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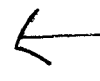
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
(800) 451-6027
www.IN.gov/idem



February 12, 2007

Ms. Dorreen Carey
City of Gary
Department of Environmental Affairs
839 Broadway, 2nd Floor
Gary, IN 46402

Re: Site Status Letter
Former Smitty's Gas Station
2501 Chase Street
Gary, Lake County
BFD Site #4040028
LUST Site #200206507

2007 080727

FILED
SEP 19 2007
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

Dear Ms. Carey:

In response to the request to the Indiana Brownfields Program by the City of Gary for assistance concerning the Former Smitty's Gas Station (Site), the Indiana Department of Environmental Management (IDEM) has agreed to provide this brownfield Site Status Letter to clarify IDEM's position on the necessity of an environmental response action at the Site. This letter is not a legal release from liability. It will, however, help to establish whether environmental conditions at the Site might be a barrier to redevelopment or transfer of ownership.

The Site is a former retail gasoline and automobile repair facility approximately 0.5 acre in size located at 2501 Chase Street, Gary, Lake County. The Site operated as a retail gas station and automobile repair facility from approximately 1957 to 2002. On April 30, 2004, the City of Gary purchased the Site as part of the M.C. Bennett City Park development project. The city received assessment and cleanup grants from the U.S. Environmental Protection Agency in 2003 to address petroleum contamination.

As part of Gary's request for assistance in determining any existing environmental impacts and potential liability to undertake response activities at the Site, the Indiana Brownfields Program staff reviewed data from the following reports from Integrated Environmental Solutions, Inc. (IES):

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- *Phase II Environmental Assessment* (Phase II), July 22, 2003;
- *Quality Assurance Project Plan* (QAPP), October 28, 2004;
- *Remedial Work Plan* (RWP), December 10, 2004;
- *Corrective Action Completion Report* (CACR), March 3, 2006;
- *3rd Quarterly Groundwater Monitoring Report* (3rd Quarter Report), July 20, 2006; and
- *4th Quarterly Groundwater Monitoring and No Further Action Report* (4th Quarter Report), October 10, 2006.

The IES reports analyzed soil and groundwater for total petroleum hydrocarbons extended range organics (TPH-ERO), total petroleum hydrocarbons gasoline range organics (TPH-GRO) benzene, toluene, ethyl benzene, total xylenes, polycyclic aromatic hydrocarbons (PAH), and metals. Sample results from all of the IES reports were compared to the IDEM Risk Integrated System of Closure (RISC) Technical Guidance (January 2006 update, June 2006 TPH update, and August 2006 PAH update) residential default closure levels (RDCL) and industrial default closure levels (IDCL).

According to the IES CACR, underground storage tank removal and remediation activities were completed at the Site in May and December 2005. Seven underground storage tanks were closed by removal. Approximately 1,832 tons of impacted soil were removed and 120,000 gallons of groundwater were treated and discharged into cross-gradient recharge pits at the Site.

After completion of these remediation activities, impacted soil remained in the main excavation area as identified in the IES CACR (Affected Area). The benzene concentration at this location was 0.38 parts per million (ppm), which is above the RISC IDCL of 0.35 ppm but below the direct contact level of 8.4 ppm on a residential site. The TPH GRO levels in the Affected Area were at 3,800 ppm and 710 ppm, which are above the RISC IDCL of 330 ppm. Further excavation was not possible due to the proximity of a city sidewalk. Other contaminants of concern in the soil were below the IDEM RISC RDCLs.

The impacted soils in the Affected Area were further treated by the addition of approximately 125 pounds of oxygen release compound (ORC) to help abate the residual contamination located in the Affected Area. Granular activated carbon was used to treat the groundwater during the ORC application.

