



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
Governor

Bruno L. Pigott
Commissioner

February 11, 2019

CERTIFIED MAIL #7017 2400 0000 0751 8118

Meritor, Inc.
c/o CT Corporation System, Registered Agent
150 West Market Street, Suite 800
Indianapolis, IN 46204

CERTIFIED MAIL #7017 2400 0000 0751 8101

Meritor, Inc.
c/o William Schikora PLLC
5543 Great Hawk Circle
Ann Arbor, MI 48105

CERTIFIED MAIL #7017 2400 0000 0751 8095

KDL Investments, LLC
c/o Carrie Lawrence, Registered Agent
1800 Churchman Avenue
Indianapolis, IN 46203

CERTIFIED MAIL #7017 2400 0000 0751 8125

KDL Investments, LLC
c/o Andrea K. Townsend, Esq.
Plews Shadley Racher & Braun LLP
1346 North Delaware Street
Indianapolis, IN 46202

CERTIFIED MAIL #7017 2400 0000 0751 8088

Arvin Exhaust Manufacturing, LLC
c/o William Schikora PLLC
5543 Great Hawk Circle
Ann Arbor, MI 48105

CERTIFIED MAIL #7017 2400 0000 0751 8071

Arvin Industries Inc.
c/o William Schikora PLLC
5543 Great Hawk Circle
Ann Arbor, MI 48105

Dear Messrs./Mesdames:

Re: Notice of Liability

Former Arvin Industries
1001 Hurricane Street
Franklin, Johnson County
State Cleanup Site #0000783

This letter notifies you of the potential environmental liability that the entities listed above may have incurred with regard to the property located at 1001 Hurricane Street, Franklin, Johnson County, Indiana (Property), as well as all areas to which contamination has migrated (collectively referred to as the Site). The Indiana Department of Environmental Management (IDEM) has determined that a release or the threat of a release of hazardous substances and/or petroleum has occurred at the Site. Based on information presently available to IDEM, IDEM has determined that the entities listed above are Potentially Responsible Persons (PRPs) as defined under Indiana Code (IC) 13-11-2-192. A Responsible Person is liable, pursuant to IC 13-25-4-8, IC 13-25-4-9, and/or IC 13-24-1-4, as well as Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), for the costs of response action incurred by IDEM with respect to this Site (including, but not limited to, past and future costs associated with IDEM's oversight of Site-related response action), and for undertaking response action with respect to this Site at the Responsible Person's own expense.

This Notice serves the following basic functions:

- 1) Providing general and Site-specific information contained in the administrative record to assist you in your consideration of your potential liability;
- 2) Serving as a demand for implementation of response actions; and
- 3) Serving as a formal demand for reimbursement of IDEM's costs incurred to date in investigating this Site and for reimbursement of costs that IDEM will incur in the oversight and administration of the Site.

BACKGROUND

IDEM has conducted an investigation to identify current and past owners of the Property and current and past operators of facilities at this Property. The Property is depicted generally on the map included as Attachment A. A deed review conducted at the Recorder's Office of Johnson County, Indiana identifies the entities listed above as PRPs. The entities listed above owned and/or operated at the Property from 1934 to present.

IDEM also conducted an investigation to locate any records that indicate that during the time of ownership and/or operation at the Property, past owners and/or operators purchased, used, handled, stored, and/or disposed of products containing the hazardous substances and/or petroleum discovered in the soil or groundwater at the Site. IDEM has located documents or has reason to believe that documents exist that demonstrate that the past owners and/or operators named above did use materials containing the hazardous substances and/or petroleum found at the Site during the time of

ownership and/or operation and that such owners and/or operators contributed to contamination of the Site. The hazardous substances and/or petroleum documented at the Property include waste oils, waste paint related materials (possibly including trichloroethene (TCE)), caustics, acids, and polychlorinated biphenyls (PCBs), per Meritor, Inc.'s response to IDEM's request for information (item 9). Waste manifests also supplied in response to IDEM's request for information indicate that chlorinated solvents and PCBs were sent off from the Property for disposal, and a waste notification from 1982 indicates Arvin handled waste oil and "trichlor" F001.

