



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

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July 3, 2024

Pamela Gregorski
Blocke, LLC
300 International Drive
Jeffersonville, Indiana 47130

Re: **Comfort Letter**
Bona Fide Prospective Purchaser
Indiana Army Ammunition Plant- Tract C
6200 East State Road 62
Jeffersonville, Clark County
EPA ID #CUSA134821
EPA ID #IN9210020443
Brownfield #4231204

Dear Ms. Gregorski:

In response to the request by Ramboll Americas Engineering Solutions, Inc./ Ramboll US Corporation (Ramboll) on behalf of Blocke, LLC (Owner) to the Indiana Brownfields Program (Program) for assistance concerning the property located at 6200 East State Road 62, Jeffersonville (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 Owner 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 Owner 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 613-acre Site is comprised of three parcels identified by the State by parcel #10-42-03-900-024.000-039, #10-42-02-600-001.000-039 and #10-42-03-900-001.000-039 which are further described on Table 1, below. The Site is located east of International Drive and south of Paul Garrett Avenue and was part of "Tract C" of

the River Ridge Development Authority Igloo Area at the former Indiana Army Ammunition Plant (INAAP). The Site primarily consists of wooded areas and grasslands, with only two remaining vacant igloos (Observation Igloo and a portion of the Drainage Swale Igloo) located in the northeastern portion of the Site. Paved and gravel access roads historically connected the 176 igloos and crossed the Site. Battle Creek is present in the northeastern portion of the Site and an unnamed tributary of Lentzier Creek is present in the southern portion of the Site.

TABLE 1
Parcel Information

Parcel Number	Street Address	Former Use	Acreage
10-42-03-900-024.000-039	6200 East State Road 62	INAAP Igloo Storage	187.3
10-42-02-600-010.000-039			357.3
10-42-02-700-005.000-039			67.95
Total Acreage			612.55

Historically, the Site was agricultural land with farmsteads and wooded land until 1940, when the INAAP constructed earth covered, reinforced concrete igloos to store explosive materials and propellants over 1,600 acres that was part of the larger 11,000-acre INAAP facility that manufactured smokeless gunpowder and rocket propellant. The United States Army (U.S. Army) utilized the igloos from 1941 to 1992 and Orica, provider of commercial explosives, utilized the igloos from 1992 to 2015, when storage operations ceased. Demolition and removal of the igloos has been ongoing since 2013. The larger, surrounding former INAAP property is owned by the River Ridge Development Authority (RRDA) which also previously owned the Site parcels from 2003 and 2005 until 2023.

Surrounding land use is as follows: to the north, former INAAP and now vacant land followed by Paul Garrett Avenue; to the east, vacant and wooded land followed by residential properties and the Ohio River beyond; to the south, International Drive, followed by former INAAP property and now vacant land as well as the Clark County Government Center, the INAAP RCRA Closed Hazardous Waste Landfill (EPA ID# IN9210020443), and residential properties; and, to the west, International Drive followed by commercial and industrial properties beyond. The Owner acquired the Site in December 2023. Redevelopment plans include the development of a hyperscale data center with an administration building, a warehouse, and equipment yards.

Due Diligence

As part of this request, the Owner provided the Program with a *Phase I Environmental Site Assessment* dated October 2023 (October 2023 Phase I ESA) prepared for Blocke, LLC by Ramboll (IDEM Virtual File Cabinet (VFC) Document #83574356). The October 2023 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 an effort for the Owner to qualify as a BFPP, Pamela Gregorski, President of Blocke, LLC, provided answers to the user-specific questions to ensure its satisfaction of the federal AAI rule.

The October 2023 Phase I ESA identified the following controlled REC (CREC) associated with the Site:

- Low-level residual contamination potentially associated with active institutional controls.
 - The Site is part of the larger INAAP property, where production of nitrocellulose- and nitroglycerin-based explosives, testing of small-arms ammunition and black powder, and storage of chemicals and explosives are known to have been performed. Historical subsurface investigation activities conducted within the larger Igloo Area (and potentially on-Site) revealed no constituent concentrations above residential risk levels in soil or sediment or above site-specific Industrial Closure levels in groundwater.¹ As such, the Igloo Area (Solid Waste Management Unit 76 (SWMU-76) and groundwater within the larger INAAP property (SWMU-90) were issued regulatory closure by IDEM in 2003 and 2006.
 - According to the 2023 ALTA Commitment, including a 2005 Tract C Quitclaim Deed transferring ownership from the US Army to RRDA, institutional controls in the form of a residential use restriction and a groundwater use restriction were implemented at the Site, which represent a CREC.
 - An historical off-Site hazardous waste and solid waste landfill (HW/SW landfill) is located approximately 710 feet to the southwest of the Site, in a presumed upgradient direction. Based on a review of the 2015 Quitclaim Deed, the HW/SW landfill is identified as “Tract C1.” Several Activity and Use Limitations (AULs) are associated with Tract C1, including residential and landfill use restrictions and prohibitions of any activities that may damage soil cover and cause exposure of hazardous solid waste. Low levels of several volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs) and metals, and elevated levels of dichlorodiphenyltrichloroethane (DDT) and total petroleum hydrocarbons (TPH) have been detected in groundwater both beneath and downgradient of the HW/SW landfill. No Resource Conservation and Recovery Act (RCRA) indicator parameter exceedances were observed during the first quarter of 2023 sampling event and the former HW/SW landfill is part of the larger INAAP property and is, therefore, included in the Site-wide residential use and groundwater use restrictions.

¹ These were site-specific screening levels established as part of RCRA Corrective Action.

In addition to the above-noted CREC, the October 2023 Phase I ESA identified the following potentially significant business risk:

- Upon its departure from the Site in 2005, the US Army conducted explosives decontamination of drains and troughs within all Igloos, but it is unknown if residues remained on walls, floors, or surrounding soils, especially since the Igloos were used for commercial explosives storage through 2015. Although no specific evidence of remaining explosive residue has been identified, the potential presence of explosive chemical compounds inside or within the vicinity of the Igloos, including in surface soils or fill material present at the site, cannot be ruled out. Ramboll considers this matter to be potentially significant from a business risk perspective.

RCRA Corrective Action

The U.S. Army identified 90 SWMUs, or areas of concern, associated with the larger INAAP property as part of its investigation of the property through the U. S. Department of Defense (U.S. Environmental Protection Area Identification Number (EPA ID#) CUSA134821). The Site is entirely situated within two specific SWMUs identified as INAAP-76 (Igloo Area) and INAAP-90 (Installation Groundwater), both of which now have an Environmental Condition of Property (ECP) ranking of 3 by the Army Corps of Engineers which is defined as areas where release, disposal, and/or migration of hazardous substances has occurred but at concentrations that do not require a removal or remedial response.

The Site was part of the larger 1,600-acre INAAP-76 Igloo Area where the only documented release occurred on April 27, 1966, when Igloo 5185, storing more than 180,000 pounds of propellant and located approximately 530 feet south of the Site, exploded. Low levels of semi-volatile organic compounds (SVOCs) were detected in one soil sample collected near former Igloo 5185. Additional sampling of soil, sediment, and surface water was conducted in 1999 and 2001; however, the exact locations of the samples are unknown. On March 26, 2003, IDEM's Hazardous Waste Permit Section issued a RCRA Corrective Action No Further Action Status letter regarding the various SWMUs at the larger INAAP property (including the Site). The letter noted that INAAP-76 (Igloo Area) had achieved NFA status in the Draft RCRA Post-Closure Permit (Document #80039027).

In 2005, the U. S. Army retained a contractor to inspect and decontaminate all 173 drains inside the igloos as well as the troughs in 107 igloos, discussed in detail below. Based on the igloo numbering, Ramboll determined that all the igloos within the Site boundaries were included in the 2005 decontamination work. A 2005 Finding of Suitability to Transfer (FOST) Report (Document #83574356, page 1797) documents the environmental condition of the INAAP Tract C (which includes the Site) and concluded that as long as land use restrictions necessary to protect human health and environment were included in the deed, the property was suitable to transfer to RRDA for industrial park development. A 2005 quitclaim deed transferring ownership of INAAP

Tract C (which includes the Site) included a residential use prohibition and a groundwater use prohibition.

To evaluate the potential for widely distributed groundwater contamination at the entire INAAP property, SWMU INAAP-90 (Installation Groundwater) was established. Numerous investigations have been conducted which include the collection of 165 spring samples, installation of 104 monitoring wells, and sampling from 40 temporary groundwater wells. No wells were installed on-Site and the wells with exceedances were off-Site to the north and west. Chemicals of concern included benzene, bis(2-ethylhexyl)phthalate, N-nitrosodiphenylamine, aluminum, antimony, arsenic, lead, manganese, and thallium. Following review of information submitted, IDEM's Hazardous Waste Permit Section issued a letter on January 11, 2006, agreeing that the numerous investigations had found no unacceptable risk to human health and the environment and that additional groundwater investigation and monitoring could be discontinued (Document #31599843).

