GUIDELINES FOR AUTOMOTIVE SECTOR BROWNFIELDS ASSESSMENT INITIATIVE (AUTO SECTOR INITIATIVE)

Introduction

The Indiana Brownfields Program (Program), managed by the Indiana Finance Authority (Authority), has established an Automotive Sector Brownfields Assessment Initiative (Auto Sector Initiative) to help Indiana communities address the growing problem of idled, abandoned, and closed facilities related to the downsizing of the automotive manufacturing sector. To facilitate redevelopment of such properties which are often hindered by actual or potential environmental contamination, the Program will provide assessment and related activities (not including remediation) at eligible automotive brownfield sites. An award under the Auto Sector Initiative will be for professional services to be provided by the Program and not a grant of funds.

Indiana political subdivisions (as defined by Indiana Code (IC) 13-11-2-164(c)) can request assessments and other activities on behalf of eligible sites in their community. Examples of political subdivisions that have qualified as applicants for Program financial assistance can be found on the Program's web site at http://www.in.gov/ifa/brownfields/2366.htm. In addition, a private entity or individual can apply for assistance under certain circumstances outlined below. Privately-owned sites may be eligible for an award of services under certain circumstances (e.g., if property transfer is imminent and a redevelopment/reuse plan is already in place).

As of June 2011, approximately $230,000[1] is available for the Auto Sector Initiative to address sites with hazardous substances and/or petroleum contamination, including sites contaminated with asbestos-containing materials and lead-based paint. A maximum dollar amount for an award of services per site, if any, will be determined on a case-by-case basis. An award of services made to a private applicant will require a match of a percentage of the award amount according to the following table:

Award Amount	Match Requirement
$0 - $49,999	10%
$50,000 - $99,999	20%
$100,000+	25%

Please refer to the *Guidance on Auto Sector Initiative Investment Requirement* for additional information about the match requirement, including the types of activities that can count toward satisfaction of the match requirement as well as the documentation that must be submitted to demonstrate fulfillment of the match amount.

[1] This initiative is being funded through repayments from a Program loan of federal brownfield funds. Repayments are scheduled through March 2012, and the balance reflected as available above includes all remaining payments due.

An award of services made to a private applicant valued at $100,000 or greater and for which the actual disbursements exceed $100,000 will take the form of a zero-interest loan to be repaid during a term that will be negotiated, but in most cases will not exceed three (3) years. Applications for assessment and other activities will be accepted anytime and awarded on a first come, first-served basis.

Once a site has been selected by the Program for assistance, a scope of work will be put out for bid by the Program to the consultants qualified by the Authority in May 2009 to provide environmental site assessment and remediation services. The Authority will then enter into a site-specific agreement with the consultant to which the Program awards the work to be funded by the Auto Sector Initiative award. If the applicant is not the city, town or county in which the site is located or the site is not owned by a political subdivision, a support letter or resolution from the appropriate local governmental agency of the community in which the site is located must be submitted with the application to demonstrate community support for the project.

Auto Sector Initiative Award Activities

Assistance is available to conduct environmental assessment and related activities at eligible brownfield sites. Auto Sector Initiative Award activities include, but are not limited to:

- Phase I Environmental Site Assessments (ASTM E1527-05)
- Phase II Environmental Site Assessments and related activities
- Asbestos surveys
- Lead-based paint surveys
- Remediation work plan redevelopment
- Limited demolition (integral to implementing an approved assessment work plan)
- Site access control/site security (e.g., against vandalism, exposure to contamination)
- Site stabilization (e.g., removal of containerized materials; stabilizing structures)

Activities conducted through an Auto Sector Initiative award will be performed utilizing the Indiana Department of Environmental Management (IDEM) Risk Integrated System of Closure (RISC) Technical Guidance Document and any other applicable IDEM guidance. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant reduction level necessary. **Funding for remediation and reimbursement for activities conducted prior to an Auto Sector Initiative Award will not be provided.**[2]

Eligibility Criteria

The following items are considered threshold eligibility criteria and, if not satisfied, may disqualify an application from consideration for an Auto Sector Initiative award. Threshold criteria are pass/fail – applications must meet all of the threshold criteria. Only those applications that meet all of the threshold criteria will be evaluated for assistance. For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of applicant

[2] Other funding is available from the Indiana Brownfields Program for remediation activities. Please visit www.brownfields.in.gov for more information.

information and/or consider information from other sources, including IDEM, the Authority, or United States Environmental Protection Agency (U.S. EPA) files.