In addition, the IES RWP required quarterly groundwater monitoring sampling events for one year. Only lead was found in the groundwater during the 4th quarter of 2006 above the RISC IDCL of 0.042 mg/l.

| Total Lead | | |
|--|--------------|---------------|
| 4th Quarter Groundwater Sampling Results | | |
| Locations | Units | Result |
| MW-10 | mg/l* | 0.007 |
| MW-12 | mg/l | 0.010 |
| MW-13 | mg/l | 0.062 |
| MW-13 (Duplicate) | mg/l | 0.057 |
| MW-14 | mg/l | 0.005 |
| MW-15 | mg/l | 0.022 |
| IDEM RDCL 06/2006 | mg/l | 0.015 |
| IDEM IDCL 06/2006 | mg/l | 0.042 |

*milligram/liter

Total lead levels in MW-13 were at 0.057 milligrams per liter (mg/l) and 0.062 mg/l which is above the IDEM RISC IDCL of 0.042 mg/l. Total lead levels in MW-15 are above the IDEM RISC RDCL of 0.015 mg/l but are below the IDEM RISC IDCL of 0.042 mg/l. The remaining total lead levels and all other contaminants of concern in the fourth quarter sampling results are below the IDEM RISC RDCLs for groundwater. On July 3, 2006, the City of Gary adopted *Amended Groundwater Ordinance No. 7930* (Groundwater Ordinance). The Groundwater Ordinance restricts the use of groundwater wells in the vicinity of the Site if piped water is available and prohibits any new well installation, thus eliminating the potential exposure pathway to contaminated groundwater. Additionally, the investigations and confirmatory samples concluded that there are no other potential exposure pathways and that the lead contamination in groundwater identified at the Site presents no current threat to human health or the environment.

IDEM concludes, in part based on information provided by the City of Gary, that:

- (1) No state or federal enforcement action at the Site is pending;
- (2) No federal grant requires an enforcement action at the Site;
- (3) No condition on the Site constitutes an imminent and substantial threat to human health or the environment;
- (4) Neither the City of Gary nor an agent or employee of the City of Gary caused, contributed to, or knowingly exacerbated the release or threat of release of any hazardous substance or petroleum at the Site through an act or omission;
- (5) The City of Gary does not have any ownership interest in any entity that caused, contributed to, or knowingly exacerbated the release or threat of release;
- (6) There is no alternative basis for the City of Gary's liability for historic contamination at the Site (e.g., liability as a generator) or by reason of the existence of a new source of contaminants on the Site; and

(7) Current levels of contaminants at the Site meet current cleanup criteria as established by IDEM so long as the institutional controls required by this letter are maintained.

Based on the information on known contaminant levels submitted to or otherwise reviewed by IDEM, IDEM concludes that current Site conditions do not warrant a response action at this time and does not plan to take a response action at the Site at this time. If IDEM later discovers that the above-referenced reports or other information submitted to IDEM was inaccurate, or if any activities undertaken by an owner or operator exacerbate the Site contamination, then IDEM reserves the right to revoke this letter and pursue any responsible parties. Additionally, this determination does not apply to any contamination that is not described in this Site Status Letter or any future releases at the Site. Furthermore, this letter does not constitute an assurance that the Site is safe or fit for any particular use.

IDEM encourages the redevelopment of this Site for recreational purposes. Please be advised that any work performed at the Site must be done in accordance with all applicable environmental laws. Redevelopment of this Site in a manner consistent with the restrictions discussed below will reduce the likelihood that environmental conditions at the subject Site will deteriorate in the future.

Since levels of lead in the groundwater and benzene and TPH in the soil are above IDEM RISC RDCLs, an environmental restrictive covenant (ERC) is required to be recorded on the deed. IDEM is requiring a deed restriction via the enclosed ERC with provisions to prohibit use of the Site for residential purposes, agricultural purposes, prohibit the installation of any groundwater wells on the Site, and limit soil excavation to twenty-four (24) inches below grade surface on the Site.

