465772

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

SC-5J

DEC 02 2013

PROMPT REPLY NECESSARY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Frederick Snyder, President
BFI Waste Systems of North America, LLC
757 North Eldridge Parkway
Houston, Texas 77079

Re: Request for Information Pursuant to Section 104(e) of CERCLA
Lusher Street Groundwater Contamination Site, Elkhart, Indiana
Site ID No: 05AB

Dear Mr. Snyder:

The U. S. Environmental Protection Agency is investigating the Lusher Street Groundwater Contamination site located in Elkhart, Indiana. The site's boundaries are defined by the extent of a contaminated ground water plume. The approximate borders are: St. Joseph River on the north; Nappanee Street on the west; Hively Avenue on the south; and Oakland Avenue on the east, (see enclosed map). EPA believes that BFI Waste Systems of North America, LLC formerly operated at the Site at 1750 W. Lusher Avenue. EPA believes that you may have information that is relevant to the investigation of this site. Please see Enclosure 1 for a summary of the history of this site. EPA asks that BFI Waste Systems of North America, LLC provide information and documents relating to the contamination of the site. Please respond completely and truthfully to this Information Request and its questions in Enclosure 4 within thirty (30) calendar days of receipt of this letter. Instructions for completion of your response are in Enclosure 2. Definitions of terms used in this Information Request and its questions are in Enclosure 3.

BFI Waste Systems of North America, LLC may consider some information that we request to be confidential. If BFI Waste Systems of North America, LLC wishes to assert a claim of business confidentiality, BFI Waste Systems of North America, LLC must respond to the relevant question(s) and advise EPA that BFI Waste Systems of North America, LLC requests that the Agency treat the response as confidential business information. Directions to assert a claim of business confidentiality are in Enclosure 5.

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The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq., (commonly referred to as CERCLA or Superfund) gives EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by a site, 3) clean up those sites, and 4) investigate parties having potential liability at a site.

Under Section 104(e)(2) of CERCLA, EPA has authority to gather information and to require persons to furnish information or documents relating to:

A. The identification, nature, and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;

B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility; and

C. The ability of potentially liable parties to pay the costs of the clean up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by EPA pursuant to Section 104(e)(5) of CERCLA. Failure to respond and failure to justify the non-response can result in similar penalties under this Section. Further, Section 104(e)(5) authorizes the United States to seek penalties from a federal court of up to $37,500 for each day of continued non-compliance. EPA considers non-compliance to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject BFI Waste Systems of North America, LLC to criminal penalties of up to $10,000 or up to five years imprisonment, or both, under 18 U.S.C. § 1001.

EPA has the authority to use the information requested in an administrative, civil, or criminal action.

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

Return your response to EPA within thirty (30) calendar days of your receipt of this Information Request. Mail your response to:

Grace Co, Enforcement Specialist
U.S. Environmental Protection Agency, Region 5
Superfund Division, Enforcement and Compliance Assurance Branch
77 West Jackson Boulevard, (SE-5J)
Chicago, Illinois 60604-3590

If you have any questions about a legal matter, please contact Sheila McAnaney, Assistant Regional Counsel at (312) 353-3114. All other questions should be directed to Syed Quadri, Remedial Project Manager at (312) 886-5736.

We appreciate your prompt attention to this matter.

Sincerely,

for Sharon Jaffess, Chief
Enforcement & Compliance Assurance Branch

Enclosure:
1. Site History
2. Instructions
3. Definitions
4. Information Request
5. Confidential Business Information
6. Site Maps (3)

ENCLOSURE 1

SITE HISTORY

The Lusher Street Ground Water Contamination site is a groundwater plume contaminated with chlorinated solvents located in Elkhart, Indiana. The area of groundwater contamination is approximately bordered to the north by the St. Joseph River, to the west by Nappanee Street, to the south by Hively Avenue, and to the east by Oakland Avenue. (It should be noted that although the site was named "Lusher Street Ground Water Contamination site," Lusher Street is actually Lusher Avenue.) The source or sources of the chlorinated solvents are being investigated since there are numerous facilities in the area that may have used and released such solvents.