Applicant Eligibility (Threshold)

1. The applicant, if not a private entity or individual, meets the definition of a political subdivision as defined in IC 13-11-2-164(c) (*see* reference to qualifying entities above).

2. The applicant or any entity involved in the project (i.e., property owner, developer) did not cause or contribute to the contamination found at the site or own and/or operate at the site at the time of the disposal of hazardous substances or release of petroleum on the site at which the Auto Section Initiative award will be utilized.[3]

3. If the applicant intends to apply for an Auto Sector Initiative award to conduct a Phase II Environmental Site Assessment or a lead-based paint and/or asbestos survey, an American Society for Testing and Materials (ASTM) Phase I (Standard E1527-05), including any updates required per the standard (180-day or one-year), must be submitted with the application, if one has been conducted. If no current Phase I is available at the time of application, the Program will include a Phase I in the scope of work provided under an award.

Site Eligibility and Property Ownership Eligibility (Threshold)

1. The site meets the federal definition of a brownfield under 42 U.S.C. § 9601(39), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under CERCLA, a brownfield is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.[4]

2. The facility (site) is permanently idled or officially closed as a result of its relationship to the automotive manufacturing sector (e.g., auto dealerships closed directly as a result of the bankruptcy filing of an auto manufacturer; shuttered auto parts/supplier, auto assembly and auto manufacturing plants).

3. The applicant, if not the city, town, or county (or if the site is not owned by the town, city or county), has a letter of support from the appropriate local governmental entity (e.g., Department of Metropolitan Development) from the community in which the site is

[3] If a stakeholder in the proposed project did cause or contribute to the contamination found at the site or own and/or operate at the site at the time of the release resulting in contamination, the Program may evaluate the project-specific facts and make a project-specific exception to this threshold eligibility requirement. A property-specific determination will include consideration of whether an award of service will protect human health and the environment, and *either* promote economic development *or* enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. Additional project documentation (e.g., executed sale/purchase agreement) may be requested from the applicant in conjunction with such determination.

[4] Applicants should carefully review CERCLA Section 101(39), as there are exclusions to the definition of "brownfield site," only some of which are outlined in these guidelines as threshold criteria. *See* 42 U.S.C. § 9601(39)(b).

located.

4. Ineligible Brownfield Sites. A property that meets any or all of the following at the time an application is submitted is ineligible for an Auto Sector Initiative award (and *not* eligible for a property-specific determination (*see* note 2):

- The site is listed or proposed for listing on the National Priorities List.
- The site is subject to the jurisdiction, custody, or control of the U.S. government, except for land held in trust by the U.S. for an Indian tribe.
- The site is subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- The site presents an imminent threat to human health or the environment.

5. Otherwise Ineligible Sites that May Obtain a Property-specific Determination. A property that meets any or all of the following at the time an application is submitted is ineligible for an Auto Sector Initiative award, but *is* eligible for a **property-specific determination** *if* the applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding (*see* note 2 for more information about property-specific determinations):

- Sites subject to planned or ongoing response actions under CERCLA;
- Sites that are subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the U.S. government or an authorized state under the Resource Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act ("FWPCA"), the Toxic Substances Control Act ("TSCA"), or the Solid Waste Disposal Act ("SWDA");
- Sites that are subject to corrective action orders under RCRA § 3004(u) or 3008(h) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
- Sites that are land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit;
- The site is subject to an open or pending State or federal administrative or judicial enforcement action; and,
- Sites where there has been a release of polychlorinated biphenyls and all or part of the site is subject to remediation under TSCA.

Contact the Program's Federal Funding and Community Relations Coordinator for additional information if you are contemplating an award under the Auto Sector Initiative for a site that may require a property-specific determination.

***Petroleum Sites*-** the additional eligibility criteria below apply only to sites with petroleum contamination (not co-mingled with hazardous substances).

