RATES AND CHARGES)
APPLICABLE THERETO)**

**PETITION OF AMERICAN SUBURBAN)
UTILITIES, INC., AN INDIANA)
CORPORATION, FOR AUTHORITY TO)
ENTER INTO A TERM CREDIT)
FACILITY IN AGGREGATE AMOUNT)
UP \$5,100,000; (2) ENCUMBER) CAUSE NO. 44700
PETITIONER'S ASSETS AS SECURITY)
FOR SUCH LONG-TERM DEBT; AND (3))
AUTHORITY TO USE THE NET)
PROCEEDS THEREFROM TO)
REIMBURSE ITS TREASURY AND)
FINANCE ITS CONSTRUCTION)
PROGRAM)**

PETITIONER'S SUBMISSION OF COMPLIANCE FILING AND PHASE II RATES

Pursuant to the Commission's November 30, 2016 Order in this Cause, Petitioner, American Suburban Utilities ("Petitioner") submits the compliance materials to implement Phase II rates to reflect the placement in service of the Klondike Road project and the Carriage Estates project. The Commission's Order states:

Upon filing of the phase-in submission for Phases II and III, respectively, as described in Finding Paragraph 6.F, Petitioner is authorized to implement a second and a third phase to the initial increase authorized herein, on or after January 1, 2017 and July 1, 2018, respectively, with the Phase II increase calculated to produce total net operating income of \$1,101,756; and the Phase III increase calculated to produce total net operating income of \$1,739,978, with both Phases II and III further adjusted for additional CIAC and

amortization of such additional CIAC as an offset to depreciation expense from system development charges as described in Finding Paragraph No. 6.B(1)(a). The new schedules of rates for Phases II and III shall each be effective upon approval by the Water/Wastewater Division and shall apply to sewer service from and after the date of approval.

Order, p. 44.

The Klondike Road extension was completed and in service before the issuance of the Order in this Cause. The improvements known as Carriage Estates Stage 1 (more commonly known as the Headworks) were nearing completion as of the issuance of the Order in this Cause. Because of the language of the Order concerning the expiration of Petitioner's Affiliate Agreement and the directives of the Commission regarding what should be included in the replacement Affiliate Agreement, the final work on Stage 1 of these improvement ceased at that time until a mechanism could be put in place to divide the scope of work between the old and the new Affiliate Agreement. The Schedule of Values attached to Affiliate Agreement 2017-1 (Headworks) reflects the percentage of work completed on these Stage 1 improvements as of January 13, 2017 when the new Affiliate Agreement was submitted to the Commission. A copy of Affiliate Agreement 2017-1 is submitted herewith. At that time, there remained \$30,675 left under this portion of First Time Development Corporation's price for this phase of the Carriage Estates expansion work. All invoices through January 31, 2017 reflect this work done pursuant to the now-expired Affiliate Agreement. The last invoice dated February 23, 2017 reflects the remaining work that was needed to place the Stage 1 improvements in service, consisting mainly of lift station equipment, lift station control panel and wiring, and macerator equipment and wiring.

Petitioner is also submitting certifications that Carriage Estates Stage 1 and Klondike Road are in service and certifications that the construction costs reflected in these invoices have been incurred and paid. Additionally, attached is a report with the actual and approved amount of plant by

Uniform System of Accounts Plant Account. There are no proposed adjustments to costs. The attached Schedules also updated accumulated depreciation expense, property tax, and income tax expense to account for the actual costs of these major projects. Finally, Petitioner is submitting its actual customer counts, actual CIAC, and updates to proforma operating revenues, CIAC, and amortization of CIAC based upon these actual results. Based upon this submission, Petitioner is submitting the updated rate schedules and tariff sheets.

Respectfully submitted,

By: 

Nicholas K. Kile, Atty No. 15203-53
Hillary J. Close, Atty No. 25104-49
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 231-7768
Fax: (317) 231-7433
Email: nicholas.kile@btlaw.com
hillaryclose@btlaw.com

Attorneys for Petitioner
American Suburban Utilities, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the following via electronic email this 17th day of March, 2017 to:

Daniel LeVay
Scott Franson
Office of Utility Consumer Counselor
PNC Center
115 W. Washington Street, #1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
dlevay@oucc.in.gov
sfranson@oucc.in.gov

Robert Johnson
2454 Waldon Drive
Greenwood, IN 46143
rjohnson@utilitylaw.us



Nicholas K. Kile



12/04/2019 Headworks



12/04/2019 Headworks



12/04/2019 Headworks



12/04/2019 Headworks



03/05/2020 Headworks



03/05/2020 Headworks



03/05/2020 Headworks



03/05/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



10/08/2020 Headworks



12/04/2019: Laboratory in Chemical Phosphorus Building (Status: Not Complete)



12/04/2019: Headworks facilities (Status: Not Complete)



12/04/2019: Ongoing construction



12/04/2019: Backfilling, site grading, digester stairs and walkway (Status: Not Complete)



12/04/2019: Facilities still under construction



12/04/2019: Backfilling, site grading, exposed electrical conduit (Status: Not Complete)



12/04/2019: Sludge pond (Status: Not removed)



12/04/2019: Backfilling, site grading, pavement, sidewalks (Status: Not Complete)



12/04/2019: Backfilling, site grading, pavement, sidewalks (Status: Not Complete)



12/04/2019: CSBR Rehabilitation (Status: Not Completed)



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

January 21, 2020

Bruno L. Pigott
Commissioner

Via Certified Mail No.: **7017 0190 0000 9502 3954**

Scott Lods, President and Registered Agent
American Suburban Utilities, Inc.
Oakwood Business Plaza
3350 W 250 W
West Lafayette, IN 47906

Dear Mr. Lods:

Re: Notice of Violation and
Proposed Agreed Order
Indiana Department of
Environmental Management
v.
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
Case No. 2019-26314-W
West Lafayette, Tippecanoe County

This is to advise that the Indiana Department of Environmental Management (IDEM) has conducted an investigation of American Suburban Utilities, Inc. As a result of that investigation, IDEM has made a preliminary determination that violations exist. Pursuant to IC 13-30-3-3, enclosed please find a Notice of Violation and a proposed Agreed Order, setting forth IDEM's specific findings of violation and the actions necessary to resolve them.

You may request a settlement conference to discuss the allegations and the necessary corrective actions, which may include a compliance schedule. Payment of a civil penalty will also be discussed. The civil penalty amount noted in the proposed Agreed Order is a preliminary figure for settlement discussion purposes only and is based on the alleged violations set forth in the Notice of Violation.

To resolve this matter as provided for in the enclosed Agreed Order, sign and return the entire document to me at the following address:

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

Cover Letter: Case No. 2019-26314-W
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 2

The enclosed proposed Agreed Order is subject to the final approval of IDEM. No Agreed Order is binding on IDEM until the Agreed Order has been approved and adopted by the appropriate IDEM official. IDEM retains the right to withdraw from the proposed Agreed Order if IDEM becomes aware of facts or considerations that indicate that the Agreed Order is unfair, inappropriate, or inconsistent with state law or the Clean Water Act.

IDEM is not required to extend the offer of entry into an Agreed Order for more than 60 days. You may enter into an Agreed Order without admitting that the violations occurred. If an Agreed Order is not entered into, IDEM may proceed to issue a unilateral Notice and Order of the Commissioner requiring compliance with the environmental laws, rules, and/or permits, including payment of a civil penalty.

Please contact me at 317-232-8407 or at alenahan@idem.in.gov within 15 days if you have any questions or if you wish to request a settlement conference.

Sincerely,



Aletha Lenahan, Case Manager
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Enclosure

cc: Tippecanoe County Health Department
<http://www.in.gov/idem>



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

January 21, 2020

Bruno L. Pigott
Commissioner

NOTICE OF VIOLATION

Via Certified Mail No.: **7017 0190 0000 9502 3954**

Scott Lods, President and Registered Agent
American Suburban Utilities, Inc.
Oakwood Business Plaza
3350 W 250 W
West Lafayette, IN 47906

Case No. 2019-26314-W

Pursuant to Indiana Code (IC) 13-30-3-3, the Indiana Department of Environmental Management (IDEM) issues this Notice of Violation. Based on an investigation, IDEM has reason to believe that American Suburban Utilities, Inc. (Respondent) has violated environmental rules. The violations are based on the following:

1. Respondent owns and operates the Carriage Estate III Wastewater Treatment Plant (WWTP). The WWTP serves approximately 2,500 customers and is located at 4100 Bridgeway Drive, West Lafayette, Tippecanoe County, Indiana (the Site).
2. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0043273 (the NPDES Permit), to discharge wastewater that is treated in accordance with the terms and conditions of the NPDES Permit from its WWTP into receiving waters named Indian Creek from Outfall 001.

The collection system is comprised of 100% separate sanitary sewers by design with no overflow or bypass points. Overflow or release of sanitary wastewater from the WWTP or collection system that is not authorized by the NPDES Permit is expressly prohibited.

3. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the NPDES Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action by IDEM.
4. Pursuant to Part I.A.1 of the NPDES Permit, the permittee is required to comply with the monitoring requirements contained in the NPDES Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of January 1, 2017 through December 1,

Notice of Violation: Case No. 2019-26314-W
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 2

2019 revealed violations of effluent limitations contained in Part I.A.1 of the NPDES Permit as follows:

- A. The weekly maximum average concentration limitation for total suspended solids (TSS) was exceeded during January 2018 and October 2018.
- B. The monthly average concentration limitation for TSS was exceeded during October 2018.
- C. The weekly maximum average concentration limitation for ammonia (as nitrogen) was exceeded during August, September and October 2018.
- D. The monthly average concentration limitation for ammonia (as nitrogen) was exceeded during September and October 2018.
- E. The daily maximum concentration limitation for Chlorine was exceeded during April and May 2017, and July 2018.
- F. The daily maximum total coliform forming units/100ml concentration limitation for E. Coli was exceeded during October 2018.
- G. The monthly average concentration limitation for carbonaceous biological oxygen demand (CBOD₅) was exceeded during December 2107 and September 2018.
- H. The weekly maximum average concentration limitation for CBOD₅ was exceeded during October 2018.
- I. The monthly average percent removal of CBOD₅ was not achieved during July and September 2018.

Respondent failed to comply with the effluent limitations from Outfall 001 contained in the NPDES Permit, in violation of Part I.A.1 of the NPDES Permit and 327 IAC 5-2-8(1).

5. Part II.B.1.e of the NPDES Permit requires that there is an ongoing preventative maintenance program for the sanitary sewer system.

Pursuant 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit, bypasses, as defined by 327 IAC 5-2-8(11)(A), are prohibited, and the Commissioner may take enforcement action against a permittee for bypasses, unless:

- A. The bypass was unavoidable to prevent loss of life, personal injury or severe property damage, as defined by Part II.B.2a of the NPDES Permit;
- B. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time. 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;
- C. The permittee submits notices, as required under Part II.B.2.d of the NPDES Permit; and
- D. The condition under Part II.B.2.f of the NPDES Permit is met.

Notice of Violation: Case No. 2019-26314-W
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 3

During the inspection on September 24, 2019, IDEM's representatives conducted a records review of Respondent's MROs that showed the WWTP is operating at 115% of the plant's capacity in all 12 months of the MROs reviewed. The WWTP is hydraulically overloaded due to inflow and infiltration (I&I) in the collection system.

