



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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100 N. Senate Avenue • Indianapolis, IN 46204

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

Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

October 22, 2024

Jeremy Rohrs
242 Investments, LLC
10610 Oaktree Road
Fort Wayne, IN 46845

Re: **Comfort Letter**
Bona Fide Prospective Purchaser
Labeca LLC
(aka Fort Wayne Metals Research
Products Corporation)
3618 West Ferguson Road
Fort Wayne, Allen County
EPA ID #INR000003533
State Cleanup #0001253
Brownfield #4240703

Dear Mr. Rohrs:

In response to the request by SES Environmental (SES) on behalf of 242 Investments, LLC (Prospective Purchaser) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 3618 West Ferguson Road, Fort Wayne (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this Comfort Letter to outline applicable limitations on liability with respect to hazardous substances and/or petroleum products found on the Site. This letter does not provide a release from liability, but provides specific information with respect to some of the criteria the Prospective Purchaser must satisfy to qualify for relief from potential liability related to hazardous substances contamination under the bona fide prospective purchaser (BFPP) exemption under Indiana Code (IC) § 13-25-4-8(b) (incorporating section 101(40) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et. seq.*, and 42 U.S.C. § 9607(r)) and potential liability for petroleum contamination under the BFPP exemption under IC § 13-23-13 and IC § 13-24-1. This letter will also address the reasonable steps IDEM recommends the Prospective Purchaser undertake to prevent or limit human, environmental, and/or natural resource exposure to previously released hazardous substances and/or petroleum found at the Site and help to establish whether environmental conditions might be a barrier to redevelopment or transfer.

Site Description and History

The approximately 3.5-acre rectangular shaped Site is one parcel identified by the State by parcel #02-17-04-300-008.000-071 and located in a commercial/industrial

area north of the Fort Wayne International Airport. The Site is developed with a one-story 44,840 square foot industrial building and an adjoining 11,672 square foot warehouse building to the north. The buildings are occupied by Fort Wayne Metals Research Products Corporation (Fort Wayne Metals) (fka Labeca)¹ which operates as a wire manufacturer for the medical device market. The industrial building includes wire drawing machines in the eastern and western portions, a pickling line and wastewater treatment plant in the northern portion, annealing using electric furnaces in the northeastern portion, cleaning and additional pickling lines in the eastern portion, and multiple aboveground storage tanks (ASTs) containing acids, rinse water, and wastewater. The warehouse building is used for storage of raw materials (wire coils, drums of wire lubricant, etc.), empty drums and containers, and equipment. Paved parking lots are located on the eastern and western portions of the Site.

The Site was used as agricultural land from at least 1938 until the eastern portion of the industrial building was constructed in 1961. An addition to the northern portion of the industrial building was constructed between 1964 and 1972. Further expansions to the industrial building were constructed in 2001 and 2011. The warehouse building was constructed in 1966. Historical occupants of the Site include Howard Photo Laboratories from at least 1963 through 1968, Brown Equipment from at least 1986 through 1994, and Labeca/Fort Wayne Metals from at least 1994 until the present. Wire manufacturing operations will continue at the Site following its acquisition by the Prospective Purchaser.

Surrounding land uses include: to the north, States Engineering with additional industrial use beyond;² to the east, Airport Drive followed by a multi-tenant³ industrial facility and associated parking; to the south, West Ferguson Road followed by an airport parking lot; and to the west, iLove Home Care with 10th Street beyond.

Due Diligence

As part of this request, the Prospective Purchaser provided the Program with a *Phase I Environmental Site Assessment* dated June 24, 2024 and revised July 18, 2024 (July 2024 Phase I ESA) prepared for 242 Investments, LLC (and Old National Bank) by SES (IDEM Virtual File Cabinet (VFC) Document #[83710509](#)). The July 2024 Phase I ESA was conducted utilizing the American Society for Testing and Materials (ASTM) Practice E1527-21, Standard Practice for Environmental Site Assessment, which satisfies the federal “All Appropriate Inquiries” (AAI) rule set forth in 40 CFR Part 312. In

¹ Labeca LLC merged with Fort Wayne Metals Research Products Corporation on December 31, 2019.