While conducting an extent of contamination study at the Gemeinhardt facility at 57882 State Road 19, contaminants were detected in private drinking water wells in an area immediately south of Lusher Avenue and the Elkhart County Health Department was notified. In 1987, the Elkhart County Health Department began an investigation of the area, which included sampling 145 wells. The sampling found that 103 private drinking water wells contained elevated levels of trichloroethylene (TCE) and 1,1,1-trichloroethane (1,1,1-TCA) and other chlorinated solvents. Subsequently, the Health Department requested assistance from EPA in providing alternate drinking water supplies to the affected residences and businesses.

EPA installed point-of-use carbon filters in 13 residences and businesses to reduce contaminant concentrations below the acceptable safe drinking water standards. In addition, EPA converted two residences' water supply from private wells to city water because these residences showed contaminant levels which exceeded the Agency for Toxic Substances and Disease Registry (ATSDR) action levels. Based on additional sampling in 1988, EPA provided five additional residences and businesses with city water.

In 1989, the Indiana Department of Environmental Management (IDEM) began its own water testing to determine if other residents should be provided alternate water supplies at the State's expense. As a result, municipal water lines were extended to the majority of impacted properties and one residence was provided with a point-of-use carbon filter because no municipal water main was in close proximity.

In 2006, IDEM's Site Inspection Section began additional sampling and found 11 wells in which contaminants exceeded drinking water levels for TCE and one additional well which contained an elevated level of 1,1-dichloroethene (DCE). IDEM's State Cleanup Program provided bottled water to those people whose water was found to exceed drinking water Maximum Contaminant Levels (MCLs) and alerted EPA. Additional EPA sampling resulted in a second removal action which included providing additional residents with point-of-use carbon filters for drinking water.

The State of Indiana subsequently referred the site to EPA because a long term comprehensive solution is needed to protect the drinking water wells and residences in the area. In 2007, the Lusher Street Ground Water Contamination site was proposed for listing on the National Priorities List (NPL), citing contamination of groundwater with chlorinated solvents including TCE; 1,1,1-TCA; trans 1,2-DCE; cis-1,2-DCE;1,1-DCE; and tetrachloroethylene (PCE). Most of these compounds can affect the central nervous system, liver, and kidneys. Some can be absorbed through intact skin, and several are suspected or known to cause cancers.

In March of 2008, the NPL listing for the Lusher Street Groundwater Contamination site was finalized. The NPL program provides an approach to investigate and address all of the contamination sources and associated plumes to protect human health and the environment at the site. In 2009, EPA began a phased remedial investigation (RI) to investigate the sources, nature, and extent of the contamination. The RI serves as the mechanism for collecting data to: characterize site conditions; determine the nature of the waste; assess risk to human health and the environment; and conduct treatability testing to evaluate the potential performance and cost of the treatment technologies that are being considered.

The 2009 field investigation was completed in two rounds: April through May 2009 and in October 2009. The investigation report for the 2009 field work was completed in March 2010. The March 2010 report identified a number of facilities that may be considered a potential source of groundwater contamination at the Lusher site. EPA is gathering additional information from these potential source facilities prior to making an enforcement decision.

In 2010, EPA continued on the phased RI to investigate the nature and extent of groundwater contamination. As part of this 2010 RI effort, EPA collected approximately 60 residential well samples from August through October of 2010. From November 2010 through February 2011, subsurface soil and ground water samples were collected from various locations at the site and analyzed. During this effort, a total of 8 permanent monitoring wells and 4 temporary wells were installed at various locations of the Lusher site. Several rounds of vapor intrusion samples (Step 1 through Step 4) were collected from November 2011 through August 2012 for the following media: groundwater, subsurface soils, sub-slab soils, indoor air and ambient air. A third round of monitoring well sampling event was conducted in August 2012. Additional indoor air and sub-slab samples were collected in October 2012. Additional vapor intrusion sampling was conducted in December 2012.