1. The site is of "relatively low risk" compared with other "petroleum-only" sites in the state.

2. There is no viable responsible party.

3. The site (or portion of the site) is not receiving/has not received Leaking Underground Storage Tank (LUST) Trust Fund monies from the federal government or the State's Excess Liability Trust Fund (ELTF) (or is not ELTF-eligible), *unless* a property-specific determination from the Program is obtained (*see* note 2 for more information about property-specific determinations).

The following **petroleum-contaminated** sites are ineligible for an Auto Sector Initiative award:

- The site is subject to RCRA Corrective Action for hazardous substances contamination or petroleum contamination (under section 9003(h) of the Solid Waste Disposal Act (RCRA § 6991b(h)).

The Auto Sector Initiative application requests additional information for petroleum-contaminated sites pertaining to the above-listed criteria that the Program will then evaluate to determine project eligibility. The following excerpted information from U.S. EPA grant proposal guidelines provides some background for the above-listed criteria that should facilitate the answering of the related questions on the Auto Sector Initiative application:

"Relatively Low Risk" - Applicants whose brownfield site(s) include properties or portions of properties contaminated with petroleum or petroleum products must provide information in their application indicating that the property represents a relatively low risk (compared to other petroleum-only sites). U.S. EPA's view is that the following types of petroleum-contaminated sites are high risk sites, or are not of "relatively low risk."

(1) "High risk" sites currently being cleaned up using LUST trust fund monies.
(2) Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

Note: Any site that does not fall under any of the provisions listed above would be considered to be of relatively low risk for purposes of determining eligibility for a financial assistance award.

"A Site for Which There is No Viable Responsible Party" –the state is required to determine that there is no viable responsible party that can address the petroleum contamination at the site. If the state identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for funding, and the Program cannot provide financial assistance. This analysis is twofold – the state must first determine whether a responsible party exists and, if a responsible party is identified, then determine whether that party is viable. Applicants must provide information in their application to demonstrate that the property or portion of property

contaminated with petroleum or petroleum product for which they seek funding has no viable responsible party.

A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above may be determined to have no responsible party if the site meets the criteria in both (1) and (2) below.

> (1) No responsible party has been identified for the site through:
> (a) a judgment rendered in a court of law or an administrative order that would require any party (including the applicant) to assess, investigate, or clean up the site,
> (b) an enforcement action by federal or state authorities that would require any party (including the applicant) to assess, investigate, or clean up the site, or
> (c) a citizen suit, contribution action or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the assessment, investigation, or clean up the site, and
>
> (2) The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate the contamination at the site, and took reasonable steps with regard to the contamination at the site.[5]

If no responsible party is identified above, then the petroleum-contaminated site may be eligible for funding. If a responsible party is identified above, then the Program must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site may not be eligible for funding. A party will be considered viable if:

> (3) the party is financially capable of satisfying obligations under federal or state law to assess, investigate or clean up the site. For example, a corporation that may be responsible for the cleanup of the site that is insolvent or defunct will generally not have the financial capacity to satisfy its obligations.

"Cleaned Up by a Person Not Potentially Liable" - Brownfields funding may be awarded for the assessment of petroleum-contaminated sites provided:

> (1) the applicant has not dispensed or disposed of petroleum or petroleum-product at the site, and
> (2) the applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

[5] For purposes of determining petroleum brownfield award eligibility, "reasonable steps with regard to contamination at the site" includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of U.S. EPA's March 6, 2003, "*Common Elements*" guidance.

Selection Criteria

If threshold eligibility criteria are satisfied, applications will be further evaluated on the following factors:

1. Local Support for Project/Neighborhood Comment and Input
   - Plans announced at public meeting and comments sought from public
   - Favorable responses received and/or proactive follow up to any negative comments
   - Additional or more focused community and/or neighborhood input sought

2. Leverage of Additional Funds
   - A dedicated pool of public and/or private funds has been identified and is of a sufficient amount to complete site assessment and remediation, if necessary, and the redevelopment project (if plans are known)
   - Partial project funding available and/or fundraising underway; public and/or private funds have been identified and are being pursued
   - No funds have been committed to project completion; no current effort is underway to identify and pursue funds

