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ENVIRONMENTAL PROGRAMS



Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT is made this $(9.9)_1$ day of $(1.0)_2$, by Fort Wayne Urban Enterprise Association, Inc. ("Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Allen, Indiana, which is located at 1417 Hanna Street in Fort Wayne and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on October 31, 2006, and recorded on November 22, 2006, as Deed Record 206071330 in the Office of the Recorder of Ailen County, Indiana. The Real Estate, which is one of three parcels on the above-referenced deed, consists of approximately 0.25 and is identified by the State by parcel identification number 02-12-12-130-005.000-074. The Real Estate to which this Covenant applies is depicted on a map attached hereto as Exhibit "B".

WHEREAS: A Site Status Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of City of Fort Wayne Redevelopment Department to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and petroleum relating to historical operations on the Real Estate, Program site number BFD #4140707.

WHEREAS: The Site Status Letter, as approved by the Department, provides that certain contaminants of concern ("COCs") remain in soil on the Real Estate following remediation activities but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment. The COCs are benzo(a)pyrene and arsenic.

WHEREAS: Soil and ground water on the Real Estate were sampled for some or all of the following: volatile organic compounds ("VOCs"), polyaromatic hydrocarbons ("PAHs"), and Resource Conservation and Recovery Act ("RCRA") metals. Benzo(a)pyrene and arsenic levels above their respective residential direct contact screening levels ("RDCSLs") established by IDEM in the Remediation Closure Guide ("RCG") (March 22, 2012 and applicable revisions) remain in soil on the Real Estate following remediation. Analytical results of soil samples that exceed applicable RCG screening levels remaining on the Real Estate following remediation are summarized on Table 1, attached hereto as **Exhibit "D"**. A site map, attached hereto as **Exhibit "E"**, depicts the sample locations on the Real Estate at which the COCs were detected in soil above applicable RCG screening levels and remain on the Real Estate following remediation.

WHEREAS: Notwithstanding that COCs remain in soil on the Real Estate above applicable RDGSLs at multiple locations following remedial activities, the Department 2017029370

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approved a conditional residential closure of environmental conditions on the Real Estate under the RCG since: (1) soil contaminated with mercury at levels above its EX DCSL was removed from the Site to the maximum extent possible; (2) the calculated average concentrations of lead and mercury detected in soil on the Real Estate are below their respective RDCSLs; (3) benzo(a)pyrene and arsenic concentrations detected in soil on the Real Estate while exceeding their respective RDCSLs, do not exceed their respective IDCSLs at any on-Site location; (4) none of the sampled constituents were detected in the any ground water sample collected on the Real Estate; and, (5) potential exposure to detected soil contamination can be controlled with an institutional control. Therefore, environmental conditions on the Real Estate meet conditional residential cleanup criteria in the RCG so long as the land use restrictions required by this Covenant are maintained.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: http://www.in.gov/idem/4101.htm.

NOW THEREFORE, the Fort Wayne Urban Enterprise Association, Inc. subjects the Real Estate to the following restrictions and provisions, which shall be binding on the Fort Wayne Urban Enterprise Association, Inc. and all future owners:

i. <u>restriction</u>s

- Restrictions. The Owner and all future owners:
 - (a) Shall not use the Real Estate for any agricultural use.
 - (b) Shall not excavate soil on the Real Estate during any residential construction without first submitting a work plan for approval by IDEM at least sixty (60) days prior to beginning work. Any removal, excavation or disturbance of soil from the Real Estate during any residential construction must be done in accordance with an IDEM-approved work plan.
 - (c) Shall sample soil in any area on the Real Estate on which standalone single-family or duplex residential housing will be constructed down to 10 feet below ground surface and remove any soil determined through such sampling to be above RDCSLs.
 - (d) Shall restore soil disturbed as a result of excavation and construction activities on the Real Estate in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under the RCG using residential screening levels). Upon the Department's request, the Owner shall provide the Department with documentation showing the excavated and restored area, and any other area affected by excavation or construction activities, does not represent such a

threat. Any soil that is removed, excavated or disturbed on the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Rolated Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the remediation work plan (if applicable), and inspect records.
- 5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED 1000 1000 2010, RECORDED IN THE OFFICE OF THE RECORDER OF ALLEN COUNTY ON 2010, INSTRUMENT NUMBER (or other identifying reference) 2010 24370 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

- Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee.
- Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. <u>ENFORCEMENT</u>

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM. MODIFICATION AND TERMINATION

- Term. The restrictions shall apply until the Department determines that contaminants of concern on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
- Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Allen County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. <u>MISCELLANEOUS</u>

11. <u>Waiver</u>. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

- 12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.
- 13. Change in Law. Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
- 14. <u>Notices</u>. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

<u>To </u>Θw<u>ner</u>:⊸

Fort Wayne Urban Enterprise Association, Inc. 1830 Wayne Trace Fort Wayne, Indiana 46803 ATTN: Regina Kostoff

<u>To Department:</u> Indiana Brownfields Program 100 N. Senate Avenue, Rm. 1275 Indianapolis, Indiana 46204

ATIN: Ken Coad

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

- 15. <u>Severability.</u> If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
- 16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

attachments.
IN WITNESS WHEREOF, Fort Wayne Urban Enterprise Association, Inc., the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this day of
Fort Wayne Urban Enterprise Association, Inc.
STATE OF Internal) SS: COUNTY OF Aller
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Patrice Trume, the President of Bendallow of the Owner, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.
Witness my hand and Notarial Seal this <u>Riv</u> day of <u>Number</u> , 2017 Building C. Name of Notary Rublic Residing in <u>Ollando</u> County, <u>Thatasa</u>
My Commission Expires:
February 8, 2023
This instrument prepared by:
Laffirm, under the perialties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.
Social Security number in this document, unless required by law. Region A. Vos North