² The former Baer Airfield drum salvage yard and landfill site is located approximately 1/4 to 1/3 mile to the north. The property, with the assigned identification #G05IN0973, was a Defense Environmental Restoration Program for Formerly Used Defense Sites (DERP-FUDS) site and investigated due to potential drum disposal and dumping concerns. A No DOD Action Indicated (NDAI) determination was proposed on March 8, 2001 (Document #[61301224](#)).

³ Current tenants include two warehousing companies (Bendon and Arden Shipping) and Craftline Graphics, a commercial printer.

an effort for the Prospective Purchaser to qualify as a BFPP, Jeremy Rohrs, member with 242 Investments, LLC provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The July 2024 Phase I ESA identified the following recognized environmental condition (REC) associated with the Site:

- Environmental investigations conducted at the Site in 2023 found detectable concentrations of chlorinated volatile organic compounds (cVOCs) including 1,1,1-trichloroethane (1,1,1-TCA), trichloroethene (TCE), cis-1,2-dichloroethene (cis-1,2-DCE), trans-1,2-dichloroethene (trans-1,2-DCE), and vinyl chloride in soil and cis-1,2-DCE in groundwater. These cVOC detections are evidence of a release and represent a REC.

In addition to the above-noted REC, the July 2024 Phase I ESA identified the following business environmental risks (BERs) associated with the Site:

- Radon testing was not conducted as part of the July 2024 Phase I ESA; however, according to the EPA Map of Radon Zones in Indiana, the Site is located in Zone 1 (highest potential).
- Based on building construction dates, asbestos containing materials (ACM), lead-based paint (LBP), and/or lead pipes or plumbing fixtures may be present at the Site.
- The Site has been occupied by a medical wire manufacturer since 1994 and operations have included wire drawing, etching, and pickling. Per- and polyfluoroalkyl substances (PFAS) are known to have been used in various products related to metal finishing and coating.

Historical Environmental Conditions

Hazardous Waste Generator #INR000003533

The Fort Wayne Metals facility on Ferguson Road is registered as a Resource Conservation and Recovery Act (RCRA) large quantity generator of hazardous waste (LQG) with waste codes including ignitable (D001), corrosive (D002), cadmium (D006), chromium (D007), lead (D008), and spent pickle liquor (K062) wastes. Waste acid from pickling operations includes hydrofluoric, nitric, hydrochloric, sulfuric, and phosphoric acids.

IDEM Enforcement

In December 2018, IDEM Office of Land Quality inspectors referred the Site, then operating as Labeca LLC, to enforcement following violations observed during two September 2018 Site inspections. On June 22, 2021, IDEM issued an Agreed Order (AO) (Case No. 2018-25874-H, Document #[8317233](#)) to Fort Wayne Metals Research

Products Corporation. Deficiencies noted in the AO included issues with proper hazardous waste determinations, preparation of hazardous waste manifests, updates to the facility's contingency plan map, required annual training, labeling universal waste, required written notices, and a missing integrity assessment for a waste acid tank. In correspondence dated March 13, 2024 (Document #[83622743](#)), IDEM stated that Fort Wayne Metals Research Products Corporation had achieved compliance with the terms of the AO.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following additional documents prepared by SES which may be viewed electronically by searching online by the noted document number in IDEM's VFC accessible through IDEM's website.