On February 22, 2006, IDEM approved a Class 1 Permit Modification which included an updated list of all SWMUs that achieved NFA status including INAAP-76 (Igloo Area) and INAAP-90 (Installation Groundwater) (Document #27934629). The letter notes that the permit modifications modify and supersede the relevant permit conditions in the permit issued December 18, 2003.

2023 Special Warranty Deed “Environmental Protection Provisions”

On December 27, 2023, Blocke, LLC purchased the Site from RRDA. The Special Warranty Deed was recorded with the Clark County Recorder's Office on December 29, 2023, as Deed Record #202323727WD (Document #83598935).

Exhibit C to the Special Warranty Deed contains “environmental protection provisions” pertaining to former munitions/explosive hazards, endangered species, and environmental conditions that apply to former INAAP facility, including the Site. Some are “notice” provisions and others include land use restrictions. The provisions the Program views as relevant to environmental conditions on the Site under its evaluation of environmental conditions on the Site using IDEM's R2 are:

3. Groundwater Notice and Restrictions: prohibits access or use of groundwater underlying or springs located on the Site for potable drinking purposes; prohibits any activity on or use of the property that would violate that restriction.
4. Notice of the Presence of Asbestos and Covenant: informs the owner of the presence of non-friable asbestos or asbestos-containing material (ACM) on the Site; owner agrees that its use and occupancy of the Site will be in compliance with all applicable laws relating to asbestos and to be responsible for any remediation or abatement of asbestos found to be necessary on the Site.
5. Notice of the Presence of Lead-Based Paint (LBP) and Covenant Against Use of the Property for Residential Purpose: informs the owner of the presumptive

presence of lead-based paint in all buildings on the Site based on their construction or rehabilitation prior to 1978; prohibits occupancy or use of any buildings or structures on the Site as “Residential Property” as defined in 24 Code of Federal Regulations (CFR) Part 35 without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to any residential habitation, the owner agrees to perform, at its sole expense, the Army’s abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

On-Site 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 which may be viewed electronically by searching online by the noted document number in IDEM’s VFC accessible through IDEM’s website.

- *Removal of Underground and Aboveground Storage Tanks and Explosive Decontamination of Igloos* (Removal of Tanks and Decontamination of Igloos Report), dated February 2005, prepared by MKM Engineers, Inc. (MKM) (Document #83574356, page 173)
- *Phase I Environmental Site Assessment*, dated August 2014, prepared by AMEC Environment & Infrastructure, Inc. (AMEC) (Document #83574356, 1073)
- *Phase I Environmental Site Assessment*, dated August 2019, prepared by Ramboll (Document #83574365)
- *Limited Site Investigation*, dated November 15, 2019, prepared by Terracon Consultants, Inc. (Terracon) (Document #83574356, page 2081)
- *Groundwater Monitoring Report* dated June 20, 2023, prepared by Lineback Funkhouser, Inc. (LFI) for the off-Site HW/SW Landfill (Document #83492219)
- *Groundwater Monitoring Report* dated November 10, 2023, prepared by LFI for the off-Site HW/SW Landfill (Document #83558503)
- *Groundwater Monitoring Report* dated June 10, 2024, prepared by LFI for the off-Site HW/SW Landfill (Document #83657213)

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 for purposes of closure because of the unlikely risk of exposure to soil at that depth. Groundwater samples were compared to groundwater published levels (GWPLs). If total and dissolved/filtered groundwater samples were collected per Section 2.2.5 of the R2 and

IDEM Nonrule Policy Document (NPD) Waste-0057, only the dissolved/filtered groundwater samples were compartmented to GWPLs.

Removal of Tanks and Decontamination of Igloos Report – February 2005

A final report documented the successful completion of the removal of the underground storage tanks (USTs) and aboveground storage tanks (ASTs) and explosive decontamination of 173 igloos across the larger INAAP facility (which includes the Site). Removal and decontamination work began in October 2004 and was completed in January 2005. Of the total 173 igloos, the drains of 107 igloos were inspected and decontaminated and the troughs and drains on the remaining 66 igloos were inspected and decontaminated. The floors and walls of the igloos were excluded from this work. USTs and ASTs were not present at the Site.