EPA has completed a Remedial Investigation (RI) Report, which summarizes the site investigation activities, data collected and the nature and extent of contamination. Along with the RI Report, EPA has completed a Focused Feasibility Study (FFS), which outlines a mechanism for the development, screening, and detailed evaluation of alternative interim remedial actions. Based on the FFS, EPA expects to issue a proposed cleanup plan that EPA will share with the public for review and comment before selecting a final plan.

ENCLOSURE 2

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.

2. Identify each answer with the number of the question to which it corresponds.

3. In answering each question, identify all persons and contributing sources of information.

4. Although the EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or misrepresentations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. § 9604, authorizes EPA to pursue penalties for failure to respond adequately to requests for submissions of required information.

5. In answering each question, identify all persons and contributing sources of information.

6. You must supplement your response to EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or erroneous, you must notify EPA as soon as possible.

7. For any document submitted in response to a question, indicate the number of the question(s) to which it responds.

8. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of the source.

9. Your response must be accompanied by the following statement, or one that is substantially equivalent:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted.
>
> Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

10. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, and the date and reason for the transfer or disposition.

11. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Enclosure 5.

ENCLOSURE 3

DEFINITIONS

1. As used in these documents, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.

2. The term ***person*** as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.

3. ***The site*** referenced in these documents shall mean the Lusher Street Groundwater Contamination site, Elkhart, Indiana, which is approximately bordered to the north by the St. Joseph River, to the west by Nappanee Street, to the south by Hively Avenue, and to the east by Oakland Avenue.

4. ***Facility or facilities*** means property or properties located within the boundaries of the site.

5. The term ***hazardous substance*** shall have the same definition as that contained in Section 101 (14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products. Hazardous substances include, but are not limited to: chlorinated solvents or other chemical compounds containing trichloroethylene, trichloroethane, dichloroethene or tetrachloroethylene.

6. The term, ***pollutant*** or ***contaminant***, shall have the same definition as that contained in Section 101 (33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.

7. The term ***release*** shall have the same definition as that contained in Section 101 (22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, tanks, and other closed receptacles containing any hazardous substance, pollutant, or contaminant.

8. The term ***identify*** means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

9. The term ***identify*** means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.

10. The term ***identify*** means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, address or, addressee and/or recipient, and the substance or the subject matter.

11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R., Parts 260-280 and 300, in which case, the statutory or regulatory definitions shall apply.

12. The term "**you**" shall mean the person or entity responding to these Information Requests.

ENCLOSURE 4

INFORMATION REQUESTS

1. State the dates during which you or your company have owned, operated, or leased a facility or any part thereof located within the boundaries of the site and provide copies of all documents evidencing or relating to such ownership, operation, or lease arrangement (e.g. including but not limited to purchase and sale agreements, deeds, leases, etc.).

2. Did you or any other person or entity ever use, purchase, store, treat, dispose, transport or otherwise handle any material containing chlorinated solvents, including but not limited to, trichloroethylene (TCE); trichloroethane (1,1,1-TCA); dichloroethene (trans 1,2-DCE ; cis-1,2-DCE; or 1,1-DCE) or tetrachlorethylene (PCE) at a facility within the boundaries of the site? If the answer to this question is anything but an unqualified "no," with respect to each facility identify:

   a) the chemical composition, characteristics, physical state (e.g., solid, liquid) of each material;

   b) who supplied the material;

   c) how, when, and where the material was used, purchased, generated, stored, treated, transported, disposed of or otherwise handled;

   d) the quantity of such materials used, purchased, generated, stored, treated, transported, disposed of or otherwise handled;

   e) all supervisory personnel for areas where chlorinated solvents were identified above. For each person identified, indicate the years during which they were a supervisor and, to the best of your knowledge and belief, their duties and responsibilities.

