

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

100 N. Senate Avenue • Indianapolis, IN 46204

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

Eric J. Holcomb

Brian C. Rockensuess

Commissioner

July 2, 2024

Mr. Derek Schmidt Flexsteel Industries, Inc. 385 Bell Street Dubuque, IA 52001

Re: Remediation Progress Report – February 2024 Flexsteel 72104 County Road 23 New Paris, IN VRP #6130401

Dear Mr. Schmidt:

The Indiana Department of Environmental Management (IDEM) has reviewed the Remediation Progress Report – February 2024 (Roberts, April 30, 2024) for the Flexsteel site located at 72104 County Road 23 in New Paris, Indiana.

The report was uploaded to the IDEM Virtual File Cabinet (VFC) as document # 83632664. Further site history can be found in the VFC located on the IDEM website vfc.idem.in.gov. This technical letter contains comments generated during our review of the above-mentioned report.

Comments

- 1. Roberts concluded that current site conditions suggest closure is appropriate and recommended the submittal of a Remediation Completion Report (RCR). IDEM agrees with this recommendation.
- 2. As proposed by Roberts, IDEM concurs that an Environmental Restrictive Covenant (ERC) will be needed for an affected area of the off-site property to the west of the site. IDEM recommends restrictions prohibiting groundwater use and a requirement for a vapor intrusion investigation prior to the construction of new buildings to determine the need for a vapor mitigation system. IDEM will accept a well depth restriction in lieu of a groundwater use restriction given sufficient lines of evidence are provided. The affected area will need to be defined on a map with GPS coordinates.
- 3. There is currently an ERC recorded on the Site property. The onsite ERC requires modification in order to ensure that the site retains large building designation in order to comply with vapor intrusion restrictions. Recommended example ERC language is as follows:

"Shall not construct a new building within the footprint of, modify the slab or foundation of, significantly alter the indoor space (i.e. ceiling height, building size, or other alterations that would affect air exchange rate), or change the use from commercial to residential of the existing building within Affected Area A, unless a vapor mitigation system is installed





Flexsteel – Remediation Progress Report-February 2024 July 2, 2024 Page **2** of **2**

and an Operations Monitoring & Maintenance (OM&M) plan is generated for the newly constructed, modified, or repurposed building."

If the site building were ever to be subdivided or if new structures were built, a vapor investigation would be required to determine the need for a vapor mitigation system. Details of the current building (ceiling height, slab thickness, GPS coordinates of building footprint) should be included as an appendix in order to assess whether or not the site building remains in compliance with the ERC. GPS coordinates of Affected Area A should also be provided. State Form 56082 along with the ERC Modification Template, attached, will need to be filled out and submitted via email to the Institutional Controls Program.

4. A Notice of Contamination in Right of Way form (State Form 57234, attached) is required for impact present under County Road 23.

The Draft ERC for the off-site property to the west must be submitted and approved by IDEM and recorded in Elkhart County before the submittal of the RCR. Additionally, after submittal of the forms mentioned in comment #3, IDEM will begin drafting the ERC modification for the site property. If you have any questions, please contact me at (317) 234-7758, (800) 451-6027, or at asergean@idem.in.gov.

Sincerely,

Andrew Sergeant, LPG,

Project Manager

Voluntary Remediation Program

ancher Segunt

Office of Land Quality

ec: Dave Jeffers, Roberts, <u>djeffers@robertsenvironmental.net</u>
Joel Bowers, Barnes & Thornburg, <u>joel.bowers@btlaw.com</u>

Enclosures: State Form 56082, ERC Modification Template, and State Form 57234

It is the goal of IDEM to enable remediation sites to move forward in a timely manner. If an impasse has been reached over technical issues, a Technical Review Panel of non OLQ scientists is available to review and offer a non-binding opinion to help resolve technical disagreements with the VRP and State Cleanup Program project managers. The goal is to facilitate progress at your site. This review process is available immediately. If you would like to request a review by the Panel, please contact Kevin Davis, Remediation Services Branch Chief for the Office of Land Quality, at 317-232-4535 or kdavis2@idem.in.gov.

