



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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Eric J. Holcomb
Governor

Brian C. Rockensuess
Commissioner

November 14, 2024

George Cressy III
Downtown Development, LLC
53149 Discovery Dr.
Elkhart, IN 46514

Re: **Comfort Letter Request**
Wilts Food Center
100 Easy Shopping Place
Elkhart, Elkhart County
Brownfield #4241101

Dear Mr. Cressy:

On October 30, 2024, the Indiana Brownfields Program (Program) received your request for a Comfort Letter for the above referenced site (Site). The Program will review the information submitted with the request, in addition to other information regarding the Site available to Program staff, to make a determination regarding your request. Program Counsel reviews all submitted Phase I ESA reports for compliance with the all-appropriate inquiry (AAI) rule prior to a Project Manager initiating review of a request. During the course of our review, additional information or documentation may be requested. Phase II environmental site assessment (ESA) reports and other technical reports/documents will be forwarded to the appropriate IDEM Science Services section for evaluation with a minimum 30 to 45 day turnaround. Please allow a minimum of 120 days from the Program's receipt of *all requested information and documentation* to receive your requested letter.

Please note that if Program-requested information and/or documentation is not timely received, review and processing of the letter will not be initiated by the Project Manager assigned to the request. If the Project Manager does not receive the requested information *within a reasonable timeframe*, your letter request will be deemed inactive and drop out of the queue for issuance. You will receive a written notice affording you a two-week grace period before the request status is made inactive. Once a letter request is deemed inactive, a new application to the Program will be required to get your project back in line for processing.

Below are some additional important items potentially applicable to your request:

- If contaminant levels on your Site qualify as a release or spill under Indiana's Spill Rule (327 Indiana Administrative Code 2-6.1), the owner/operator of the Site is required to notify the appropriate IDEM program (e.g., the Indiana Emergency Response Section or the Petroleum Remediation Section). The above-referenced Brownfields Program Site number is not a substitute for an incident number.
- Recordation of an environmental restrictive covenant (ERC) (or a modification and/or termination of a previously recorded ERC) on the deed for the Site may be required

in conjunction with issuance of the letter to ensure no occupant of the Site is exposed to contamination.

- Certain components of an ASTM E1527-21 Phase I Environmental Site Assessment (ESA) report cannot be older than 180 days if the report will be used to qualify as a bona fide prospective purchaser (BFPP). If more than 180 days has lapsed since the earliest date report information was collected or site reconnaissance was conducted, certain components of the Phase I ESA report must be updated prior to closing to satisfy all appropriate inquiry. If a Phase I ESA Update is completed, please be sure to submit the report to the Program to supplement the application.
- For an entity to qualify as a BFPP, the name of the entity for which the Phase I ESA report was completed (the User name) needs to match exactly the name of the entity that will be the grantee on the property deed (unless the party seeking protection is a prospective tenant, in which case it must match the entity identified as lessee in the lease agreement). In addition, the User-provided information (e.g., User Questionnaire) must be completed by an authorized representative of the User of the Phase I ESA. *If the entity that will purchase the property changes after report issuance*, that entity must obtain a letter from the consulting firm authorizing it to rely on the report (reliance letter) and an authorized representative of that entity must complete a User Questionnaire. If the report has not yet been issued, the new entity can be added to the "User Reliance" section of the report but must still complete its own User Questionnaire.

The Program is pleased to assist with this request. Visit the Program's webpage at www.in.gov/ifa/brownfields for frequently asked questions and other valuable information. Should you have any questions or concerns, please contact the Project Manager assigned to the request, Carmen Anderson, for further assistance. She can be reached directly at (317) 233-2415 or by e-mail at CarAnderson@ifa.in.gov.

Sincerely,



Andrea Robertson Habeck
Technical Staff Coordinator
Indiana Brownfields Program

cc: Site File
Carmen Anderson, Indiana Brownfields Program
Joshua Klosinski, Jones Petrie Rafinski
Dan Cory, Plews Shadley Racher & Braun, LLP