Phase I ESA – August 2014

The August 2014 Phase I ESA was performed for the larger 1,600-acre Igloo Area (entire INAAP Tract C), which includes the Site, and identified the following CREC:

- The historical HW/SW landfill, located southwest of the Site, occupies about 45 acres. The landfill originally received industrial and household waste from facility operations containing general refuse, sewage treatment sludge, dispensary wastes, and construction debris. Wastes were buried in the northern and western parts of the landfill that were later determined to be hazardous and included lead-lined bags, cadmium paint shavings, propellant contaminated wastes, and asbestos debris. The landfill is unlined and soil covered with no surface debris visible. Low levels of several VOCs, SVOCs, pesticides, PCBs, and metals; and elevated levels of DDT and TPH have been detected in the groundwater. The landfill is the subject of the RCRA Post Closure Permit. The solid waste portion (2A) received IDEM closure on May 9, 2002. The hazardous waste portion (2B) received IDEM closure on October 2, 2002.

Phase I ESA – August 2019

The August 2019 Phase I ESA was done for a smaller, approximately 458-acre portion of the current Site within the Igloo Area and identified the NFA status of SWMU-76 and SWMU-90 and associated deed restrictions and the off-Site HW/SW landfill as CRECs. These same CRECs were identified in the October 2023 Phase I ESA conducted for the Owner.

Limited Site Investigation – November 2019

In November 2019, 14 soil borings (SB1 through SB14) and six additional offset borings for temporary groundwater wells (TW1 through TW6) were advanced on-Site to a maximum depth of 10.3 feet bgs for borings and up to 50 feet bgs for wells. Soil and

groundwater samples were collected and analyzed for VOCs, SVOCs, RCRA metals, explosives, pesticides, and perchlorates (groundwater only).

Groundwater was collected for laboratory analysis from three wells (TW2, TW4, and TW6) while the remaining wells were dry. No constituents analyzed in groundwater were detected at levels above applicable R2 published levels.

Arsenic was detected in soil from SB1 at four to six feet bgs at a concentration of 37.4 parts per million (ppm) above its CSPL of 30 ppm and in SB7, SB8, SB10, SB12 and SB13 at four to six feet bgs at concentrations above its RSPL. Arsenic was also detected in soil at concentrations above its RSPL in three surface samples (0.5 – 1 ft) (in SB1, SB7 and SB9). To assess the overall risk presented by arsenic in soil on the Site, a 95 percent upper confidence level (UCL) was calculated using EPA’s ProUCL version 5.1 program for the 13 shallow soil samples collected and was calculated at 12.24 ppm which is above its RSPL of 10 ppm but below the CSPL of 30 ppm. When evaluating all 24 soil samples collected for laboratory analysis of arsenic, the UCL was calculated at 13.82 ppm which is above its RSPL of 10 ppm but below its CSPL of 30 ppm. The calculated ProUCL concentrations of 12.24 ppm for shallow soil and 13.82 ppm for all soil samples are within the range for naturally occurring background concentrations for arsenic in soils in Indiana of 2 ppm to 13 ppm. No other constituents analyzed in soil were detected at levels above applicable R2 published levels. Refer to Table 2, below, for a summary of soil analytical data above applicable R2 published levels.

TABLE 2
September 2019 Soil Concentrations
Exceeding Applicable IDEM R2 Published Levels

Sample Location ID	Depth (feet bgs)	Contaminant & Results (parts per million (ppm))
		Arsenic
SB1	0.5-1	16.5
	4-6	37.4
SB7	0.5-1	21
	4-6	17.6
SB8	4-6	10.9
SB9	0.5-1	11.2
SB10	4-6	17.3
SB12	4-6	10.8
SB13	4-6	10.9
Background levels in Indiana		2.0-13.0
ProUCL (0.5-1 foot bgs)		12.24
ProUCL (0.5-6 foot bgs)		13.82
RSPL		10
CSPL		30
XSPL		900

Notes: **bold** = above R2 Residential Soil Published Level
italics = above R2 Commercial Soil Published Level
bgs = below ground surface

Off-Site Environmental Conditions

Landfill Groundwater Monitoring Reports – June 2023, November 2023, & June 2024

Ongoing quarterly groundwater monitoring with IDEM oversight has occurred from 1991 to the present for the off-Site HW/SW landfill, which is located approximately 710 feet to the southwest, and potentially upgradient of the Site. Hazardous wastes were buried in the unlined northern and western landfill sections of the landfill. Concentrations of several VOCs, SVOCs, pesticides, PCBs, metals, DDT, and TPH have been detected in groundwater both beneath and downgradient of the landfill but do not appear to have migrated onto the Site. The last documented precipitation and non-precipitation sampling events occurred on March 7, 2023, and March 11, 2024, respectively. One sample from landfill location LF-3 and spring samples SP5 and SP-11 were collected for both events for laboratory analysis of cadmium, lead, and chlorobenzene. No constituents analyzed in groundwater were detected at levels above applicable R2 published levels. The other natural spring locations were dry and not sampled.