- *Phase I Environmental Site Assessment (Phase I ESA)*, dated May 23, 2023 (Document #[83707451](#))
- *Phase II Environmental Site Assessment (Phase II ESA)*, dated July 11, 2023 (Document #[83665467](#))
- *Additional Site Investigation*, dated November 30, 2023 (Document #[83665464](#))
- *Further Site Investigation (FSI)*, dated September 20, 2024 (Document #[83700438](#))
- *Further Site Investigation Addendum*, dated October 4, 2024 (Document #[83706845](#))

For purposes of this letter, sample analytical results were compared to IDEM's *Risk-based Closure Guide* (R2) (July 8, 2022 and applicable revisions) published levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to R2 residential and commercial soil published levels (RSPLs and CSPLs, respectively); soil samples collected between 0 and 15 feet bgs were compared to the excavation worker soil published levels (XSPLs); and, soil samples collected at depths greater than 15 feet bgs were not evaluated unless a subsurface structure was anticipated to extend to depth greater than 15 feet bgs because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to groundwater published levels (GWPLs). Indoor air samples were compared to residential indoor air published levels (RIAPLs) and commercial indoor air published levels (CIAPLs) as well as calculated residential and commercial indoor air action levels (RIAALs and CIAALs, respectively). Exterior soil gas samples were compared to R2 residential soil gas published levels (RSGPLs) and commercial soil gas published levels (CSGPLs).

Phase I Environmental Site Assessment – May 2023

The May 2023 Phase I ESA identified the following RECs associated with the Site:

- The Site was historically occupied by Howard Photo Laboratories from at least 1963 through 1968, Brown Equipment from at least 1986 to 1994, and Labeca, LLC/Fort Wayne Metals from 1994 to the present. No known subsurface investigations have been completed on the Site. Based on the long-term manufacturing and former photo laboratory operations, the potential exists for a release of hazardous substances or petroleum products to have occurred at the Site.
- The north adjoining property was first developed as a machine shop between 1957 and 1963 and has been occupied by manufacturing facilities since development. Regulatory records indicate the property was registered with two 500-gallon underground storage tanks (USTs) installed in 1964 and one 1,000-gallon UST containing mineral spirits installed in 1984. The 500-gallon USTs were filled in place in 1969 and their contents and location are unknown. The 1,000-gallon mineral spirits UST was located approximately 15 feet north of the Site and was closed by removal in 1995. Confirmation sampling indicated a low level of petroleum contamination was detected in soil collected from the north sidewall of the tank excavation. Based on the long history of manufacturing operations and the proximity to the Site the potential exists for contaminants to be present on the north-adjacent property and to have migrated to the Site.

Phase II Environmental Site Assessment Report – July 2023

In June 2023, SES conducted a Phase II ESA to evaluate the two RECs identified in the May 2023 Phase I ESA. SES advanced six soil borings (GP-1 through GP-6) to a maximum depth of 32 feet bgs on the Site. Native soil generally consisted of clay extending from the near surface to 27 to 30 feet bgs. A dry sand layer was observed at a depth of 27 feet bgs. One soil sample from each boring was collected and analyzed for volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), cadmium, nickel, total chromium, hexavalent chromium, lead, nitrate, and phenols. No groundwater was encountered during this investigation.

No constituents analyzed in soil were detected at levels above applicable R2 published levels. Along with multiple metals being detected below published levels in all samples, TCE and 1,1,1-TCA were also detected in soil sample GP-2 (located north of the warehouse on the northern end of the Site) at levels below their respective published levels. The GP-2 soil sample was collected from an approximately 2-foot-thick sandy clay layer at a depth of 4 to 6 feet bgs. Due to the detection of cVOCs at GP-2, SES recommended additional investigation north of the warehouse to characterize the extent of contamination.

Additional Site Investigation – November 2023

In November 2023, SES conducted additional sampling to further investigate the cVOCs detected in soil sample GP-2. SES advanced three soil borings (GP-7 through GP-9) to a maximum depth of 47 feet bgs to the north, southeast, and southwest of boring GP-2. The soil generally consisted of clay extending from near surface to 47 feet bgs. Saturated sand was observed at a depth of approximately 46 feet bgs in boring GP-7 and at a depth of approximately 16.8 feet bgs in GP-9. A total of six soil samples (two from each boring) and one duplicate soil sample (of GP-8, labeled GP-10) were collected and analyzed for VOCs.

