



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

Michael R. Pence
Governor

Thomas W. Easterly
Commissioner

Mr. Alex Gross
Whiting Metals, LLC
2230 Indianapolis Blvd.
Whiting, IN 46394

Oct. 10, 2014

Re: Covenant Not To Sue
Whiting Metals, LLC
2230 Indianapolis Blvd.
Hammond, IN 46394
VRP #6101202

Dear Mr. Gross:

The Indiana Department of Environmental Management's Voluntary Remediation Program (VRP) is pleased to provide the State of Indiana's Covenant Not To Sue to Whiting Metals, LLC for the cleanup conducted at the Whiting Metals, LLC, 2230 Indianapolis Boulevard, Hammond, Lake County, Indiana. Please find the original copy of the Covenant Not To Sue enclosed.

We appreciate your efforts in completing the voluntary cleanup at your site and fulfilling the requirements of the Voluntary Remediation Program. Your proactive efforts have taken Indiana another step toward a cleaner and healthier environment.

If you have any questions or concerns regarding this project or the Covenant Not To Sue, please contact your VRP Project Manager, Aaron Green, at (317) 234-0971, (800) 451-6027, or at agreen2@idem.in.gov. Thank you for your participation.

Sincerely,

Thomas W. Easterly
Commissioner

Enclosure

cc: VRP Project File
Mark Elliott, MHEEnvironmental, Inc., 2016 North Cleveland Ave. 1S, Chicago, IL
60614 (include copy of enclosure)

IDEM

Indiana Department of Environmental Management

Covenant Not To Sue

Voluntary Remediation Program

Whiting Metals, LLC
Whiting, Lake County, Indiana

VRP Project #6101202

STATE OF INDIANA
VOLUNTARY REMEDIATION PROGRAM

COVENANT NOT TO SUE

COVENANT

On July 11, 2014, the Commissioner of the Indiana Department of Environmental Management (IDEM) issued a Certificate of Completion pursuant to Indiana Code § 13-25-5-16 to Whiting Metals, LLC for Voluntary Remediation Program site number 6101202. The Certificate was issued in recognition of the completion of the work performed under a Voluntary Remediation Work Plan ("Work Plan") to address the release of hazardous substances and/or petroleum at Whiting Metals, LLC in Whiting, Lake County, Indiana. The Certificate is attached to this Covenant and incorporated herein. The Certificate contains a project summary as Exhibit 1; a list of the specific contaminants addressed under the project as Exhibit 2; and a site map of the project area as Exhibit 3.

Pursuant to Indiana Code § 13-25-5, the Governor of the State of Indiana now covenants not to sue Whiting Metals, LLC for any liability, including future liability, or for any claim, resulting from or based upon the release or threatened release of contaminants listed in Exhibit 2 that were the subject of the approved Work Plan, as explained below. The Covenant shall bar suit against Whiting Metals, LLC, and any other person who receives the Certificate of Completion through legal transfer or who acquires the subject property to which the Certificate applies ("successors in title"), from all public and private claims arising under Title 13 of the Indiana Code or rules adopted thereunder in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved Work Plan, except as set forth in Reservations, below.

This Covenant Not To Sue shall be construed as a Covenant running with the land, but shall not apply to the predecessors in title of Whiting Metals, LLC.

RESERVATIONS

1. Pursuant to Indiana Code § 13-25-5-18(c), the Covenant does not apply to any public or private claim for liability, or future liability, arising under Title 13 of the Indiana Code or any rules adopted thereunder, resulting from or based upon a condition or extent of a condition that:

- A) was present on the property on which the completed Work Plan was conducted; and
- B) was not known to the Commissioner of IDEM at the time the Certificate of Completion was issued.

For purposes of this paragraph, the Commissioner's knowledge at the Site is limited to the information IDEM received during the execution of the Work Plan and the information contained in the site investigation report(s) and the Work Plan and its attachments as provided to IDEM.

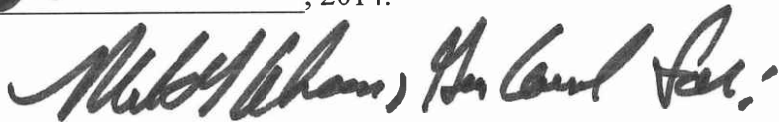
2. This Covenant applies only to releases of the contaminants addressed by the Work Plan as specified in Exhibit 2.