In order for IDEM to consider this letter effective, you must record the following documents in the Lake County Recorder's Office:

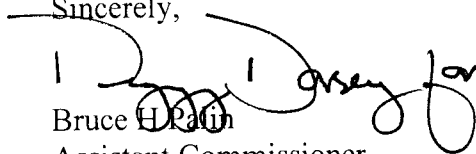
- 1) This Site Status Letter
- 2) The Environmental Restrictive Covenant

Please return a certified copy of the filed documents to the address listed below:

Indiana Brownfields Program
100 North Senate Avenue
Room 1275
Indianapolis, Indiana, 46204
ATTN: Kyle Hendrix

IDEM is pleased to assist the City of Gary with the redevelopment of this Site. Should you have any questions or comments, please contact Kyle Hendrix of the Indiana Brownfields Program at 317-232-4402 or toll-free at 1(800) 451-6027, extension 2-4402 or by e-mail at lhendrix@ifa.in.gov.

Sincerely,


Bruce H. Paff
Assistant Commissioner
Office of Land Quality

cc: Jan Pels, U.S. EPA Region 5
Meredith Gramelspacher, Indiana Brownfields Program
Sudhir Mantri, Integrated Environmental Solutions, Inc.
Craig Schroer, IDEM Leaking Underground Storage Tanks Program



EXHIBIT A

Legal Description of the Real Estate

Lots 40 to 46, both inclusive, in Block 9 in Ridgemoor Real Estate's Company's 2nd Addition to Gary, as per plat thereof, recorded in Plat Book 12 page 26, in the office of the Recorder of Lake County, Indiana, and that part of the West ½ of the vacated alley lying East of and adjacent to said lots.



EXHIBIT B

**AFFECTED AREA
Coordinates Table & Aerial Photo**

| Approximate Coordinates | | |
|-------------------------|-------------|------------|
| Location Number | Latitude | Longitude |
| 1 | 4602469 m N | 468711 m E |
| 2 | 4602423 m N | 468711 m E |
| 3 | 4602423 m N | 468748 m E |
| 4 | 4602469 m N | 468748 m E |



Aerial Photograph courtesy of Indiana Geological Survey
611 N. Walnut Grove
Bloomington, IN 47405-2208

TABLE 1

| September 2006 Total Lead 4 th Quarter Groundwater Sampling Results | | |
|--|-------|--------------|
| Locations | Units | Result |
| MW-10 | mg/l* | 0.007 |
| MW-12 | mg/l | 0.010 |
| MW-13 | mg/l | 0.062 |
| MW-13 (Duplicate) | mg/l | 0.057 |
| MW-14 | mg/l | 0.005 |
| MW-15 | mg/l | 0.022 |
| IDEM RISC RDCL | mg/l | 0.015 |
| IDEM RISC IDCL | mg/l | 0.042 |

*mg/l - milligrams per kilogram

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TABLE 2

May 2005
Soil Analytical Sampling Results
UST Removal and Excavation

| Locations | Units | Analytical results | |
|---|--------|--------------------|------------|
| | | Benzene | TPH – GRO |
| wall sample 3' East 57' South 5' Deep | mg/kg* | 0.38 | 3,800 |
| bottom sample 38' East 65' South 9' Deep | mg/kg | 0.35 | 710 |
| IDEM RISC RDCL | mg/kg | 0.034 | 25 |
| IDEM RISC IDCL | mg/kg | 0.35 | 330 |
| IDEM RISC Default Direct Contact Level | mg/kg | 8.4 | N/A |

*mg/kg - milligrams per kilogram

Environmental Restrictive Covenant

THIS COVENANT is made this _____ day of _____, 2007, by the City of Gary concerning the Former Smitty's Gas Station Facility located at 2501 Chase Street, Gary, Indiana (together with its successors and assignees, collectively "Owner").

WHEREAS: Owner owns certain real estate in the County of Lake, Indiana, which is more particularly described in the attached Exhibit "A" and made a part hereof ("Real Estate"), which Real Estate was acquired by deed on _____, and recorded on _____, as Deed Record _____, in the Office of the Recorder of Lake County, Indiana.