Owner hereby attests to the accuracy of the statements in this document and all

EXHIBIT A

Quit Claim Deed for the Real Estate

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ESTEROMORATION PROCESSES

#206071330 Recorded 11/22/2006 06:23:47 RECORDER PAIK OTH J CROSK ALEN GUERTY, IN RECRIPT No. 5:498 USHD 5:00 TESP 2:00 HIGH 1:00 SEST 5:00 Jotal 19:00

Mail Tax Bills To: 1730 WAYNE TRACE FORTWAYNE, IN 46803

QUIT CLAIM DEED

THE INDENTIFIE WITNESSTIL, that OmniSource Corporation, an Indiana corporation ("Grantor") of Allen County in the State of Indiana QUIT CLAIMS to the Fact Wayne Urban Enterprise Association, Inc., an Indiana corporation ("Chanten") of Allen County in the State of Indiana in consideration of One Dollar and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in the following described real estate ("Kezi Estate") in Allen County, in the State of Indiana.

Lot 731 Sumus! Hanna's Amended Addition. 62-17-17-136-065-000-074
Lot 732 Samual Hanna's Amended Addition. 62-(7-)25-136-017-000-074-4-4-7-7
Lots 168 through 175 (fibra Hanna Senior's Addition 62-031-134-013-000-074-4-7-7-)

Grantor hereby impresses upon the Real Estate the following restrictions and covenants which shall am with the Real Estate and be binding upon (trainer, future owners of the Real Estate, and anyone clausing under them.

- 1. Probablied Uses of the Real Estate. The Real Estate and any part thereof shall not be used, directly or induredly, in any operation or business, the primary purpose of which is the collection, storage, staging, transporting, transferring, processing, buying, selling or trokering of ferrois or non-ferrois strap metals.
- 2. Duration and Alteration. The restrictions and coverants contained herein shall be construed as and shall be convenient running with the land and shall be bracking upon all owners of all or any part of the Real Estate and any persons claiming under them, and shall continue in existence for a period of fifty (50) years commoning on the case of the recording bereaf, and may be amerated or abolished, in whole or in part, at any time prior to the expiration of said fifty (50) year period, only by the written agreement of Gramon. The restrictions and coverants contained herein shall automatically terminate upon the expiration of the fifty (50) year period accumenting on the date of the recording hereof without any further across or fillings by the parties hereon.
- 3. Investigation and Compliance. A representative chosen by Grantor shall have the right of access to the Real Estate at all reasonable times and in a reasonable manner and upon reasonable notice to investigate and determine compliance with the provisions of this Declaration
- 4. No Waiver. The failure of Chautor to entorce the provisions hereof shall not constitute a waiver of the right to enforce them on another occasion and no delay in entorcement shall constitute a waiver of the right of enforcement so long as a violation continues.
- 5. Successors and Assigns. The restrictive povenants set forth above shall be binding on and inuse to the benefit of Grantor and Grantee, and their respective successors, grantees and assigns.
- 6. Remedies. Grantee acknowledges that it may be difficult to compensate (franter with monetary damages in the event of a violation or breach of any restriction or coverant set for a berein. Grantee therefore agrees that in

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addition to any other right which Greator may have at law or in equity as a result of an actual breach or violation, or threatened bruarli of violation, of any restriction or covenant horain temporary, prediminary and permanent injunctive relief may be granted in favor of Grantos, together with attorney's fees and costs, in any proceeding which may be brought to enforce any of the provisions hereof, without the necessity of proof of across demage. Granton's temodica shall be complative and non-exclusive, and Grantor shall also be entitled to recover all actual, meideptal, consequential, and punitive damages, legether with atterney's fees and costs,

The undersigned person executing fails deed on behalf of Grantor represents and certifies that he is duly authorized to act for Granter and has been folly empowered by proper resolution, or the by-laws of Grantor, to execute and deliver this deeut that Grantor is a corporation in good steading in the State of its origin and, where requared, in the State where the subject real estate is situate; that Granton has full corporate capacity to convey the real estate described; and that all hecessary corporate action for the making of such conveyance has been only taken and done.

Dated this 3 st day of October, 2005,

OMNISOURCE CORPORATION

STATE OF INDIANA, COUNTY OF ALLEN) 58:

Before me, Consudersigned, a Notarry Public in and for said County and State, this they of Gottil personally appeared OamiSource Corporation by Daniel M. Rifkin, its President, and acknowledged the execution Amagaing Decal.

IN WITNESS WHEREOP, I have hereunto subscribed my name and affected my offic

My Commission Expires:

1/20107 Resident of Allen

County,)gational

THIS INSTRUMENT prepared by Rosald J. Enleger, Afformay No. 8237-32, Barrett & McNagny, 215 liest Borry Street, P.O. Box 2263, For: Wayne, Indiana 4680:-2263.

