



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We Protect Hoosiers and Our Environment.*

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Eric J. Holcomb  
*Governor*

Bruno L. Pigott  
*Commissioner*

April 17, 2019

Lori Santana  
231 North Main Street  
Elkhart, Indiana 46516

Dear Ms. Santana:

Re: **Access Request for Site Investigation  
Activities**

Executive Cleaners  
201 North Main Street  
Elkhart, Elkhart County  
State Cleanup #0000746

The Indiana Department of Environmental Management (IDEM) is responsible for protecting human health and the environment pursuant to Title 13 of the Indiana Code. Part of that responsibility includes ensuring that properties contaminated with hazardous substances are investigated and remediated to eliminate the threat to human health and the environment.

Responsible Persons under the Comprehensive Environmental Response, Compensation, and Liability Act (42 United States Code (U.S.C.) 9607(a)) (CERCLA) and Indiana Code (IC) 13-25-4-8 include current owners and operators of a facility, any person who owned the Site at the time of disposal or release of any hazardous substances, persons who arranged for disposal or treatment of hazardous substances sent to a site, and persons who accepted hazardous substances for transport to a site. Under IC 13-25-4-9(a)-(b), and other laws, a Responsible Person may be ordered to perform response actions deemed necessary by IDEM to protect the public health, welfare or the environment.

Pursuant to that mandate, IDEM has requested that Executive Cleaners and the current owner of the property located at 201 North Main Street, Elkhart, Indiana conduct an environmental investigation to determine the nature and extent of contamination present at the property. IDEM understands from the investigations conducted to date that the contamination has entered into soil and groundwater at the Executive Cleaners property and may be migrating off-site onto adjacent properties.

IDEM's policy concerning property containing contamination allows IDEM to utilize its enforcement discretion and not pursue any person for contamination that has migrated onto their property, if certain criteria are met. A key criterion is that the landowner does not cause, contribute to, or exacerbate the release, or threat of release, of the contaminant. The criterion will not be met if access is denied and the potential for contaminant migration is allowed to continue. Courts have also held that landowners may be liable for the costs of cleaning up pollution if they failed to stop the migration of pollution once becoming aware of it.

The environmental consultant for the Executive Cleaner's facility is Crossroads Environmental Consulting (Crossroads). Crossroads has attempted to gain access to your property to collect indoor air and sub-slab samples. Your property is near the Site and within the potential range of influence of contamination from the Executive Cleaner's facility. Crossroads has reported that they have been unable to access your property and have requested IDEM's assistance to inform you of this issue and request property access. The indoor air and sub-slab samples being proposed by Crossroads are necessary for the assessment of the potential threat to human health and environment caused by a release on the Executive Cleaner's property. There will be no cost to you. The cost of the indoor air and sub-slab sampling is solely the responsibility of the Potentially Responsible Person (PRP), in this case the Executive Cleaner's facility, and their designated representatives.

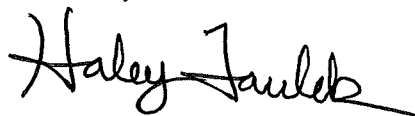
Crossroads has attempted to reach you by phone and by stopping by in person. No response was received by Crossroads. This has prevented the investigation required by IDEM to be stalled. Please contact me by telephone at (317) 234-3505 or by e-mail at [HFaults@idem.in.gov](mailto:HFaults@idem.in.gov), or you may telephone Crossroad's Principal Geologist, Mike Cooper at (317) 626-9039 or e-mail him at [MCooper@crossroadsec.com](mailto:MCooper@crossroadsec.com) to discuss this matter. IDEM has determined it is imperative to the investigation to gain sample data from your property.

IDEM requests that access be provided within 30 days of the date of this letter to persons that Executive Cleaners has designated to perform investigation activities. If access is still not provided within that time frame, IDEM will evaluate other available options, which will include an administrative or civil order directing compliance with the request, an order requiring that you conduct an investigation, or an order allowing IDEM to conduct the investigation on your property and subsequent recovery of costs.

IDEM is willing to review any proposed access agreements or assist in reaching a resolution regarding this issue. If you have any questions or wish to discuss this letter further, please contact April Lashbrook, IDEM Office of Legal Counsel, at (317) 233-1805.

Thank you for your help in moving this matter forward.

Sincerely,



Haley Faulds, Project Manager  
State Cleanup Section  
Office of Land Quality

HF/sb

cc: State Cleanup File #0000746  
Mike Cooper, Crossroads  
Nicholas Gahl, Gahl Legal Group  
April Lashbrook, IDEM Office of Legal Counsel

**ATTACHMENT A**  
**Technical Review Panel Announcement**

# Technical Review Panel

## **IDEM's Office of Land Quality Announces New Technical Review Panel for VRP and State Cleanup Program Technical Disputes**

During the course of some remediation projects, technical disagreements between the Indiana Department of Environmental Management (IDEM) staff and external entities arise. We recognize that these disputes can often cause delays and frustration on both sides of the issue. Therefore, the IDEM has developed a mechanism for settling technical disagreements called the Technical Review Panel (Panel). The IDEM assembled a pool of approximately 12 IDEM scientists from outside the Office of Land Quality (OLQ) each having expertise applicable to the technical issues we commonly encounter. When the Panel is needed we will assemble a small group of those scientists with the appropriate expertise to help settle the dispute.

We envision the basic process to be as follows: If the IDEM project manager and the external party cannot agree on a technical issue within a reasonable time, the IDEM project manager will elevate the dispute to their Remediation Branch managers and senior Science Service technical staff for review. If the dispute is still not settled, the external party may contact the Remediation Services Branch Chief directly and request the issue be reviewed by the Panel. Each side will provide the Panel a short written summary of their technical view point prior to participating in an informal discussion with the Panel. The Panel will then provide written recommendations.

The Technical Review Panel is a pilot and at this time will only be used for disputes between our State Cleanup Program and/or the Voluntary Remediation Program (VRP) project managers and external parties.

Note: Any decision produced by the Technical Review Panel is not an agency action as defined in IC § 4-21.5-1-4 or an order as defined in IC §4-21.5-1-9. This decision is not subject to administrative review because it is not a determination of any legal rights, duties, privileges, immunities, or other legal interests, and because it is issued pursuant to an informal procedure for dispute resolution as allowed by IC 4-21.5-3-34 (a).

Our goal is to enable remediation sites to move forward in a timely manner and to provide external entities a forum outside the OLQ to help resolve technical disagreements with the VRP and State Cleanup Program project managers.

This review process is available immediately. If you would like to request a review by the Panel, please contact the Remediation Services Branch at (317) 232-4535 or [scp@idem.in.gov](mailto:scp@idem.in.gov).

Source: <http://www.in.gov/idem/landquality/2504.htm>