3. Identify all past and present solid waste management units (e.g., waste piles, landfills, surface impoundments, waste lagoons, waste ponds or pits, tanks, container storage areas, etc.) at each facility you or your company have owned, operated, or leased within the boundaries of the site. For each such solid waste management unit, provide the following information:

   a) A map which shows the unit's boundaries and the location of all known solid waste management units, whether currently in operation or not. This map should be drawn to scale, if possible, and clearly indicate the location and size of all past and present units;

   b) the type of unit (e.g., storage area, landfill, waste pile, etc.) and the dimensions of the unit;

c) the dates that the unit was in use;

d) the purpose and past usage of the unit (e.g., storage, spill containment, etc.);

e) the quantity and types of materials (hazardous substances and any other chemicals) located in each unit;

f) the construction (materials, composition), volume, size, dates of cleaning, and condition of each unit; and

g) if unit is no longer in use, describe how the unit was closed and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit.

4. Identify all leaks, spills, or releases into the environment of any chlorinated solvents or materials containing chlorinated solvents that have occurred at or from any facility you or your company have owned, operated, or leased within the boundaries of the site. In addition, identify:

   a) when, where, and how such leaks, spills or releases occurred;

   b) the amount of each leak, spill or release;

   c) activities undertaken in response to each such leak, spill or release, including the notification of any agencies or governmental units;

   d) investigations of the circumstances, nature, extent or location of each leak, spill or release, including the results of any soil, water (ground and surface), or air testing undertaken; and

   e) all persons with information relating to these leaks, spills or releases.

5. Provide copies of all local, state, and federal environmental permits ever granted for any facility (or any part thereof) you or your company have owned, operated, or leased within the boundaries of the site (e.g., RCRA permits, NPDES permits, etc.).

6. Identify any persons or entities, other than those responding to this information request, that may have information about the history, use, purchase, storage, treatment, disposal, transportation or handling of any materials containing chlorinated solvents at any facilities in the area identified as the Lusher Street Ground Water site.

7. To the extent you believe that another person, including any previous property owner, is responsible for any leaks, spills or releases into the environment of any chlorinated solvents or materials containing chlorinated solvents at or from any facility you or your company have owned, operated, or leased within the boundaries of the site, identify:

    a) the name and address of that person or persons;

    b) when, where, and how such leaks, spills or releases occurred;

    c) the amount of each leak, spill or release; and

    d) the detailed basis for your belief that each such person is responsible for leaks, spills or releases, including any transactional documents, reports, or other documentation supporting your belief.

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ENCLOSURE 5

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that EPA is requesting. You cannot withhold information or records upon that basis. The Code of Federal Regulations at 40 C.F.R. Part 2, Subpart B, requires that EPA affords you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish EPA to treat the information or record as "confidential", you must advise EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a separate assertion of confidentiality for each response and each document that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential", and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;

2. The measures that you have taken to guard against disclosure of the information to others;

3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;

4. Whether EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination;

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information;