Following soil sampling, temporary groundwater sampling points were installed in each boring. The screened intervals were positioned to intercept potential water bearing soil layers. Subsequent groundwater elevation gauging indicated water at a depth of 45.5 feet bgs (GP-7), 8.32 feet bgs (GP-8), and 12.95 feet bgs (GP-9). Due to the various depths to groundwater, flow direction was not determined. Three groundwater samples (GP-7 through GP-9) and one duplicate (of GP-8, labeled GP-10) were collected and submitted for analysis of VOCs. In addition, three exterior soil gas sampling points were installed to a depth of 5 feet bgs adjacent to the soil borings GP-7 through GP-9. Three exterior soil gas samples, one duplicate exterior soil gas sample, and one indoor air sample from the warehouse were collected and analyzed for VOCs.

Laboratory analysis detected TCE, cis-1,2-DCE, trans-1,2-DCE, and vinyl chloride in the shallower soil sample (GP-8) and its duplicate (GP-10), each collected from the depth interval 5 to 7.5 feet bgs and located southeast of the GP-2 location. The R2 does not have residential or commercial direct contact published levels for cVOCs and the levels of cVOCs detected were well below each respective XSPL. These contaminants were not detected at any other boring location including the deeper GP-8 soil sample (collected from the depth interval 18 to 20 feet bgs).

Laboratory analysis detected cis-1,2-DCE in groundwater sample GP-8 and its duplicate GP-10, but at levels well below its GWPL. No VOCs were detected in the exterior soil gas samples or the indoor air sample.

Per the Prospective Purchaser's June 27, 2024, application for this letter, at the current Site owner's request, a notice of historical contamination/release incident report was provided to IDEM on April 19, 2024, and the November 2023 *Additional Site Investigation* was provided as a spill report. In July 2024, IDEM's State Cleanup Program assigned incident #0001253 to the reported release.

Further Site Investigation – September 2024

Further Site Investigation Addendum – October 2024

In September 2024, in response to a request from the Program in conjunction with its review of available data and the July 2024 Phase I ESA in preparation of this letter, SES conducted an FSI to obtain additional shallow soil samples to evaluate the direct contact exposure pathway, to attempt to collect groundwater samples Site-wide, and to evaluate the Site for potential PFAS contamination given the historical industrial operations conducted at the Site. SES advanced an additional six soil borings (SB-1 through SB-6) to maximum depths ranging from 20 to 50 feet bgs on the Site. Soil borings SB-1 through SB-4, and SB-6 were advanced to refusal at depths ranging from 20 feet bgs to 38 feet bgs using direct push technology with dual tube samplers. After switching from direct push technology to a hollow stem auger with split spoon samplers, soil boring SB-5 was advanced to 50 feet bgs. Clay was observed extending from near surface to depths of approximately 24 to 28 feet bgs underlain by a layer of sand and gravel ranging in thickness from a few inches to six feet. Clay continued below the sand and gravel layer to the end of exploration at 50 feet bgs in soil boring SB-5.

One soil sample from each boring and one duplicate soil sample (from SB-6) were collected and analyzed for VOCs, PAHs, RCRA 8 metals, hexavalent chromium, and PFAS. An additional deeper soil sample was collected from the SB-2 boring location north of the warehouse (and adjacent to the prior boring GP-2 that had cVOC impacts) and submitted for analysis of the same constituents. Following soil sampling, a piezometer was installed in each boring. The report noted there was no field evidence of groundwater during soil sampling and groundwater did not accumulate in any piezometer; therefore, no groundwater samples were obtained. Laboratory analyses found no detectable concentrations of PAHs, hexavalent chromium, or PFAS in soil. The metals barium, total chromium, and lead were detected in all soil samples but below their respective R2 published levels and the VOCs cis-1,2-DCE and TCE were also detected in one sample (SB-2 at 6 to 8 feet bgs) but well below their respective R2 published levels.