In a review of Respondent's Bypass/Overflow Incident Reports for the period of April 6, 2017 to March 30, 2019, it was discovered that Respondent reported 10 sanitary sewer overflows (SSOs). Nine of the 10 SSOs were reported to have been caused by a precipitation event, and approximately 524,500 gallons of untreated wastewater was released from the second manhole just prior to the WWTP influent lift station during the SSOs. The SSOs were not in accordance with the terms and conditions of the NPDES Permit, in violation of 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit.

Respondent failed to have an ongoing preventative maintenance program for the sanitary sewer system that would prevent SSOs, I&I, and hydraulic overloading at the WWTP, in violation of Part II.B.1.e of the NPDES Permit.

6. Pursuant to 327 IAC 3-2-1, no person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer, without a valid construction permit issued by the commissioner.

Pursuant to 327 IAC 3-2-2(d), construction shall not commence until all necessary state approvals and permits are obtained.

Pursuant to 327 IAC 5-2-8(11)(E), where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or corrected information.

On February 21, 2014, IDEM issued the construction permit, Approval No. 20788, for the WWTP expansion of the existing WWTP from 1.5 million gallon per day (mgd) to 4 mgd, with a new influent lift station, four-tank continuous SBR, an ultra violet (UV) disinfection system, effluent flow meter, four new aerobic digesters, sludge transfer pumps, blowers, and removal of the Chlorination/Dechlorination disinfection system, and conversion to a new liquid sludge loading station, with final sludge to be aerobically digested and land applied by a contractor.

During inspections conducted on March 13, 2019 and September 24, 2019, IDEM's representatives observed and documented that Respondent has constructed facilities significantly different than what was approved in the original 2014 construction permit without submitting revised plans and specifications, and without obtaining a revised construction permit, in violation of 327 IAC 3-2-1 and 327 IAC 3-2-2(d).

Notice of Violation: Case No. 2019-26314-W
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 4

Respondent failed to submit the corrected information to IDEM regarding significant changes to design and capacity that were made during the WWTP expansion. These changes would have warranted revision of the discharge limitations and treatment facility description contained in the issued NPDES Permit. Respondent failed to provide information related to these changes in the approved construction plan, and failed to request an NPDES Permit modification, in violation of 327 IAC 5-2-8(11)(E).

In accordance with IC 13-30-3-3, the Commissioner herein provides notice that violations may exist and offers an opportunity to enter into an Agreed Order providing for the actions required to correct the violations and, as necessary and appropriate, for the payment of a civil penalty. The Commissioner is not required to extend this offer for more than 60 days.

As provided in IC 13-30-3-3, an alleged violator may enter into an Agreed Order without admitting that the violations occurred. IDEM encourages settlement by Agreed Order, thereby resulting in quicker correction of the environmental violations and avoidance of extensive litigation. Timely settlement by Agreed Order may result in a reduced civil penalty. Also, settlement discussions will allow the opportunity to present any mitigating factors that may be relevant to the violations.

If an Agreed Order is not entered into within 60 days of receipt of this Notice of Violation, the Commissioner may issue a Notice and Order under IC 13-30-3-4 containing the actions that must be taken to correct the violations and requiring the payment of an appropriate civil penalty. Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Aletha Lenahan, Water Enforcement Case Manager, at (317) 232-8407 or alenahan@idem.in.gov within 15 days after receipt of this Notice to discuss resolution of this matter.

Date:

January 21, 2020

For the Commissioner:



Samantha K. Groce, Chief
Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

cc: Tippecanoe County Health Department
<http://www.in.gov/idem>



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

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

COMMISSIONER OF THE DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,)

v.)

Case No. 2019-26314-W

AMERICAN SUBURBAN UTILITIES, INC.,)

Respondent.)

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (IC) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (Complainant) of the Indiana Department of Environmental Management (IDEM), a department of the State of Indiana created by IC 13-13-1-1.
2. American Suburban Utilities, Inc. (Respondent), which owns and operates the Carriage Estate III Wastewater Treatment Plant (WWTP). The WWTP serves approximately 2,500 customers and is located at 4100 Bridgeway Drive, West Lafayette, Tippecanoe County, Indiana (the Site).
3. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0043273 (the NPDES Permit), to discharge wastewater

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 2

treated in accordance with the terms and conditions of the NPDES Permit from its WWTP into receiving waters named Indian Creek from Outfall 001.

The collection system is comprised of 100% separate sanitary sewers by design with no overflow or bypass points. Overflow or release of sanitary wastewater from the WWTP or collection system that is not authorized by the NPDES Permit is expressly prohibited.

4. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.
5. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation via Certified Mail to:

Scott Lods, President and Registered Agent
American Suburban Utilities, Inc.
Oakwood Business Plaza
3350 W 250 W
West Lafayette, IN 47906
6. During an investigation conducted by IDEM's representatives, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the NPDES Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part I.A.1 of the NPDES Permit, the permittee is required to comply with the monitoring requirements contained in the NPDES Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of January 1, 2017 through December 1, 2019 revealed violations of effluent limitations contained in Part I.A.1 of the NPDES Permit as follows:

- A. The weekly maximum average concentration limitation for total suspended solids (TSS) was exceeded during January 2018 and October 2018.
- B. The monthly average concentration limitation for TSS was exceeded during October 2018.
- C. The weekly maximum average concentration limitation for ammonia (as nitrogen) was exceeded during August, September and October 2018.
- D. The monthly average concentration limitation for ammonia (as nitrogen) was exceeded during September and October 2018.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 3

- E. The daily maximum concentration limitation for Chlorine was exceeded during April and May 2017, and July 2018.
- F. The daily maximum total coliform forming units/100ml concentration limitation for E. Coli was exceeded during October 2018.
- G. The monthly average concentration limitation for carbonaceous biological oxygen demand (CBOD₅) was exceeded during December 2107 and September 2018.
- H. The weekly maximum average concentration limitation for CBOD₅ was exceeded during October 2018.
- I. The monthly average percent removal of CBOD₅ was not achieved during July and September 2018.

Respondent failed to comply with the effluent limitations from Outfall 001 contained in the NPDES Permit, in violation of Part I.A.1 of the NPDES Permit and 327 IAC 5-2-8(1).

- 9. Part II.B.1.e of the NPDES Permit requires that there is an ongoing preventative maintenance program for the sanitary sewer system.

Pursuant 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit, bypasses, as defined by 327 IAC 5-2-8(11)(A), are prohibited, and the Commissioner may take enforcement action against a permittee for bypasses, unless:

- A. The bypass was unavoidable to prevent loss of life, personal injury or severe property damage, as defined by Part II.B.2a of the NPDES Permit;
- B. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time. 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;
- C. The permittee submits notices, as required under Part II.B.2.d of the NPDES Permit; and
- D. The condition under Part II.B.2.f of the NPDES Permit is met.

During the inspection on September 24, 2019, IDEM's representatives conducted a records review of Respondent's MROs that showed the WWTP is operating at 115% of the plant's capacity in all 12 months of the MROs reviewed. The WWTP is hydraulically overloaded due to inflow and infiltration (I&I) in the collection system.

In a review of Respondent's Bypass/Overflow Incident Reports for the period of April 6, 2017 to March 30, 2019, it was discovered that Respondent reported 10 sanitary sewer overflows (SSOs). Nine of the 10 SSOs were reported to have been caused by a precipitation event, and approximately 524,500 gallons of untreated

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 4

wastewater was released from the second manhole just prior to the WWTP influent lift station during the SSOs. The SSOs were not in accordance with the terms and conditions of the NPDES Permit, in violation of 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit.

Respondent failed to have an ongoing preventative maintenance program for the sanitary sewer system that would prevent SSOs, I&I, and hydraulic overloading at the WWTP, in violation of Part II.B.1.e of the NPDES Permit.

10. Pursuant to 327 IAC 3-2-1, no person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer, without a valid construction permit issued by the commissioner.

Pursuant to 327 IAC 3-2-2(d), construction shall not commence until all necessary state approvals and permits are obtained.

Pursuant to 327 IAC 5-2-8(11)(E), where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or corrected information.

On February 21, 2014, IDEM issued the construction permit, Approval No. 20788, for the WWTP expansion of the existing WWTP from 1.5 million gallon per day (mgd) to 4 mgd, with a new influent lift station, four-tank continuous SBR, an ultra violet (UV) disinfection system, effluent flow meter, four new aerobic digesters, sludge transfer pumps, blowers, and removal of the Chlorination/Dechlorination disinfection system, and conversion to a new liquid sludge loading station, with final sludge to be aerobically digested and land applied by a contractor.

During inspections conducted on March 13, 2019 and September 24, 2019, IDEM's representatives observed and documented that Respondent has constructed facilities significantly different than what was approved in the original 2014 construction permit without submitting revised plans and specifications, and without obtaining a revised construction permit, in violation of 327 IAC 3-2-1 and 327 IAC 3-2-2(d).

Respondent failed to submit the corrected information to IDEM regarding significant changes to design and capacity that were made during the WWTP expansion. These changes would have warranted revision of the discharge limitations and treatment facility description contained in the issued NPDES Permit. Respondent failed to provide information related to these changes in the approved construction plan, and failed to request an NPDES Permit modification, in violation of 327 IAC 5-2-8(11)(E).

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 5

11. On March 22, 2019 and October 1, 2019, IDEM issued Inspection Summary/Noncompliance Letters to Respondent outlining violations of the construction permit, and the NPDES Permit at the WWTP and in the collection system. IDEM received responses to the letters explaining compliance actions Respondent would take to address the violations. However, to date the above noted violations continue.
12. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective (Effective Date) when it is adopted by Complainant or Complainant's delegate (as evidenced by signature), and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. In addition to addressing the violations cited in Paragraphs 7 through 11 of the Findings of Fact above, this Agreed Order also addresses any additional violations of these same rules that may have occurred subsequent to the issuance of the NOV and prior to the Effective Date.
2. Respondent shall comply with rules and statutes listed in the findings above at issue.
3. Within 90 days of the Effective Date, Respondent shall submit an application to obtain approval of "As-Built" plans and specifications that reflect the post-construction design of its WWTP expansion, IDEM Approval No. 20788, and the Phosphorus Removal, IDEM Approval No. 22977. The "As-builts" plan application should also define, and provide support for, an appropriate capacity rating to reflect the changes that were made to the original IDEM-approved plans and specifications.

Respondent may not commence any new construction and/or change existing structure(s) until IDEM has approved any construction plans and specifications.

4. Within 90 days of the Effective Date, Respondent shall submit an application to IDEM to obtain the NPDES Permit modification to accurately reflect the post-construction WWTP design and effluent limitations.
5. Within 90 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP), which identifies actions that

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 6

Respondent will take to achieve and maintain compliance with the NPDES Permit, specifically including the actions Respondent will take to:

- A. Achieve and maintain compliance with the new effluent limitations contained in the forthcoming NPDES Permit modification;
- B. Assure proper removal, storage and disposal of sludge solids throughout the WWTP;
- C. Develop and implement a preventative maintenance program for the collection system, which includes methods and milestone dates for locating and eliminating sources of I&I and prevention of SSOs in the collection system; and
- D. Comply with all applicable monitoring and reporting requirements of the NPDES Permit.

The CP shall include an implementation and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing and obtain approval of variations to the approved CP, prior to implementation of any variations.