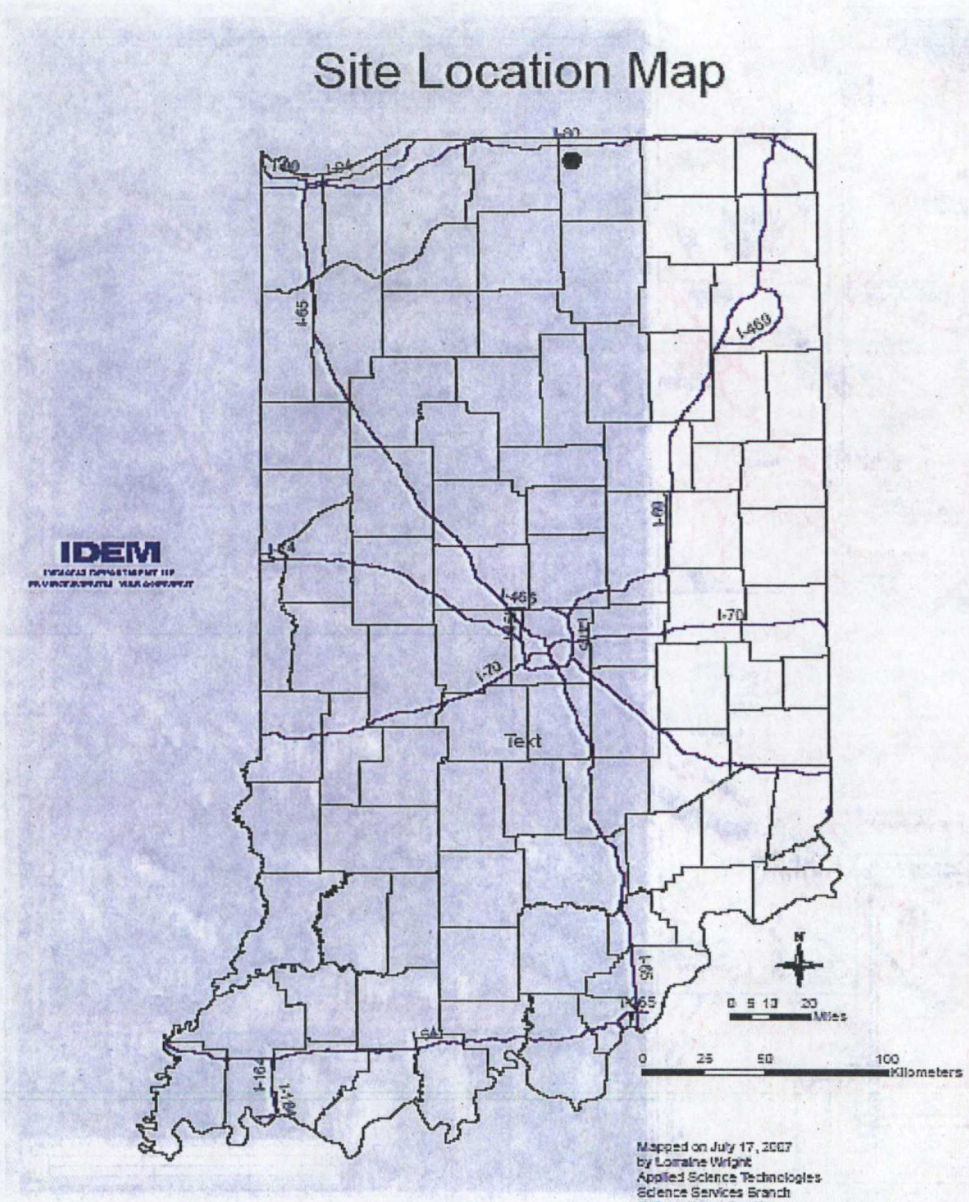
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. § 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of EPA to obtain similar information in the future;

7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. § 2.208(e), the burden of substantiating confidentiality rests with you. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that EPA may maintain their confidentiality pursuant to 40 C.F.R. § 2.205(8). If you do not identify this information and documents as Aconfidential", your comments will be available to the public without further notice to you.

ENCLOSURE 6

Site Map – 1



Mapped on July 17, 2007
by Lorraine Wright
Applied Science Technologies
Science Services Branch
Office of Land Quality
Indiana Department of Environmental Management

Source:
The location of the site was plotted using address matching by comparing the site address against the Elkhart, IN GIS parcel addresses.
Interstates - Tiger data
County boundaries - Tiger data

