

# STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

February 26, 2013

Mr. Brent Anderson, Esq.  
IRG Redevelopment I, LLC  
7991 Shaffer Parkway, Suite 300  
Littleton, CO 80127

**RE:    CDPHE Approval with Conditions of the Revised Request to Stockpile Soil on OU2  
      Landfill Cap, Lowry Vista Project, Denver, Colorado dated November 12, 2012**

Dear Mr. Anderson:

The Colorado Department of Public Health and Environment (“CDPHE”), Hazardous Materials and Waste Management Division (“the Department”) has completed its review of the above-referenced *Revised Request to Stockpile Soil on OU2 Landfill Cap* dated November 12, 2012 (received electronically on November 12, 2012) [“Revised Stockpile Plan”]. The Revised Stockpile Plan was prepared by Walsh Environmental Scientists and Engineers, LLC on behalf of IRG Redevelopment I, LLC (“IRGI”). The Revised Stockpile Plan was prepared in response to the Department’s letter dated October 19, 2012, which provided comments on IRGI’s original request to stockpile soil dated September 28, 2012.

IRGI responded to Comments 1 and 4 from the Department’s October 19, 2012 letter in a separate letter dated November 29, 2012. In response to IRGI’s November 29, 2012 letter, the Department and IRGI are in the process of negotiating a Consent Agreement to establish a regulatory framework between the Department and IRGI. Additionally, the Department and IRGI are in the process of negotiating a Modified Environmental Covenant in accordance with the Colorado Environmental Covenants Statute, Colorado Revised Statute §25-15-317 – 25-15-326, that would allow IRGI to execute the Revised Stockpile Plan under the conditions of approval described herein.

As background, OU2 was transferred by deed from the United States Air Force (“the Grantor”) to Lowry Economic Redevelopment Authority (“the Grantee”) via a Finding of Suitability for Early Transfer (“FOSET”) in January 2006. In addition to the above-referenced Modified Environmental Covenant, the FOSET includes the following environmental protection provisions to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities. The deed provides the following Restrictive Covenants:

*The Grantee shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in the regulations of the Colorado Department of Public Health and Environment.*

*It is the intent of the Grantor and Grantee that these Restrictive Covenants bind the Grantee and shall run with the land and are perpetual, unless modified or terminated pursuant to this paragraph. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce the Restrictive Covenants through the chain of title, in addition to any State law that permits the State to enforce the Restrictive Covenants. The Grantee or its successors and assigns may request that the Air Force approve a modification or termination of any of the Restrictive Covenants. The Air Force shall review any submitted information and may request additional information. Grantor recognizes that future Grantees may change the Environmental Covenants in accordance with the Environmental Covenant Statute including but not limited to providing for limited disturbance of the final cover of OU2. Grantor agrees to consider such changes set forth in the Environmental Covenant for its Restrictive Covenant. No modification or termination of a Restrictive Covenant shall be effective unless the Air Force has approved such modification or termination in writing, which approval shall not be unreasonably withheld or delayed.*

The Department's conditions of approval for the Revised Stockpile Plan are as follows:

- Condition 1.** Pursuant to the requirements of the FOSET Restrictive Covenants referenced above, the Air Force must provide written approval of the Modified Environmental Covenant prior to recording, execution, or effectiveness.
- Condition 2.** The above-referenced Consent Agreement and the Modified Environmental Covenant must be fully executed and recorded before any work under the Revised Stockpile Plan can commence.
- Condition 3.** The Air Force must provide written approval of the Revised Stockpile Plan before any work under the Revised Stockpile Plan can commence.
- Condition 4.** IRGI must provide financial assurance to the Department in accordance with the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, Part 266, prior to commencement of any work under the Revised Stockpile Plan.
- Condition 5.** Following satisfaction of Conditions 1 through 4 (above), the Department requires IRGI to provide the Department with written notification of at least five calendar days identifying the planned start date for soil stockpiling activities.
- Condition 6.** The Revised Stockpile Plan includes the following statement: *"It is anticipated that the stockpile will be removed or graded into the redevelopment under a Revised Closure*

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CDPHE Approval with Conditions of the *Revised Request to Stockpile Soil on OU2 Landfill Cap, Lowry Vista Project*

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*Plan by January 1, 2015.*” Prior to January 1, 2015, the stockpile must be removed from OU2 or utilized at OU2 in accordance with an approved Revised Closure Plan.

**Condition 7.** The Revised Stockpile Plan includes the following statement: *“A post construction survey will be performed by a Colorado registered professional land surveyor, photographs taken, and a summary letter report documenting the stockpile closure will be prepared and submitted to CDPHE within 90 days following stockpile removal.”* Pursuant to Section 264.115 of the Regulations, certification of closure must be submitted to the Department within 60 days following stockpile removal. The certification must be signed by the owner or operator and by an independent Colorado-registered professional engineer.

Please note that the Department is authorized to bill for its review of technical submittals. As discussed with you during a meeting on October 3, 2012, the Department will bill its time pursuant to Section 1.7 of the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1). An invoice for the Department’s review of the above-referenced document will be transmitted under separate cover.

If there are any questions concerning this letter, or if you would like to discuss this letter, please contact Curt Stovall at (303) 692-2295 (e-mail: [curtis.stovall@state.co.us](mailto:curtis.stovall@state.co.us)).

Sincerely,



Curt Stovall, P.E., Project Manager  
Federal Facilities Remediation and Restoration Unit  
Remediation Program

cc: Joe Aiken, IRG Assumptions, LLC  
Paul Carroll, USAF AFRPA  
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Stanley Pehl, HQ AFCEE/BCE  
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