3. This Covenant does not apply to releases of hazardous substances or petroleum (including all contaminants listed in Exhibit 2 of the Certificate) that occurred, or migrated outside of the boundaries of the VRP project area, as identified in Exhibit 3 of the Certificate. This

Covenant also does not apply to releases of hazardous substances or petroleum not listed in Exhibit 2 of the Certificate or releases that occurred after issuance of this Covenant.

4. Pursuant to Indiana Code § 13-25-5-1, a person's participation in the Voluntary Remediation Program does not affect a person's legal obligations set forth in 42 U.S.C. § 6901, et seq.
5. Pursuant to Indiana Code § 13-25-5-18(f), this Covenant does not preclude the federal government from pursuing Whiting Metals, LLC or any successors for claims based on federal law.
6. This Covenant does not preclude the State of Indiana from taking any unilateral action at the site, under any existing or future statutory authority, to protect human health and the environment.
7. This Covenant does not preclude the State Natural Resource Trustees ("Trustees") from pursuing Whiting Metals, LLC, or its successors in title, for natural resource damages resulting from the release or threatened release of any hazardous substances or petroleum, regardless of whether they were listed in Exhibit 2 and addressed by the completed Work Plan.
8. This Covenant does not preclude the State of Indiana from suing Whiting Metals, LLC for the administrative costs it agreed to pay IDEM under the Voluntary Remediation Agreement it entered into with IDEM.
9. This Covenant does not preclude the State of Indiana from enforcing, under Indiana Code § 13-14-2-6(6) or other applicable law, an environment restrictive covenant recorded on the property that is the subject of this Covenant.
10. This Covenant is conditioned upon complete compliance with the provisions and restrictions of the environmental restrictive covenant that has been recorded on the property that is the subject of this Covenant.

WHEREFORE, the Governor of the State of Indiana issues this Covenant to Whiting Metals, LLC, with all aforementioned privileges, responsibilities, conditions and reservations, this 10th of Oct, 2014.



Michael R. Pence, Governor, State of Indiana

APPROVED FOR LEGALITY AND FORM

Gregory F. Zoeller
Attorney General, State of Indiana



By:
Matt Light
Chief Counsel, Advisory



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Michael R. Pence
Governor

Thomas W. Easterly
Commissioner

Mr. Alex Gross
Whiting Metals, LLC
2230 Indianapolis Blvd.
Whiting, IN 46394

July 11, 2014

Re: **Certificate of Completion**
Whiting Metals, LLC
2230 Indianapolis Blvd.
Hammond, IN 46394
VRP #6101202

Dear Mr. Gross:

The Indiana Department of Environmental Management (IDEM) is pleased to issue the enclosed Certificate of Completion to Whiting Metals, LLC for the successful conclusion of the voluntary remediation conducted at Whiting Metals located in Whiting, Lake County, Indiana. The issuance of the Certificate of Completion under IC 13-25-5-16 is the final agency action for purposes of IC 4-21.5.

Please note that as required by IC 13-25-5-16, Whiting Metals, LLC must record a copy of the Certificate of Completion and its Exhibits in the Recorder's Miscellaneous Book in the county in which the property is located. This must be cross-referenced to the recorded deed that concerns the property on which the remediation took place. To show compliance with this section, a copy of the recorded Certificate and its Exhibits showing the book and page number or the instrument number must be returned to the Voluntary Remediation Program project manager along with the completed and notarized affidavit.

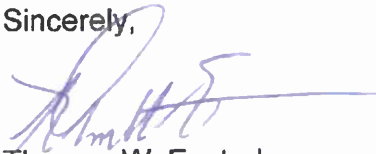
When IDEM receives confirmation that the Certificate and its Exhibits have been properly recorded, IDEM will begin working on the Covenant Not To Sue for Whiting Metals that will be signed by the Governor's office. The information contained in the enclosed packet defines the contaminants and environmental media that will be included in the Covenant Not To Sue.