Any decision produced by the Technical Review Panel is not an agency action as defined in IC § 4-21.5-1-4 or an order as defined in IC §4-21.5-1-9. This decision is not subject to administrative review because it is not a determination of any legal rights, duties, privileges, immunities, or other legal interests, and because it is issued pursuant to an informal procedure for dispute resolution as allowed by IC 4-21.5-3-34 (a).



Return this signed form to: INSTITUTIONAL CONTROLS GROUP

100 N. Senate Avenue, IGCN N1101 Indianapolis, IN 46204-2251 Fax: 317-234-0428 Or submit form electronically to: institutionalcontrols@idem.IN.gov

INSTRUCTIONS: Please complete this form (type or print legibly) and return it to the Institutional Controls Group to begin the process of modifying or terminating a recorded Environmental Restrictive Covenant (ERC) or Deed Notice. Attach any additional documentation needed to support the request and include a draft modification or termination document. Eligibility determinations utilize the facts and data provided with the request, and a written evaluation response will be provided along with an approved modification or termination as appropriate. Please note that the complexity of technical issues pertaining to the site, and/or incomplete submittals, may significantly increase staff review time. Regardless of the eligibility determination results, reimbursable costs will apply to IDEM's evaluation of the request.

ENVIRONMENTAL RESTRICTIVE COVENANTS/DEED NOTICES (RESTRICTIVE COVENANTS)

Environmental Restrictive Covenants (ERCs)/Deed Notices are institutional controls which are enforceable (IC 13-11-2-193.5) legal instruments used to protect human health at contaminated sites by restricting property activity, use, and access. ERCs/Deed Notices can also obligate property owners and their successors to operate or maintain physical barriers to eliminate exposures to the contamination.

When a restrictive covenant is proposed as a remedy or component of a remedy, IDEM evaluates it to determine: 1) whether the proposed activities, land use restrictions, and obligations are sufficient to protect human health from the contamination; 2) if the covenant is associated with the correct real estate; and 3) that the covenant includes all of its necessary elements as defined in IC 13-11-2-193.5.

After June 30, 2009, a restrictive covenant must include instructions on how it can be modified or terminated (IC 13-11-2-193.5). This clause requires IDEM's prior written approval for all amendments, modifications, or terminations. If approved by IDEM, the PROPERTY OWNER must record the document in the same manner as the original ERC/Deed Notice in the office of the Recorder of the county in which the real estate is located. A copy of the recorded modification or termination must be provided to IDEM.

Restrictive covenant modification and termination requests will be evaluated utilizing IDEM's current risk based guidance.

REQUESTER CONTACT INFORMATION			
Restrictive covenant modification / Termination requester		Entity / Organization / Community	
Address (number and street, city, state, a	and ZIP code)		
Telephone number (include area code) ()	Fax number ()	E-mail address	
Are you the current owner of record with the county? Yes No (if not, complete property owner contact information section below)			
	PROPERTY OWNER CONTAC	T INFORMATION	
Name(s) of property owner		Organization / Community / Firm (if applicable)	
Address (number and street, city, state, and ZIP code)			
Telephone number (include area code) ()	Fax number ()	E-mail address	
SITE/PROPERTY INFORMATION			
Site or Project name			
Address (number and street, city, state, and ZIP code)			County
Original restrictive covenant instrument number (County recorder number) Original restrictive covenant date of recordation (mm/dd/yyyy)			
Original restrictive covenant IDEM virtual file cabinet (VFC) number (if not available in VFC, please attach original ERC)			
IDEM Office of Land Quality Program Indiana Brownfields Program Leaking Underground Storage Tanks Voluntary Remediation Program	☐ Hazardous Waste (LUST) ☐ Solid Waste ☐ Other (please specify	☐ Federal Programs (Sup☐ State Cleanup	perfund; DERP)

