

From: Pelczar, Jennifer S - DNR
Sent: Monday, November 14, 2022 6:02 PM
To: bbrand@kellybrandlaw.com; qefnez@yahoo.com
Cc: Schultz, Josie M - DNR; Chronert, Roxanne N - DNR
Subject: Enforcement Conference Summary Letter - Innovative Properties Group LLC
Attachments: 2022 11 14 ECSL Innovative Properties Group LLC.pdf

Good Evening,

Please see the attached letter summarizing the November 1, 2022 Enforcement Conference. I'm looking forward to your commitment letter by EOB – Wednesday, November 30, 2022.

Please respond confirming you have received this email and attachment.

If you have any questions, please let me know.
Thank you.

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Jennie Pelczar

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November 14, 2022

Brown County
BRRTS #02-05-217270
EMAILED Only

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Subject: ENFORCEMENT CONFERENCE SUMMARY LETTER

Dear Mr. Brand and Mr. Neziri:

Thank you for attending the enforcement conference held on Tuesday November 1, 2022, at 10:00 am by teleconference to discuss the alleged violations of state hazardous substance spill laws at the Innovative Properties Group, LLC (IPG) Site located at 1233 S. Military Avenue, Green Bay, Brown County, Wisconsin (the Site) as alleged in the October 17, 2022, notice of violation (NOV). A list of the teleconference attendees is located at the end of this letter.

Enforcement Conference Summary

Mr. Brand is IPG's attorney on this matter and provided a brief background on the history of the business and Site. IPG is a holding company and purchased the Site with assistance of Mike Hubert in June of 2015 from Synergy Investors (Synergy). Synergy had owned the Site when the contamination was discovered historically. The Site has three separate buildings. The northern most building contains a church. The middle building has roof damage and is unoccupied; IPG has paid \$90,000 to repair the roof this summer but there are more indoor building repairs to be completed due to rain damage. The third and southern most building contains Jim's Music, a dry cleaner, and a boutique. There is a 70% vacancy rate for all buildings. When IPG purchased the Site, Mr. Neziri did not understand the degree of the contamination and was told that it was being taken care of by Synergy (the previous Site owner) and that there would be no issues that IPG would need to follow up on as there was an indemnification clause in the Site sale stating that IPG would be held harmless. In addition, the bank said not to worry about the contamination. IPG then closed on the sale and took title of the Site. Mr. Brand said that a demand letter was recently sent to Synergy, which may result in a lawsuit. Mr. Neziri added that IPG has spent \$106,000 dollars on the Site. IPG is having financial issues due to the loss of renting tenants and a consulting firm that said they cannot perform the work the department is requesting. IPG has contacted department staff in Madison for potential funding options but there are no monies in the Dry Cleaner Repair Fund (DERF) for distribution at this time. IPG's consultant (Terracon) is no longer involved with the Site.

Department staff explained how IPG was sent a responsible party letter on September 9, 2019, after IPG purchased the Site, and IPG is now the possessor of the Site. The historic dry cleaner identified back in 1999 as the causer of the chlorinated contamination is deceased. When the causer was no longer viable, that is when the responsibility of the cleanup was transferred to the Site owner at that time (Synergy). The department recommended that IPG investigate any potential dry cleaner insurance policies from the original dry cleaner

business that may have covered the cleanup of releases to the environment prior to 1986.

Discussions centered on the circumstances that gave rise to the NOV and actions taken to date to resolve the alleged violations. Forfeitures and orders were discussed, as was referral to the Wisconsin Department of Justice. The department would prefer to work with IPG to have IPG continuously investigate and remediate the Site, including implementing the immediate actions regarding vapor control for your tenants' health.

Department staff requested immediate actions be implemented back on February 7, 2022, due to the air sampling that the Department of Health Services completed on January 13, 2022. Perchloroethylene (PCE) exceeds the vapor action level (VAL) and is greater than three times this level in multiple samples, which requires immediate action. On February 24, 2022, IPG's consultant (Terracon) stated that SWAT Environmental could assist with inspecting and sealing the cracks and deploy temporary air treatment units to lower the vapor concentrations inside the building. IPG advised that SWAT had completed the work on sealing the cracks as requested and that the invoice for this work was already sent to the department. No temporary air treatment units have been installed. The department has not received any reports which describe the work or any follow up testing to determine if the VMS is effectively removing the vapors from the indoor air as previously requested in the department's notice of noncompliance letter dated May 9, 2022.

