

STATE OF COLORADO

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

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



Colorado Department
of Public Health
and Environment

December 31, 2013

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

RE: CDPHE Approval with Modifications and Conditions of the Field Investigation Work Plan and Financial Assurance Cost Estimate for the Operable Unit 2 Landfill Zone Lowry Vista Redevelopment 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 following two documents: (1) *Field Investigation Work Plan, Operable Unit 2 Landfill Zone, Lowry Vista Redevelopment Project, Denver, Colorado* (dated December 6, 2013, received December 10, 2013) [“FIWP”], and (2) *Field Investigation Work Plan Financial Assurance Cost Estimate, OU2 Landfill Zone, Lowry Vista Redevelopment Project, Denver, Colorado* (dated December 19, 2013, received December 23, 2013) [“FA Cost Estimate”]. The FIWP was prepared by IRG Assumptions, LLC for IRG Redevelopment I, LLC (“IRGI”). The FA Cost Estimate was prepared by Walsh Environmental Scientists and Engineers, LLC.

As background, the Department and 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 FIWP under the conditions of approval and modifications described herein.

As additional background, 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 approves the FIWP and FA Cost Estimate with the following modifications:

Modification 1. Section 2.0, Site Background, on page 4 of the FIWP includes the following:

IRGI conducted an extensive review of historical aerial photographs of the Lowry Vista site to identify trenching/disposal locations. Based on this analysis approximately 14% of the overall area of the OU2 Landfill Zone is covered with waste disposal trenches (see Figure 2). It is assumed that the remaining area outside of the trenches is native or disturbed fill materials. In addition, major investigations were conducted at the OU2 Landfill Zone during the 1990 Remedial Investigation (RI), 1995 Supplemental Remedial Investigation (SRI), and the 1998 Focused Feasibility Study (FFS) to determine the nature and extent of the contamination present in soil, soil gas, surface water, and groundwater."

The Department does not concur with IRGI's aerial photograph analysis as described in the FIWP (i.e., approximately 14% of the overall area of the OU2 Landfill Zone contains waste disposal trenches). The Department agrees with the interpretations and conclusions presented by Versar, Inc., in the referenced FFS. As part of the FFS, Versar conducted landfill test trenching and a detailed aerial photograph

analysis to confirm the areal extent of historical waste disposal activities. Versar concluded the following (from Appendix O of the FFS, page O-1): *“Review of the aerial photographs indicates that trenching operations were conducted throughout the entire area roughly bounded by the Building 1390 complex to the west, the wetlands to the north, Westerly Creek to the east, and Alameda Avenue to the south. Figure O-1 shows the observed horizontal extent of landfilling.”* Versar’s Figure O-1 (which is also Versar’s Figure 3.14) is reproduced as Figure 4 in the Revised CPP. While the Division is herewith conditionally approving the FIWP, the Department does not concur with IRGI’s conclusions resulting from IRGI’s aerial photographic review.

Modification 2. Section 3.0, Scope/Specified Procedures, of the FIWP states that all subsurface exploration will be conducted “inside” of the environmental covenant boundary. However, some of the boring locations shown on Figure 3 are outside of the covenant boundary. The Department confirmed with IRGI during a meeting held on December 19, 2013 that the subsurface exploration will be conducted at boring locations shown on Figure 3 of the FIWP with some subsurface exploration to occur on IRGI property located outside of the environmental covenant boundary.

Modification 3. Section 3.0, Scope/Specified Procedures, of the FIWP includes the following statement: *“Initial locations of all borings will be surveyed and staked prior to mobilization.”* In addition to surveying initial boring locations, ground surface elevation at each boring location also must be surveyed prior to mobilization.

Modification 4. The FA Cost Estimate contains two errors. First, the text of the document indicates that CDPHE will procure a consultant and review their work plan in 40 hours at \$125 per hour. However, the cost estimate spreadsheet shows this line item as 30 hours at \$125 per hour. Second, the spreadsheet contains a math error. After consultation with IRGI with respect to the first item, it was determined that the document text contains the correct number (i.e., 40 hours). IRGI also confirmed the math error. Therefore, the correct financial assurance cost estimate total is \$32,000.

The Department’s conditions of approval for the FIWP are as follows:

Condition 1. The Air Force must provide written confirmation that the proposed activities contemplated under the FIWP 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 FIWP will not affect the Air Force’s warranties in the Deed.

Condition 3. The Air Force must provide written approval of the FIWP before any work under the FIWP can commence.

Condition 4. IRGI submitted to the Department under separate cover a Revised Cap Penetration Plan dated December 10, 2013 [“Revised CPP”]. The Department approved the Revised CPP with conditions set forth in its letter dated December 23, 2013. Following satisfaction of the conditions herein and the conditions in the Department’s December 23, 2013 letter, all work under the FIWP must be performed in accordance with the requirements of the FIWP and the Revised CPP.

Condition 5. The above-referenced Consent Agreement must be fully executed before any work under the FIWP can commence.

- Condition 6.** The above-referenced Modified Environmental Covenant (Attachment A of the Revised CPP) must be fully executed and recorded in the real property records before any work under the FIWP can commence.
- Condition 7.** IRGI must provide financial assurance in the amount of \$32,000 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 FIWP (see Modification 4).
- Condition 8.** IRGI must provide proof of its environmental insurance policy (referenced on page 6 of the Revised CPP) to the Department prior to commencement of any work under the FIWP.
- Condition 9.** Following satisfaction of Conditions 1 through 8 (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 FIWP. Additionally, as part of the written notification, IRGI must provide the name, phone number, address, and email address of the IRGI Project Manager (described on page 12 of the Revised CPP).
- Condition 10.** Within five calendar days following completion of the field work under the FIWP, IRGI must provide written notification to the Department identifying the completion date of the field work. Pursuant to the requirements of the Revised CPP and FIWP, the written report(s) must be submitted to the Department within 90 calendar days from the completion of field work.

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 documents 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