Lattlym, under the penalties for perjuries, that I have taken reasonable care to reduct each Social Security manhorse this document, unless required by law. Ronald J. Ehinger,

When Recorded, mail to:

1830 WAYNE TRACE
FORTWAYNE, IN 46803

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EXHIBIT B

Map of the Real Estate

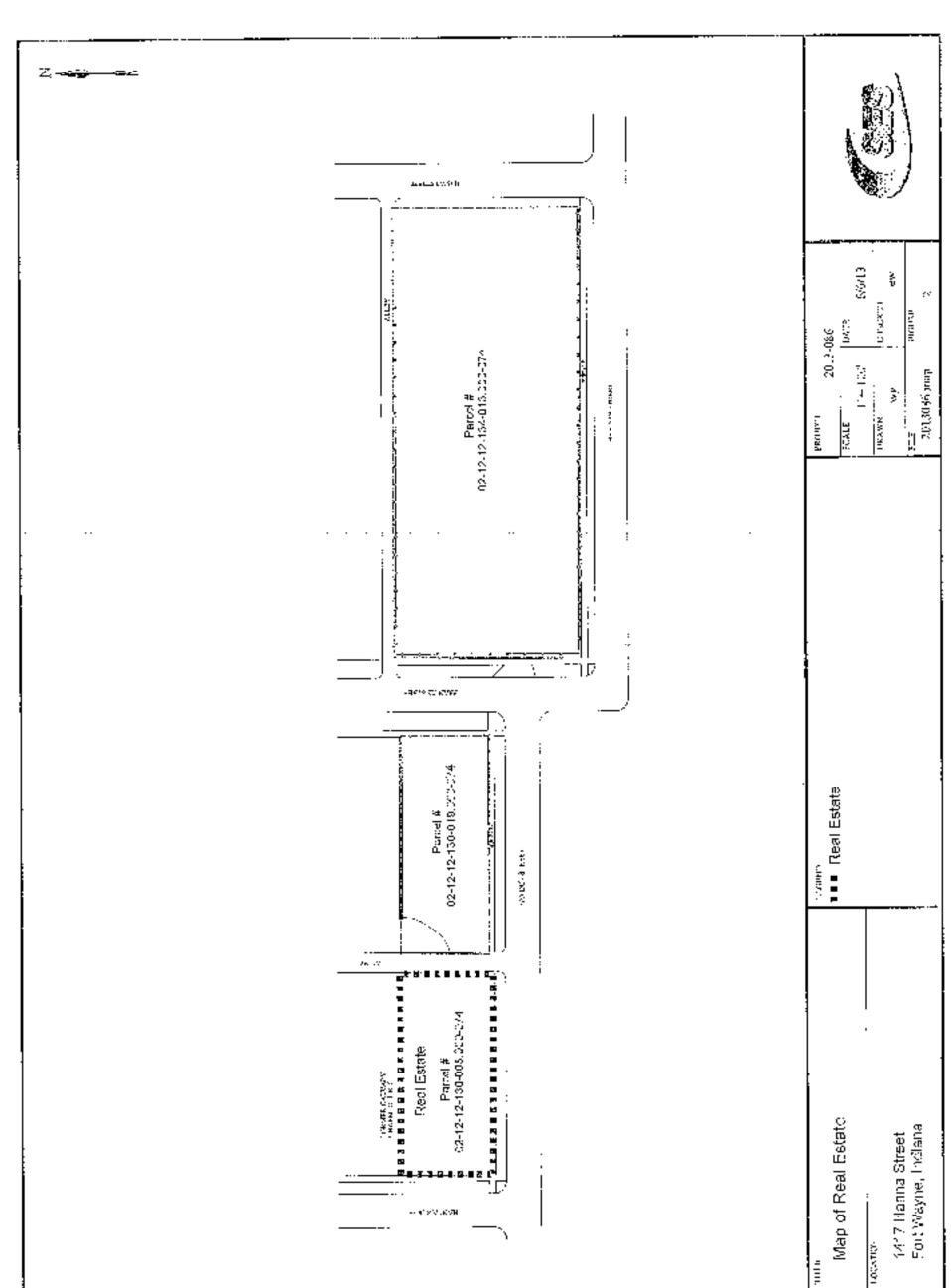


EXHIBIT C Copy of Site Status Letter

IDEM 2.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hooslers and Our Environment.

100 N. Sanata Avenue + Indianapol's, (N 46204

(800) 451-6027 (317) 232-8503 (www.idem.JN.gov

Eric II. Holcomb Gavernor Bzuno I., Pigall Commissioner

May 26, 2017

Lindsey Maksim City of Fort Wayne Redevelopment Department 200 East Berry Street, Suite 320 Fort Wayne, IN 46802

Re: Site Status Letter

Lyons Trucking 1417 Hanna Street

Fort Wayne, Allen County Brownfield # 4140707

Dear Ms. Maksim:

In response to the request by SES Environmental (SES) on behalf of the City of Fort Wayne Redevelopment Department (City) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 1417 Hanna Street (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Site Status Letter to clarify IDEM's position on the necessity of an environmental response action at the Site. This letter is not a legal release from liability. It will, however, help to establish whether environmental conditions at the Site might be a barrier to redevelopment or property transfer.

As part of the request for assistance in determining any existing environmental contamination and potential liability to undertake response activities at the Site, Program staff have reviewed the following reports, which can be viewed electronically on IDEM's website in the Virtual File Cabinet (VFC) by the applicable document (#), all of which were prepared by SES unless otherwise indicated:

- Phase | Environmental Site Assessment (July 2006 Phase LESA), dated July 3, 2006 (# 70256586)
- Phase II Environmental Screening Investigation Report (April 2013 Phase II), dated April 3, 2013 (# 70259743)
- Phase I Environmental Sito Assessment (June 2013 Phase I ESA), dated June 10, 2013 (# 70256482)
- Initial Site Characterization (ISC), dated September 9, 2013 (# 70256448)
- Analysis of Brownfields Cleanup Alternatives (ABCA), dated September 18, 2013 (# 70256460)
- Remediation Work Plan (RWP), dated June 6, 2014 (# 70256454).
- Final Investigation Report (FIR), dated April 29, 2015 (# 80461185)
- Remediation Work Plan Addendum (RWP-Addendum), dated September 8, 2016 (# 80461187)
- Remediation Completion Report (RCR), dated January 24, 2017 (# 80411271 & # 80411273 (Laboratory Report))

Lyons Trucking Fort Wayne -- Site Status Lotter BFD #4140707 May 26, 2017 Page 2 of 11

Site Description and History

The 0.25-acre Site is one rectangular parcel located at the northeastern corner of Hanna and Hayden Streets. The Site extends along the north side of Hayden Street to an alley. Refer to Table 1, below, for parce! information.