IDEM appreciates your participation in the Voluntary Remediation Program. The Certificate of Completion and the Covenant Not To Sue provide both the applicant and future landowners with an assurance that a voluntary cleanup has been performed and approved by the State of Indiana.



Please contact your project manager, Aaron Green, at (317) 234-0971, (800) 451-6027, or at agreen2@idem.in.gov if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Easterly', with a long horizontal flourish extending to the right.

Thomas W. Easterly
Commissioner

Enclosure: Certificate of Completion

cc: Project Manager (electronic copy including enclosure)
Mark Elliott, MHEnvironmental, Inc., 2016 North Cleveland Ave. 1S, Chicago, IL
60614 (include copy of enclosure)

IDEM

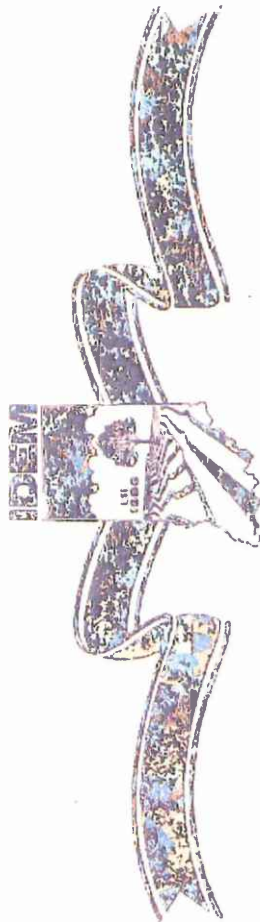
Indiana Department of Environmental Management

Certificate of Completion

Voluntary Remediation Program

Whiting Metals
Whiting, Lake County, Indiana

VRP Project #6101202



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT CERTIFICATE OF COMPLETION

ISSUED TO: **Whiting Metals, LLC**

FOR: The successful completion of the Voluntary Remediation Work Plan for Whiting Metals, IDEM #6101202 located at 2230 Indianapolis Boulevard, Whiting, (Lake County), Indiana, as more specifically described in the attached Exhibits 1-3, which are incorporated herein by reference. The issuance of a Certificate of Completion under IC 13-25-5 is a final agency action for purposes of IC 4-21.5.

GIVEN UNDER MY HAND IN THE CITY OF INDIANAPOLIS
THIS 11TH DAY OF JULY, 2014

Thomas W. Easterly, COMMISSIONER
Department of Environmental Management



Exhibit 1

Project Summary

Exhibit 1

**Project Summary
Certificate of Completion for the Voluntary Remediation Program
Indiana Department of Environmental Management
Whiting Metals
VRP Site # 6101202**

VRP APPLICANT: Whiting Metals, LLC

APPLICANT ADDRESS: 2230 Indianapolis Blvd., Whiting, Indiana 46394

PROJECT NAME: Whiting Metals

VRP PROJECT ADDRESS: 2230 Indianapolis Blvd

CITY, COUNTY: Whiting, Lake County

DATE APPLICATION RECEIVED: December 22nd, 2010

DATE COMPLETION REPORT APPROVED: May 6th, 2014

**DID THE REMEDY ENTAIL ACTIVE / PHYSICAL REMEDIATION OF
CONTAMINATION IN ORDER TO ACHIEVE CLOSURE?:** No

REMEDIAL CLEANUP GOALS ACHIEVED: RISC Industrial Default Closure Levels, as revised May 1, 2009; and Remediation Closure Guide Industrial Screening Criteria, with corrections through July 9, 2012 (See Exhibit 2)

MEDIA ADDRESSED: Surface Soil "ONLY"

VRP PROJECT AREA: Entire Property See Exhibit 3

ENVIRONMENTAL RESTRICTIVE COVENANT (ERC) USE RESTRICTIONS:

The Owner:

- a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).
- b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be

extracted in conjunction with environmental investigation and/or remediation activities.

