

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION
INCITE CAUSE NO. IDEM-2404-000920

OBJECTION TO THE DENIAL OF VOLUNTARY)
REMEDATION PROGRAM (VRP))
CERTIFICATE OF COMPLETION)
VRP PERMIT NO.: 6071001)
FORMER DANA PERFECT CIRCLE SITE)
HAGERSTOWN, WAYNE COUNTY, INDIANA)

Hagerstown Land, LLC and Autocar, LLC,)
Petitioners/Respondents,)
Indiana Dept. of Environmental Management,)
Respondent.)

CAUSE NO. 24-S-J-5284

**HAGERSTOWN LAND, LLC AND AUTOCAR, LLC'S FIRST
REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT IDEM**

Pursuant to Rule 34 of the Indiana Rules of Trial Procedure, Respondent Indiana Department of Environmental Management ("IDEM") is requested to provide responses to the following requests for production of Documents and produce for inspection and copying the following Documents and materials at the offices of HATCHETT & HAUCK LLP, 150 W. Market Street, Suite 200, Indianapolis, Indiana 46204, within thirty (30) days of the date of service.

INSTRUCTIONS

1. Individual responses are to be made to every request and must be based upon information and personal knowledge, and/or corporate/entity knowledge.
2. In accordance with the Indiana Trial Rules, the requests shall be deemed continuing so as to require supplemental production if you receive, become aware of, or generate additional Documents between the time of original production and trial in this matter.
3. All Documents, as set forth below, are to be produced that are in your possession, custody, or control. This includes Documents that are not currently in your physical possession or custody, but nonetheless are under your control.

4. Production of Documents or other materials in response to these requests may be via electronic means, unless doing so would result in unreadable or otherwise indecipherable information, in which case originals are required for inspection and copying.
5. If more than one copy of a requested Document is in your possession and any copy bears notations, whether handwritten or otherwise, that do not appear on all copies, each such copy shall be separately produced.
6. A request seeking Documents relating to any Communication with a corporation, partnership or other business or governmental entity includes, but is not limited to, any Communication with its officers, directors, controlling shareholders, employees, representatives, contractors, agents and attorneys acting on the entity's behalf.
7. The response to a request seeking Documents relating to any Communication shall include the following information with respect to each Communication:
 - a. Its date;
 - b. The name and addresses of all participants;
 - c. The place in which each person was located at the time of the Communication;
 - d. The method used to transmit the Communication;
 - e. Each statement made in the course of the Communication; and
 - f. The identity of each Document prepared to memorialize, record or confirm the Communication or otherwise prepared as a consequence of the Communication.
8. With respect to each numbered category, if you have no records to produce for a specific numbered item, you are to respond in writing concerning the lack of those records.
9. When a request asks that a certain Document be identified or described, the response shall include the following information with respect to each Document, unless the Document is produced for inspection and copying:
 - a. The title, heading or caption of such Document, if any;
 - b. The identifying numbers, letters or combination thereof, if any, and the significance or meaning of such numbers, letters or combination thereof;
 - c. The inclusive dates of each set of Documents;
 - d. The general nature or description of each such Document and the number of pages of the Document;
 - e. The name of the person(s) who signed the Document;
 - f. The name of the person(s) who prepared the Document; and
 - g. The name of the person(s) who have possession, custody, care, or control of the Document.
10. In the event that any Document called for by this request is to be withheld under a claim of privilege or otherwise, that Document is to be identified by stating:
 - a. The names of its author or authors, preparers, senders and recipients, including title and employer;
 - b. Whether any indicated or blind copies exist;
 - c. The Document's date, subject matter, number of pages, and attached exhibits or appendices;