IDEM discovered this Site during investigation and cleanup of several other facilities in Franklin, Indiana that released chlorinated organic compounds into soil and groundwater. The Sites include State Cleanup Site #201334567 (Houghland Tomato Cannery), State Cleanup Site #2013342015 (Reed Properties), and a United States Environmental Protection Agency (U.S. EPA) Resource Conservation and Recovery Act (RCRA) Site (Amphenol).

IDEM has established an administrative record of the documents and information that serve as the basis for IDEM's determination of liability for each PRP. IDEM will also include additional relevant information that it receives in the record. The record may be found on the Virtual File Cabinet at <http://vfc.idem.in.gov/> under Site #0000783

DEMAND FOR RESPONSE ACTIONS

This Notice is an official demand for the PRPs to undertake response action with respect to the release and/or threatened release of hazardous substances and/or petroleum that have occurred at the Site. **The PRPs shall undertake such response action in accordance with the provisions, including the scheduling provisions, of the Statement of Work (SOW) provided in Attachment B. PRPs shall submit work plans and reports for IDEM's approval pursuant to the timelines provided in the SOW.**

FAILURE TO MEET DEADLINES

IDEM has a number of actions it may take if PRPs fail to submit the requested information or complete the response actions as outlined in the attached SOW. Those actions include, but are not limited to the following:

- 1) Seek a Commissioner's Order pursuant to IC 13-25-4-9 and/or IC 13-24-1-1, compelling PRPs to undertake appropriate response actions;
- 2) Perform investigation(s) pursuant to IC 13-25-4-6 and/or IC 13-24-1-6 to determine the extent of contamination, and implement actions necessary to remediate the Site pursuant to IC 13-25-4-9(a) and/or IC 13-24-1-2. PRPs must reimburse IDEM for all response costs incurred by IDEM, pursuant to IC 13-25-4-8 and IC 13-25-4-10 and/or IC 13-24-1-4; and
- 3) Refer the Site to the U.S. EPA for performance of an emergency response action and possible listing as a Superfund site on the National Priorities List, pursuant to CERCLA § 105, 42 U.S.C. 9605.

DEMAND FOR REIMBURSEMENT

IDEM has spent public funds conducting the investigation of this Site, and will continue to spend public funds in overseeing response actions at this Site. IDEM demands reimbursement of its costs incurred to date, and of its future costs to be incurred in the oversight and administration of response actions at this Site. IDEM oversight costs to be paid by PRPs will include costs associated with site specific review of environmental investigation, remediation, and closure documentation, including site visits, data collection, meetings, technical review, and legal review.

IDEM oversight costs will be billed on a monthly basis at a rate of \$75 per hour. PRPs shall pay IDEM project oversight costs to the Hazardous Substances Response Trust Fund as provided in IC 13-25-4-2 and/or IC 13-24-1-4, and shall pay in full before receiving No Further Action status from IDEM for this Site. Failure to pay these costs within 90 calendar days from the initial due date shown on the invoice may result in IDEM pursuing legal action through the Office of the Indiana Attorney General to compel payment of outstanding project oversight costs. The oversight cost hourly rate may change. IDEM will provide PRPs with 60 days advance notice of any change in the oversight cost hourly rate.

In the event that you declare bankruptcy after you receive this Notice, you must include IDEM as a creditor and provide notice of the bankruptcy to IDEM, because IDEM has a potential claim against you. IDEM reserves the right to file a proof of claim or an application for administrative expenses in any bankruptcy proceedings.

If you own the Property, you must notify IDEM of any transfer (voluntary or involuntary) of ownership in the Property (excluding mortgages or liens). You must notify IDEM within 30 days of the transfer and include: (a) a copy of the instrument conveying any interest in any portion of the Property (e.g. deed); and, (b) the name and business address of the transferee. If you are a business entity (e.g. a corporation or LLC), you must notify IDEM of any transfer of ownership in the business entity. You must notify IDEM within 30 days of the transfer and include a description of the nature of the transfer and the name and business address of the new or additional owners of the business entity.