WHEREAS: A Site Status Letter was prepared and issued by the Indiana Department of Environmental Management ("the Department") pursuant to the Indiana Brownfields Program's recommendation at the request of the City of Gary to address the redevelopment potential of the Former Smitty's Gas Station Facility project, site number BFD #4040028 ("Site"), a brownfield site impacted by a release of petroleum.

WHEREAS: The Site Status Letter, as approved by the Department, provides that contaminants of concern, specifically lead, benzene, and total petroleum hydrocarbons gasoline range organics ("TPH-GRO") will remain on or beneath the surface of the Real Estate and outlines land use restrictions that must be maintained to ensure the protection of public health, safety or welfare, and the environment. Soil and groundwater at the Real Estate were sampled for total petroleum hydrocarbons extended range organics ("TPH-ERO"), TPH-GRO, benzene, toluene, ethylbenzene, total xylenes, polycyclic aromatic hydrocarbons (PAH) and metals. Investigations revealed that current levels of TPH-ERO, SVOCs, VOCs, PCBs and metals were below residential default closure levels ("RDCLs") established by IDEM in the Risk Integrated System of Closure ("RISC") Technical Guidance (January 2006 update, June 2006 TPH update and August 2006 PAH update). Benzene levels in the soil were above IDEM RISC industrial default closure levels ("IDCLs") but below the direct contact exposure level on a residential site. Lead levels in the groundwater were above the IDEM RISC IDCLs; however lead levels in the groundwater have decreased steadily. To limit potential exposure to the groundwater, the City of Gary adopted *Amended Groundwater Ordinance No. 7930* ("Groundwater Ordinance") on July 3, 2006. The Groundwater Ordinance restricts the use of groundwater wells in the vicinity of the Site if piped water is available and prohibits the installation of any new wells, thus eliminating the potential exposure pathway to contaminated groundwater. TPH-GRO levels in soil were above the IDEM RISC IDCL in the main excavation area ("Affected Area"), but the constituents associated with TPH-GRO are below the IDEM RISC RDCLs for groundwater in the Affected Area (see aerial photo in attached Exhibit "B"). A list of the contaminants of concern and the concentration levels/detected parameters are set forth in Tables 1 and 2 attached hereto. Related Site documents are incorporated herein by reference and may be examined at the offices of the Department in the public file for Brownfields Site # 4040028.

WHEREAS: IDEM approved closure of the Site under RISC because the subsurface soil residential direct contact level for benzene of 8.4 ppm was not exceeded as illustrated in Table 2 by the 0.38 milligrams/kilogram ("mg/kg") level in the Affected Area; the exposure pathway for

lead in groundwater was eliminated by the Groundwater Ordinance implemented by the City of Gary; it was impracticable for TPH-GRO impacted soil to be removed due to the proximity of the sidewalk and roadway; and the individual constituents associated with TPH-GRO are below the IDEM RISC RDCLs for groundwater. Therefore, the Site meets applicable cleanup criteria in RISC so long as the institutional controls required by this covenant are maintained.

NOW THEREFORE, Owner, hereby, in consideration for the promises contained herein and other good and valuable consideration imposes restrictions on the Real Estate and covenants and agrees that:

I. GENERAL PROVISIONS

1. Property Conveyance- Continuance of Provisions. Any conveyance of title, easement, or other interest in the Real Estate shall be subject to compliance with restrictions described in paragraph 8, below.
2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
3. Binding upon Future Owners. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and the terms of this Covenant.
4. Recordation. Unless this Covenant is terminated under paragraph 11, the Owner shall re-record this Covenant including any subsequent modifications and amendments forty-nine (49) years from the date of first recording, or any subsequent recordings, to ensure its continued applicability under the Marketable Title for Real Property Act found in IC 32-20.
5. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions described in paragraph 8 are being maintained (and operated as applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment; this includes the right to take samples, monitor compliance with the corrective action plan, and inspect records.
6. Written Notice of the Presence of Hazardous Substances. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing

interests, and other non-possessory encumbrances) the following notice provision:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____ 200__, RECORDED IN THE OFFICE OF THE RECORDER OF LAKE COUNTY ON _____, 200__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

7. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department no later than thirty (30) days after any conveyance of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide Department with a certified copy of the instrument conveying any interest in any portion of the Real Estate and, if it has been recorded, its recording reference. Such notice shall also include the name and business address of the transferee.