In an additional attempt to collect groundwater samples, on September 23, 2024, SES remobilized at the Site using a hollow stem auger to continue advancing borings SB-3 and SB-6. The soil boring log indicated that SB-3 (adjacent to boring GP-3) was extended to weathered bedrock at 44 feet bgs. Boring SB-6 was extended to 50 feet bgs with weathered bedrock noted at 46 feet bgs. No groundwater was encountered so no samples were collected.

Technical Summary

No PAHs, RCRA metals, hexavalent chromium, or PFAS were detected in soil or groundwater above published levels. While cVOCs including TCE, cis-1,2-DCE, trans-1,2-DCE, and vinyl chloride were detected in soil and cis-1,2-DCE was detected in one groundwater sample (and its duplicate) on the northern end of the Site, all detected

concentrations were also below R2 published levels. The contaminants detected in soil (below R2 published levels) were at depths ranging between 4 to 8 feet bgs. There was no further field evidence of contamination (elevated PID readings, odor, staining) deeper than 4 to 8 feet bgs in any of the borings. The source of the cVOC detections is unknown and given the close proximity of the detections to the northern Site border, it is possible the source of the detections is located off-Site.

No contaminants were detected above published levels in either the exterior soil gas samples collected near the cVOC detections or the indoor air sample collected from the warehouse building. Therefore, no further evaluation of the vapor intrusion exposure pathway appears warranted at this time.

Liability Clarification

IDEM's "*Brownfields Program Comfort and Site Status Letters*" Non-rule Policy Document, W-0051 (April 18, 2003) (Comfort and Site Status Letter Policy), provides that IDEM may issue a letter to a stakeholder involved in redevelopment of a brownfield if the stakeholder satisfies certain eligibility criteria outlined below. IDEM concludes, based in part on information provided by the Prospective Purchaser, that:

- (1) no state or federal enforcement action at the Site is pending;⁴
- (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 Prospective Purchaser nor an agent or employee of the Prospective Purchaser caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site; and,
- (5) the Prospective Purchaser is eligible for an applicable exemption to liability, specifically the bona fide prospective purchaser (BFPP) exception to liability for hazardous substance contamination found in IC §13-25-4-8(b) and for petroleum contamination under IC §§ 13-23-13 and 13-24-1, provided the applicable statutory criteria are met.

As discussed below, the Prospective Purchaser has demonstrated to IDEM's satisfaction that it is eligible for the State BFPP exemption from liability for hazardous substance and petroleum contamination provided it takes the "reasonable steps" required by statute, recommendations for which are also discussed below.

⁴ Although the IDEM State Cleanup incident associated with the Site remains open, the Program has discussed the real estate transaction with IDEM staff who do not object to the agency's use of enforcement discretion as it pertains to the Prospective Purchaser.

Bona Fide Prospective Purchaser

Under IC § 13-25-4-8(a), except as provided in IC § 13-25-4-8(b), (c), or (d), a person that is liable under § 107(a) of CERCLA is liable to the state in the same manner and to the same extent. IC § 13-25-4-8(b) references certain exceptions to liability imposed by IC § 13-25-4-8(a), including the exception in Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), which states that a BFPP whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the BFPP does not impede the performance of a response action or natural resource restoration. 42 U.S.C. § 9607(r). Thus, a prospective purchaser that qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration would not be liable under IC § 13-25-4-8(a). Similarly, such a bona fide prospective purchaser would not be liable under IC §§ 13-23-13 and 13-24-1 for petroleum contamination existing on the Site.