Some or all of the costs associated with this Notice may be covered by current or past insurance policies that were in effect at the time of ownership of the Site or during the period of operation of the facility by the PRP or its predecessor companies. Most insurance companies require notice to the carrier of a claim in a timely manner based upon receipt of this Notice. To evaluate whether you have coverage, you may want to review current and past policies. Coverage depends on many factors such as the language of the policy and which state's laws will apply. **Not having insurance or not having coverage under a policy does not prevent you from being a PRP responsible for all response actions. Furthermore, IDEM will not excuse delays associated with third parties, such as delays caused by negotiations between a PRP and its insurance carriers.**

AGREED ORDER

According to IC 13-25-4-23 and/or IC 13-24-1-1(b), IDEM may, under certain circumstances, enter into an administrative Agreed Order (AO) with one or more of the PRPs who agree to conduct a response action.

If you are willing and able to complete all required response activities at the Site in a timely manner, then you may be eligible to enter into an AO with IDEM that specifies how and when response actions will be conducted. Such an agreement will also require you to reimburse IDEM for all past and future oversight costs. If you are interested in entering into an AO with IDEM, please contact the assigned Project Manager (PM) listed below.

DEFENSES/EXCEPTIONS TO LIABILITY

A PRP who believes it has a valid defense under IC 13-25-4-8(a) and CERCLA § 107(a), 42 U.S.C. 9607(a), or that it meets exceptions to liability under IC 13-25-4-8, IC 13-24-1-4(a), and/or CERCLA § 107, 42 U.S.C. 9607, and/or meets the definition of a Bona Fide Prospective Purchaser (BFPP) pursuant to CERCLA § 101(40), 42 U.S.C. 9601(40), must submit a written briefing regarding the defenses and exceptions that the PRP is claiming, along with all supporting documentation, to the IDEM attorney listed below within 60 days after the date of this Notice. If the PRP is claiming that it meets the BFPP exception, then the submission must include any determination from the Indiana Finance Authority's Brownfields Program that the PRP does have BFPP status. If IDEM determines that no legitimate defense or exception has been demonstrated, IDEM may issue a Commissioner's Order to compel the PRP to undertake response action with respect to the Site pursuant to IC 13-25-4-9, IC 13-14-2, and/or IC 13-24-1.

NO FURTHER ACTION LETTER

A person who implements or completes an approved hazardous substance response action may not be held liable for claims or for contribution from third parties concerning matters addressed in the hazardous substance response action, pursuant to IC 13-25-4-27. This statutory immunity from liability, which does not apply to petroleum response actions, will be provided to you in a No Further Action letter upon approved completion of the remediation.

IDEM CONTACTS

IDEM State Cleanup Project Manager Contact

General technical documents are to be submitted to the PM's mailing address below. Any technical questions, clarifications and requests for meetings to discuss technical issues (please indicate whether an attorney will be present) should be directed to the PM at:

Indiana Department of Environmental Management
Office of Land Quality
State Cleanup Section, Attn: Tim Johnson
100 North Senate Avenue, IGCN, Room 1101
Indianapolis, Indiana 46204-2251

tjohnson@idem.in.gov
(317) 234-3931

IDEM Office of Legal Counsel Contact

Submittal of executed AOs, any written briefing regarding defenses and exceptions to liability that the PRP is claiming, and other legal documents and general legal questions shall be directed to the Office of Legal Counsel attorney assigned to this matter at:

Indiana Department of Environmental Management
Office of Legal Counsel
Attn: Stephen Thill
100 N. Senate Avenue, 13th Floor
Indianapolis, IN 46204

sthill@idem.in.gov
(317) 233-1206

Please note that the options, legal authorities, and remedies identified in this letter are not exclusive, and IDEM reserves the right to take any action it deems necessary to protect human health and the environment. Any of the IDEM personnel identified in this letter may be reached toll-free by calling (800) 451-6027, pressing 0, and asking for that person.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Oertel', with a stylized, looping flourish at the end.

Bruce Oertel, Branch Chief
Remediation Branch
Office of Land Quality

BO:trj:sb
cc: IDEM Site #0000783
Mr. Tim Johnson, IDEM State Cleanup Section
Mr. Stephen Thill, IDEM OLC Attorney
Johnson County Health Department

ATTACHMENTS:

Attachment A - Property Map
Attachment B - Response Actions Statement of Work