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VIA ELECTRONIC MAIL

Jeffrey J. Kavanaugh (JKAVANAU@idem.IN.gov)
Senior Environmental Manager
Voluntary Remediation Program
Indiana Department of Environmental Management
100 N. Senate Avenue
Indianapolis, Indiana 46204

Re: Former Norge Laundry and Cleaning Village, VRP #6130102,
Bellfound Farms Environmental Restrictive Covenant

Dear Mr. Kavanaugh:

As you know, we represent D&E Enterprises Incorporated in the matter of the former Norge Laundry and Cleaning Village, VRP #6130102. I am responding to your email to Mike Devir, Keramida, our environmental consultant, dated May 10, 2024, regarding the on and off-site draft Environmental Restrictive Covenants (ERCs). We have made the changes IDEM requested and will provide you with those revised, draft ERCs soon, with one exception. I would like to respond to IDEM's comment #6, reproduced as follows:

2856 KI Properties (Parcels 4, 7, 8, 9, 10, 12, 13, 15, 18): An ERC is in place requiring extracted groundwater for potable use must be below MCLs, new construction requires VI sampling or mitigation, no installation of new drinking (potable) wells is permitted, and a water treatment system is required for use of existing potable wells with COCs above MCLs. This ERC requires modification. The ERC only restricts installation of new drinking (potable) water wells and it does not prevent the use of the existing impacted irrigation wells without pre-treatment or monitoring potential influence on groundwater and plume dynamics of the existing contamination plume. The ERC also does not restrict installing new irrigation wells anywhere on the above listed parcels.

This ERC was executed and recorded by the prior owner of referenced parcels, Bellfound Farm, Inc., on July 31, 2018, in accordance with a "Comfort Letter" Bellfound sought from IDEM under the Brownfields Program. The Comfort Letter was issued to Bellfound on June 6, 2018, and it set out the conditions under which the exposure risks on the Bellfound parcels would be mitigated and Bellfound would be considered to have met the requirements of a "bona fide



prospective purchaser” under CERCLA (Superfund) to avoid liability for groundwater contamination upon the purchase of the parcels. The purpose of my letter is to show that the recorded ERC on the Bellfound parcels is sufficient to mitigate the exposure risks and no revisions are necessary.

The Comfort Letter was clear that one of the conditions was that no new potable or irrigation wells could be installed on the Bellfound parcels, and any existing potable or irrigation wells must have pre-treatment prior to being used (p. 12 of 14). A draft ERC was attached and incorporated into the Comfort Letter that included the following restrictions:

(c) Shall not install any new drinking (potable) water wells on the Real Estate.

...

(e) Shall install, operate and maintain, or allow a third party to install, operate and maintain, a water treatment system for any existing potable well in which COCs are detected above MCLs in order to ensure drinking water quality.

Any well on which a treatment system is installed shall comply with the annual sampling requirement outlined in paragraph (d) above to ensure MCL compliance.

These restrictions were included in the ERC executed and recorded by Bellfound Farms. Although the ERC did not include the word “irrigation,” the context of the Comfort Letter shows that it included irrigation wells. Moreover, state construction standards for the installation and use of water wells make no legal distinction between “potable” and “irrigation” wells, as illustrated below.

State statutes define “well” for purposes of the installation and abandonment of water wells, without regard to how the groundwater is used:

“Well” means a hole drilled or driven to:

- (1) obtain geologic information on aquifers;
- (2) monitor the quality or quantity of ground water;
- (3) obtain ground water; or
- (4) utilize the geothermal properties of earth formations.

I.C. § 25-39-2-16. Furthermore, the statute provides, regarding the Natural Resources Commission:

(a) The commission shall, by rule, establish standards for well siting, construction, and operation. The standards must address the following:

- (1) Placement of wells.
- (2) Well drilling procedures.
- (3) Operation of well drilling and water well pump equipment.
- (4) Contamination precautions.



- (5) Well casing and water well pump specification and installation.
- (6) Well grouting procedures.
- (7) Well screen design and installation.
- (8) Pitless adapter units.
- (9) Installation of pumping apparatus.
- (10) Well disinfection techniques.
- (11) Sealing and plugging abandoned wells.
- (12) Other generally accepted standards relating to the drilling, operation, or abandonment of wells.

I.C. § 25-39-4-2. The water well construction standards are in Article 13 of the 312 Indiana Administrative Code. They are designed to ensure that water wells are constructed in a manner that prevents contamination¹ and only monitoring wells, dewatering wells, and in some cases, “public water supply” wells (subject to other rules) are excluded from applicability. The rules also require disinfection of all water wells in Rule 9 of Article 13. The result is that all private water wells for groundwater usage, with the exception of monitoring and dewatering wells, are “potable” wells.

In addition:

“Abandoned well” means a well:

- (1) whose original purpose and use have been discontinued for more than five (5) years; or
- (2) that is in such a state of disrepair that using it to obtain ground water is impractical or a health hazard.

I.C. § 25-39-2-2. And:

A well which has not been used for more than three (3) months without being permanently abandoned must be sealed at or above the ground surface by a welded, threaded, or mechanically attached watertight cap. The well shall be maintained so that the well does not become a source or channel of ground water contamination.

312 IAC 13-10-1. To our knowledge, the existing water wells (former Hafer irrigation wells) have not been used for more than five years and are likely in a state of disrepair. Adding pre-treatment to these wells would be inappropriate. They are legally “abandoned” and therefore, the current landowner of the farm property, KI, LLC, has the legal obligation to permanently abandon them if it has not been done already. IDEM should ensure that the wells are abandoned in accordance with state law.

¹ See e.g., 312 IAC 13-3-2 (a)(2)(B); 312 IAC 13-4-1(h); 312 IAC 13-4-3(d)(1); 312 IAC 13-4-5.



The installation of any new water wells must be constructed as potable wells in accordance with state construction standards noted above and Indiana Department of Health guidance. The Indiana Department of Health has established standards for private water wells at <https://www.in.gov/health/eph/water-supply-information/recommended-standards-for-private-water-wells/#C1>. These include irrigation wells: “Dewatering wells, irrigation wells, heating and cooling supply and return wells, temporary service wells, construction water wells, process wells, and other structures for withdrawing ground water or lowering of a water table, regardless of location, length of intended service, or original use or intent, should be constructed in accordance with these standards.” The DOH provides construction standards and references those in 312 IAC Article 13.

Finally, the DOH provides: “In addition to bacteriological testing, all new wells should be sampled for chemical analysis. The analysis should include all parameters listed in Table 7 below: [Water Test Parameters and State/Federal Drinking Water Standards].”

Given the law and context, the Bellfound ERC does not require modification. The existing water wells should be properly abandoned in accordance with state law, and the Bellfound ERC prohibition on new potable wells would include any new irrigation wells.

Thank you for your attention to this matter.

Sincerely,

STOLL KEENON OGDEN PLLC

A handwritten signature in black ink, appearing to read "K. Watson", written over a white background.

Kathryn A. Watson

cc: Michael Devir, KERAMIDA