3. Project Development - What is the stage of project development?
   - Ready for construction bid
   - Land acquired
   - Ready for land acquisition
   - Development plan complete
   - Ready for planning

4. Redevelopment Potential for Site
   - Long-term plans for the site, including its place in the overall economic and community development plans of the community
   - Potential for project success based on formal contracts and/or designated funds to accomplish assessment, remediation and redevelopment
   - Project is part of a proposed/planned trail or greenway redevelopment that is completed or under development
   - Project has associated economic development opportunities, including potential increase to tax base, job creation, and investment in project property
   - Project characteristics include pollution prevention and reduced resource consumption (i.e., infrastructure reuse, native landscaping, innovative stormwater management/reuse, construction debris/fill reuse, green building techniques, and/or others)
   - Project will serve multiple use functions
   - Previous local efforts to redevelop property and/or address environmental issues of the site

5. Geographic Distribution of Awards
   - This is the only project seeking an Auto Sector Initiative award from the county in which it is located
   - Fair distribution of funds between urban and non-urban areas

Loan Terms

In order to ensure the long-term availability of funding for the Auto Sector Initiative, an award of services to a private applicant valued at $100,000 or greater and for which actual disbursements exceed $100,000 will be required to be in the form of a loan and the private applicant will be required to execute a loan agreement agreeing to repay the funds expended by the Program on the auto sector brownfield. The loan will be a zero-interest loan, and the term of any loan awarded under this initiative is negotiable, but will in most cases not exceed three (3) years. Principal payments may be deferred for up to three (3) months; if payments on principal are deferred for any period of time, the balance of the loan will be amortized within the remaining loan term. There are no prepayment penalties on a loan under this initiative. The collateral requirement for a loan provided to a private applicant is a standby letter of credit (LOC) naming the Authority as the beneficiary. The LOC and the issuing bank for such collateral must be pre-approved by the Authority prior to loan closing.

Application Procedure

Please follow the instructions provided on the "Application for Auto Sector Brownfields Assistance" available on the Program's website at www.brownfields.in.gov. There is no application fee.

1. One fully-completed application; and,
2. Documentation evidencing a non-private applicant meets the definition of political subdivision as defined by IC 13-11-2-164(c) if the applicant is not a town, city or county; and,
3. An Access Agreement from the current owner of the brownfield[6]; and,
4. A Phase I Environmental Site Assessment (ASTM E1527-05) if the applicant is applying for funding to conduct a Phase II Environmental Site Assessment, or a lead and/or asbestos survey, if available; and,
5. A letter of support from the appropriate local governmental agency from the community in which the site is located if the applicant is not a city, town, or county and the site is not owned by the city, town, or county; and,
6. Other submittals as indicated in the application or as desired.

Applications that pass the threshold review will be evaluated based upon the additional project criteria set forth above. Contact the Program's Federal Funding and Community Relations Coordinator for additional information if you are contemplating an award under the Auto Sector Initiative for a site that may require a property-specific determination. While applications for assessment and related activities will be awarded on a first come, first-served basis, if the volume of applications necessitates it, the Program will consider ranking applications. A Financial Assistance Agreement between the Authority, the Authority's Consultant, and the applicant will be required for any site receiving an Auto Sector Initiative award in the form of a loan.

[6] The applicant must obtain written consent for site access (Access Agreement) from the owner to perform the Auto Sector Initiative award activities. Access to the brownfield must be provided to IDEM, the Authority, the Consultant, and the applicant until the Program's issuance of a comment letter indicating acceptance of final reports received from the Consultant pertaining to assessment and other activities at the site. A template Access Agreement is attached hereto as "Exhibit A" as an example of the form of agreement the Program will accept. This requirement will be satisfied by the applicant after an award is made and a consultant is selected by the Authority. If the applicant is also the owner, written consent for site access must still be provided for the parties listed above.

Contact Information & Disclaimers

We welcome comments on the Auto Sector Initiative Guidelines at any time. General questions regarding these guidelines or the Auto Sector Initiative can be directed to the Program's Federal Funding & Community Relations Coordinator at (317) 234-0235. These guidelines may be modified at any time by the Program to address demand and other issues to promote the effective and efficient administration of the Program. The Program may eliminate this initiative or modify the scope at any time in accordance with the terms and conditions of the underlying agreement with U.S. EPA that controls the funding source for the initiative.