Under Indiana law, if the Prospective Purchaser qualifies as a bona fide prospective purchaser and does not impede the performance of a response action or natural resource restoration, IDEM is prohibited from pursuing the Prospective Purchaser even if cleanup requirements change or if IDEM determines that a response action related to existing known hazardous substances or petroleum contamination from prior releases at the Site is necessary. Furthermore, IDEM is prohibited from pursuing such a prospective purchaser for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Prospective Purchaser to respond to the past release of hazardous substances or petroleum contamination found at the Site beyond the scope of the statutorily-required reasonable steps outlined below, even if cleanup requirements change or if IDEM determines that a response action is necessary in the future. This decision, however, does not apply to past or present hazardous substance or petroleum contamination that is not described in this letter, future releases, or applicable federal requirements under CERCLA, criminal liability or liability for natural resource damages. Further, pursuant to Indiana Code 13-25-5-1, a prospective purchaser's or owner's participation in the Indiana Brownfields Program does not affect the applicable closure or corrective action obligations under the Resource Conservation and Recovery Act (RCRA) set forth in 42 U.S.C. § 6901, et seq.

To meet the statutory criteria for liability protection as a BFPP under Indiana law, a landowner must meet certain threshold criteria and satisfy certain continuing obligations. IDEM notes that the Prospective Purchaser will acquire the Site after January 11, 2002 (and after June 30, 2009), and the disposal of hazardous substances and petroleum at the Site will have occurred prior to that date. See 42 U.S.C. § 9601(40)(A); § IC 13-11-2-148(h); IC § 13-11-2-151(g); IC § 13-11-2-150(f). Based on information reviewed by IDEM, IDEM concludes that the Prospective Purchaser has conducted all appropriate inquiries into the previous ownership and uses of the Site. See 42 U.S.C. § 9601(40)(B)(i). Furthermore, the Prospective Purchaser has

represented that it is not potentially liable or affiliated with any person that is potentially liable for contamination at the Site, and IDEM has no information to the contrary. See 42 U.S.C. § 9601(40)(H). Therefore, the Prospective Purchaser meets the threshold requirements of CERCLA §§ 9601(40) (A), (B) and (H) to qualify for the status of BFPP under 42 U.S.C. § 9601(40).

The continuing obligations the Prospective Purchaser must undertake to qualify as a BFPP under Indiana law and maintain such status are outlined in 42 U.S.C. §§ 9601(40)(C)-(G) and include exercising “appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.” 42 U.S.C. § 9601(40)(D). By extension, under IC §§ 13-11-2-148(h), 13-11-2-150(f), and 13-11-2-151(g), the continuing obligations the Prospective Purchaser must undertake to maintain BFPP status are outlined in 42 U.S.C. §§ 9601(40) (C)-(G) and include exercising appropriate care with respect to petroleum products found at the facility by taking reasonable steps to – (i) stop any continuing release; (ii) prevent any threatened future release; and, (iii) prevent or limit human, environmental, or natural resource exposure to any previously released petroleum product. Furthermore, the Prospective Purchaser recognizes that in order to maintain the status of BFPP, it will have to continue to provide the cooperation, assistance and access required by 42 U.S.C. § 9601(40) (E). In addition, the Prospective Purchaser will have to maintain compliance with land use restrictions established for the Site, and not impede the implementation or the effectiveness of any institutional control as required by 42 U.S.C. § 9601(40) (F). To maintain BFPP status, the Prospective Purchaser must also supply required notices and respond to requests for information or administrative subpoenas in accordance with 42 U.S.C. § 9601(40)(C) and 42 U.S.C. § 9601(40) (G), respectively.

Recommendations

IDEM has the following recommendation regarding the Site:

- Properly abate and/or manage lead-based paint and ACMs during any renovations and/or demolition of the existing Site buildings in accordance with applicable Federal, State, and local laws and regulations.