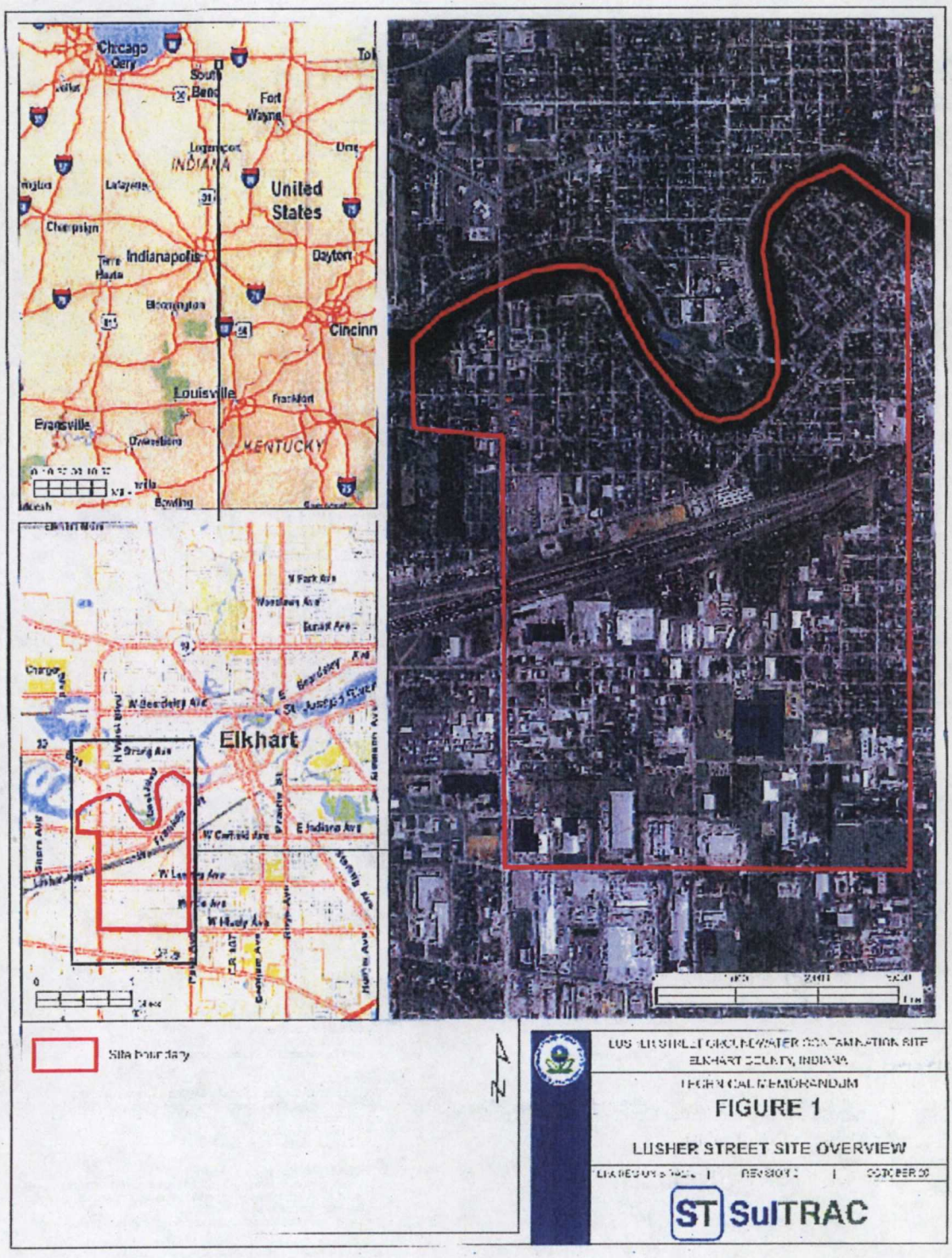
DISCLAIMER:
This map does not represent a legal document. It is intended to serve as an aid in graphic representation only. Information shown on this map is not warranted for accuracy.
This map does not contain sensitive or classified information.