An application to renew the landfill closure permit (EPA ID #IN9210020443) dated February 29, 2024, prepared by LFI (VFC #83602773), was received by IDEM after the prior permit, last renewed on February 14, 2014, had expired. No additional information was available for review.

Technical Summary

Arsenic was detected in shallow soil (0.5-1 foot bgs) at one location above its CSPL and three locations above its RSPL. The calculated 95 percent UCL using EPA's ProUCL version 5.2 program for the 13 shallow soil samples (collected from 0.5 to 1 foot bgs) was determined to be 12.24 ppm which is above its RSPL of 10 ppm but below its CSPL of 30 ppm. When evaluating all 24 soil samples collected for laboratory analysis of arsenic, the 95 percent UCL was determined to be 13.82 ppm which is above its RSPL of 10 ppm but below its CSPL of 30 ppm. The calculated ProUCL concentrations of 12.24 ppm for shallow soil and 13.82 ppm for all soil samples are within the range for naturally occurring background concentrations for arsenic in soils in Indiana of 2 ppm to 13 ppm and, therefore, are not indicative of an anthropogenic source. The United States Geological Survey (USGS) has performed sampling and analysis of the New Albany Shale and its native soils in the region and determined that many naturally occurring trace element concentrations are not only present, but are significantly elevated, in New Albany Shale as well as in soil profiles derived from in-place weathering of New Albany Shale. Therefore, IDEM concludes that the detected arsenic levels in soil do not pose a risk to human health or the environment.

Groundwater samples collected as part of the investigations conducted on the Site detected no contaminants detected above R2 published levels. No soil gas

samples were collected to evaluate the vapor intrusion pathway during investigations; however, the contaminants that have been detected in on-Site soil are metals which are not expected to be a source of potential vapor intrusion. Therefore, no additional evaluation of the vapor intrusion pathway is necessary.

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 Owner, that:

- (1) 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 Owner nor an agent or employee of the Owner caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site; and,
- (5) the Owner 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 Owner 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.

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 Owner 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 Owner 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 an owner for response costs relating to the past release of hazardous substances or petroleum contamination at the Site. Therefore, IDEM will not require the Owner 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 Owner acquired the Site on December 27, 2023, after January 11, 2002 and June 30, 2009, and the disposal of hazardous substances and petroleum at the Site 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner 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.

Reasonable Steps

As of the date of issuance of this Comfort Letter, IDEM believes the following are appropriate reasonable steps for the Owner to undertake with respect to the hazardous substances contamination found at the Site in order 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:

- Comply with and maintain the “Environmental Protection Provisions” pertaining to ACM, LBP, groundwater use and residential use of the Site (summarized above), in Exhibit C of the Special Warranty Deed recorded for the Site.
- Reasonably cooperate with and do not impede any third party’s undertaking of any response actions required by U.S. EPA or IDEM to comply with off-Site post closure landfill permit number IN 9210020443 or to address any contamination identified on the Site resulting from an off-Site source.
- 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

IDEM encourages the commercial redevelopment of the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular Environmental Protection Provision in the deed for the Site is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the particular provision that is on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that new land use

restrictions may be necessary in the future due to new information or changed circumstances at the Site.

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 Owner 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.

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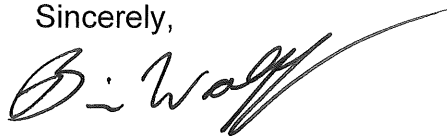
This letter shall not be construed as limiting the Owner's ability to rely upon any other defenses and/or exemptions available to it under any common or environmental law, nor shall it limit any ongoing obligations of the Owner that are required to maintain the status of BFPP. Furthermore, the terms 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 or Owner, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Furthermore, if any activities undertaken by the Owner 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 Owner exacerbates the contamination at the Site, or if the

Owner does not implement and maintain the reasonable steps and other statutory requirements outlined in this letter, then the Owner 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 Blocke, LLC with this commercial redevelopment project. Should you have any questions or comments, please contact John Morris at 317-234-0235. He can also be reached via email at: jmorris@ifa.in.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Wolff", with a long, sweeping flourish extending to the right.

Brian Wolff
Assistant Commissioner
Office of Land Quality

cc: Ashley Green, U.S. EPA Region 5
Meredith Gramespacher, Indiana Brownfields Program
John Morris, Indiana Brownfields Program
Jessica Huxhold Fliss, IDEM Federal Program Section
Don Stiliz, IDEM RCRA Corrective Action
Christine Ng, Ramboll
Freedom Smith, Ice Miller, LLP
Clark County Health Department