



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Mike Braun
Governor

Clint Woods
Commissioner

August 28, 2025

Nivas Vijay, CHMM
Senior Project Manager
Heartland Environmental Associates, Inc.
nvijay@heartlandenv.com

Re: Request for Termination of Environmental Restrictive Covenants and
Recordation of New Environmental Restrictive Covenant
Institutional Controls Environmental Restrictive Covenant/Deed Notice Modification
or Termination Request State Form 56082
Sherman Park Facility (Former Thomson Consumer Electronics Facility)
600 North Sherman Drive
Indianapolis, IN 46201
VRP #6020801

Dear Mr. Vijay:

The Indiana Department of Environmental Management (IDEM) has reviewed the Request for Termination of Environmental Restrictive Covenants and Recordation of New Environmental Restrictive Covenant – Former Radio Corporation of America/Former Thomson Consumer Electronics – General Electric Sherman Park Facility Campus (Heartland Environmental Associates, Inc. (Heartland), October 15, 2024) and the Institutional Controls Environmental Restrictive Covenant/Deed Notice Modification or Termination Request State Form 56082 (December 6, 2024) regarding the Sherman Park Facility site located at 600 N. Sherman Dr. in Indianapolis, Indiana.

The letter was uploaded to the IDEM Virtual File Cabinet (VFC) as Content ID #83729831, and the form was uploaded as Content ID #83757119. Further site history can be found in the VFC located on the IDEM website vfc.idem.in.gov. This technical letter contains a brief background summary including comments generated during our review of the above-mentioned reports.

Background

The site consists of a 50-acre mixed paved/gravel lot, located in a mixed industrial, commercial, and residential area. It is primarily vacant, with the northern portion used as a recycling facility. A CSX railroad track runs in a northeast-southwest orientation through the property, dividing the site into eastern and western portions. Historic use of the site is primarily industrial; manufacturing operations performed on-site include radio and television components, electronics, plastic molding and assembly, label printing, and cabinet painting. The Radio Corporation of America from Westinghouse Corporation owned the site from approximately 1920 until 1986, when General Electric (GE) purchased the business. Thomson Consumer Electronics continued manufacturing radio and television components on-site from 1987 until 1995. Various manufacturing and

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commercial warehouse operations were performed until the site buildings were demolished. Portions of the site are currently owned by the City of Indianapolis, State of Indiana - Department of Administration (IDOA), and RecycleForce. The parcels owned by the City of Indianapolis and the State of Indiana are undergoing redevelopment, with planned use being mixed commercial/residential.

GE Aerospace (formerly General Electric) entered IDEM's Voluntary Remediation Program (VRP) in 2002. Site investigations confirmed the presence of chlorinated Volatile Organic Compounds (cVOCs) in soil and groundwater. The source of the contaminants is the use and storage of chlorinated solvents for manufacturing on the western portion of the site. To address soil, soil gas, and groundwater contamination, the Remediation Work Plan (GeoTrans, Inc., May 17, 2010) proposed capping, continued operation of the sub-slab depressurization system in the main building (since demolished), enhanced bioremediation, and monitored natural attenuation. An Environmental Restrictive Covenant (ERC) was recorded in 2014 to prevent exposure to remaining groundwater, vapor, and soil impacts. The remedial action objectives are based on the Risk-Integrated System of Closure industrial closure levels.

The following was noted during our review of the above-mentioned reports:

Comments

2012 ERCs

Heartland Correspondence (page 2): The termination of the 2012 ERC layers was reviewed and tentatively approved by both IDEM and the IBP in consultation in April and May 2024, provided that site re-parceling had occurred and that a new ERC was provided that served to protect human health and the environment. This letter request simply serves to follow up on these conversations and formally request the termination of the 2012 ERCs.

IDEM Response: While the Indiana Brownfields Program and IDEM's VRP have tentatively approved the termination of the 2012 Brownfield ERCs, these terminations cannot be processed by Brownfields until the 2014 VRP ERC terminated and proposed ERCs written by GE Aerospace and the City (with concurrence from the State of Indiana - IDOA and RecycleForce) are reviewed by Brownfields and approved by VRP.