6. Respondent shall, after completion of the work required pursuant to the approved CP from Order Paragraphs 4 and 5 above, demonstrate 12-consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the NPDES Permit.
7. In the event that violation(s) occur during the Compliance Demonstration, within 30 days of the violation, Respondent shall develop and submit to IDEM, for approval, an Additional Action Plan (AAP) which identifies the additional actions that Respondent will take to achieve and maintain compliance with the terms and conditions of the NPDES Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
8. The plans required by Order Paragraphs 5 and 7 are subject to IDEM approval. In the event IDEM determines that any plan submitted by Respondent is deficient or otherwise unacceptable, Respondent shall revise and resubmit the plan to IDEM in accordance with IDEM's notice. After three submissions of such plan by Respondent, IDEM may seek civil enforcement of this Order.
9. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved CP and AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 7

Following completion of the actions included in the AAP, the 12 month Compliance Demonstration, as specified in Order Paragraph 6 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.

10. Beginning with the first calendar quarter following the Effective Date, Respondent shall submit to IDEM a written progress report within 10 days of the end of each calendar quarter, which identifies the compliance actions implemented during each quarter ending on March 31st, June 30th, September 30th, and December 31st until completion of the CP or AAP.
11. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times, operate its existing WWTP as efficiently and effectively as possible.
12. All submittals required by this Agreed Order, unless Respondent is notified otherwise in writing by IDEM, shall be sent to:

Aletha Lenahan, Enforcement Case Manager
Office of Water Quality – IGCN 1255
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204-2251
13. Respondent is assessed and agrees to pay a civil penalty of Seventy Nine Thousand, Seven Hundred Fifty Dollars (\$79,750). Said penalty amount shall be due and payable to the "Environmental Management Special Fund" within 30 days of the Effective Date, the 30th day being a "Due Date."
14. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

Paragraph	Violation	Stipulated Penalty
3	Failure to submit "As-Built" plans, within the required time period.	\$500 per week late, or part thereof.
3	Failure to obtain IDEM's approval prior to commencing construction, within the required time period.	\$400 per violation.
4	Failure to submit an application to IDEM to obtain the NPDES Permit modification to accurately reflect the post-construction WWTP design and effluent limitations.	\$250 per week late, or part thereof.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 8

5	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
6	For violations of terms and conditions of the NPDES Permit during the Compliance Demonstration.	\$400 per violation
7	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
8	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.
9	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
10	Failure to submit to IDEM a written progress report within 10 days of each milestone date OR calendar quarter.	\$150 per week late, or part thereof.
11	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.

15. Stipulated penalties shall be due and payable no later than the 30th day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30th day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.

16. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2019-26314-W of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, Indiana 46204

17. This Agreed Order shall apply to and be binding upon Respondent, its successors and assigns. Respondent's signatories to this Agreed Order certify

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 9

that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.

18. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance and any accrued interest at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. The interest shall continue to accrue on the first of each month until the civil penalty and any interest accrued are paid in full. Such interest shall be payable to the "Environmental Management Special Fund," and shall be payable to IDEM in the manner specified above.
19. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
20. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
21. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permits or any applicable Federal or State law or regulation.
22. Complainant does not, by his approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
23. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the Notice of Violation.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 10


24. Nothing in this Agreed Order shall prevent IDEM (or anyone acting on its behalf) from communicating with the United States Environmental Protection Agency (US EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the US EPA or any other agency or entity.
25. This Agreed Order shall remain in effect until Respondent has complied with the terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 11

TECHNICAL RECOMMENDATION:
Department of Environmental Management

RESPONDENT:
American Suburban Utilities, Inc.

By: 

By: _____

Samantha K. Groce, Chief
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Printed: _____
Title: _____

Date: January 17, 2020

Date: _____

COUNSEL FOR RESPONDENT:

By: _____

Date: _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 20__.

For the Commissioner:

Martha Clark Mettler
Assistant Commissioner
Office of Water Quality



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

December 07, 2020

Bruno L. Pigott
Commissioner

Via Certified Mail No.: **7019 2280 0001 5571 0514**

Scott Lods, President and Registered Agent
American Suburban Utilities, Inc.
Oakwood Business Plaza
3350 W 250 W
West Lafayette, IN 47906

Dear Mr. Lods:

Re: Adoption of Agreed Order
Indiana Department of
Environmental Management
v.
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
Case No. 2019-26314-W
West Lafayette, Tippecanoe County

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

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence (Effective Date). Please note that the first payment of the civil penalty is due within 30 days after the effective date of the Agreed Order.

Payment should be made payable to the "Environmental Management Special Fund" and sent to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room 1340
100 North Senate Avenue
Indianapolis, IN 46204

Please include the Case Number *2019-26314-W* on the front of the check.

Cover Letter: Case No. 2019-26314-W
American Suburban Utilities, Inc.
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 2

Please note the terms of compliance contained in the Agreed Order. The time frames for compliance are effective upon your receipt of this correspondence (Effective Date). If you have any questions, please contact Aletha Lenahan, Case Manager, Water Enforcement Section, Compliance and Enforcement Branch, at (317) 232-8407 or at alenahan@idem.in.gov.

Sincerely,



Samantha K. Groce, Chief
Water Enforcement Section
Office of Water Quality

Enclosure

cc: Christopher Shelmon, Attorney
Tippecanoe County Health Department
<http://www.in.gov/idem>



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

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

COMMISSIONER OF THE DEPARTMENT)
OF ENVIRONMENTAL MANAGEMENT,)

Complainant,

v.

Case No. 2019-26314-W

AMERICAN SUBURBAN UTILITIES, INC.,)

Respondent.)

AGREED ORDER

Complainant and Respondent desire to settle and compromise this action without hearing or adjudication of any issue of fact or law, and consent to the entry of the following Findings of Fact and Order. Pursuant to Indiana Code (IC) 13-30-3-3, entry into the terms of this Agreed Order does not constitute an admission of any violation contained herein. Respondent's entry into this Agreed Order shall not constitute a waiver of any defense, legal or equitable, which Respondent may have in any future administrative or judicial proceeding, except a proceeding to enforce this order.

I. FINDINGS OF FACT

1. Complainant is the Commissioner (Complainant) of the Indiana Department of Environmental Management (IDEM), a department of the State of Indiana created by IC 13-13-1-1.
2. American Suburban Utilities, Inc. (Respondent), which owns and operates the Carriage Estate III Wastewater Treatment Plant (WWTP). The WWTP serves approximately 2,500 customers and is located at 4100 Bridgeway Drive, West Lafayette, Tippecanoe County, Indiana (the Site).
3. Respondent is authorized by its National Pollutant Discharge Elimination System (NPDES) Permit No. IN0043273 (the NPDES Permit), to discharge wastewater



Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 2

treated in accordance with the terms and conditions of the NPDES Permit from its WWTP into receiving waters named Indian Creek from Outfall 001.

The collection system is comprised of 100% separate sanitary sewers by design with no overflow or bypass points. Overflow or release of sanitary wastewater from the WWTP or collection system that is not authorized by the NPDES Permit is expressly prohibited.

4. IDEM has jurisdiction over the parties and the subject matter of this action pursuant to IC 13-30-3.
5. Pursuant to IC 13-30-3-3, IDEM issued a Notice of Violation via Certified Mail to:

Scott Lods, President and Registered Agent
American Suburban Utilities, Inc.
Oakwood Business Plaza
3350 W 250 W
West Lafayette, IN 47906
6. During an investigation conducted by IDEM's representatives, violations were found, as described below.
7. 327 Indiana Administrative Code (IAC) 5-2-8(1), states the permittee shall comply with all terms and conditions of the NPDES Permit. Any permit noncompliance constitutes a violation of the Clean Water Act and IC 13 and is grounds for enforcement action by IDEM.
8. Pursuant to Part I.A.1 of the NPDES Permit, the permittee is required to comply with the monitoring requirements contained in the NPDES Permit, including effluent limitations.

Discharge Monitoring Reports (DMRs) and Monthly Reports of Operation (MROs) submitted by Respondent for the period of January 1, 2017 through December 1, 2019 revealed violations of effluent limitations contained in Part I.A.1 of the NPDES Permit as follows:

- A. The weekly maximum average concentration limitation for total suspended solids (TSS) was exceeded during January 2018 and October 2018.
- B. The monthly average concentration limitation for TSS was exceeded during October 2018.
- C. The weekly maximum average concentration limitation for ammonia (as nitrogen) was exceeded during August, September, and October 2018.
- D. The monthly average concentration limitation for ammonia (as nitrogen) was exceeded during September and October 2018.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 3

- E. The daily maximum concentration limitation for Chlorine was exceeded during April and May 2017, and July 2018.
- F. The daily maximum total coliform forming units/100ml concentration limitation for E. Coli was exceeded during October 2018.
- G. The monthly average concentration limitation for carbonaceous biological oxygen demand (CBOD₅) was exceeded during December 2107 and September 2018.
- H. The weekly maximum average concentration limitation for CBOD₅ was exceeded during October 2018.
- I. The monthly average percent removal of CBOD₅ was not achieved during July and September 2018.

Respondent failed to comply with the effluent limitations from Outfall 001 contained in the NPDES Permit, in violation of Part I.A.1 of the NPDES Permit and 327 IAC 5-2-8(1).

9. Part II.B.1.e of the NPDES Permit requires that there is an ongoing preventative maintenance program for the sanitary sewer system.

Pursuant 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit, bypasses, as defined by 327 IAC 5-2-8(11)(A), are prohibited, and the Commissioner may take enforcement action against a permittee for bypasses, unless:

- A. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, as defined by Part II.B.2a of the NPDES Permit;
- B. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time. 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;
- C. The permittee submits notices, as required under Part II.B.2.d of the NPDES Permit; and
- D. The condition under Part II.B.2.f of the NPDES Permit is met.

During the inspection on September 24, 2019, IDEM's representatives conducted a records review of Respondent's MROs that showed the WWTP is operating at 115% of the plant's capacity in all 12 months of the MROs reviewed.

In a review of Respondent's Bypass/Overflow Incident Reports for the period of April 6, 2017 to March 30, 2019, it was discovered that Respondent reported 10 sanitary sewer overflows (SSOs). Nine of the 10 SSOs were reported to have been caused by a precipitation event, and approximately 524,500 gallons of untreated wastewater was released from the second manhole just prior to the WWTP influent

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 4

lift station during the SSOs. The SSOs were not in accordance with the terms and conditions of the NPDES Permit, in violation of 327 IAC 5-2-8(11) and Part II.B.2.b of the NPDES Permit.

Respondent failed to have an ongoing preventative maintenance program for the sanitary sewer system that would prevent SSOs, I&I, and hydraulic overloading at the WWTP, in violation of Part II.B.1.e of the NPDES Permit.

10. Pursuant to 327 IAC 3-2-1, no person shall cause or allow the construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer, without a valid construction permit issued by the commissioner.

Pursuant to 327 IAC 3-2-2(d), construction shall not commence until all necessary state approvals and permits are obtained.

Pursuant to 327 IAC 5-2-8(11)(E), where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or corrected information.

On February 21, 2014, IDEM issued the construction permit, Approval No. 20788, for the WWTP expansion of the existing WWTP from 1.5 million gallon per day (mgd) to 4 mgd, with a new influent lift station, four-tank continuous SBR, an ultra violet (UV) disinfection system, effluent flow meter, four new aerobic digesters, sludge transfer pumps, blowers, and removal of the Chlorination/Dechlorination disinfection system, and conversion to a new liquid sludge loading station, with final sludge to be aerobically digested and land applied by a contractor.