EXHIBIT A

Template Access Agreement

SITE ACCESS AGREEMENT
PERMISSION TO ENTER PROPERTY
INDIANA BROWNFIELDS PROGRAM
AUTO SECTOR INITIATIVE

This Site Access Agreement ("Agreement") is made by and between [insert property owner] ("Owner"), the Indiana Brownfields Program ("Program"), and [insert consultant name] ("Consultant") regarding the Owner's property located at [insert address] ("Site"), Site Identification Number [insert site number]. The access is given in connection with site activities to be conducted with an award of services made to [insert applicant's name] through the Program's Auto Sector Brownfields Assessment Initiative. The Program requests permission for the Consultant to enter the Site for the exclusive purposes of conducting environmental investigation and other related activities associated with hazardous substances and/or petroleum contamination.

1. Owner hereby gives permission to the Consultant or other authorized environmental contractors, Indiana Department of Environmental Management ("IDEM") employees, Indiana Finance Authority ("IFA") employees, or other designees authorized by the Program and/or the Consultant (collectively, "Authorized Parties") to enter upon the Site to perform investigation or related activities at the Site. This permission is effective immediately upon the execution of this Agreement by Owner and the Consultant and acceptance of the Agreement by the Program.

2. The permission granted by Owner under this Agreement is contemplated to be used for the following activities that may be performed by Authorized Parties: [*choose specific activities covered by scope of award; delete the rest, except for "f"*]

a. Investigation of soil and groundwater, including, but not limited to, the installation of soil borings, test pits and/or groundwater monitoring wells, the use of geophysical equipment, the use of drilling equipment for collection of soil and sediment samples, the logging, gauging and sampling of existing wells, videotaping, preparation of site sketches, taking photographs, any testing or sampling of groundwater, soil, surface water, sediments, air, soil vapor or other material deemed appropriate by the Program and the like.

b. Survey of asbestos-containing material and lead-based paint conditions.

c. Limited demolition activities.

d. Measures to control site access/site security.

e. On-Site observation and oversight of environmental investigation activities.

f. Disclosure of environmental information as required by law.

3. Upon completion of the above-listed activities, Authorized Parties will restore the property as near as practicable to its condition immediately prior to the commencement of such activities, but not including paving or concrete replacement at ground surface.

4. The granting of this permission by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner or the Owner's successors and assigns for any contamination discovered on the Site.

5. Authorized Parties may enter the Site during normal business hours and may also make special arrangements to enter the Site at other times after agreement from the Owner.

6. Authorized Parties shall enter upon the Site at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Party arising out of or in connection with activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of Owner, any lessee of the Site, or any employee or agent of the Owner.

7. Neither the State nor the IFA is providing any indemnification, either jointly or severally, to the Owner, the Consultant or its agents, assigns or designees.

8. The Program will supply to Owner all information derived from the environmental investigation and other activities conducted at the Site. The Program may use such information for any purpose at the Program's sole discretion. The Consultant will hold in confidence all such information except as instructed by the Program and the Owner or as required to be disclosed by law.

9. In exercising its access privileges, Authorized Parties will take reasonable steps not to interfere with the Owner's operations on the Site.

10. Authorized Parties will give notice to the Owner at least one (1) week in advance of the start of field activities on the Site.

11. Owner ensures that Owner and any/all Site operators will give Authorized Parties access to the entire Site for the purposes set forth in this Agreement.

12. Any party to this Agreement may terminate this Agreement by giving two (2) months advanced written notice, or all parties may terminate the Agreement at any time by written agreement.

13. This Agreement shall expire upon the Program's issuance of a comment letter indicating completion of project activities under the Auto Sector Initiative award.

_____	_____
[insert name], Site Owner	Witness
_____	_____
Date	Date

Site Owner's Telephone Number: _____

Site Owner's Mailing Address (if other than Site address): _____

_____

For the benefit of [insert Consultant's name]:

_____	_____
[insert authorized signatory's name] [insert signatory's title]	Date

Accepted by the Indiana Brownfields Program by:

_____	_____
Michele Oertel Federal Funding & Community Relations Coordinator	Date