- d. The names of all persons to whom the Document was distributed, shown, or explained, identified by title and employer;
 - e. Its present condition and location;
 - f. All facts as to each response on which it relies to establish such privilege; and
 - g. The nature of the privilege asserted and the paragraph of this request to which the Document relates. In the case of any Document relating in any way to a meeting or any other conversation, all those persons present (whether or not they were participants) in the meeting or conversation are to be identified by name, title, and employer.
11. In the event that the Document called for has been destroyed or discarded, that Document is to be identified by stating:
- a. The names of its author or authors, preparers, senders and recipients, including title and employer;
 - b. Whether any indicated or blind copies exist;
 - c. The Document's date, subject matter, number of pages, and attached exhibits or appendices;
 - d. The names of all persons to whom the Document was distributed, shown, or explained, identified by title and employer;
 - e. Its date of destruction or discard, manner of destruction or discard; and
 - f. The names, addresses, titles, and employers of persons authorizing or carrying out such destruction or discard.
12. If any information or data is withheld because such information or data is stored only electronically or digitally, it is to be identified by the subject matter of the information or data, the storage mode, and the place or places where such information is maintained.
13. Production by reference to IDEM's Virtual File Cabinet shall not be sufficient or responsive to any request unless:
- a. The specific request(s) to which the identified Document number responds to is/are provided;
 - b. The response provides a certification that the Document number reference is a true, accurate, and complete electronic copy of the record; and
 - c. All other applicable instructions are complied with.

DEFINITIONS

- 1. As used herein, **AND/OR** includes, but is not limited to, "and" and in the alternative "or." "And" refers to "or" and "or" refers to "and."
- 2. As used herein, **CLOSURE DETERMINATION** means any decision made by IDEM to grant or deny Regulatory Closure at any property under IDEM's various cleanup programs, including the Voluntary Remediation Program, State Cleanup, and the Leaking Underground Storage Tank programs.

3. As used herein, **COMMUNICATION** includes, but is not limited to, every manner or means of disclosure, transfer, or exchange of information, and every such disclosure, transfer or exchange of information, whether orally or in a Document, and whether face-to-face, by telephone, mail, electronic mail, text, web link, online repository or file sharing, personal delivery, or otherwise.
4. As used herein, the term **DOCUMENT** includes, but is not limited to, any written, printed, typed, photostatic, photographed, facsimile reproduced, recorded, or otherwise reproduced Communication, representation, or means of preserving thought or expressions of every type and description, whether comprised of letters, words, numbers, pictures, sounds, symbols, or any combination thereof. This definition specifically includes duplicates of Documents contemporaneously or subsequently created that have any non-conforming notes or other markings and all drafts of Documents (meaning any earlier, preliminary, preparatory, or other tentative version of all or part of a Document) whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final Document. Without limiting the generality of the foregoing, **DOCUMENT** includes, but is not limited to, correspondence, memoranda, notes, work papers, records, letters, logbooks, envelopes, telegrams, messages, electronic mail (i.e., “e-mail”), text message, policy or other manuals, studies, surveys, appraisals, evaluations, analyses, contracts, agreements, analytical records, reports and summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or other Communications of any type, inter- and intra-office Communications, questionnaires, charts, graphs, photographs, phonograph records, films, video-tapes, audio-tapes, disks, data cells, printouts of information stored or maintained by electronic or digital data compilations from which information can be obtained including, without limitation, electromagnetically sensitive storage media such as floppy disks, hard disks, tape, and compact or digital discs.
5. As used herein, **IDEM, RESPONDENT, YOU, and YOUR** includes, but is not limited to, the Indiana Department of Environmental Management and any and all of its officers, directors, employees, representatives, attorneys, independent contractors, or agents.
6. As used herein, **INSTITUTIONAL CONTROL** means a recorded Environmental Restrictive Covenant, a Restrictive Covenant under Ind. Code §13-11-2-193.5, an Environmental Restrictive Ordinance adopted by a local government, or another device that forbids, restricts, or compels certain land use(s) on a property.
7. As used herein, **LONG TERM STEWARDSHIP** shall include any initiative, program, concept, alternative, project, or other undertaking by IDEM under the name “Long Term Stewardship,” “LTS,” or a similar name.
8. As used herein, **OFF-SITE PROPERTY** or **PROPERTIES** means the real estate parcel(s), or any portion thereof, that were the subject of the Site Determination identified as “Downgradient Agricultural Properties” (Parcels 8-11), the “Camp Wapi Kamigi LLC

parcels” (Parcels 12-15) in the Site Determination, and the parcel owned by James & Jack Study Farms LLC (Tax Parcel Identification Number 89-05-26-100-112.001-020) identified as the “Study LLC parcel” in the Site Determination.