TABLE 1
Parcel and Historical Use Information

Parcel Identification	Parcel	Street	Size	Former Uses (Approximate
Number	Name	Address	(acres)	Operating Years)
 02-12-12-130-005.000- 074	Lyons Trucking	1417 Hanna Street	0.25	

According to available city directories, the Site was occupied by P. Lyons (trucking) between 1938 and 1943. In 1949, the Site was occupied by J. Walker and then in 1954 by E. Johnson. No other listings were provided for the Site. Fort Wayne Urban Enterprise Association, Inc. (UFA) became owner of the Site in November, 2006. The Site is primarily a gravel parking let with grass and two trees located near Hayden Street, located in a mixed residential/commercial area cast-southeast of downtown Fort Wayne. Surrounding land use includes an adjoining commercial building (formerly Calvary Chapel Church) to the north; across an alley, a vacant lot to the east; across Hayden Street, a commercial warehouse building to the south; and, across Hanna Street, single family residential homes to the west. The City of Fort Wayne applied to the United States Environmental Protection Agency (USEPA) to determine if the Site was eligible for an USEPA Brownfield Grant. The Site was approved for funding under USEPA Brownfields Assessment Cooperative Agreement No. BF00E00883 on June 26, 2013 and subsurface investigation and remedial activities subsequently occurred. Redevelopment of the Site is expected to be commercial in nature.

Environmental Conditions

For purposes of evaluating Site conditions for closure, sample analytical results were compared to IDEM's Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker soil exposure direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure because of the unlikely risk of exposure to soil at that depth. Ground water samples were compared to residential tap ground water screening levels (Res TAP GWSLs).

Lyons Trucking, Fort Wayne – Site Status Letter BFD #4140707 May 26, 2017 Page 3 of 11

Phase I ESA - July 2006

The July 2006 Phase I ESA was performed for three vacant (and tracts including the Site and properties at 1422 Francis Street (located across the alley to the east of the Site) and 801 Hayden Street (located across Francis Street further to the east). No recognized environmental conditions (RECs) were identified on the Site. The following RECs and potential concerns were identified off-Site on adjoining and/or adjacent properties to the east or southeast:

- Two underground storage tanks (USTs) were removed from the 1422 Francis
 Street (adjoining the Site to the east) in the summer of 1997.
- A UST vent pipe was observed along the north boundary of 1422 Francis
 Street, and two pipes of unknown purpose were observed at the northeast
 corner of this parcel.
- Two areas of exposed soi! were present on the northeast portion of the 801
 Haydon Street parcel. These areas exhibited oxidation stabling, likely as a
 result of metal scrap storage related to a junkyard that had been located at
 this parcel.
- Apparent construction/demolifion debris was observed in the center and northwest corner of 1422 Francis Street. A potential UST vent pipe was observed on the northern property boundary at this parcel.
- A spill of an unknown amount of petroloum product was reported at 702
 Haydon Street (located south of the Site) in 1997 (Spill Incident #199710030).
 The affected area by the spill was unknown and was apparently not addressed. IDEM enforcement action records indicated clean-up as "Pending Additional Report".

According to a communication with Allen County Emergency Response officials, IDEM – Emergency Response Section (ERS) responded to a petroleum release at 1422 Francis Street in May 1997 and issued Incident #199705134. The preliminary subsurface investigation and visual inspection concluded that the contamination emanated from three source areas: 1) two USTs located in the southwest corner of the parcel, 2) a hydraulic lift cylinder on the north-central portion of the parcel, and, 3) a release of motor oil/water mix that had flooded the basement of a building located on the eastern portion of the parcel.

Between June and August of 1997, the two USTs were removed, and approximately 619 tens of contaminated soil were excavated from the UST basin, basement, and hydraulic cylinder location. Soil confirmation samples were analyzed for some or all of the following: total petroleum hydrocarbon (TPH)* and/or polychlorinated

As of June 2010 (for ground water) and March 2012 (for soil), IDEM no longer evaluates 1P% contamination in soil and ground water when determining ROG closure. Therefore, levels

Lyons Trucking, Fort Wayne – Site Status Letter BFD #4140707 May 26, 2017 Page 4 of 11

biphenyls (PCBs). Contaminated water from the basement was transported off-Site for proper disposal. Ground water collected within the excavation basins was discharged into the municipal storm water sewer after analysis for benzene, toluene, ethylbenzene, xylenes (BTEX) and methyl tertiary butyl ether (MTBE).

Phase II -- April 2013

In March 2013, a total of 12 soil borings (GP1 through GP12) were advanced as part of an investigation of the three parcels addressed by the Phase ESA. Soil borings GP-10, GP-11, and GP-12 were advanced to a maximum depth of 8 feet bgs on the Site. Soil samples were collected from all three soil borings on-Site and analyzed for some or all of the following: volatile organic compounds (VOCs), polynuclear atomatic hydrocarbons (PAHs), and Resource Conservation and Recovery Act (RCRA) metals. Although soil samples were collected, no soil samples from GP-12 were submitted for laboratory testing. (Soil borings GP1 through GP9 were advanced on the other two parcels).