Reasonable Steps

At this time, IDEM believes the following are appropriate reasonable steps for the Prospective Purchaser to undertake with respect to the potential hazardous substances and/or petroleum contamination found at the Site to qualify as a BFPP, as well as to satisfy the eligibility requirements for issuance of this letter under the Comfort and Site Status Letter Policy:

- Reasonably cooperate with and do not impede any third party’s undertaking

of any response actions required by IDEM's SCP to address incident number #0001253 or any other identified contamination on the Site resulting from an off-Site source.

- If required by IDEM's SCP, record any environmental restrictive covenant (ERC) requested in conjunction with the issuance of a no further action determination for State Cleanup incident #0001253 and comply with any land use restrictions therein. Once recorded on the Site deed, provide the Program with a certified copy of the filed ERC.
- Upon becoming aware of such information, communicate to IDEM any newly-obtained information about existing hazardous substance contamination or any information about new (or previously unidentified) contamination. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

Implementation of the above-mentioned reasonable steps in addition to ongoing satisfaction of the additional statutory conditions will, with respect to IDEM, satisfy the statutory conditions for State BFPP protection. Please be advised that any work performed at the subject property must be done in accordance with all applicable environmental laws to ensure no inadvertent exacerbation of existing contamination found on the Site which could give rise to liability.

Conclusion

Pursuant to the Comfort and Site Status Letter Policy, the determinations in this letter are based on the nature and extent of contamination known to IDEM as of the date of this letter, as a result of review of information submitted to or otherwise reviewed by IDEM. If additional information regarding the nature and extent of contamination at the Site later becomes available, additional measures may be necessary to satisfy the reasonable steps requirements of BFPP status. In particular, if new areas of contamination or new contaminants are identified, the Prospective Purchaser must communicate this information to IDEM upon becoming aware of it and should ensure that reasonable steps are undertaken with respect to such contamination in order to qualify as and maintain BFPP status, including, perhaps, implementing land use restrictions through an environmental restrictive covenant. This requirement does not apply to information developed by a third party that should be separately communicated to IDEM by the third party.

This letter shall not be construed as limiting the Prospective Purchaser's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Prospective Purchaser that are required to maintain the status of BFPP. Furthermore, the terms and conditions of this letter shall be limited in application to this letter recipient and this Site and shall not be binding on IDEM at any other Site.

If at any time IDEM discovers that the above-mentioned reports, any representations made to IDEM, or any other information submitted to or reviewed by IDEM was inaccurate, which inaccuracy can be attributed to the Prospective Purchaser, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Prospective Purchaser result in a new release or if Site conditions are later determined by IDEM to constitute an imminent and substantial threat to human health or the environment, IDEM reserves the right to revoke this decision and pursue any responsible parties. Additionally, this decision does not apply to past or present contamination that is not described in this Comfort Letter, future releases, or applicable requirements under CERCLA. Further, pursuant to Indiana Code (IC) § 13-25-5-1, a prospective purchaser or owner's participation in the Indiana Brownfields Program does not affect applicable closure or corrective action obligations under the Resource Conservation and Recovery Act (RCRA) set forth in 42 U.S.C. 6901, et seq. In addition, if any acts or omission by the Prospective Purchaser exacerbates the contamination at the Site, or if the Prospective Purchaser does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Prospective Purchaser would not be considered a BFPP and may be potentially liable under IC §§ 13-25-4-8(a), 13-23-13 and/or 13-24-1. Furthermore, activities conducted at the Site subsequent to purchase that result in a new release can give rise to full liability. This letter does not constitute an assurance that the Site is safe for any particular use.

The Program is pleased to assist 242 Investments, LLC with this request. Should you have any questions or comments, please contact Nancy Dollar via email at: ndollar@ifa.in.gov.

Sincerely,



Andrew Pappas
Deputy Assistant Commissioner
Office of Land Quality

cc: Ashley Green, U.S. EPA Region 5
Meredith Gramelspacher, Indiana Brownfields Program
Nancy Dollar, Indiana Brownfields Program
Nicholas Bradley, State Cleanup Program
Glen Howard, SES
Allen County Health Department