9. As used herein, **PERSON** means any individual, corporation, partnership, company, organization, association, governmental unit, or any other identifiable entity.
10. As used herein, **REGULATORY CLOSURE** means a Voluntary Remediation Program Certificate of Completion and/or Covenant Not to Sue, a No Further Action or similar letter under the State Cleanup or the Leaking Underground Storage Tank programs, or a Site Status Letter under the Brownfields Program.
11. As used herein, the term **RELATING TO** or **PERTAINING TO** means, but not limited to, containing, concerning, showing, relating, referring, reflecting, evidencing, describing, constituting, supporting, or pertaining in any way, directly or indirectly, to the subject matter of the request, including, without limitation, all things supporting, underlying, explaining, or at any time attached, annexed or appended to or used in the preparation of, and all drafts of, any Documents identified herein.
12. As used herein, **SITE** means Voluntary Remediation Program project number 6071001, which involves real estate owned by Hagerstown Land and operated by Autocar located at 550 and 551 S. Washington, Hagerstown, Indiana 47346.
13. As used herein, **SITE DETERMINATION** means IDEM’s March 28, 2024 letter issued to Hagerstown Land and Autocar denying Hagerstown Land and Autocar’s request for a Voluntary Remediation Program Certificate of Completion.
14. The singular refers to the plural and the plural refers to the singular. The masculine refers to the feminine and the feminine to the masculine. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these requests.

DOCUMENTS REQUESTED

Request for Production No. 1: Produce all Documents relating to any laws, rules, policies or procedures utilized or otherwise relied upon by IDEM in issuing the Site Determination.

RESPONSE:

Request for Production No. 2: Produce all Documents relating to any fact, assertion, claim, conclusion, denial, or contention utilized or otherwise relied upon by IDEM in issuing the Site Determination.

RESPONSE:

Request for Production No. 3: Produce all Long Term Stewardship plans or similar measures considered, proposed, approved by IDEM.

RESPONSE:

Request for Production No. 4: Produce all Long Term Stewardship plans or similar measures agreed to or otherwise implemented by a responsible party, voluntary remediation program applicant, or other party performing cleanup.

RESPONSE:

Request for Production No. 5: Produce each and every Communication related to the Site, including but not limited to Communications generated in reviewing the remediation work

plans and closure requests for the Site and in issuing the Site Determination, that in any way relate to:

- (A) Whether any Institutional Control(s) will or will not be required for Regulatory Closure.
- (B) Whether any Long Term Stewardship plan will or will not be required for Regulatory Closure.
- (C) The contents of any Long Term Stewardship plan required for Regulatory Closure.
- (D) The current or possible future use of any Off-Site Property.
- (E) The “potential for exposure” at any Off-Site Property.

RESPONSE:

Request for Production No. 6: Produce all Communications and other Documents generated by IDEM in drafting the Site Determination, including, without limitation:

- (A) All draft, outlines, or prior versions of the Site Determination.
- (B) All emails, memos, or other Communications related to the drafting of the Site Determination or its possible contents.

RESPONSE:

Request for Production No. 7: Produce all Sampling Data that IDEM reviewed, considered, or analyzed in developing or issuing the Site Determination.

RESPONSE:

Request for Production No. 8: Produce any Communications IDEM has had since January 1, 2019 with any person that is not an employee of IDEM or an employee, consultant, or attorney for Hagerstown Land or Autocar related to the Site, including, without limitation, any written, electronic, or oral correspondence to and from any resident or government official.

RESPONSE:

Request for Production No. 9: Produce any Documents associated with any Communication identified in Request for Production No. 8, above, including transcripts, recordings, notes taken by IDEM employees or contractors in preparation for, during, or after such Communications, summaries or recaps created by IDEM or an automated service, calendar appointments, text or email messages, or voice mail messages.

RESPONSE:

Request for Production No. 10: Produce all Documents IDEM consulted or relied upon in concluding that Hagerstown Land and Autocar “have not successfully implemented their approved *Remediation Work Plan (RWP)*” (Site Determination, p. 1 (emphasis original)).

RESPONSE:

Request for Production No. 11: With respect to IDEM’s conclusion that “IDEM does not agree that the LOEs demonstrate that restrictions are not required” at the Study LLC Off-Site Property (Site Determination, p. 10), produce the following:

- (A) All Documents (including, without limitation, Communications) generated by IDEM.
- (B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 12: With respect to IDEM’s claim of “a reasonably likely potential for exposure” at the Study LLC Off-Site Property (Site Determination, p. 11), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 13: With respect to IDEM’s conclusion that “future installation and use of a well in the contaminated area of the [Study LLC] parcel is reasonably likely” (Site Determination, p. 11), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 14: With respect to IDEM’s conclusion that “IDEM does not agree that the LOEs demonstrate that restrictions are not required” at the Camp Wapi Kamigi Off-Site Property (Site Determination, p. 12), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 15: With respect to IDEM’s claim of “a reasonably likely potential for exposure” at the Camp Wapi Kamigi Off-Site Property (Site Determination, p. 12), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 16: With respect to IDEM’s conclusion that “future installation and use of a well in the contaminated area of the [Camp Wapi Kamigi] parcel is reasonably likely” (Site Determination, pp. 12-13), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 17: With respect to IDEM’s conclusion that “IDEM does not agree that the LOEs demonstrate that restrictions are not required” at the Downgradient Agricultural (Parcels 8-11) Off-Site Properties (Site Determination, p. 15), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 18: With respect to IDEM’s claim of “a reasonably likely potential for exposure” at the Downgradient Agricultural (Parcels 8-11) Off-Site Properties (Site Determination, p. 15), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 19: With respect to IDEM’s conclusion that “future installation and use of a well in the contaminated area of [the Downgradient Agricultural (Parcels 8-11) Off-Site Properties] is reasonably likely” (Site Determination, p. 15), produce the following:

(A) All Documents (including, without limitation, Communications) generated by IDEM.

(B) All Documents reviewed or relied upon by IDEM.

RESPONSE:

Request for Production No. 20: Produce all Documents containing IDEM’s policies, procedures, directions, or other materials that provide guidance or instruction to its employees for conducting the “assessment of risks” described in Ind. Code § 13-25-5-8.5(b)(2).

RESPONSE:

Request for Production No. 21: Produce all Documents containing IDEM’s policies, procedures, directions, or other materials that provide guidance or instruction to its employees

for determining the “expected future use” of property, as described in Ind. Code § 13-25-5-8.5(b)(2)(A).

RESPONSE:

Request for Production No. 22: Produce all Documents containing IDEM’s policies, procedures, directions, or other materials that provide guidance or instruction to its employees for assessing the “measurable risks to human health, natural resources, or the environment” described in Ind. Code § 13-25-5-8.5(b)(2)(B).

RESPONSE:

Request for Production No. 23: Produce all Documents containing IDEM’s policies, procedures, directions, or other materials that provide guidance or instruction to its employees for taking into account “site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that: (A) manage risk; and (B) control completed or potential exposure pathways” as described in Ind. Code § 13-25-5-8.5(d)(3).

RESPONSE:

Request for Production No. 24: Produce all Documents containing IDEM’s policies, procedures, directions, or other materials that provide guidance or instruction to its employees to determine the conditions under which IDEM would grant or deny Regulatory Closure without an Institutional Control when groundwater contamination at the site exceeds applicable residential groundwater screening levels.

RESPONSE:

Request for Production No. 25: Produce all Documents (including, without limitation, any law, rule, regulation, policy, memo, guidance, or internal IDEM document) containing or explaining the development or application of the “reasonably likely potential for exposure” standard referenced in the Site Determination at pages 8, 11, 12, and 15.

RESPONSE:

Request for Production No. 26: Produce all Documents containing IDEM’s “assessment of risks” for the Off-Site Properties per Ind. Code § 13-25-5-8.5(b)(2).

RESPONSE:

Request for Production No. 27: Produce all Documents containing IDEM’s evaluation of the “expected future use” of the Off-Site Properties per Ind. Code § 13-25-5-8.5(b)(2)(A).

RESPONSE:

Request for Production No. 28: Produce all Documents containing IDEM’s assessment of the “measurable risks to human health, natural resources, or the environment” at the Off-Site Properties per Ind. Code § 13-25-5-8.5(b)(2)(B).

RESPONSE:

Request for Production No. 29: Produce all Documents containing IDEM’s establishment of “levels of hazardous substances and petroleum developed based on site specific risk assessments” at the Off-Site Properties per Ind. Code § 13-25-5-8.5(b)(2)(B).