Soil analytical results of the soil sample collected from GP11 (0 to 2 feet bgs) detected lead and mercury at levels above their respective RDCSLs, with a level of mercury also detected above its IDCSL and EX DCSL. Refer to Table 2, below, for a summary of soil analytical data above applicable RCG screening levels.

TABLE 2

March 2013 Soil Concentrations Exceeding

Applicable IDEM RCG Screening Levels

Sample Location	Depth bgs (feet)	Res (in parts per t	cted Constituent and Result arts per million (ppm))		
	(Lead	Mercury		
GP11	0-2	6 30	39		
RDCSI		400	3.1		
IDCSL		800	3.1		
·— EX DOS	:: L	1,000	3.1		

Notes: bold = above RCG Residential Direct Contact Screening Level

italics = above RCG Commercial/Industrial Direct Contact Screening Level

underline = above RCG Excavation Workers Direct Contact Screening Level

bgs = below ground surface

Phase I ESA - June 2013

The June 2013 Phase I ESA performed for the Site and properties at 1422 Francis Street and 801 Hayden Street identified the following RECs on and off-Site including:

of TPH detected in soft and/or ground water are not relevant for purposes of evaluating environmental bond tions on the Site and, indetected, are presented for informational purposes only.

Lyons Trucking, Fort Wayne – Site Status Letter BFD #4140707 May 26, 2017 Page 5 of 11

On-Site:

 An environmental investigation conducted at the Site in April 2013 detected levels of arsenic, lead, and mercury in surface fill material exceeding applicable IDEM RDCSLs; and detected mercury levels exceeding its IDCSL and EX DCSL.

Off-Site:

- Environmental investigations conducted at 801 Hayden Street in April and May 2013 identified the presence of surface fill material consisting of a mixture of topsoil, brick, glass, clay, sand, gravel, and coal. Analytical results for samples collected of the soil/fill material detected contaminants of concern including arsenic, lead, and/or benzo(a)pyrene at concentrations exceeding their respective IDCSLs.
- An environmental investigation conducted at 1422 Francis Street in April 2013
 identified arsenic concentrations in clay soil exceeding its RDCSL. Trace levels
 of xylene and PAH constituents were also detected near the former basement
 area where oil contamination was encountered in 1997.

A data gap was identified because a search of land title records for environmental liens and activity or use limitations was not conducted during this assessment pursuant to ASTM Standard Practice E1527-05. However, based on the fact that no listings were identified within the Environmental Data Records, Inc. (EDR, Inc.) search area related to institutional controls and historical records indicate that this Site has been vacant, undeveloped, and/or agricultural since at least 1938, this data gap was not considered significant by SES.

ISC – September 2013

In July 2013, SES advanced 21 soil borings (GP-1 through GP-21) to a maximum depth of 6 feet bgs in a grid pattern to assess the nature and extent of contamination on Site. Push-probe soil borings encountered fill materials as deep as 4 feet bgs on the Site. Soil samples were collected and analyzed for VOCs, RCRA metals, and PAHs.

Soil analytical results detected benzo(a)pyrene, dibenzo(a,h)anthracene, arsenic, lead, and/or mercury in 15 of the boring locations at levels above their respective RDCSLs and/or IDCSLs. In addition, lead (GP-02, GP-04, GP-12) and mercury (GP-01, GP-12, GP-15) were detected at levels above their respective EX DCSLs. Refer to Table 3, attached, for a summary of soil analytical data above applicable RCG screening levels.

Lyons Trucking, Fort Wayne – Site Status Letter BFD #4140707 May 26, 2017 Page 6 of 11

ABCA – September 2013

As part of the work conducted under USEPA Grant # BF00E00883, the September 2013 ABCA was prepared to evaluate environmental cleanup alternatives based on the presence of metals and PAHs above applicable RDCSLs, iDCSLs and/or EX DCSLs in soil on the Site. Given the concentrations of confaminants and the proposed future use of the Site as an asphalt parking lot, remediation alternatives evaluated by SES included: isolation; immobilization; physical separation; and/or excavation of contaminated soil identified on the Site.

Based on Site conditions and related costs, either isolation (engineered barrier) or excavation and off-Site disposal of contaminated soil were determined to be the most cost effective remedial strategies to be protective to human health and the environment.

FIR - April 2015

Additional investigation was completed between January and March 2015 to further characterize the extent of contamination previously identified on Site. In January 2015, three push-probe soil borings (B1 through B3), one temporary monitoring point (MW-1), and four hand auger borings (HA-1 through HA-4) were installed as part of the investigation. Two soil borings (B2 and B3) were placed just off-Site to the south within the right-of way of Hayden Street and one hand auger (HA-1) was placed in the right-ofway of Hanna Street. Push-probe soil borings were advanced to a depth of 12 feet bgs near the south property boundary. Four hand augers were advanced to a depth of 4 feet bgs along the west and north property boundaries. Soil samples collected from the push-probe soil cores were split vertically, with one part of each soil sample field screened with an x-ray florescence (XRF) analyzer and a photo-ionization defector (PID). The remaining soil sample exhibiting elevated measurements were submitted for laboratory testing for VOCs, PAHs, and/or RCRA metals. Temporary monitoring well MW-1 was advanced to a depth of 36 feet bgs near the north-central portion of the Site and adjacent to soil boring G-4 (March 2013 - Phase II). The ground water sample was collected from MW-1 via low-flow procedures and analyzed for VOCs, PAHs, and dissolved RCRA metals.