The department also discussed the current site investigation activities, and that no information has been received since the last site investigation update report dated November 28, 2021. IPG needs to continue with the site investigation to define the degree and extent of the contamination, including the following areas:

- Additional soil sampling, installation of wells/piezometers, and groundwater sampling;
- Complete a utility investigation for vapors;
- Investigate vapors at off-site properties;
- Provide a scoping statement for emerging contaminants.

IPG needs to move forward with all the above items in order to move towards a remedial action which will assist with removal of the source of the contamination and may help reduce the vapor intrusion concerns.

In addition, the department also summarized the need for interim actions, including additional modifications to make the vapor mitigation system (VMS) effective, submitting updated VMS construction documentation reports, and conducting the long-term monitoring and maintenance as required in ch. NR 700 Wisconsin Administrative Code (Wis. Adm. Code). These items were discussed with IPG and IPG's consultant in previous letters and emails from the department. Mr. Brand requested a copy of the department's case file to review the department's correspondence with IPG. The department will provide additional guidance documents to assist IPG's understanding of the vapor concentrations, including guidance document RR-0136, *Wisconsin Vapor Quick Look-Up Table*, in addition to several others.

During the meeting, IPG advised that it would take the following steps to return to compliance:

1. By no later than November 30, 2022, please provide me your written commitment to returning to and remaining in compliance for each of the alleged violations.
2. Immediately deploy temporary air filtration units or another option that immediately decreases vapor concentrations to acceptable levels.
 - a. Submit a brief workplan for indoor air vapor sampling to show temporary filtration is effective.
 - i. If using the air treatment units, they should run for at least 24+ hours before obtaining the indoor air samples.
 - b. Provide documentation of the initial indoor air sampling results to the department showing the temporary air units are effectively reducing vapor concentrations on or before November 30, 2022.

- c. Two to three rounds of indoor air sampling are needed, with at least one round performed during the heating season (i.e. winter) to ensure the sample results in the tenants' units are lower than the vapor action level of 180 ug/m³ for chlorinated volatile organic compounds (CVOCs).
 - d. As noted in the enforcement conference, temporary air units are not to be used for long-term use. The VMS modifications may be iterative until it is shown to be effective.
3. On or before December 31, 2022 - Submit a workplan to address the violations above, including:
- a. Modifying the VMS to make it effective and provide the analytical data to the department.
 - b. Provide updated VMS construction documentation report and OM&M plan, including long term monitoring, within 60 days of VMS being effective.
 - c. Move forward with the site investigation (SI) per the ch. NR 700, Wis. Adm. Code series to complete the investigation, to include: defining the degree and extent of soil and groundwater contamination (e.g. installation additional soil borings and/or wells and piezometers), groundwater monitoring, utility and preferential pathway investigation, vapor intrusion at other on-Site buildings and off-site properties, and scoping of emerging contaminants (please reference the letter sent to you on August 17, 2020).
 - d. If the above vapor sampling shows the VMS is not effective, then additional modifications are needed, and temporary air units need to remain running.
 - e. Conduct remediation at the site to remove the source of vapors.
4. Submit all documentation relating to the VMS repair work that SWAT Environmental performed this calendar year.
5. The department provided a copy of the entire Site file as requested by Mr. Brand during the enforcement conference. An email from Roxanne Chronert dated November 2, 2022, provided a link to the Site file. Please let us know if this does not satisfy your open records request.

Department staff have stressed the need to control the vapors due to health concerns with the chlorinated solvent contamination. This is the department's main concern at the moment, however additional media besides on-Site vapor requires additional investigation and remediation.

If you have any technical questions, please contact Josie Schultz at (920) 366-5685. If you have questions regarding this letter or the department's stepped enforcement process, please contact me at (920) 808-0045.

Sincerely,



Jennifer Pelczar
Environmental Enforcement Specialist

Ecc: Josie Schultz – josie.schultz@wisconsin.gov
Roxanne Chronert – Roxanne.chronert@wisconsin.gov

Teleconference Attendees:

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Josie Schultz	WDNR Hydrogeologist	2984 Shawano Ave. Green Bay, WI 54313	920-366-5685	Josie.schultz@wisconsin.gov
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