- c) Shall not use the Real Estate for any agricultural use.
- d) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's current risk based guidance. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws, and disposal of such soils must also be done in accordance with all applicable federal and state laws.
- e) Shall neither engage in nor allow excavation of soil at depths below the surface material the Real Estate unless the soil disturbance obligations listed in the preceding paragraph are followed. In addition, the Owner shall provide written notice to the Department in accordance with paragraph 14 of the recorded ERC at least 14 days before the start of soil disturbance activities. The owner, upon the Department's request, shall provide the Department evidence showing the excavated and restored area does not represent a threat to human health or the environment.
- f) Shall operate and maintain the engineered controls as depicted in Exhibit C "Engineered Controls" and as described in Exhibit D "Operation and Maintenance Plan" of the recorded ERC so as to protect its functional integrity of the engineered cover and fenced barrier (collectively referred to as engineered controls). Owner shall notify the Department in writing at least fifteen (15) days in advance of conducting any construction or excavation work that may impact an engineered control, unless an emergency exists. Owner shall ensure that the integrity of the engineered control is restored immediately after disturbance by any construction or excavation work. Upon IDEM's request, the Owner shall provide written evidence showing the engineered control has been restored to its complete integrity.
- g) Shall maintain the integrity of the existing surface covering, buildings and fenced areas which are depicted on Figure C, Engineered Controls of the recorded ERC via illustrated GPS coordinates; as engineered barriers to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair.
- h) Shall prohibit any activity at the Real Estate that may interfere with the ground water monitoring or well network.

The land-use restrictions above are contained in an ERC recorded on the property. The ERC can be reviewed at the Lake County Recorder's Office (Instrument Number 2014-018314), or in IDEM's Virtual File Cabinet (VFC) as document #69890871 at the following internet web address: <http://108.59.49.89/Pages/Public/Search.aspx>. The ERC is hereby incorporated by reference into Exhibit 1 of this Certificate of Completion (COC).

ENGINEERING CONTROL(S) TO BE MAINTAINED:

Fencing, buildings, and asphalt/gravel ground cover are to be maintained pursuant to the recorded ERC.

SUMMARY OF PROJECT:

Whiting Metals owns 9.02 acres of the former 36-acre Federated Metals facility and leases areas that are not utilized for their metal reclamation process for storage. MHEnvironmental, Inc. (MHEnvironmental) conducted a site assessment on portions of the Whiting Metals property that are not part of the Federated Metals RCRA Corrective Action program. Levels of lead, arsenic and antimony that exceed IDEM Risk Integrated System of Closure (RISC) screening levels (May 2009) were found. Whiting Metals entered into a Voluntary Remediation Agreement (VRA) with IDEM on March 31st, 2011.

MHEnvironmental submitted a Site Investigation Report (SI), dated July 30, 2011. The report indicated the Chen Test was applied to approximately 3.73 acres of non-RCRA Solid Waste Management Unit areas extraneous to the buildings. This was done in order to identify areas where metals are present in soils at concentrations that pose an unacceptable risk to site workers. In a letter dated October 6, 2011, IDEM provided a response to the SI report approving the SI activities and the use of the Chen Test to evaluate potential antimony, lead and arsenic direct contact exposure levels to surface soils only. The SI report stated that subsurface and ground water contamination is being addressed via a federal enforcement action against the American Smelting and Refining Company (parent company of Federated Metals).

MHEnvironmental submitted a combined Further Site Investigation/Remediation Work Plan (FSI/RWP), dated February 20th, 2012 and a subsequent RWP Addendum, dated August 20th, 2012, which detailed the activities of a limited source removal, confirmation sampling, and re-calculation of the Chen Test. The 3.73 acres extraneous to the buildings were divided into eight (8) approximately ½ acre sub-parcels labeled A through H. The Chen Test was applied to antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, silver, thallium, tin, vanadium, and zinc sampling data collected within these sub-parcels. The data revealed that direct exposure risks exist in parcels A, B, C, G, and H for antimony, arsenic, and/or lead. The proposed remedy is to restrict exposure to these five (5) areas via engineered controls which include: maintaining existing asphalt/concrete

cover in areas C, G, and H; restricting access via a chain link fence in area B; and installing and maintaining 6" thick gravel layer in area A. IDEM offered formal approval of the RWP on December 27th, 2012.