Soil analytical results detected arsenic at a concentration of 11.1 parts per million (ppm) in HA-3 from 0 to 1 foot bgs above its RDCSL of 9.5 ppm but below its IDCSL of 30 ppm. Although arsenic was detected in B-2 (6 to 8 feet bgs) at 12 ppm above its RDCSL, B-2 is located off-Site in the right-of-way of Hayden Sirces. No other constituents analyzed in soil were detected at levels above applicable RCG screening levels. A limited volume of ground water was collected from MW-1 which allowed for VOC analytical testing only (due to the limited volume of ground water produced by MW-1, PAHs and RCRA motals were not tested). Analytical results were all below laboratory detection limits.

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Remediation Completion Report – January 2016

In December 2016, contaminated soil was removed from the following three areas of the Site:

 Area One was located near the northeast corner of the Site in the vicinity of soil boring locations GP-1, GP-2, GP-4, GP10, GP-11 and GP-12 where lead and/or mercury concentrations exceeded applicable EX DCSLs. An estimated total of 230 cubic yards of contaminated soil was excavated to depths ranging from 2 to approximately 4,5 feet bgs across the area. Seven bottom (BOT14 through BOT19 and BOT17D) and 23 sidewall (SW54 through SW75 and SW75D) confirmation soil samples were collected and analyzed for lead and mercury. Analytical results detected lead in five confirmation soil samples and/or mercury in nine sidewall confirmation soil samples above their respective RDCSL, IDCSL, and/or EX DCSLs. Two sidewall soil samples detected lead and all seven sidewall soil samples detected mercury above. their respective RDCSL, IDCSL, and/or EX DCSLs. Analytical results from sidewall confirmation soil samples SW54, SW57, and SW63 collected along the north property line and SW66 collected along the alley and east property. line exceeded either the RDCSL for lead and the RDCSI , IDCSL and EX DCSI, for mercury.

Phase 2 excavation of Area One was expanded further to the south at two separate locations to remove soil sample locations SW56, SW58, and SW64, where lead and/or mercury concentrations were greater than their respective IDCSLs and/or EX DCSLs. Six sidewail confirmation soil samples (SW80, SW81, SW82, SW82 and SW88) were analyzed for lead and mercury. Analytical results detected lead in one sidewall soil sample (SW81) above its RDCSL but below its IDCSL.

Area Two was located in the vicinity of GP-17 where lead and mercury
concentrations exceeded their respective RDCSLs, IDCSLs, and/or FX
DCSLs. Three bottom (BOT22, BOT23, and BOT24) and six sidewall soil
confirmation samples (SW71 through SW75 and SW75D) were collected and
analyzed for lead and mercury. Analytical results detected mercury in three
sidewall soil samples above its respective RDCSL, IDCSL, and EX DCSL.

Phase 2 excavation of Area Two was expanded to the north and south from Phase 1 activities to remove soil sample locations SW71, SW73 and SW74 where mercury concentrations were greater than its respective EX DCSL. Following excavation, three sidewall confirmation samples (SW76 through SW78) were collected and analyzed for lead and mercury. Analytical results detected lead and mercury below their respective RDCSLs.

 Area Three was located in the vicinity of GP-15 where lead and mercury concentrations exceeded their respective EX DCSLs. Four sidewall confirmation soil samples (SW67 through SW70) and two bottom confirmation Lyons Trucking, Fort Wayne – Site Status Letter BFD #4140707 May 26, 2017 Page 8 of 11

samples (BOT21 and BOT22) samples were collected and analyzed for lead and mercury. Analytical results detected lead in soil sample SW67 above its RDCSL, IDCSL and EX DCSL. All other confirmation soil sample results were below applicable RDCSLs.

Phase 2 excavation of Area Three was expanded to the north to remove soil near and around SW67 where lead was detected above its EX DCSL. Following excavation, three sidewall confirmation soil samples (SW76 through SW78) were collected and analyzed for lead and mercury. Analytical results detected lead and mercury concentrations below their respective RDCSLs.

Approximately 557.41 tons of contaminated material were excavated and properly disposed from three locations on-Site. Excavations were backfilled with crushed stone which was compacted in lifts by a vibratory roller. Refer to Table 4, attached, for a summary of detected levels of contaminants above applicable RCG screening levels remaining on the Site following excavation activities.

Technical Conclusion

Site investigations defected lead and mercury in soil above their respective RDCSLs. IDCSLs, and EX DCSLs. Program staff calculated the average concentration of levels of lead and mercury remaining in soil after remediation and compared the respective averages to applicable RCG screening levels. The comparison resulted in the following conclusions:

- Using the analytical results from soil samples collected and analyzed for RCRA metals in 2013, 2015 and following excavation of contaminated soil in December 2016, the average concentration of lead in soil from sample points remaining on Site post-excavation (detected concentrations ranging from 19 ppm to 638 ppm) was calculated to be 90 ppm which is below its RDCSLs of 400 ppm.
- Using the analytical results from soil samples collected and analyzed for RCRA metals in 2013, 2015 and following excavation of contaminated soil in December 2016, the average concentration of mercury in soil from sample points remaining on the Site post-excavation (detected concentrations ranging from 1.2 ppm to 20 ppm) was calculated to be 1.6 ppm, which is below its RDCSL, IDCSL, and EX DCSL of 3.1 ppm. Although mercury concentrations were detected above the EX DCSL in SW-54, SW-55, SW-57, SW-63, and SW-66, these sample locations were at the outermost wall of the soil excavation area along the north due to the presence of a building and/or the eastern property boundary and could not be removed.