Questions about the status of the 2012 ERC terminations should be referred to the Indiana Brownfields Program project manager, as IDEM Institutional Controls Group (ICG) does not oversee Brownfields ERCs.

2014 ERC

Heartland Correspondence (page 3, para. 1): The 2014 ERC was recorded without the proper evaluation and/or termination of the 2012 ERCs. At this time, both the 2012 and 2014 ERCs are on record for the site. The 2014 ERC cannot be recorded over the 2012 ERCs and therefore should be terminated.

IDEM Response: IDEM is not aware of any law or statute that prevented recording of the 2014 ERCs, although recording conflicting successive ERCs is not recommended. Please provide any statutory/regulatory/case law-based support for the assertion that ERCs cannot be recorded over each other, if known.

Heartland Correspondence (page 3, para. 2): The 2014 ERC was executed on May 28, 2014, by Peter Dvorak, Manager for SP Investments H, LLC. However, as of September 21, 2013, SP Investments H, LLC was no longer the owner of record of said property. As shown in the provided deeds (see Attachment C), the City of Indianapolis DMD obtained, pursuant to law, the real property subject to these ERCs. Neither SP Investments H, LLC, nor GE, had authority to sign and record an ERC on the property parcels at the time of recordation.

IDEM Response: IDEM does not have any reason to believe that the 2014 ERC is invalid. The tax sale certificate was purchased by the City of Indianapolis in 2013; however, it appears title did not vest in the City until the tax deeds were issued in 2015, after the 2014 ERC was recorded. Pursuant to IC 6-1.1-24, the issuance of a tax sale certificate does not divest an owner of their property; the issuance of a tax deed is the act that divests the owner of the property per IC 6-1.1-24-6.1(b)(5) and 6.4(c)(1). SP Investments H, LLC was the record owner of the property at the time of the recording of the 2014 ERC, and therefore had the authority to record the ERC at the time of its execution.

Whether or not the owner entities were administratively dissolved per the Secretary of State when the ERC was signed in 2014 is not material, as administrative dissolution is a ministerial act by the Secretary of State, and not a deliberate decision by an entity to dissolve. Moreover, under Indiana business organization statutes, administrative dissolution means that the entity continues its existence but is not allowed to take any actions except for petitioning for reinstatement and “as necessary to wind up its activities and affairs and liquidate its assets” (IC 23-0.5-6-2). IDEM’s position is that signing an ERC is likely one of the activities that is contemplated by the language “winding up its activities and affairs.”

Heartland Correspondence (page 3, para. 3): Section 1.1.a (Restrictions) refers to not allowing the residential reuse of the real estate, including daily child care facilities or educational facilities. This restriction no longer reflects present-day IDEM language relative to ERCs and the proposed new ERCs update this restriction to be more reflective of present-day site conditions and more reflective of present-day IDEM allowances as it relates to institutional controls and property development / reuse.

IDEM Response: Restrictions in already-recorded ERCs do not always need to be revised to reflect current recommended language to remain effective at preventing exposure. Moreover, the residential use restriction is reflective of current site conditions and IDEM guidance for property development/reuse. Contaminant concentrations in the subsurface soil, groundwater, and soil gas at the Sherman Park Facility exceed Residential Closure Levels (RCLs). IDEM guidance requires a demonstration that concentrations are remediated to RCLs or

that exposure to concentrations above RCLs will be mitigated prior to removal of a residential use restriction to allow for land use change.

Heartland Correspondence (page 3, para 4): Section I.1.g (Restrictions) states that residential development cannot occur without the installation of a vapor intrusion mitigation system. While this restriction is appropriate, it is directly counter to the restrictions set forth in Section I.1.a. The ERC requires modification to correct this.

IDEM Response: IDEM concurs that these restrictions are inconsistent, but this inconsistency does not invalidate the 2014 ERC.