During inspections conducted on March 13, 2019, September 24, 2019, and July 7, 2020, IDEM's representatives observed and documented that Respondent has constructed facilities significantly different than what was approved in the original 2014 construction permit without submitting revised plans and specifications, and without obtaining a revised construction permit, in violation of 327 IAC 3-2-1 and 327 IAC 3-2-2(d).

Respondent failed to timely submit the corrected information to IDEM regarding significant changes to design and capacity that were made during the WWTP expansion. These changes would have warranted revision of the discharge limitations and treatment facility description contained in the issued NPDES Permit. Respondent failed to timely provide information related to these changes in the approved construction plan, and failed to request an NPDES Permit modification, in violation of 327 IAC 5-2-8(11)(E).

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 5

On September 28, 2020, Respondent submitted the revised plans and specifications, in accordance with 327 IAC 3-2-1 and 327 IAC 3-2-2(d).

11. On March 22, 2019, October 1, 2019, and July 16, 2020, IDEM issued Inspection Summary/Noncompliance Letters to Respondent outlining violations of the construction permit, and the NPDES Permit at the WWTP and in the collection system. IDEM received responses to the letters explaining compliance actions Respondent would take to address the violations. However, to date, some of the above noted violations continue.
12. Orders of the Commissioner are subject to administrative review by the Office of Environmental Adjudication under IC 4-21.5; however, in recognition of the settlement reached, Respondent acknowledges notice of this right and waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective (Effective Date) when it is adopted by Complainant or Complainant's delegate (as evidenced by signature), and the adopted Agreed Order has been received by Respondent. This Agreed Order shall have no force or effect until the Effective Date. In addition to addressing the violations cited in Paragraphs 7 through 11 of the Findings of Fact above, this Agreed Order also addresses any additional violations of these same rules that may have occurred subsequent to the issuance of the NOV and prior to the Effective Date.
2. Respondent shall comply with rules and statutes listed in the findings above at issue.
3. Respondent may not commence any new construction and/or change existing structure(s) until IDEM has approved any construction plans and specifications.
4. Within 90 days of the Effective Date, Respondent shall develop and submit to IDEM for approval a Compliance Plan (CP), which identifies actions that Respondent will take to achieve and maintain compliance with the NPDES Permit, specifically including the actions Respondent will take to:
 - A. Achieve and maintain compliance with the NPDES Permit;
 - B. Assure proper removal, storage, and disposal of sludge solids throughout the WWTP;
 - C. Develop and initiate a preventative maintenance program for the collection system, which includes methods and milestone dates for locating and eliminating sources of I&I and prevention of SSOs in the collection system;

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 6

and

D. Comply with all applicable monitoring and reporting requirements of the NPDES Permit.

The CP shall include an implementation and completion schedule, including specific milestone dates.

Respondent shall notify IDEM in writing and obtain approval of variations to the approved CP, prior to implementation of any variations.

5. Respondent shall, after completion of the work required pursuant to the approved CP from Order Paragraph 4 above, demonstrate 12-consecutive months of compliance (Compliance Demonstration) with the terms and conditions of the NPDES Permit.
6. In the event that violation(s) occur during the Compliance Demonstration, within 30 days of the violation, Respondent shall develop and submit to IDEM, for approval, an Additional Action Plan (AAP) which identifies the additional actions that Respondent will take to achieve and maintain compliance with the terms and conditions of the NPDES Permit. The AAP, if required, shall include an implementation and completion schedule, including specific milestone dates.
7. The plans required by Order Paragraphs 4 and 6 are subject to IDEM approval. In the event IDEM determines that any plan submitted by Respondent is deficient or otherwise unacceptable, Respondent shall revise and resubmit the plan to IDEM in accordance with IDEM's notice. After three submissions of such plan by Respondent, IDEM may seek civil enforcement of this Order.
8. Respondent, upon receipt of written notification from IDEM, shall immediately implement the approved plan(s) and adhere to the milestone dates therein. The approved CP and AAP shall be incorporated into the Agreed Order and shall be deemed an enforceable part thereof.
9. Following completion of the actions included in the AAP, the 12-month Compliance Demonstration, as specified in Order Paragraph 5 above, will re-start. Failure to achieve compliance at the conclusion of work under an AAP may subject Respondent to additional enforcement action.
10. Beginning with the first calendar quarter following the Effective Date, Respondent shall submit to IDEM a written progress report within 10 days of the end of each calendar quarter, during each quarter ending on March 31st, June 30th, September 30th, and December 31st until completion of the CP or AAP.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 7

11. Beginning on the Effective Date and continuing until the successful completion of the approved CP, Respondent shall, at all times maintain in good working order and effectively operate all facilities and systems (and related appurtenances) for collection and treatment.

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

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

13. Respondent is assessed and agrees to pay a civil penalty of Sixty-Three Thousand, Eight Hundred Dollars (\$63,800). Respondent agrees to pay the penalty in six (6) monthly payments as follows:

The first payment of the civil penalty amount is Ten Thousand, Eight Hundred Dollars (\$10,800), which shall be due and payable to the "Environmental Management Special Fund" within 30 days of the Effective Date, the 30th day being the "Due Date."

The remaining five (5)-consecutive and equal payments of Ten Thousand, Six Hundred Dollars (\$10,600) shall be made by the 30th day of each of the five (5) remaining months that follow the initial civil penalty payment, which shall be due and payable to the "Environmental Management Special Fund."

14. In the event the terms and conditions of the following paragraphs are violated, IDEM may assess and Respondent shall pay the corresponding stipulated penalty:

Paragraph	Violation	Stipulated Penalty
3	Failure to obtain IDEM's approval prior to commencing construction, within the required time period.	\$400 per violation.
4	Failure to submit the CP within the required time period.	\$250 per week late, or part thereof.
5	For violations of terms and conditions of the NPDES Permit during the Compliance Demonstration.	\$400 per violation
6	Failure to submit the AAP, if required, within the given time period.	\$500 per week late, or part thereof.
7	Failure to modify the CP and/or AAP, if required, within the given time period.	\$500 per week late, or part thereof.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 8

8	Failure to meet and/or implement any milestone date set forth in the approved CP or AAP.	\$500 per week late, or part thereof.
10	Failure to submit to IDEM a written progress report within 10 days of each milestone date OR calendar quarter.	\$150 per week late, or part thereof.
11	Failure to operate the WWTP as efficiently and effectively as possible prior to Compliance Demonstration.	\$200 per violation.

15. Stipulated penalties shall be due and payable no later than the 30th day after Respondent receives written notice that IDEM has determined a stipulated penalty is due, the 30th day being a "Due Date." IDEM may notify Respondent at any time that a stipulated penalty is due. Failure to notify Respondent in writing in a timely manner of a stipulated penalty assessment shall not waive IDEM's right to collect such stipulated penalty or preclude IDEM from seeking additional relief against Respondent for violation of this Agreed Order. Neither assessment nor payment of stipulated penalties shall preclude IDEM from seeking additional relief against Respondent for a violation of this Agreed Order. Such additional relief includes any remedies or sanctions available pursuant to Indiana law, including, but not limited to, civil penalties pursuant to IC 13-30-4.
16. Civil and stipulated penalties are payable by check to the "Environmental Management Special Fund." Checks shall include the Case Number 2019-26314-W of this action and shall be mailed to:

Indiana Department of Environmental Management
Accounts Receivable
IGCN, Room N1340
100 N. Senate Avenue
Indianapolis, IN 46204
17. This Agreed Order shall apply to and be binding upon Respondent, its successors, and assigns. Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this Agreed Order and legally bind the party they represent. No change in ownership, corporate, or partnership status of Respondent shall in any way alter its status or responsibilities under this Agreed Order.
18. In the event that the monies due to IDEM pursuant to this Agreed Order are not paid on or before their Due Date, Respondent shall pay interest on the unpaid balance and any accrued interest at the rate established by IC 24-4.6-1. The interest shall be computed as having accrued from the Due Date until the date that Respondent pays any unpaid balance. The interest shall continue to accrue on the first of each month until the civil penalty and any interest accrued are paid in full.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 9

Such interest shall be payable to the "Environmental Management Special Fund," and shall be payable to IDEM in the manner specified above.


19. In the event that any terms of this Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if this Agreed Order did not contain the invalid terms.
20. Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms, and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
21. This Agreed Order is not and shall not be interpreted to be a permit or a modification of an existing permit. This Agreed Order, and IDEM's review or approval of any submittal made by Respondent pursuant to this Agreed Order, shall not in any way relieve Respondent of its obligation to comply with the requirements of its applicable permits or any applicable Federal or State law or regulation.
22. Complainant does not, by his approval of this Agreed Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Agreed Order will result in compliance with the provisions of any permit, order, or any applicable Federal or State law or regulation. Additionally, IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of Respondent's efforts to comply with this Agreed Order.
23. Nothing in this Agreed Order shall prevent or limit IDEM's rights to obtain penalties or injunctive relief under any applicable Federal or State law or regulation, except that IDEM may not, and hereby waives its right to, seek additional civil penalties for the same violations specified in the Notice of Violation.
24. Nothing in this Agreed Order shall prevent IDEM (or anyone acting on its behalf) from communicating with the United States Environmental Protection Agency (US EPA) or any other agency or entity about any matters relating to this enforcement action. IDEM or anyone acting on its behalf shall not be held liable for any costs or penalties Respondent may incur as a result of such communications with the US EPA or any other agency or entity.
25. This Agreed Order shall remain in effect until Respondent has complied with the terms and conditions of this Agreed Order and IDEM issues a Resolution of Case (close out) letter to Respondent.

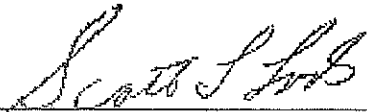
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

Agreed Order: Case No. 2019-26314-W
American Suburban Utilities, Inc.
Construction Permit Nos. 20788 & 22977
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County
Page 10

TECHNICAL RECOMMENDATION:
Department of Environmental Management

RESPONDENT:
American Suburban Utilities, Inc.

By: 

By: 

Samantha K. Groce, Chief
Water Enforcement Section
Surface Water, Operations &
Enforcement Branch
Office of Water Quality

Printed: Scott L. Lods
Title: President
American Suburban Utilities, Inc.

Date: November 9, 2020

Date: 12-Nov-20

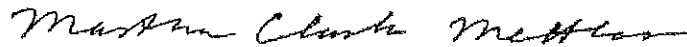
COUNSEL FOR RESPONDENT:

By: 

Date: 12-Nov-2020

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS 1st DAY OF December, 2020.

For the Commissioner:



Martha Clark Mettler
Assistant Commissioner
Office of Water Quality



03/05/2020: Laboratory in Chemical Phosphorus Removal Building (Status: Not Complete)



03/05/2020: Ongoing construction



03/05/2020: Ongoing construction. Stairs and walkway for digesters not complete.