Is the property currently being leased? ☐ Yes ☐ No	If property is currently being leas	ed, the lessee is:	
Current land use (check all that apply): Agricultural Commercial Ind	dustrial	esidential	
Intended reuse of property (check all that ap ☐ Commercial ☐ Green space ☐ Inc ☐ Other (please specify)		esidential Park Undecided	
RESTRIC	TIONS PROPOSED TO BE M	ODIFIED/TERMINATED	
Control type (check all restrictions proposed	d for modification or removal):	Current site coverage:	
Residential Use Restriction		☐ Entire ☐ Portion	
☐ Groundwater Use Restriction		☐ Entire ☐ Portion	
☐ Agricultural or Food Crop Restriction		☐ Entire ☐ Portion	
☐ Construction Restriction		☐ Entire ☐ Portion	
☐ Excavation Notice Required		☐ Entire ☐ Portion	
☐ Vapor Mitigation System		☐ Entire ☐ Portion	
☐ Engineered Control (check all that apply)):	☐ Entire ☐ Portion	
Slurry wall Sheet piling Inter	etative cap	er recovery system	
☐ Solid Waste Post Closure Care Requirements		☐ Entire ☐ Portion	
☐ Other (please specify)		☐ Entire ☐ Portion	
	REASON FOR REQ	UEST	
Reason for modification (check all that apply):			
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[Note: Always review the original ERC paragraph describing requirements for ERC modifications or terminations. This template may be used for purposes of terminating individual restrictions; use the "Termination of Environmental Restrictive Covenant" template for termination of an ERC or other IC instrument in its entirety.]

Cross Reference: Instrument No. [add instrument # from Original ERC]

MODIFICATION OF ENVIRONMENTAL RESTRICTIVE COVENANT

this on deed]	S MODIFICATION of Environmental Restrictive Covenant ("ERC") is made day of, 20, by [insert name of property owner as it appears ("Owner") with the approval of the Indiana Department of Environmental ent ("IDEM").	
I. Recitals		
- 	A. Owner is the fee owner of certain real estate in the County of, Indiana, which is located at [insert address], and is more particularly described in the attached legal description designated as "Exhibit A" (the "Real Estate"). The Real Estate was acquired by deed on [insert month, day, year], and recorded on [insert month, day, year], as [Instrument Number or Deed Record,] in the Office of the Recorder of County, Indiana. The Real Estate consists of approximately acres, and has also been identified as parcel identification number(s)];	
/ 	B. The Real Estate is <i>subject</i> to an ERC ("Original ERC") recorded on [<i>insert month</i> , <i>day</i> , <i>year</i>], as Instrument Number The Original ERC established certain restrictions and/or obligations on the Real Estate and ts future use to ensure the protection of public health, safety or welfare and the environment due to a release of [<i>select from: petroleum; hazardous waste; hazardous substances</i>] relating to the [<i>site name and identification number</i>];	
ı	C. Paragraph of the Original ERC provides that, if any owner desires to modify the Original ERC, the person shall obtain [select IDEM's or IDEM and insert third party as noted] prior written approval.	
	D. [In one or more paragraphs, describe the reason for the modification, and any justification for the change. For example, if additional environmental sampling has been conducted a summary of those results and a reference to environmental reports by title and date should be included. Additional exhibits, such as maps and tables may be attached ("Exhibit B", etc.).	

This narrative is site specific; some example reasons for a modification of an ERC may include:

- Changes in land use that necessitate modification of one or more specific restrictions or obligations;
- Additional remedial activities at the site that may allow broader use of the Real Estate than allowed in the Original ERC. Include a summary describing the remedial activity(ies) and date(s) conducted;
- A correction to the Original ERC. The correction should be clearly explained (e.g. a missing page, an incorrect legal description);
- Subdivision of the Real Estate. Pay particular detail to providing correct reference information regarding new deeds, legal descriptions, and parcel identification numbers to clearly portray desired changes. New legal description(s) should be attached as an exhibit.]

II. Modification of Original ERC

- A. Owner desires to modify the Original ERC described in Section I, Paragraph ____ of this instrument. [If IDEM provided prior written approval of the request to modify, insert IDEM provided prior written approval of the modification request by way of letter dated [insert month, day, year]].
- B. [In one or more paragraphs, insert the specific modification language. Directly referencing the applicable section and paragraph of the Original ERC is recommended. Clearly describe which restrictions and/or obligations are being changed, and the location on the Real Estate that the changes apply to.