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Conclusion

Notwithstanding that contaminants remain in soil above applicable RDCSLs at multiple locations following remediation, IDEM can approve a conditional residential closure of environmental conditions on the Real Estate under RCG since: (1) the contaminated soil in which mercury was detected at levels above its EX DCSL was removed from the Site to the maximum extent possible; (2) calculated average concentrations of lead and mercury remaining in Site soil are below their respective RDCSLs; (3) benzo(a)pyrene and arsenic concentrations remaining in Site soil, while exceeding their respective RDCSLs, do not exceed their respective IDCSLs at any on-Site location; (4) none of the sampled constituents were detected in the limited ground water samples obtained; and, (5) the potential exposure to remaining contamination in Site soil can be controlled with an institutional control. Therefore, environmental conditions on the Real Estate meet conditional residential cleanup criteria in the RCG so long as the land use restrictions required by the environmental restrictive covenant (ERC) discussed below are maintained.

IDEM concludes, in part based on information provided by the City of Fort Wayne Redevelopment Department that:

- No state or federal enforcement action at the Site is pending;
- (2) No federal grant requires an enforcement action at the Site;
- (3) No condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) Neither the City of Fort Wayne Redevelopment Department, nor an agent or employee of the City of Fort Wayne Redevelopment Department caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site through an act or omission:
- (5) City of Fort Wayne Redevelopment Department does not have any ownership interest in any entity that caused, contributed to, or knowingly exacerbated the release or threat of release;
- (6) There is no alternative basis for the City of Fort Wayne Redevelopment Department liability for historical contamination at the Site (e.g., liability as a generator) or by reason of the existence of a new source of contaminants on the Site; and,
- (7) Detected levels of contaminants at the Site meet conditional residential screening criteria established in IDEM's Remediation Closure Guide (March 22, 2012 and applicable revisions).

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Based on the information on known contaminant levels submitted to or otherwise reviewed by IDEM, IDEM concludes that current Site conditions do not warrant a response action at this time and does not plan to take a response action at the Site at this time. If IDEM later discovers that above-referenced reports or other information submitted to IDEM was inaccurate, or if any activities undertaken by an owner or operator exacerbate the Site contamination, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Additionally, this determination does not apply to any contamination that is not described in this Site Status Letter or any future releases at the Site. Furthermore, this letter does not constitute an assurance that the Site is safe or fit for any particular use. Please be advised that any work performed at the Site must be done in accordance with all applicable environmental laws.

Since levels of arsenic and benzo(a)pyrene remaining in soil underlying the Site are above applicable RCG residential screening levels, an ERC is required to be recorded on the deed for the Site. As a condition of the effectiveness of this Site Status tretter, iDEM is requiring land use restrictions via the enclosed ERC with the following provisions, summarized below:

- Shall not use the Site for any agricultural use.
- Shall not use the Site for standalone single-family residential use without first removing soil contaminated at levels above RCG RDCSLs to a maximum depth of 10 feet bgs.
- Shall not use the Site for multi-family residential use without an IDEM
 approved soil management plan (SMP) that complies with all applicable legal
 requirements and that will mitigate any potential ingestion, direct contact, or
 inhalation concerns.
- Shall restore soil disturbed as a result of excavation and construction activities on the Site in such a manner that any remaining contaminant concentrations do not present a threat to human health or the environment (as determined under IDEM's RCG using residential screening levels). Upon IDEM's request, the Owner shall provide IDEM with documentation showing the excavated and restored area, and any other area affected by excavation or construction activities, does not represent such a threat. Any soil that is removed, excavated or disturbed on the Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.

In order for IDEM to consider this letter effective, the enclosed ERC, which includes a copy of the Site Status Letter, must be recorded on the deed for the Site in the Allen County Recorder's Office. Please return a certified copy of the filed document to the address listed below:

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> Indiana Brownfields Program 100 North Senate Avenue, Room 1275 Indianapolis, Indiana 46204 ATTN: Ken Coad

IDEM is pleased to assist the City of Fort Wayne Redevelopment Department with this request. Should you have any questions or comments, please contact Ken Coad of the Indiana Brownfields Program at 317-233-8409 or by email at kcoad@ifa.in.gov.

<u>Sincorely.</u>

Deputy Assistant Commissioner

Office of Land Quality

Enclosure Attachments

cc: Jan Pels, U.S. EPA Region 5 (electronic copy)

Meredith Gramelspacher, Indiana Brownfields Program (electronic copy)

Ken Coad, Indiana Brownfields Program (electronic copy)

Regina Kostoff, Ft. Wayne Urban Enterprise Association (electronic copy)

Gien Howard, SES Environmental (electronic copy)