II. RESTRICTIONS AND OBLIGATIONS

8. The Owner shall:

- a) Not use the Real Estate for residential purposes, including, but not limited to, daily care facilities (e.g., daycare centers, schools and senior citizen facilities).
- b) Not use the Real Estate for agricultural purposes.
- c) Neither engage in nor allow the installation or use of any wells on the Real Estate. There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate that could cause exposure of humans or animals to the groundwater or disrupt the movement of groundwater underlying the Real Estate, other than for site investigation and/or remediation purposes, without prior Department approval.
- d) Neither engage in nor allow excavation of soil below twenty-four (24) inches below grade surface anywhere in the Affected Area on the Real Estate as depicted on Exhibit "B" without first submitting a work plan for approval by the Department at least thirty (30) days prior to beginning work. Any removal, excavation or disturbance of impacted soil from the Affected Area must be conducted in accordance with all applicable requirements of IOSHA/OSHA, and impacted soil that is removed, excavated or disturbed from the Affected Area must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- e) Notify the Department if there is a change in the land use and/or any zoning change from a recreational classification to residential use of the Real Estate.

III. ENFORCEMENT

9. Enforcement. Pursuant to IND. CODE § 13-14-2-6(5), the Department may proceed in court, by appropriate action to enforce this Covenant. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

10. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
11. Modification and Termination. This Covenant shall not be amended, modified, or terminated except by written instrument executed between the Department and the owner of the Real Estate at the time of the proposed amendment, modification, or termination. Within five (5) days of executing an amendment, modification, or termination of the Covenant, such amendment, modification, or termination shall be recorded with the Office of the Recorder of Lake County and within five (5) days after recording, a true copy of the recorded amendment, modification, or termination shall be presented to the Department.
12. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
13. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.
14. Change in Law or Regulation. In the event that the Risk Integrated System of Closure ("RISC") is adopted by rule in Indiana, or in the event of any other change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 8, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or policies for environmental restrictive covenants or institutional or engineering controls change as to form or content. All statutory references include any successor provisions.

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V. MISCELLANEOUS

15. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
Ms. Dorreen Carey
City of Gary
Department of Environmental Affairs
839 Broadway, 2nd Floor
Gary, IN 46402

To Department:
Indiana Brownfields Program
IGCN-Suite 1275
100 North Senate Avenue
Indianapolis, Indiana 46204
ATTN: Kyle Hendrix

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

16. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
17. Liability. An Owner's rights and obligations under this instrument terminate upon transfer of the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
18. Authority to Execute and Record. The undersigned persons executing this Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute, record, and deliver this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 23rd day of MAY, 2007.

Board of Park Commissioners

STATE OF IN)
) SS:
COUNTY OF LAKE)

KCR
Keith C. Rogers, President Owner
Betty L. Gabriel
Betty L. Gabriel, Secretary

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared KEITH ROGERS, BETTY GABRIEL the PRESIDENT, SECRETARY of the Owner, BOARD OF PARK COMMISSIONERS who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 23 day of MAY, 2007.

ANISSA L. SMITH
Notary Public, State of Indiana
County of Lake
My Commission Expires Aug. 23, 2010

Anissa L. Smith

ANISSA L. SMITH, Notary Public

Residing in LAKE County, IN.

My Commission Expires: 8.23.2010

This instrument prepared by:

