

STATE OF INDIANA
VOLUNTARY REMEDIATION PROGRAM

COVENANT NOT TO SUE

COVENANT

On [DATE](#), the Commissioner of the Indiana Department of Environmental Management (IDEM) issued a Certificate of Completion pursuant to Indiana Code § 13-25-5-16 to [Applicant](#) for Voluntary Remediation Program site number [site number](#). 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 the [site](#) in [City](#), 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; a site map and legal description of the site and the project areas as Exhibit 3. [\[Slight modifications to the wording of this paragraph may be necessary depending on circumstances\]](#).

Pursuant to Indiana Code § 13-25-5, the Governor of the State of Indiana now covenants not to sue [APPLICANT](#) 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 [APPLICANT](#), 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 [APPLICANT](#).

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 closure or corrective action obligations under the Resource Conservation and Recovery Act (RCRA) 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 **APPLICANT** 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 **APPLICANT**, 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 **APPLICANT** 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 environmental 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. **If an ERC is not required for this property, delete paragraphs 9 & 10.**

WHEREFORE, the Governor of the State of Indiana issues this Covenant to **APPLICANT**, with all aforementioned privileges, responsibilities, conditions and reservations, this _____ of _____, 2018.

Eric J. Holcomb, Governor, State of Indiana

APPROVED FOR LEGALITY AND FORM
Curtis Hill
Attorney General, State of Indiana

By:
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