TABLE 3
Lyons Trucking, Fort Wayne - BFD #4140707
Soil Concentrations Exceeding

Applicable IDEM RCG Screening Levels Pre-Excavation

	- Applicar	Detected Constituent and Result						
Sample	Depth	Sample Date	(in parts per million (ppm))					
Location	bgs (feet)		Benzo(a) pyrene	Dibenzo(a,h) anthracene	Arsenic	iead	Mercury	
	0-1		0.13	0.043	15.7	220	9.4	
; GP-01	5-6		ND	ND	11	8.7	<u>ND</u>	
	0-1	·	0.13	0.076	12.3	324	2.1i	
GP-02	2-3		0.28	0.53	17.2	<u>1,630</u>	ND	
GP-03	9.1		0.18	0.063	18.5	444	_ <u>C.42</u>	
GP-04	2-3		0.36	0.29	20.4	1,510	2.7	
GP-05	0-1		0.19	0.066	12.1_	493	0.62	
GP-09FD	0-1		0.37	0.12	2.2	91.7	1.1	
GP-09	2-3		0.013	<u>ND</u>	10.6	22.2	1.3	
· · · · · · · · · · · · · · · · · · ·	······0-1 ·		- · 0.2· ·	0 <u>.076</u>	. 1 <u>1.3</u>	25 <u>0</u>	<u> 1.3</u>	
GP-11	5-6	July	ND	ND	10.2	7.8	ND .	
GP-12	 0-1	2013	0.23	0.094	16.8	<u>2,070</u>	4.6	
GP-13	0-1		0.34	0.079	9.3	299	3	
GP-14	<u> </u>		0.026	0.0099	10.7	95.9	<u>. 0.39</u>	
GP-15	0-1		0.25	0.056	11.5	240	22.8	
	0-1	,	0.77	<u>D.15</u> _	13.2	361	2.8	
GP-16	4-5		. <u>ND</u>	<u>ND</u>	11.2	19	ND	
	0-1		0.66	0.13	12.9	691	<u>22</u>	
GP-17	2-3		<u>ND</u>	<u> ND </u>	9.9	13.3	ND	
GP-18	0-1		<u>1.1</u>	0. <u>18</u>	14.4	114_	<u> </u>	
GP-19	T 0-1		0.5 <u>5</u>	0.12	11.5	342	1.2	
GP-20	0-1		0.37	0.12	19 <u>.9</u>	261	1.4	
HA-3	0-1	March 2015	NA	N/A	11	268	ND	
RDC:	SL		0.22	0.22	9.5	400	3.1	
· — ·	IDCSIEX DCSL :		2.9	2.9	.30	800	3.1	
			160	160	920	1,000	3.1	

Notes: **bold** = above RCG Residential Direct Confact Screening Love:

italies = above RCG Commercia/Industrial Direct Contact Screening Level underlined = above RCG Excavation Worker Direct Contact Screening Level

bgs = below ground surface

FD = field duplicate
ND = not detected

NA ≂ not analyzed

TABLE 4

Lyons Trucking, Fort Wayne - BFD #4140707

Soil Concentrations Exceeding

Applicable IDEM RCG Screening Levels Post-Excavation

Sample	·	Depth	Detected Constituent and Result (in parts per million (ppm))				
Location	Date	bgs (feet)	Benzo(a)pyrene	Arsenic	Lead	Mercury	
GP-05		0-1	0,19	12.1	493	0.62	
GP-09FD		0-1	0.37	2.2	91.7	0.89	
— Ğ P- 09 —	: 	2-3	0.013	10.6	22.2	1,3	
— :GP-14	1		0.026	10.7	95.9	0.39	
	July 2013	0-1	0.77	13.2	361	2.8	
GP-16		4-5	· ND	11.2	19	ND	
GP-18		0-1	1.1	14.4	114	0.88	
GP-19		0-1	0.55	11.5	342	1.2	
GP-20		· 0-1 ···	0.37	19.5	261	<u>ND.</u>	
HA-3	Maich 2015	0-1	NA NA	11.1	268	ND	
SW-54	December 2016	₁	NA !	NA	218	<u>20</u>	
SW-55		1 ·	NA.	NΛ	638	4.1	
SW-57		2		NA_	253	12	
SW-63		2 2 1	NA	NA	420	4.8	
SW-86		1	NA	NA	400	7.2	
SW-81		2	NA	NA	420	ND	
	VERAGE		NC	NC	90.0	1.6	
RDCS).			0.22	9.5	400	3.1	
	IDCSL		2.9	30	800	3,1	
FX DCSL			160	920	1,000	3.1	

Notes: bold - above RCG Residential Direct Contact Screening Level

italies = above RCG Commercial/Industrial Direct Contact Screening Level

bgs = below ground surface

NA = not analyzed FD = field duplicate ND = not detected NC = not calculated

EXHIBIT D

TABLE 1
Lyons Trucking, Fort Wayne - BFD #4140707
Final Soil Concentrations Exceeding
Applicable IDEM RCG Screening Levels

TABLE 1

Lyons Trucking, Fort Wayne - BFD #4140707

Final Soil Concentrations Exceeding

Applicable IDEM RCG Screening Levels

Sample	Date	Depth bgs	Detected Constituent and Result (in parts per million (ppm))			
Location	ļ i	(feet)	Benzo(a)pyrenc	Arsenic		
GP 5	·	0-1	0.19	12.1		
GP-09FD		 0-1	0.37	2.2		
GP-09	·	2-3	0.013	10.6		
GP-14		O-1	0.026	10.7		
<u> </u>	July 2013	0-1	0.77	13.2		
GP-16		4-5	ND	11.2		
GP-18	1	Ü-1 · ·	1.1	14.4		
GP-19	-	0-1	0.55	11.5		
GP-20	•	0-1	0.37	19.5		
 · - · · · • HA-3 · · · ·	March 2015	0-1	NA <u></u>	11.1		
	RDCSL		0.22	9.5		
	IDCSL		2.9	30		
· · · · · · · · · · · · · · · · · · ·	EX DOSL		160	920		

Notes: bold = above RCG Residential Direct Contact Screening Level

italics = above RCG Commercial/Industrial Direct Contact Screening Level

bgs = below ground surface

NA = not analyzed FD = field duplicate

EXHIBIT E

Lyons Trucking, Fort Wayne - BFD #4140707
Site Map Depicting Sampling Locations At Which
COCs Were Detected Above Applicable IDEM RCG Screening Levels

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party invostigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.