If the change applies to only a portion of the Real Estate, or if the Real Estate is subdivided, a legal survey or GPS coordinates must be provided. Add additional paragraphs (B, C, D, etc.) and Exhibits as necessary].

- C. After approval and signature by IDEM, Owner shall record this Modification of ERC with the Office of the Recorder of _____ and provide a copy to IDEM within 30 days of recording.
- D. Except as expressly modified by this instrument, all other restrictions, obligations and requirements established in the Original ERC recorded on [insert month, day, year], as Instrument Number _____ shall remain in full force and effect.
- E. This Modification of ERC is effective when signed by the parties.

III. Approval

Pursuant to the terms of Paragraph [insert reference to modification/termination paragraph in Original ERC] of the Original ERC, IDEM has reviewed and approves the Modification of ERC.

IV. Authorization

The undersigned persons executing this Modification of ERC on behalf of Owner and IDEM represent and certify that they are empowered and duly authorized by their respective entities to execute this document. The undersigned person on behalf of the Owner further represents and certifies that Owner is the current owner of the Real Estate.

OWNER		
Ву:		
Printed:		
Title:	······································	
Affirmation of Notary for the Owner		
STATE OF INDIANA)) SS: COUNTY OF)		
COUNTY OF)		
Before me, the undersigned, a N personally appearedOwner, who acknowledged the execution behalf of said entity. Witness my hand and Notarial Section 1.5	, the on of the foregoing Mod	of the ification of ERC and on
	(Signature)	
	(Printed Name) Notary	y Public
	Residing in	County,
My Commission Expires:		

This Modification of ERC is approved this day of , 20 , by IDEM. By: _____ Printed: **Affirmation of Notary for IDEM:** STATE OF INDIANA)) SS: COUNTY OF MARION Before me, the undersigned, a Notary Public in and for said County and State, personally appeared ______ of the Indiana Department of Environmental Management, who acknowledged the execution of the foregoing Modification of Environmental Restrictive Covenant for and on behalf of said entity. Witness my hand and Notarial Seal this ____ day of _____, 20____. (Signature) (Printed Name) Notary Public Residing in County, My Commission Expires:

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

[insert name and address]

This instrument prepared by:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document as required by law.

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

NOTICE OF CONTAMINATION IN RIGHT OF WAY State Form 57234 (3-23) INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

PURPOSE: Provides notice that contaminated soil and/or groundwater is present in the Right of Way because of a release of contamination to the environment from an IDEM reported incident. This information will be used by the roadway's managing authority to consider worker safety and proper management practices during future construction activities.

Send completed form to:

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Land Quality institutionalcontrols@idem.in.gov ATTN: Institutional Controls Group AND

INDIANA DEPARTMENT OF TRANSPORTATION

ESD.SAM@indot.in.gov ATTN: SAM Team Lead

INSTRUCTIONS: Send completed Notice of Contamination in Right of Way form to both IDEM <u>and</u> INDOT (contact information provided above). The person completing this form may be the property owner or any individual authorized by the property owner to act as their delegate or agent. For local roads (county and municipal), send an <u>additional</u> copy of this form directly to the managing authority. Use links at <u>IDEM: Environmental Cleanups:</u>
<u>Institutional Controls</u> to determine if a road is owned by an entity other than INDOT and to find additional supporting information to assist with completing this form. You are responsible for identifying the managing authority.

SECTION I: SITE INFORM	ATION			
Name of Site				County
Address of Site (number and street)				
City		State Indiana		ZIP / Postal Code
Affected INDOT and/or Locally Owned Road	Agency Interest	Agency Interest Number (AI ID) Facility Identificat		ion Number (UST FID)
IDEM Remediation Program Choose an item.	Remediation Pro	Remediation Program Incident Number Date Incident Re		ported
SECTION II: PROPERTY O	WNER INFORMAT	ION		
Property Owner				
Address of Property Owner (number and stre	eet)			
City		State		ZIP / Postal Code
Telephone Number		E-mail Address		
Date ERC recorded (month, day, year)	Instrument Nur	mber	VFC Number	er
To view the ERC in its entirety, visit IDEM's Virtual File Cabinet at IDEM: Environmental Cleanups: Institutional Controls.				
ADVISORY STATEMENT				
IDEM's Uncontaminated Soil Nonrule Policy Document (NPD) (WASTE-0064-NPD) should be used when determining whether it is appropriate to re-use excavated soil in a construction project. Refer to the most current version of the Nonrule Policy Document at the Effective Nonrule Policies webpage (IDEM: Environmental Cleanups: Institutional Controls) to determine the appropriate criteria to evaluate soil containing detectable levels of human introduced chemicals and the proper management of such soils.				
SECTION III. CONTAMINA		BLES		
The purpose of the analytical tables is to ensure that the contaminants in the ROW are identified. This information can be provided by either referencing an already submitted report, such as the last Quarterly Monitoring Report (QMR) (VFC document number #) or ensuring that the tables are attached to this document. Please check the Yes, No, or N/A boxes to declare that this information is/is not included.				
A Soil Analytical Table (Select				
residential, industrial, and e	Most recent soil samples compared to IDEM's current risk-based policy, residential, industrial, and excavation worker direct contact soil levels			No N/A
	Depth of soil impacts remaining on the Site and in the vicinity of the residual contamination extending into/beneath the ROW		No N/A	

If a soil table with this information has already been submitted to IDEM, provide the associated VFC #			
В	Groundwater Analytical Table (<i>Select</i> : ☐ Petroleum ☐ Chlorinated Solvents ☐ Metals ☐ Other:		
	Most recent four quarters compared to IDEM's current risk-batter for drinking water standards	based policy Yes No N/A	
	Include depth to groundwater from the monitoring wells on the the vicinity of the residual contamination extending into/benea		
If a	groundwater table with this information has already been subm	mitted to IDEM, provide the associated VFC #	
SECTION IV. FIGURES			
The purpose of the Site figures is to ensure that the location of contaminants in the ROW is depicted. This information can be provided by either referencing an already submitted report, such as the latest Quarterly Monitoring Report (QMR) (VFC document number #) or ensuring that the tables are attached to this document. Please check the Yes, No, or N/A boxes to declare that this information is or is not included/applicable.			
Α	Site Figure		
	Roadways depicted	☐ Yes ☐ No ☐ N/A	
	Utility corridors depicted	☐ Yes ☐ No ☐ N/A	
If a Site figure with this information has already been submitted to IDEM, provide the associated VFC #			
B Soil Figure - Location of residual soil impacts (on-site and extending into/beneath the ROW)			
	Most recent analytical data included (data boxes or isopleth lirextent and concentration level)	lines showing Yes No N/A	
	Inferred plume extents	☐ Yes ☐ No ☐ N/A	
If a soil figure with this information has already been submitted to IDEM, provide the associated VFC #			
С	C Groundwater Figure - Location of residual groundwater impacts (on-site and extending into/beneath the ROW)		
	Most recent analytical data included (data boxes or isopleth lines showing extent and concentration level)		
	Inferred plume extents	☐ Yes ☐ No ☐ N/A	
If a groundwater figure with this information has already been submitted to IDEM, provide the associated VFC # .			
SF	CTION V. PROPERTY OWNER OR AUTHORIZED REF	PRESENTATIVE	
A	Date (month, day, year)		
	Name (print or type)	Title	
В	Telephone Number	E-mail Address	
OF	DIFFICATION CTATEMENT (Diamage signs in how heless)		
I swear or affirm that I have the authority to complete and submit this Notice of Contamination in Right of Way as the Site owner or as a Site representative authorized by the site owner. I swear or affirm, under penalty of perjury as specified by IC 35-44.1-2-1 and other penalties specified by IC 13-30-10, that the statements and representations in this Notice of Contamination in Right of Way and any attachments are true, accurate, and complete.			
Sig	Signature: Date (month, day, year):		