03/05/2020: Facilities under construction



03/05/2020: Backfilling and rough grading not complete



03/05/2020: backfilling, rough grading, access stairs and walkway for digester not complete



03/05/2020: Sludge pond not closed



03/05/2020: Effluent Flow Meter – Access stairs not complete



03/05/2020: Access stairs to new CSBR tanks not complete



03/05/2020: CSBR tanks not rehabilitated



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

Bruno Pigott
Commissioner

June 29, 2020

Via Email to: inbox@asutilities.com
Mr. Scott Lods, Owner
American Suburban Utilities, Inc.
3350 W 250 N
West Lafayette, Indiana 47906

Dear Mr. Lods:

Re: Inspection Summary Letter
American Suburban Utilities-Carriage Estates
WWTP
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County

An inspection of the above-referenced facility or location was conducted by a representative of the Indiana Department of Environmental Management, Office of Water Quality, pursuant to IC 13-18-3-9. A summary of the inspection is provided below:

Date(s) of Inspection: June 24, 2020
Type of Inspection: Reconnaissance Inspection
Inspection Results: Potential problems were discovered or observed.

The Permit section was rated as marginal due to the facility potentially not completing all construction activities associated with the treatment plant expansion construction permit No. 20788. On May 17, 2019 the facility was granted an extension of construction permit No. 20788 that extended the completion timeline until June 30, 2020. At the time of the inspection it was noted that the facility still has to finish installing second influent macerator, finish sludge pond closure through Office of Land, finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding. The facility was aware of the extension completion date of June 30, 2020, but noted they may not complete construction by then depending on the weather and the closure approval of the sludge holding pond.

In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process completing construction associated with the installation of a phosphorus removal system through a separate construction permit, No. 22977. The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs. The treatment plant improvements for phosphorus removal system through construction permit No. 22977 is valid for five years from the approval letter dated February 21, 2019.

A copy of the NPDES Wastewater Facility Inspection Report is enclosed for your records. Please direct any response to this letter and any questions to Aaron Deeter at 317-691-1915 or by email to adeeter@idem.IN.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Groce', with a large, sweeping flourish at the end.

Samantha Groce, Chief
Wastewater Inspection Section
Office of Water Quality

Enclosure



NPDES Wastewater Facility Inspection Report
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NPDES Permit Number: IN0043273	Facility Type: Municipality	Facility Classification: Major	TEMPO AI ID 55359
Date(s) of Inspection: June 24, 2020			
Type of Inspection: Reconnaissance Inspection			
Name and Location of Facility Inspected: American Suburban Utilities-Carriage Estates WWTP 4100 Bridgeway Drive West Lafayette IN 47906		Receiving Waters: Indian Creek	Permit Expiration Date: 1/31/2021 Design Flow: 1.5MGD
On Site Representative(s): First Name: Scott Last Name: Lods Title: Owner		Email: inbox@asutilities.com	Phone: 765-463-3856
Was a verbal summary of findings presented to the on-site representative? Yes, by Phone			
Certified Operator: Dennis Crandell	Number: 15007	Class: IV	Effective Date: 7-1-18
Expiration Date: 6-30-21	Email: dc0866@yahoo.com		
Cyber Security Contact: Name: _____ Email: _____			
Responsible Official: Mr. Scott Lods, Owner 3350 W 250 N West Lafayette, Indiana 47906		Permittee: American Suburban Utilities, Inc. Email: inbox@asutilities.com Phone: 765-463-3856 Fax: _____	
		Contacted? Yes	
INSPECTION FINDINGS			
<input type="radio"/> Conditions evaluated were found to be satisfactory at the time of the inspection. (5) <input type="radio"/> Violations were discovered but corrected during the inspection. (4) <input checked="" type="radio"/> Potential problems were discovered or observed. (3) <input type="radio"/> Violations were discovered and require a submittal from you and/or a follow-up inspection by IDEM. (2) <input type="radio"/> Violations were discovered and may subject you to an appropriate enforcement response. (1)			
AREAS EVALUATED DURING INSPECTION			
<i>(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)</i>			
N	Receiving Waters	N	Facility/Site
N	Effluent	N	Operation
M	Permit	N	Maintenance
N	Collection System	N	Sludge
N		N	Self-Monitoring
N		N	Flow Measurement
N		N	Laboratory
N		N	Records/Reports
N		N	Compliance Schedules
N		N	Pretreatment
N		N	Effluent Limits Compliance
N		N	Other:
DETAILED AREA EVALUATIONS			
This inspection was conducted to evaluate the progress of construction of the wastewater treatment plant expansion. The operation of the treatment plant was not evaluated and no monthly reports were reviewed at the time of the inspection.			
Permit:			
Comments: The Permit section was rated as marginal due to the facility potentially not completing all construction activities associated with the treatment plant expansion construction permit No. 20788. On May 17, 2019 the facility was granted an extension of construction permit No. 20788 that extended the completion timeline until June 30, 2020. At the time of the inspection it was noted that the facility still has to finish installing second influent macerator, finish sludge pond closure through Office of Land, finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding. The facility was aware of the extension completion date of June 30, 2020, but noted they may not complete construction by then depending on the weather and the closure approval of the sludge holding pond.			

In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process completing construction associated with the installation of a phosphorus removal system through a separate construction permit, No. 22977. The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs. The treatment plant improvements for phosphorus removal system through construction permit No. 22977 is valid for five years from the approval letter dated February 21, 2019.

Effluent Limits Compliance:

No 1. Were DMRs reviewed as part of the inspection?

Comments:

Monthly reports were not reviewed during the time of the inspection.

IDEM REPRESENTATIVE

Inspector Name:	Email:	Phone Number:
Aaron Deeter	adeeter@idem.IN.gov	317-691-1915

IDEM MANAGER REVIEW

IDEM Manager:	Date:
Samantha Groce	6/26/2020

Inspection Photographs



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: New influent structures and one of the two old round sludge holding tanks on right



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: New digesters and old sludge holding tanks



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: sludge pond removal



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: New SBR tanks



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: Final UV tank, blower building, post air tank, and final flow meter tank



Facility: American Suburban Utilities- Carriage Estates WWTP
Photographer: Aaron Deeter
Date: 6/24/2020 Time:
Others Present:
Location/Description: construction of chemical feed lines to SBRs



Indiana Department of Environmental Management

We Protect Hoosiers and Our Environment.

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

Eric J. Holcomb
Governor

Bruno Pigott
Commissioner

July 16, 2020

Via Email to: inbox@asutilities.com
Mr. Scott Lods, Owner
American Suburban Utilities, Inc.
3350 W 250 N
West Lafayette, Indiana 47906

Dear Mr. Lods:

Re: **Inspection Summary/ Noncompliance Letter**
American Suburban Utilities - Carriage Estates
WWTP
NPDES Permit No. IN0043273
West Lafayette, Tippecanoe County

An inspection of the above-referenced facility or location was conducted by a representative of the Indiana Department of Environmental Management, Office of Water Quality, pursuant to IC 13-18-3-9. A summary of the inspection is provided below:

Date(s) of Inspection: July 07, 2020
Type of Inspection: Reconnaissance Inspection
Inspection Results: Violations were observed.

The Compliance Schedules evaluation generated an unsatisfactory rating due to the facility still conducting construction activities associated with the treatment plant expansion construction permit No. 20788 that expired on June 30, 2020. This is a violation of 327 IAC 3-2-1 that states in part, no person shall cause, or allow construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer without a valid construction permit issued by the commissioner. This violation is addressed in the facility's existing Agreed Order Case No. 2019-26314-W.

At the time of inspection, the facility had not completed all construction activities associated with the treatment plant expansion construction permit No. 20788. On May 17, 2019 the facility was granted an extension of construction permit No. 20788 that extended the completion timeline until June 30, 2020. The facility was in the process of installing the second influent macerator. The facility has completed sludge pond closure through Office of Land. The facility still needs to finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding.

In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process completing construction associated with the installation of a

phosphorus removal system through a separate construction permit, No. 22977. The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs. The treatment plant improvements for phosphorus removal system through construction permit No. 22977 is valid for five years from the approval letter dated February 21, 2019.

This information is being forwarded to the OWQ Enforcement Section for consideration in conjunction with your Agreed Order, Case No. 2019-26127-W. Please direct any response to this letter and any questions to Rob McLaughlin at 317-452-9059 or by email to rmclaugh@idem.in.gov. **If the non-compliance issues addressed in this report/letter are attributable to the COVID-19 pandemic, please provide this information in your response to this Office.** A copy of the NPDES Wastewater Facility Inspection Report is enclosed for your records.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samantha Groce', written over a horizontal line.

Samantha Groce, Chief
Wastewater Inspection Section
Office of Water Quality

Enclosure

Cc: Samantha Groce, Enforcement



NPDES Wastewater Facility Inspection Report
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NPDES Permit Number: IN0043273		Facility Type: Municipality		Facility Classification: Major		TEMPO AI ID 55359	
Date(s) of Inspection: July 07, 2020							
Type of Inspection: Reconnaissance Inspection							
Name and Location of Facility Inspected: American Suburban Utilities - Carriage Estates WWTP 4100 Bridgeway Drive West Lafayette IN 47906				Receiving Waters: Indian Creek		Permit Expiration Date: 1/31/2021	
County: Tippecanoe				Design Flow: 1.5MGD			
On Site Representative(s):							
First Name	Last Name	Title	Email		Phone		
Scott	Lods	Owner	inbox@asutilities.com		765-463-3856		
Was a verbal summary of findings presented to the on-site representative? Yes							
Certified Operator: Dennis Crandell	Number: 15007	Class: IV	Effective Date: 7-1-18	Expiration Date: 6-30-21	Email: dc0866@yahoo.com		
Cyber Security Contact:							
Name: _____ Email: _____							
Responsible Official: Mr. Scott Lods, Owner 3350 W 250 N West Lafayette, Indiana 47906				Permittee: American Suburban Utilities, Inc. Email: inbox@asutilities.com Phone: 765-463-3856 Fax: _____			
				Contacted? Yes			
INSPECTION FINDINGS							
<input type="radio"/> Conditions evaluated were found to be satisfactory at the time of the inspection. (5) <input type="radio"/> Violations were discovered but corrected during the inspection. (4) <input type="radio"/> Potential problems were discovered or observed. (3) <input checked="" type="radio"/> Violations were discovered and require a submittal from you and/or a follow-up inspection by IDEM. (2) <input type="radio"/> Violations were discovered and may subject you to an appropriate enforcement response. (1)							
AREAS EVALUATED DURING INSPECTION							
<i>(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)</i>							
N	Receiving Waters	N	Facility/Site	N	Self-Monitoring	U	Compliance Schedules
N	Effluent	N	Operation	N	Flow Measurement	N	Pretreatment
N	Permit	N	Maintenance	N	Laboratory	N	Effluent Limits Compliance
N	Collection System	N	Sludge	N	Records/Reports	N	Other:
DETAILED AREA EVALUATIONS							
This inspection was conducted to evaluate the progress of construction of the wastewater treatment plant expansion. The operation of the treatment plant was not evaluated and no monthly reports were reviewed at the time of the inspection.							
Compliance Schedules:							
Comments: The Compliance Schedules evaluation generated an unsatisfactory rating due to the facility still conducting construction activities associated with the treatment plant expansion construction permit No. 20788 that expired on June 30, 2020. This is a violation of 327 IAC 3-2-1 that states in part, no person shall cause, or allow construction, installation, or modification of any water pollution treatment/control facility or sanitary sewer without a valid construction permit issued by the commissioner. This violation is addressed in the facility's existing Agreed Order Case No. 2019-26314-W.							