Heartland Correspondence (page 3, para 5): The 2014 ERC is not completely filled out, as the Office of the Recorder failed to complete the notice of recordation on Page 4 of the ERC.

IDEM Response: The instrument number, date, and county are in the County Recorder's stamp on the first page.

Heartland Correspondence (page 3, para 6): The enforcement section of the ERC (Section III.8, Page 4) requires an Owner of the Real Estate to indemnify and hold harmless both SP Investments H, LLC and GE. However, at the time of recordation, as stated above, the ownership of the property had already changed to the City DMD. A provision such as this cannot be retroactively applied. Furthermore, ERC language typically does not provide indemnification, as such provisions are not pertinent to institutional controls meant to protect human health and the environment.

IDEM Response: IDEM does not take a position regarding the inclusion of indemnification clauses in ERCs as, per IC 13-14-2-8, although IDEM shall review and approve, disapprove, or modify land use restrictions within a restrictive covenant, other portions of a restrictive covenant, executed after June 30, 2009, are not subject to IDEM approval.

Heartland Correspondence (page 3, para 7): Section IV.9 (Term) states that restrictions in the ERC shall apply "until the Department and GE determine that COCs no longer present an unacceptable risk to public health, safety, or welfare, or to the environment." GE is not a regulatory agency under the terms of this ERC and should not be provided with such authority under the typical terms of an ERC.

IDEM Response: IDEM does not take any position regarding the rights reserved by GE in the 2014 ERC. While IDEM has the authority to approve restrictions and to require certain information be included per statute, it cannot regulate additional ERC language that a property owner may want to include. This type of reservation of rights has been included in several draft ERCs that IDEM has reviewed.

Heartland Correspondence (page 3, para 8): Section IV.10 (Modification and Termination) refers to recordation of any modification "with the Office of the Recorder of Grant County". The project site is in Marion County.

IDEM Response: This is a Scrivener's error and does not necessarily make the 2014 ERC invalid.

State Form 56082 and Draft Termination of ERC

The request for ERC termination/modification form submitted by Heartland on behalf of the City of Indianapolis Department of Metropolitan Development (DMD) cannot be processed by the ICG or VRP due to the following reasons:

- Section IV of the 2014 ERC requires GE's (now GE Aerospace) prior written approval of modifications and terminations. The draft ERC termination does not have a signature block for GE Aerospace representatives, and it is IDEM's understanding that the City and GE Aerospace are continuing to discuss the terms of replacement ERCs. While this condition is not enforceable by IDEM, IDEM must ensure the continued protection of human health and the environment and cannot approve termination of the current ERCs without the necessary replacements either in place or in process.
- ERC terminations require approval and signatures from all current property owners. The form does not include signatures from the State of Indiana and RecycleForce, who also own portions of Parcel H to which the 2014 ERC applies.
- The form is incomplete. Specifically, the parcel numbers, owner names, land description, and deed(s) are missing.
- The City requests the removal of Restriction (a) (no residential use) but does not provide analytical data or lines of evidence to demonstrate that removal of this restriction would not increase the potential hazards to human health or the environment, as required by IC 13-14-2-9(c).

Conclusion

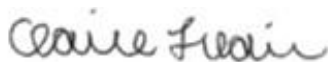
The VRP, in conjunction with both IDEM's Institutional Controls Group and IDEM's Office of Legal Counsel, denies the October 15, 2024 request submitted by the City of Indianapolis Department of Metropolitan Development to terminate the 2014 VRP ERC and to review ERC drafts for the Sherman Park Facility. The reasons for this denial include:

- The 2014 ERC is valid and requires approval of GE Aerospace for any modification or termination; and
- The request did not include data or lines of evidence to support the request to remove the residential restriction.

IDEM remains willing to work with all stakeholders to assist in facilitating appropriate redevelopment at this site that does not increase the potential hazards to human health or the environment or dismantle current protections related thereto.

If you have any questions, please contact me at (317) 234-9731, (800) 451-6027, or via email.

Sincerely,



Claire Fredin,
Project Manager
Voluntary Remediation Program
Office of Land Quality

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

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