The Remediation Closure Report (RCR), prepared by MHEnvironmental, dated December 6th, 2013, provides a summary of the remedial activities and details the proposed use of an Environmental Restrictive Covenant (ERC) to restrict ground water use, residential usage, agricultural uses, and the proposed use and maintenance of engineered barriers to eliminate the direct contact exposure route. On March 31, 2014, an IDEM approved ERC was recorded onto the property under Lake County instrument number 2014-018317 which satisfied the closure obligations outlined within the approved RWP and as summarized in the RCR.

This Certificate of Completion is not meant to modify the terms or conditions of the completed Remediation Work Plan and Covenant Not to Sue. In the event this Certificate of Completion should be inconsistent with the Remediation Work Plan or the Covenant Not To Sue, the Remediation Work Plan shall control.

Exhibit 2

Table of Contaminants Addressed in Project

EXHIBIT 2

METALS - Industrial Default Closure Levels

Contaminant	Direct Contact Soil Closure Level (mg/kg)	Remediation Effort
Antimony	620	Area Screening
Arsenic	20	Area Screening; Limited Excavation
Barium	230,000	Area Screening
Beryllium	2,900	Area Screening
Cadmium	990	Area Screening
Chromium	650	Area Screening
Cobalt	300 ⁽¹⁾	Area Screening
Copper	62,000	Area Screening
Lead	1,300	Area Screening; Limited Excavation
Mercury	470	Area Screening
Nickel	31,000	Area Screening
Selenium	7,800	Area Screening
Silver	7,800	Area Screening
Thallium	110	Area Screening
Tin	100,000 ⁽¹⁾	Area Screening
Vanadium	5,200 ⁽¹⁾	Area Screening
Zinc	470,000	Area Screening

All area screening results utilizing the Chen Test were below industrial closure levels.

Closure criteria are from the 2001 IDEM RISC Technical Guide, Appendix 1 (revised May 1, 2009), Table A

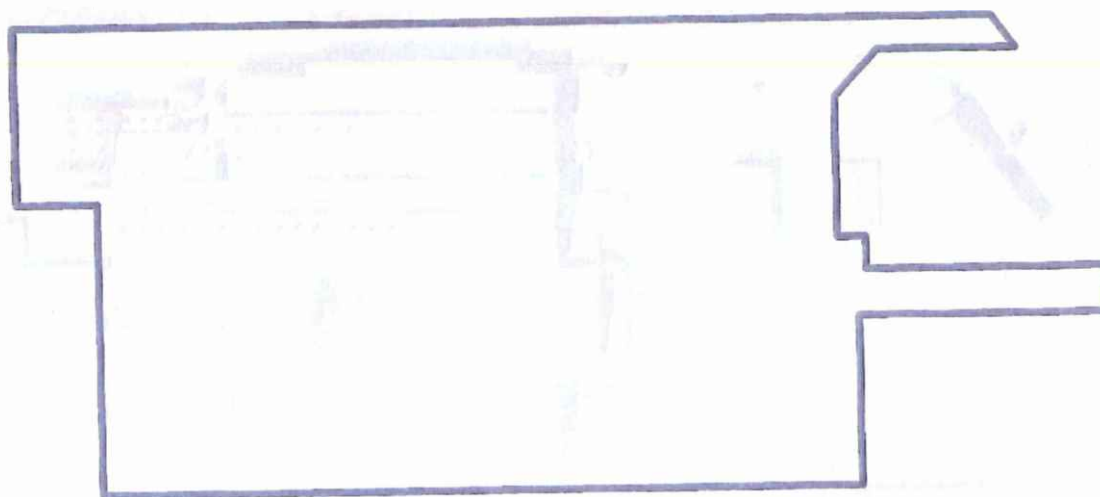
⁽¹⁾ Closure criteria were not specified or available within the RISC Guidance. Industrial screening criteria taken from the Remediation Closure Guide, with correction through July 9, 2012

units are in milligram per kilogram (mg/kg)

Exhibit 3

Site Map

VRP # 6101202 - General Extent of VRP Project Area



Mapped By: Mike Hill, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, May 22, 2014

ERC Info: Instrument # 2014 018317 Recorded 2014 MAR 31
Environmental Restrictive Covenant

Deed Info: Deed Record # 2010 045238 Recorded August 5, 2010

Parcel ID: 45-03-07-403 045.000 023 (partial)

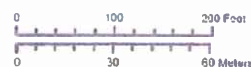
PLSS Info: Section 7, T37N, R9W
North Township
Lake County, IN

Aerial Info: 2005 Statewide Orthophotography

Property: 2230 Indianapolis Boulevard
Whiting, IN

Disclaimer: This map is intended to serve as an aid in graphic representation only.
This information is not warranted for accuracy or other purposes.