At the time of inspection, the facility had not completed all construction activities associated with the treatment plant expansion construction permit No. 20788. On May 17, 2019 the facility was granted an extension of construction permit No. 20788 that extended the completion timeline until June 30, 2020. The facility was in the process of installing the second influent macerator. The facility has completed sludge pond closure through Office of Land. The facility still needs to finish gravity sewer piping for drains for tanks, finish air piping to old sludge holding tanks, finish cat walks and stairs for new tanks, install gravel driveway, and finish final grading and seeding.

In addition to the treatment plant expansion (construction permit No. 20788), the facility is in the process completing construction associated with the installation of a phosphorus removal system through a separate construction permit, No. 22977. The facility has completed the chemical feed building and is still in the process of installing chemical feed lines to the SBRs. The treatment plant improvements for phosphorus removal system through construction permit No. 22977 is valid for five years from the approval letter dated February 21, 2019.

Effluent Limits Compliance:

No 1. Were DMRs reviewed as part of the inspection?

Comments:

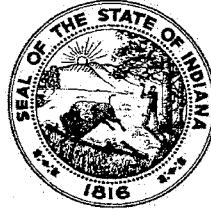
IDEM REPRESENTATIVE

Inspector Name:	Email:	Phone Number:
Rob McLaughlin	rmclaugh@idem.in.gov	317-452-9059
Other staff participating in the inspection:		
Name(s)	Phone Number(s)	
Aaron Deeter	317-691-1915	

IDEM MANAGER REVIEW

IDEM Manager:	Date:
Samantha Groce	7/15/2020

STATE of INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

www.in.gov/iurc
Office: (317) 232-2701
Facsimile: (317) 232-6758

February 15, 2017

via electronic mail

Nicholas K. Kile
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Re: Affiliate Contracts Nos. 2017-1, 2017-2, 2017-3, and 2017-4 between American Suburban Utilities, Inc. and First Time Development Corporation, dated Jan. 13, 2017.

Dear Mr. Kile,

Thank you for submitting the above-referenced affiliate contracts between American Suburban Utilities, Inc. ("ASU") and First Time Development Corporation ("First Time"). The Indiana Utility Regulatory Commission's ("IURC" or "Commission") Office of General Counsel has reviewed these contracts regarding compliance with General Administrative Order ("GAO") 2016-5 and the Commission's Final Order in consolidated IURC Cause Numbers 44676 and 44700 ("Final Order"). This letter lists potential deficiencies and concerns and provides ASU and First Time with the opportunity to revise the contracts to address the identified concerns and adjustments to ASU's affiliate transaction process, which are as follows:

- Compensation is set at the project caps, rather than the actual costs. Affiliate Contract No. 2017-1 (Headworks), Affiliate Contract No. 2017-2 (Phosphorus Removal), and Affiliate Contract No. 2017-3 (CE-III Expansion) provide that ASU shall pay First Time the costs as reflected in the contracts' respective Schedule of Values. The Activity Descriptions in the Schedule of Values total \$1,975,200, \$1,500,000, and \$8,024,800 for each contract respectively. However, these amounts represent the *project caps* approved in the Final Order. While First Time may be compensated up to those amounts, its compensation should be based on the work it performs and the actual costs incurred and not set automatically at the maximum amount authorized by the Commission.
- The compensation scheme in the affiliate contracts is neither transparent nor verifiable. To comply with GAO 2016-5, affiliate contracts must "[i]nclude clear and reasonably detailed information regarding costs and how they are calculated." The submitted affiliate contracts do not appear to meet this requirement. One

potential solution would be for ASU to require that a full-time, independent project inspector be on-site to monitor the development of each project, including completing daily reports documenting what work was performed, what personnel was on-site, what materials were delivered, and what equipment was used.

- The contracts do not appear to require that detailed records be retained (and provided upon request) regarding the work performed. The Final Order stated: “Petitioner shall require First Time or any other affiliated company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment, and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete the work.” Although Affiliate Contract No. 2017-1 (Headworks), Affiliate Contract No. 2017-2 (Phosphorus Removal), and Affiliate Contract No. 2017-3 (CE-III Expansion) require ASU to engage TBird Engineering to perform construction inspections and issue inspection reports, First Time should also be required under these affiliate contracts to justify its cost-basis and invoices through a detailed record retention program consisting of all invoices, receipts, and other documentation associated with the work performed. In addition, Affiliate Contract No. 2017-4 (Sewer Line Services) contains provisions regarding Charges for Services, Charges for Goods, and Use of Equipment and Vehicles. Costs associated with these provisions contemplate the “fair market value” for goods and the “fair rental value” for vehicles and equipment. However, the contract does not require First Time to maintain records, invoices, receipts, or any other documentation that would serve to substantiate these expenditures. Again, First Time should justify its cost-basis for these costs through a detailed record retention program consisting of all invoices, receipts, and other documentation associated with the work performed.
- The percentage adder appears to be excessive. Affiliate Contract No. 2017-4 (Sewer Line Services) provides that ASU shall pay to First Time its actual costs plus 15%, payable upon receipt of a monthly invoice submitted by First Time. There does not appear to be a justification for the 15% adder and the 15% appears to be excessive. A more reasonable payment arrangement would be actual costs plus 10%.
- The contracts do not appear to contain appropriate accounting requirements. The Commission’s Final Order set the expectation that ASU would comply with the National Association of Regulatory Utility Commissioners’ (“NARUC”) Uniform System of Accounts, and specifically with Accounting Instruction 2 for Class A Wastewater Utilities. Unfortunately, the contracts appear to be devoid of these accounting requirements.
- More reliable cost estimates need to be obtained. The Final Order discussed numerous concerns regarding the reliability of cost estimates performed by Mr. Serowka. To more accurately predict project costs, ASU should obtain a disinterested, third-party estimator rather than continuing to retain Mr. Edward J.

Serowka to develop cost estimates. Retaining a disinterested, third-party estimator will help ensure that project costs are not inflated or biased.

Please withdraw the contracts or revise the contracts to correct the deficiencies and concerns listed above no later than Wednesday, March 1, 2017. Failure to do so may result in a Commission investigation regarding whether the contracts should be disapproved.

If you have any questions, please contact me via email at BrPope@urc.IN.gov or call me at the phone number listed below.

Thank you for your prompt attention to this matter.

Sincerely,



Brad J. Pope
Assistant General Counsel
(317) 232-2737

BARNES & THORNBURG LLP

Nicholas Kile
317-231-7768
Nicholas.Kile@btlaw.com

11 South Meridian Street
Indianapolis, IN 46204-3535 U.S.A.
(317) 236-1313
Fax (317) 231-7433

www.btlaw.com

March 30, 2017

Brad Pope
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500E
Indianapolis, Indiana 46204

Via Email brpope@urc.in.gov

RE: Affiliate Contracts 2017-1, 2017-2 and 2017-3 for American Suburban Utilities
Dated January 13, 2017

Dear Mr. Pope:

This is in response to your letter dated February 15, 2017.

We are not at this point withdrawing the three Affiliate Agreements referenced above related to the Carriage Estates III project. Instead we would ask that the Commission Office of General Counsel ("OGC") reconsider the conclusions that you have stated in your letter. American Suburban Utilities, Inc. ("ASU") asks for this change in opinion because it is ASU's sincere desire to keep rates at an affordable level. This is why First Time Development Corp. ("First Time") is willing to construct this project on a fixed fee basis at a cost far below what anyone believes another construction company would charge. Unfortunately, if the OGC continues to adhere to the positions stated in the above referenced letter, First Time cannot and will not do the work. This will force rates significantly higher than they otherwise need to be. Let me explain by responding to the various concerns raised in your letter.

ASU has committed to build the plant for a fixed price of \$11.5 million. This is covered through the course of three agreements – the new headworks already completed for \$1.9752 million (Agreement No. 1), the plant expansion to three million gallons per day ("3.0 MGD") for \$8.0248 million (Agreement No. 3, which when combined with Agreement No. 1 equals a total of \$10.0 million), and phosphorous removal for \$1.5 million (Agreement No. 2). The OGC has objected on the bases that the compensation is set as a fixed fee cap equal to the amount the Commission has preapproved and that the OGC would like to see "more reliable" estimates of the costs. ASU has done two things to respond to these concerns. First, it has returned to the independent engineer, Hannum Wagle & Cline ("HWC") that prepared the original estimate. This is the engineering firm that prepared the independent estimate in Cause No. 44272 which ultimately led to the Commission's finding approving that First Time could do this work. HWC has updated the original cost estimate to scale back the project to the 3.0 MGD that ASU is

Brad Pope
March 30, 2017
Page 2

committing to construct. That cost estimate is attached hereto. HWC estimates the construction cost to be \$16 million, and this does *not* include the phosphorous removal.

In addition, ASU has solicited a third party bid from an independent construction company who is not expected to bid on the project but does do construction work in Tippecanoe County, Indiana. ASU has never done work with Schomburg & Schomburg Construction – there is no affiliation or past relationship whatsoever. Schomburg’s bid is also submitted herewith. Like the HWC estimate, Schomburg’s bid does not include the cost of the phosphorous removal. Both HWC’s estimate and Schomburg’s bid include the Headworks project, nearly all of which was completed before these Affiliate Agreements were submitted. In other words, both of these estimates are for the work covered by the \$10 million cap that is set forth in Agreements 2017-1 (Headworks) and 2017-3 (CE-III Expansion). As is readily apparent, it should be expected that in the competitive marketplace, this project will cost no less than \$14.5 million plus the cost for phosphorous removal. Further, neither estimate is a cap. Change orders encountered during construction are very common in the utility construction industry and could drive the price higher. Both estimates are still at least \$4.5 million more than the cap First Time is willing to accept for these project costs. As indicated before, First Time is willing to do this because of the desire to maintain affordable rates.

The OGC also requests that a full-time employee be hired for inspection purposes and that record keeping be implemented at a level which First Time does not possess the resources to maintain. There appears to be a failure to recognize that First Time could not agree to the cap if it must undertake these additional administrative costs. If First Time must hire additional staff solely for the purpose of satisfying the preference for full-time inspections and additional record keeping, First Time is unwilling to do this work, let alone to do it for the fixed amount set forth in the contracts.

Next, your letter contends that the National Association of Regulatory Utility Commissioners’ (“NARUC”) Uniform System of Accounts (USoA) requires the additional records. Accounting Instruction 2 for Class A Wastewater Utilities as cited in the letter only applies to keeping the books and records for the “utility” – ASU. The OGC’s interpretation attempts to impose requirements upon the affiliate – First Time. The instruction for books and records in relationship to the affiliate is set forth in Accounting Instruction 15, which provides:

Each utility shall keep its accounts and records so as to be able to furnish accurately and expeditiously statements of all transactions with associated companies. The statements may be required to show the general nature of the transactions, the amounts involved therein, and the amounts included in each account prescribed herein with respect to such transactions. Transactions with associated companies shall be recorded in the appropriate accounts for transactions of the same nature. Nothing herein contained, however, shall be construed as restraining the utility from subdividing the accounts for recording separately transactions with associated companies.

Brad Pope
March 30, 2017
Page 3

The Affiliate Agreements fully satisfy ASU's obligations pursuant to Instruction 15.