Legend

- Lusher Street Ground Water Contamination Site, Elkhart, IN
- Interstates_TIGER_IGS_IN
- County boundaries (TGR2K)

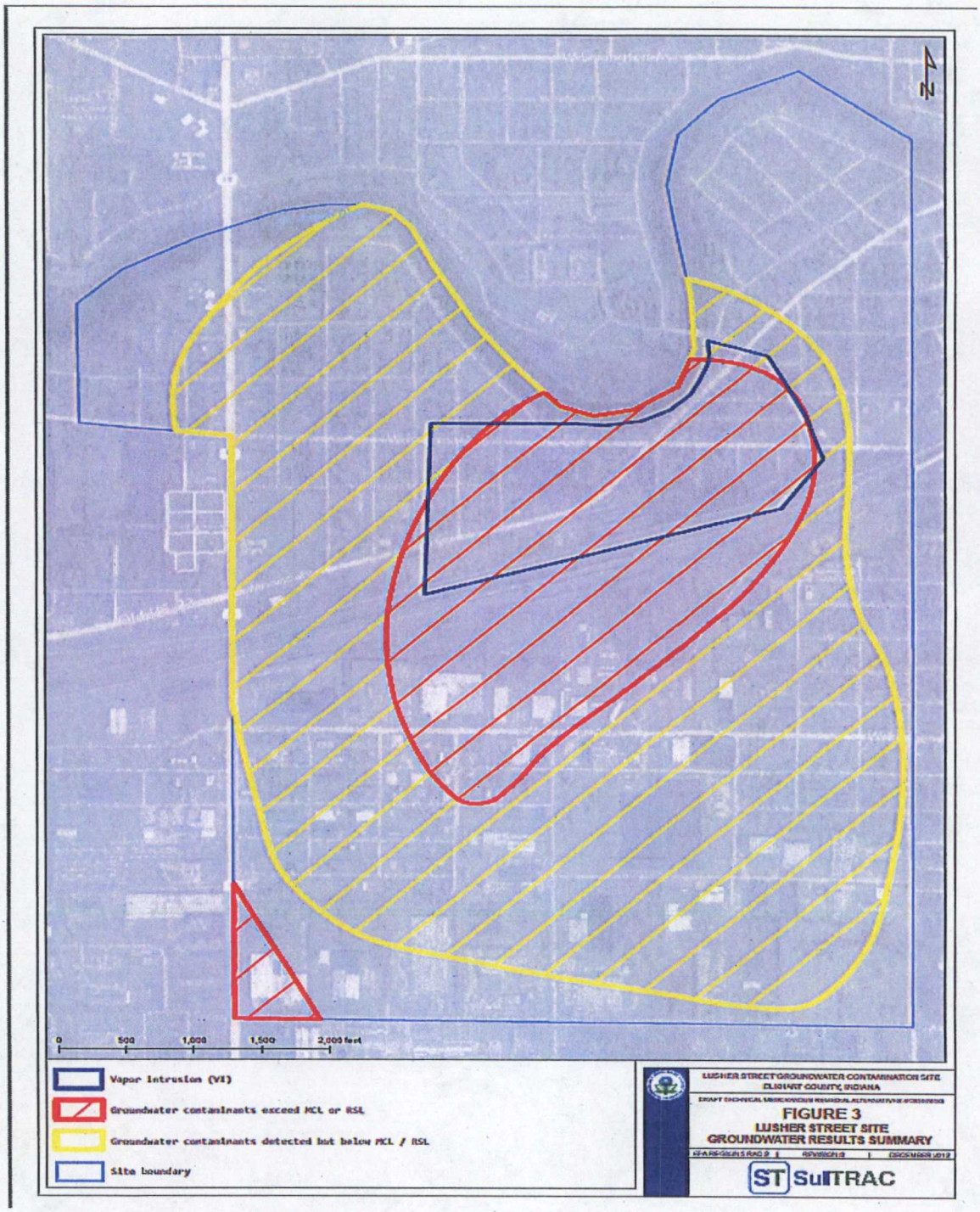
ENCLOSURE 6

Site Map – 2



ENCLOSURE 6

Site Map – 3



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Agency
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Chicago, IL 60604

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- Moved, Left No Address
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- Unclaimed
- No Such Street
- Refused
- Insufficient Address
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. Frederick Snyder, President
BFI Waste Systems
of North America, LLC
757 N. Eldridge Parkway
Houston, TX 77079

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7009 1680 0000 7671 9636

PS Form 3811, March 2001 Lusher Domestic Return Receipt 102595-01-M-1424

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