RESPONSE:

Request for Production No. 30: Produce all Documents related to how IDEM took into account “site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that: (A) manage risk; and (B) control completed or potential exposure pathways” for the Off-Site Properties per Ind. Code § 13-25-5-8.5(d)(3).

RESPONSE:

Request for Production No. 31: Produce all Documents (including, without limitation, any law, rule, regulation, policy, memo, guidance, or internal IDEM document) containing or explaining IDEM’s policies with regard to granting a covenant not to sue with conditions that must be performed or maintained after issuance of the covenant as described in Ind. Code § 13-25-5-18(e).

RESPONSE:

Request for Production No. 32: Produce all Documents (including, without limitation, any law, rule, regulation, policy, memo, guidance, or internal IDEM document) related to IDEM’s development of Long Term Stewardship guidance, policies, requirements, or other related considerations.

RESPONSE:

Request for Production No. 33: Produce all Documents related to the following with respect to the Site, the Off-Site Properties, or Wayne County:

(A) Current or projected future irrigation activities.

- (B) Current or projected future construction of structures in floodways.
- (C) Current or projected future construction of residences.
- (D) Current or projected future construction of groundwater consumption wells.
- (E) Any relationship between climate change and irrigation.

RESPONSE:

Request for Production No. 34: Produce all Documents related to any IDEM request that Hagerstown Land propose an alternative when it was unable to obtain Environmental Restrictive Covenants at the Off-Site Properties.

RESPONSE:

Request for Production No. 35: Produce all Documents related to any property that was the subject of a Closure Determination at which there was subsequent exposure to contamination in excess of applicable remediation objectives.

RESPONSE:

Request for Production No. 36: Produce all Documents related to any Voluntary Remediation Program, State Cleanup, or Leaking Underground Storage Tank remediation project (other than the Site) in which IDEM employed the “reasonably likely potential for exposure” (using that specific phrase) in determining whether to grant or deny Regulatory Closure.

RESPONSE:

Request for Production No. 37: Produce each and every Closure Determination issued by IDEM since January 1, 2019 that denied Regulatory Closure on the basis that an Institutional Control was not obtained.

RESPONSE:

Request for Production No. 38: Produce each and every Closure Determination issued by IDEM since January 1, 2019 that limited the scope of Regulatory Closure on the basis that an Institutional Control was not obtained.

RESPONSE:

Request for Production No. 39: Produce each and every Closure Determination issued by IDEM since January 1, 2019 that granted Regulatory Closure for property with groundwater exceeding an applicable residential groundwater screening level without an Institutional Control prohibiting the extraction or use of groundwater except for purposes of monitoring.

RESPONSE:

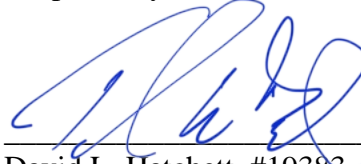
Request for Production No. 40: Produce each and every Closure Determination issued by IDEM since January 1, 2019 that utilized an Institutional Control other than an Environmental Restrictive Covenant or Environmental Restrictive Ordinance.

RESPONSE:

Request for Production No. 41: Produce each and every Closure Determination issued by IDEM since January 1, 2019 that utilized a Long Term Stewardship Plan or similar measure.

RESPONSE:

Respectfully submitted,

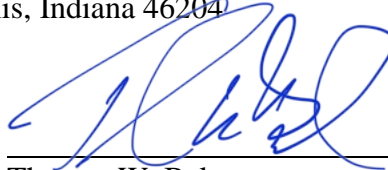


David L. Hatchett, #19383-49
Thomas W. Baker, #20777-49
HATCHETT & HAUCK LLP
150 W. Market Street, Suite 200
Indianapolis, IN 46204-5124
Telephone: (317) 464-2620
Facsimile: (317) 464-2629

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, a true and complete copy of the foregoing was served on all of the parties appearing in this cause via electronic mail as follows:

Lisa McCoy
Stephen Thill
Office of Legal Counsel
Indiana Dept. of Environmental Management
IGCN, Room 1307
100 North Senate Avenue
Indianapolis, Indiana 46204



Thomas W. Baker