I understand that you personally may not have been involved with this plant expansion proposal back to its infancy in Cause No. 44272. ASU filed that case in November 2012. During the ensuing 4-1/2 years, no party has ever suggested, let alone provided any evidence, that this work can be done competitively for \$10 million. You may not recall that First Time was proposing in Cause No. 44272 to install the Klondike Road interceptor for a cost of \$725,000 (excluding easements, engineering and dewatering). Ultimately First Time determined not to contract for the Klondike Road project, and it was instead competitively bid. The competitive bid was \$1.716 million, and that is the amount that the Commission approved to be included in rates in the most recent case. Competitive bidding produced an increase in cost of 136% for that project. This history should confirm for us that the difference between First Time's proposal for Carriage Estates and the Schomburg bid (a savings of 1/3) is extremely realistic.

It is with this background that I summarize the road that lies ahead. If this letter is unsuccessful in satisfying the OGC's concerns about the Affiliate Agreements, ASU does not intend to defend a Commission investigation into the Agreements. Further, the Agreements will not be replaced. Rather than do so, ASU will pull these Affiliate Agreements and will competitively bid the remaining work. But if that is to be the course, there needs to be a clear understanding of the real-world impact that choice would have. There is no dispute that ASU needs additional capacity at the Carriage Estates plant. Indeed, it has been preapproved by Commission Order. There is also no dispute that phosphorous removal is needed with that expansion, which has also been preapproved by Commission Order. Twice now, the Office of Utility Consumer Counselor has analyzed the need and testified under oath that the plant should be expanded to 3.0 MGD. First Time is prepared to do that work for a total fixed price under the three Agreements of \$11.5 million. There will be no change orders, and the plant will not be expanded beyond the amounts that both the OUCC and the Commission in the recent rate case (Cause No. 44676) found to be appropriate. Assuming that the Commission grants a six-month extension of the final in-service date for the Carriage Estates improvements, ASU is willing to live with the rates that were recently approved in the most-recent rate case. That will require ASU to file a motion in the rate case for the six month extension of the final in-service date, and I understand the OUCC may have objection to granting that motion. But if the Commission allows the plant to be built pursuant to Affiliate Agreements 1, 2 and 3 and if the Commission grants that motion for six month extension, ASU will not be forced to file another rate case and can accept the ultimate monthly residential rate of approximately \$76.

If, after considering the foregoing responses, the OGC remains of the view that the Agreements are not acceptable, the Agreements will be withdrawn and not replaced. As indicated in the original submission, the last construction work that First Time will do for ASU is the construction work covered by these three Agreements. If these three Agreements are not accepted, there will be no ongoing relationship between First Time and ASU other than the

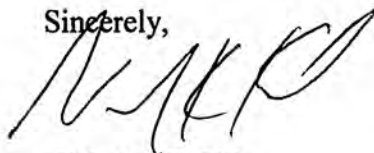
Brad Pope
March 30, 2017
Page 4

sewer service line agreement, which is Affiliate Agreement No. 2017-4.¹ Instead, ASU will solicit competitive bids for the Carriage Estates III project. Because the rates are insufficient to address the additional costs that would be associated with competitive bidding, a new rate case would be filed. Using the revenue requirement from the last rate case (which is largely based upon expenses incurred during the twelve months ended March 31, 2015) and merely adjusting for the additional capital outlay that would result from the Schomburg bid, the rates would go to approximately \$87. I am attaching in Excel a worksheet that demonstrates this calculation as well as a worksheet demonstrating the Phase III rates under the Affiliate Agreements. The only change is to reflect additional depreciation expense, return, and income taxes on the additional \$4.5 million. The result would be that ASU's customers would be paying greater than \$11 more each month.

If you or anyone else is aware of a way for this work to be done for less than the \$11.5 million that First Time has capped its price, please tell us. We will immediately hire them to do the work so that the rates can be kept at the level just approved. If the OGC is not aware of a way for this project to be completed for less, then please reconsider the position stated in your letter. The OGC will be gambling on a matter of principle, and ASU fears it is the customers who will ultimately pay the price.

I look forward to hearing further from you.

Sincerely,



Nicholas K. Kile

NKK:jc

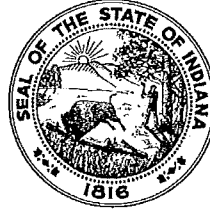
Attachments

cc: James Atterholt (w/enc.) (jatterholt@urc.in.gov)
Angela Rapp Weber (w/enc.) (aweber@urc.in.gov)
Senator Ron Alting (w/enc.) (Senator.Alting@iga.in.gov)
Representative Sally Siegrist(w/enc.) (h26@iga.in.gov)
Representative Todd Rokita (trokita@hotmail.com)
Daniel LeVay (w/enc.) (dlevay@oucc.in.gov)
Robert Johnson (w/enc.) (rjohnson@utilitylaw.us)

DMS 4872154v1

¹ We have already amended Agreement No. 4 once to satisfy your concerns. Upon confirmation that we have received all concerns, we will submit an executed agreement amending it once more to address the items raised in your email of March 20, 2017.

STATE of INDIANA



INDIANA UTILITY REGULATORY COMMISSION
101 WEST WASHINGTON STREET, SUITE 1500 EAST
INDIANAPOLIS, INDIANA 46204-3419

www.in.gov/iurc
Office: (317) 232-2701
Facsimile: (317) 232-6758

April 21, 2017

Nicholas K. Kile
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204

via electronic mail

**Re: American Suburban Utilities, Inc., and First Time Development Corporation
2017 Affiliate Contracts**

Dear Mr. Kile,

Thank you for your letter dated March 30, 2017, regarding American Suburban Utilities, Inc. ("ASU") and First Time Development Corporation ("First Time"), who are affiliated companies with Scott Lods as President of both companies and who have submitted their affiliate contracts to the Indiana Utility Regulatory Commission ("IURC" or "Commission"). Much of the information provided in your March 30th letter had not been provided previously to the Commission and its staff, so it was helpful. We look forward to meeting with you and your client on April 24, 2017, to discuss this further.

The record-keeping and evidence required by statute and by the Commission can help ASU demonstrate that its relationship with its affiliates is above board and appropriate. As you are aware, in its November 2016 order in ASU's rate case, the Commission expressed its concerns about ASU and its affiliates, the lack of records and inspector reports about the work being done for ASU by the affiliates, the lack of detail about the work being performed by First Time (including personnel and equipment used and specific activities performed), and the inadequacy of ASU's records and its failure to follow required accounting procedures. The Commission's November order also required ASU to provide verification of construction costs incurred and paid, as well as require ASU's affiliates, such as First Time, to "submit detailed invoices for all costs including unit costs for structure, materials, labor, equipment, and engineering." The reports, records, and accurate accounting procedures referenced in the Commission's order are necessary to protect ratepayers and help to assure that ASU and First Time are accurately reporting the costs of construction to be included in ASU's rates.

Another important protection to ratepayers is state statute Indiana Code § 8-1-2-49, which requires that contracts between a public utility and its affiliate are not in effect until those contracts have

been submitted to the Commission and that the Commission may disapprove an affiliate contract if the Commission finds the contract is not in the public interest. Commission staff, including the Commission's Office of General Counsel, review the submitted affiliate contracts and communicate with the utility regarding any concerns, prior to the opening of an investigation by the Commission regarding whether the affiliate contract is in the public interest. Regarding the 2017 affiliate contracts between ASU and First Time, you submitted those contracts on January 13, 2017, and Commission staff provided its concerns (regarding whether the submitted affiliate contracts were in compliance with the Commission's order and procedures) via letter and electronic mail on February 15, 2017.

The Commission staff's concerns are not merely based on a "matter of principle" as your letter suggests but are focused on the Commission's statutory requirements. Indeed, the Commission found through the adoption of General Administrative Order ("GAO") 2016-5 "that certain contract provisions are generally necessary in order for an affiliate contract to be deemed in the public interest." To be more specific, Section IV of GAO 2016-5 states:

In order to be considered in the public interest, as required by IC 8-1-2-49, affiliate contracts must, at minimum, do the following:

- (a) Include clear and reasonably detailed information regarding costs and how they are calculated. This information should be reasonably detailed relative to the cost of products or services in the contract.
- (b) Include clear information regarding the scope of work or duties of the parties. This information should be reasonably detailed relative to the nature of the contract.

Moreover, Commission staff's Feb. 15th letter also raised concerns focused around ASU's compliance with the Commission's order, in which the Commission stated:

... in all future proceedings, Petitioner shall provide records sufficient to support all major plant investments, including, but not limited to a detailed project description, the basis or need for the project, cost estimates (including material quantities), bids, and invoices that are broken out in sufficient detail to allow an auditor adequate information to verify the reasonableness of the project and the amounts paid.

....

Further, we are concerned with the lack of documentation maintained by Petitioner. Therefore, Petitioner shall require First Time or any other affiliated company to submit detailed invoices for all costs including unit costs for structures, materials, labor, equipment, and engineering, which should be compared to the cost estimate or contract entered into by Petitioner to complete the work. We expect to receive this level of detail regardless of whether the work performed was done so under a lump sum or time and materials contract.

In light of the Commission's order, Commission staff still have the following concerns and comments regarding the 2017 affiliate contracts between ASU and First Time:

1. Fixed fee or lump sum contracts still require reliable estimates and documentation of costs.

Commission staff is concerned that the 2017 affiliate contracts set the compensation at the maximum amount allowed by the Commission without requiring more reliable estimates and documentation of costs

ASU has responded to these concerns in two ways.

First, you state that ASU “has returned to the independent engineer, Hannum Wagle & Cline (“HWC”) that prepared the original estimate” to produce an updated estimate for the 3.0 MGD plant. However, it is the experience of Commission staff that design engineers are adept at establishing budgets for construction projects but have a tendency to consistently overstate their estimates of actual bids (by 30% to 50% in some cases). It would be inappropriate for the Commission to allow such known pricing biases to be passed along to customers in the consideration of an affiliate agreement. As design engineers are developing cost estimates, they are under no pressure or obligation to produce an estimate that reflects the actual cost of a project because they are under no obligation to build the project for that cost. For this reason, Commission staff requested in the Feb. 15th letter that an independent, third-party construction estimator be retained to develop a cost estimate. Estimators are in the business of breaking down construction plans into their various material, labor, and equipment cost components and take into account existing market conditions in the development of their estimates.

Second, ASU also provided a “Proposal” by Schomburg & Schomburg Construction, dated March 13, 2017, for the work proposed. While this estimate provides a summary of what Commission staff requested, the lack of detail is disappointing. The estimate provided costs for specific components of the plant, but it failed to identify the various material, labor, and equipment components that make up the cost of each component. Short of the Commission staff obtaining a set of construction drawings or specifications and completing quantity take-offs of each component, it is impossible for Commission staff to determine the reasonableness of those costs. To enable a proper review, please request that the estimator provide the quantity take-offs for each component of the cost identified in attachment one (1), which should have been prepared as the basis for these costs.

2. Inspections and record keeping

Appropriate inspections and record keeping are necessary not only to protect ratepayers, but also to provide the Commission with the substantial evidence needed before the project costs may be included in ASU’s rates. However, it appears that this recommendation may have been misinterpreted. Commission staff is not requiring that a full-time employee be hired for inspection purposes or that record keeping be implemented at a level which First Time does not possess the resources to maintain.