 General Extent of VRP Project Area & ERC



Lake County



Project Area



This document was prepared by:



Lisa McCoy, Attorney

Indiana Department of Environmental Management

Office of Legal Counsel

Indiana State Office Building - North

100 North Senate Avenue

Indianapolis, IN 46202

(317) 233-2355

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



Lisa McCoy, Attorney

Signed before me his 1st day of July, 2018



Notary Public (please sign and print)



(print)

My Commission Expires:

County and State of Residence

5-11-19

Lucas Indiana

AFFIDAVIT

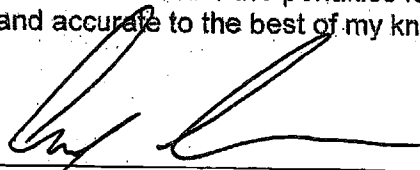
I, the undersigned, being duly sworn upon my oath, have personal knowledge of the facts stated herein;

- the enclosed copy of the Certificate of Completion and its Exhibits were recorded in the LAKE County Recorder's Miscellaneous Book and were cross-referenced to the recorded deed that concerns the property on which the remediation took place;
- the enclosed copy represents the Certificate and its Exhibits in their entirety as received from the Indiana Department of Environmental Management.

County Recorder's Book and Page or Instrument
Number: _____

Number of Pages Recorded: _____

I swear or affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.


Applicant's Signature

ALEX GROSS
Print or type name

JULY 14, 2014
Date

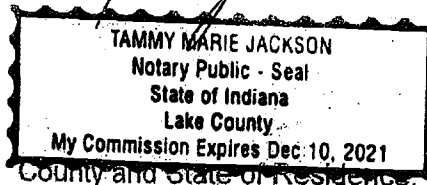
MEMBER
Position

Signed before me the 14th day of July, 20 14.

Tammy Jackson
Notary Public

My Commission Expires:

12-10-21



Lake, Indiana

AFFIDAVIT

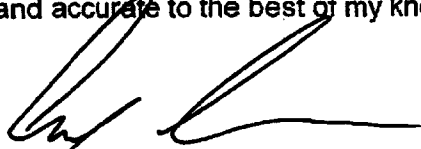
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- the enclosed copy represents the Certificate and its Exhibits in their entirety as received from the Indiana Department of Environmental Management.

County Recorder's Book and Page or Instrument
Number: _____

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I swear or affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.


Applicant's Signature

ALEX GROSS
Print or type name

JULY 14, 2014
Date

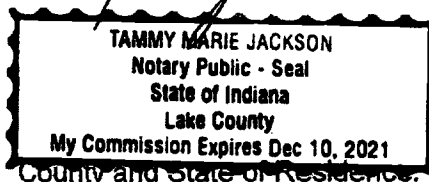
MEMBER
Position

Signed before me the 14th day of July, 20 14.

Tammy Jackson
Notary Public

My Commission Expires:

12-10-21



Lake, Indiana



RECEIPT

LAKE COUNTY RECORDER
 Name of UNIT, AGENCY, BOARD OR COMMITTEE **916886**

2014-040993

7-14-14 FUND
 IN '20

PAYMENT TYPE AND AMOUNT				
Cash Amount	Check/Draft Amount	MO Amount	Credit Card/ Bank Card Amount	EFT Amount
	2			

38
 \$

RECEIVED FROM

Whiting Metals

IN THE SUM OF

DOLLARS

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ON ACCOUNT OF

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CK#

1344

Ca

IDEM

Indiana Department of Environmental Management

Certificate of Completion

2014 040993

Voluntary Remediation Program

MICHAEL D. BROWN
RECORDER

2014 JUL 14 PM 2:30

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

Whiting Metals
Whiting, Lake County, Indiana

VRP Project #6101202