

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer



Colorado Department
of Public Health
and Environment

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

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
Located in Glendale, Colorado (303) 692-3090

www.colorado.gov/cdphe

December 31, 2013

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

RE: CDPHE Approval with Conditions of the *Stockpile Financial Assurance Cost Estimate and Stockpile Removal Timeframe Extension, OU2 Landfill Cap Stockpiling, Lowry Vista Project, Denver, Colorado*

File: DMA LWY 13 OU2 15.8

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 document dated December 2, 2013 (received via email December 2, 2013) [“Stockpile FA Cost Estimate document”]. The Stockpile FA Cost Estimate was prepared by Walsh Environmental Scientists and Engineers, LLC on behalf of IRG Redevelopment I, LLC (“IRGI”).

As background, on behalf of IRGI, Walsh Environmental Scientists and Engineers, LLC prepared and submitted a document to the Department titled *Revised Request to Stockpile Soil on OU2 Landfill Cap, Lowry Vista Project, Denver, Colorado* dated November 12, 2012 (“Revised Stockpile Plan”). 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. By its letter dated February 26, 2013, the Department provided conditional approval of the Revised Stockpile Plan. Condition 6 from the Department’s February 26, 2013 letter states the following:

“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 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.”

As part of the Stockpile FA Cost Estimate document, IRGI has requested that the Department approve a time extension from the above-referenced January 1, 2015 deadline to a new deadline of January 1, 2017. Additionally, IRGI has indicated to the Department that it would likely be cost prohibitive to remove stockpiled soil from OU2 should the Lowry Vista project become delayed or abandoned. As such, the Stockpile FA Cost Estimate document contemplates a revised site grading plan for OU2 rather than

December 31, 2013

Mr. Brent Anderson, Esq.

CDPHE Approval with Conditions of the Revised Stockpile Plan as Modified by the Stockpile FA Cost Estimate Document

Page 2 of 4

stockpile removal. Because stockpile removal is not contemplated by the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document, and stockpiled soil is likely to remain at OU2, the Department's conditions of approval presented herein supersede and replace those presented in the above-referenced Department letter dated February 26, 2013.

As additional background, the Department and IRG Redevelopment I, LLC ("IRGI") are negotiating a Consent Agreement to establish a regulatory framework between the Department and IRGI. Additionally, the Department and IRGI are negotiating a Modified Environmental Covenant in accordance with the Colorado Environmental Covenants Statute, Colorado Revised Statute §25-15-317 to §25-15-326, that would allow IRGI to execute the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document under the conditions of approval described herein.

The former Lowry Air Force Base Landfill Zone, Operable Unit 2 ("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 ("the Deed"). In addition to the above-referenced Modified Environmental Covenant, the FOSET and the Deed include environmental protection provisions to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

Section VII.B. of the Deed includes the following United States Air Force warranty on OU2:

Pursuant to section 120(h)(3)(A)(ii)(II) of CERCLA, the United States covenants and warrants that any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VII.D. below, as may be modified or released pursuant to section VII.D(3).

Section VII.D(2)(b)(i) of the Deed places the following Restrictive Covenants on OU2:

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 as modified by the Stockpile FA Cost Estimate document are as follows:

- Condition 1.** The Air Force must provide written confirmation that the proposed activities contemplated under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document are consistent with the above-referenced Restrictive Covenants in the Deed.
- Condition 2.** The Air Force must provide written confirmation that the proposed activities contemplated under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document will not affect the Air Force's warranties in the Deed.
- Condition 3.** The Air Force must provide written approval of the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document before any soil stockpiling at OU2 can commence.
- Condition 4.** The above-referenced Consent Agreement must be fully executed before any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document can commence.
- Condition 5.** The above-referenced Modified Environmental Covenant must be fully executed and recorded in the real property records before any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document can commence.
- Condition 6.** IRGI must provide financial assurance initially in the amount of \$395,000 to the Department in accordance with the Colorado Regulations Pertaining to Solid Waste Sites and Facilities ("the Regulations"), 6 CCR 1007-2, Part 1, prior to commencement of any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document. Before the stockpile size exceeds 100,000 bank cubic yards, IRGI must increase the financial assurance amount by \$418,000 to a total financial assurance amount of \$813,000.
- Condition 7.** IRGI must provide proof of its environmental insurance policy to the Department prior to commencement of any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document.
- Condition 8.** Following satisfaction of Conditions 1 through 7 (above), IRGI must provide the Department with written notification of at least five calendar days identifying the planned start date for any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document.

December 31, 2013

Mr. Brent Anderson, Esq.

CDPHE Approval with Conditions of the Revised Stockpile Plan as Modified by the Stockpile FA Cost Estimate Document

Page 4 of 4

Condition 9. In addition to all of the monitoring, maintenance, documentation, and reporting requirements under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document, IRGI must provide a quarterly report to the Department that summarizes the volume of stockpiled soil and footprint of the stockpile at OU2.

Condition 10. Stockpile removal, stockpile grading (including restoration), or stockpile incorporation into the redevelopment project must be completed by January 1, 2017.

Please note that the Department is authorized to bill for its review of technical submittals. The Department will bill its time pursuant to Section 1.7 of the Regulations. 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).

Sincerely,

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

cc: Tom Berger, LRA
Brad Coleman, Burns & McDonnell
Monty Force, LRA
Jeannine Natterman, CDPHE
Lee Pivonka, CDPHE
Donald Roche, City of Aurora
Patricia Smith, EPA – Region 8
Steve Termaath, USAF AFCEC/CIB
John Yerton, IRGI and LAC

Paul Carroll, USAF AFCEC/CIBE
David Erickson, City and County of Denver
Enrique Martinez, CDPHE
Stanley Pehl, USAF AFCEC/CIBW
Jennifer Robbins, AGO
Sam Rupe, Office of Air Force General Counsel
Cynthia Stephens, USAF SAF/GCN-SA
Tracie White, CDPHE