Per Commission staff’s understanding of the standard of care for such projects, it would be expected that ASU, as project owner, would have an individual (in this case, T-Bird

Engineering) on site during construction to ensure that materials, progress, and quality of work provided by the contractor conform with the construction plans and to maintain project documents such as material tickets, testing data, shop drawing, and payment requests. In staff's experience, inspection services can be procured (and apparently have been per ASU's Jan. 13, 2017 filing) on a contractual basis and do not necessarily require ASU to obtain a full-time employee. The services of the inspector protects the interest of the owner and, ultimately, its customers. ASU engaged T-Bird Engineering in a past project, but the monthly reports provided as support in that case were not adequate. The inspector needs to document project progress and all site activities on a daily basis.

In addition, while not a deficiency with the affiliate contracts themselves, ASU's construction inspector, T-Bird Engineering, should provide detailed daily reports instead of the monthly reports that were provided in the rate case. The daily reports should at a minimum provide documentation of what work was performed, what personnel was on-site, what materials were delivered, and what equipment was used. Such a basic project management function could have significantly documented and addressed many of the OUCC's concerns in the previous case. Requiring T-Bird Engineering to provide the aforementioned details can protect ASU's project interests as noted above and can help provide the additional documentation directed by the Commission's order

3. Accounting requirements

The Commission's order directed ASU to comply with National Association of Regulatory Utility Commissions' ("NARUC") Uniform System of Accounts ("USoA"). In order to do that, ASU must require that First Time provide the necessary record keeping and documentation.

Contrary to what is stated in your letter, Commission staff is not seeking to impose accounting requirements upon the affiliate First Time. Rather, it is the Commission's expectation, pursuant to its Order, that ASU would comply with the NARUC's USoA. It is also the Commission's expectation that ASU would impose upon First Time, through its contract provisions, requirements for the detailed information necessary to comply with the Commission's order.

4. Competitive bid costs

Finally, you provided an example regarding the Klondike Road project wherein "[c]ompetitive bidding produced an increase in the cost of 136% for that project." Evidence in Cause No. 44272 and 44676 indicates that the \$725,000 project estimate was based on a preliminary design. The Office of Utility Consumer Counselor ("OUCC") identified that the project substantially increased in scope, depth, and length from what was pre-approved in Cause No. 44272. Moreover, the cost overruns appears to be the result of poor project scoping, planning, and estimating by ASU. Therefore, your conclusion that the cost increase is attributable to competitive bidding is disingenuous given the above-indicated changes in the project and considering that the engineer was never under obligation to build the project for \$725,000 in the first place. It is inappropriate to classify these estimation and planning errors as a missed opportunity at savings.

Regarding the Carriage Estates-III project, you state “no party has ever suggested, let alone provided any evidence, that this work can be done competitively for \$10 million.” However, because the project has not been competitively bid, it is also unknown whether a company not affiliated with ASU would be willing to bid and construct the project for less than First Time’s apparent price of \$10 million. As noted previously, an engineer’s estimate cannot substitute for a reasonable, competitive bid because the engineer was never under any obligation to build the project for that price.

5. Sewer line services contract

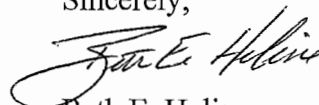
Your letter also discusses Affiliate Contract No. 2017-4 (Sewer Line Services) between ASU and First Time and expressed your willingness to revise that particular contract in accordance with Commission staff’s suggestions. One point of clarification – please let us know whether your reference to “accounting requirement” refers to the requirements outlined on page 41 of the Commission’s order. If that is what was intended, then all of Commission staff’s issues with that agreement have been addressed. Please provide an executed copy of the second revised Affiliate Contract No. 2017-4 (Sewer Line Services) for the Commission’s review and files.

Commission staff is encouraged by ASU’s desire to keep rates at an affordable level. Our concerns are also focused on utilities maintaining affordable rates. I hope this letter addresses the concerns raised in your March 30, 2017 letter. To be clear, at no time during staff’s review has it been expressed or implied that First Time would not be able to recover the amounts approved by the Commission, as long as the required documentation is provided. To the contrary, Commission staff hopes that ASU will reconsider its decision to not revise the affiliate contracts but, instead, work to ensure that the contracts meet the requirements of GAO 2016-5 and the Commission’s order.

If you would like to discuss the concerns of Commission staff prior to our meeting on April 24th, please contact me or Assistant General Counsel Brad Pope.

Thank you for your work on this matter.

Sincerely,



Beth E. Heline
General Counsel

cc: James Atterholt, Chairman, IURC
Angela Rapp Weber, Commissioner, IURC
Senator Ron Alting
Representative Sally Siegrist
Representative Todd Rokita
Daniel LeVay, Deputy Consumer Counselor, OUCC
Robert Johnson

From: Heline, Beth E. <BHeline@urc.IN.gov>
Sent: Monday, May 1, 2017 4:43 PM
To: Kile, Nicholas
Cc: senator.alting@iga.in.gov; h26@iga.in.gov; trokita@hotmail.com; Pope, Brad; Levay, Daniel; Johnson, Bob; Close, Hillary; Gassert, Curt; Lynn, Dana; Turner, Marcus
Subject: RE: American Suburban Utilities Affiliate Agreements

Nick,

Thank you for providing the draft revisions to the affiliate contracts between American Suburban Utilities, Inc. ("ASU"), and First Time Development Corporation. Based on these revisions, and upon the receipt of the executed revised contracts, Commission staff will not be recommending the opening of a proceeding regarding these contracts under Ind. Code § 8-1-2-49.

As a disclaimer, this staff decision does not indicate a pre-determination by the Indiana Utility Regulatory Commission regarding future ASU proceedings, its compliance with Commission orders, or the need to provide sufficient evidence on which the Commission may base its determinations.

Thank you again for agreeing to meet with us and for the helpful discussion.
Beth

Beth E. Heline
General Counsel
Indiana Utility Regulatory Commission
101 W. Washington St., Suite 1500 East
Indianapolis, IN 46204
Direct line: (317) 232-2092
Fax #: (317) 232-6758
Email: bheline@urc.in.gov

Confidentiality Notice: This e-mail transmission may contain deliberative, confidential or other legally privileged information that is not subject to public disclosure under Ind. Code § 5-14-3-4(b), and is intended only for the individual or entity named in the e-mail address. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or reliance upon the contents of this e-mail is strictly prohibited.

If you have received this e-mail transmission in error, please reply to the sender, so that the Indiana Utility Regulatory Commission's Office of General Counsel can arrange for proper delivery, and then please delete the message from your inbox. Thank you.

From: Kile, Nicholas [mailto:Nicholas.Kile@btlaw.com]
Sent: Friday, April 28, 2017 1:40 PM
To: Heline, Beth E. <BHeline@urc.IN.gov>
Cc: senator.alting@iga.in.gov; h26@iga.in.gov; trokita@hotmail.com; Pope, Brad <BrPope@urc.IN.gov>; Levay, Daniel <dlevay@oucc.IN.gov>; Johnson, Bob <rjohnson@utilitylaw.us>; Close, Hillary <Hillary.Close@BTLaw.com>
Subject: American Suburban Utilities Affiliate Agreements

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

OUCS DR 1-3

**DATA INFORMATION REQUEST
American Suburban Utilities, Inc.**

Cause No. 44676

Information Requested:

Detailed invoices First Time or any other contractor or supplier submitted for all costs including unit costs for (a) structures, (b) materials, (c) labor, (d) equipment, and (e) engineering. (See Final Order, p. 41, Cause No. 44676).

Information Provided:

All First Time invoices have already been submitted. The text of the question suggests that further explanation is warranted. Note that the information cited in the question is not required to be part of the compliance filing but rather is language that was to be addressed in the next affiliate agreements to be submitted by ASU. As the order states in the ensuing paragraph to the one the question cites:

“The Commission concludes that the affiliate transaction process proscribed for Petitioner in the final order for Cause No. 43294 (Jan 23, 2008) may not be adequate in insuring that the affiliated transactions are competitive, reasonable, and in the public interest. The affiliate contract between Petitioner and First Time Development Corp. is set to expire in January of 2017. The Commission shall address these issues upon the filing of Petitioner’s next affiliate contract provided to the Commission for review pursuant to Ind. Code §8-1-2-49(2)(g).

Order, p. 42.

Following the issuance of the Order, ASU submitted its renewed affiliate agreements on January 13, 2017. This prompted a response from the Commission General Counsel’s Office dated February 15, 2017, indicating objections to the terms, and asking them to be withdrawn by March 1, 2017, and that, otherwise, an investigation might be commenced. That response is submitted herewith. ASU thereafter responded to the February 15 letter on March 30, 2017, also submitted herewith. First Time’s position was that if it were required to submit its own cost information, that it would be unwilling to do the work, that the affiliate contracts would simply be withdrawn, and that that the contract would be competitively bid (and likely for a much higher amount based upon an updated cost estimate and a competitive bid that had been solicited). The Commission General Counsel’s Office responded with the letter attached hereto on April 21, 2017. All

stakeholders, including the OUCC, the intervenor, and others, were copied on this series of correspondence. A meeting was then held at the Commission's offices on April 27, 2017, which was attended by ASU representatives, the OUCC, the Commission's General Counsel, the Commission's Staff, and the intervenor. That meeting ultimately resulted in agreement regarding the terms of affiliate agreements that would be acceptable. This ultimately resulted in the submission of revised affiliate agreements, including an absolute cap on construction costs to be charged by First Time to ASU. This is a term that ASU would never have achieved with any non-affiliated entity, and the cap was set at a level far below what any party suggested could be the competitive price for this work. This commitment, together with others, caused the withdrawal of the Commission General Counsel's objections. This is reflected in the email attached from Beth Heline, dated May 1, 2017. The final executed affiliate agreements were submitted on May 2, 2017. They were returned the next day noted as "received." All of this was accomplished before work began on the improvements that are the subject of the Phase 3 submission, and all parties were informed that work would not begin on the Phase 3 improvements until the affiliate contract issues had been resolved. Once the agreements were submitted on May 2, 2017, they became effective pursuant to Ind. Code §8-1-2-49(2). These agreements remain effective unless and until "it be found that any such contract is not in the public interest." *Id.* The "issues" noted in the question were "addressed" by the Commission "upon the filing of Petitioner's next affiliate contract provided to the Commission for review pursuant to Ind. Code §8-1-2-49(2)(g)." All stakeholders, including the OUCC, had the right pursuant to Ind. Code §8-1-2-54 to file a complaint with the Commission to challenge the affiliate agreements if they felt the affiliate agreements failed to address the Commission's issues expressed in the Order. The work under the agreements is now complete, such that they are no longer executory.

Attachments:

Oucc DR 1-3, Attachment 1.pdf
Oucc DR 1-3, Attachment 2.pdf
Oucc DR 1-3, Attachment 3.pdf
Oucc DR 1-3, Attachment 4.pdf
Oucc DR 1-3, Attachment 5.xlsx
Oucc DR 1-3, Attachment 6.xlsx
Oucc DR 1-3, Attachment 7.pdf
Oucc DR 1-3, Attachment 8.pdf
Oucc DR 1-3, Attachment 9.pdf
Oucc DR 1-3, Attachment 10.pdf
Oucc DR 1-3, Attachment 11.pdf
Oucc DR 1-3, Attachment 12.pdf
Oucc DR 1-3, Attachment 13.pdf