Members

Rep. David Wolkins, Chairperson
Rep. Ryan Dvorak
Rep. James Baird
Rep. Matt Pierce
Sen. Edward Charbonneau
Sen. James Buck
Sen. Frank Mrvan
Sen. Karen Tallian
Doug Meyer
Dave Wyeth
Dwayne Burke
John Hardwick
Calvin Davidson
Thomas Easterly
Heather Hill
Kyle Hannon

ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Ruth Rivera, Attorney for the Council
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Authority: IC 13-13-7

MEETING MINUTES[1]

Meeting Date:	**September 12, 2012**
Meeting Time:	**1:00 P.M.**
Meeting Place:	**Governmental Center South, 302 W. Washington St., Auditorium**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**2**

Members Present: **Rep. David Wolkins, Chairperson; Rep. Ryan Dvorak; Rep. James Baird; Sen. James Buck; Sen. Karen Tallian; John Hardwick; Calvin Davidson; Thomas Easterly; Kyle Hannon.**

Members Absent: **Rep. Matt Pierce; Sen. Edward Charbonneau; Sen. Frank Mrvan; Doug Meyer; Dave Wyeth; Dwayne Burke; Heather Hill.**

Call to Order. Rep. Wolkins, Chair of the Environmental Quality Service Council, called the meeting to order at approximately 1:05 p.m.

Duties of Solid Waste Management Districts. Ms. Julie Rhodes, Executive Director of the Association of Indiana Solid Waste Management Districts, provided information regarding permitting by solid waste management districts (Exhibit 1). Ms. Rhodes informed the Council that the solid waste management districts in Boone, Crawford, Dubois, Monroe, and St. Joseph Counties permit or register trucks or haulers that operate in the districts. She suggested that solid waste management districts should be able to register or permit facilities and vehicles operating waste-related activities in the district because other county agencies are able to do so. It helps prevent violations which should save IDEM and taxpayers money in clean-up costs, and it is a home rule decision.

Ms. Jennifer Lawrence, Executive Director of the Boone County Solid Waste Management District, provided information concerning the permitted facilities, hauler registrations, and

[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

associated fees collected in the district (Exhibit 2).

In response to questions, Ms. Lawrence:

- Explained that the Boone County Solid Waste Management District utilizes the hauler registration fee as a revenue source instead of imposing taxes.
- Informed the Council that if trucks operate in more than one district, then the Boone County Solid Waste Management District tries to only register the trucks that operate within their district.
- Shared that the district's regulations for hauler trucks are the same as INDOT's with the exception of the collection of fees.
- Explained that when she receives phone calls concerning illegal dumping, inspections occur and about 90% of the time sites are cleaned up when people are notified about the violations.
- Explained that the special assessment fee was reduced from $1 per house per month to $0.25 per house per month because more revenue was collected than the district could spend.

Mr. Terry Guerin, Chairman, Indiana Chapter of the National Solid Waste Management Association, provided testimony concerning the registration of solid waste haulers by the Boone County Solid Waste Management District (Exhibit 3). Mr. Guerin stated that the role of solid waste management districts has changed since their creation. He suggested that the fundamental role of solid waste management districts should be education.

Mr. Patrick Bennett, Indiana Manufacturers Association, stated that while solid waste management districts provide good and valuable services, they should be re-purposed to fit with current times. He recommended that the legislature review the powers of solid waste management districts (particularly the power to adopt resolutions that have the force of law) and limit their authority as deemed appropriate.

Sen. Gard was recognized to speak. Sen. Gard shared that she and Rep. Wolkins sponsored the solid waste management district legislation in 1990. Sen. Gard asked the following questions concerning permitting and registration activities by solid waste management districts:

- What kind of training is conducted for those who monitor compliance?
- Are district regulations different from state regulations?
- Are there district requirements for hauler trucks that the state does not have?
- What actions are taken when a violation occurs?

Ms. Rhodes and Ms. Lawrence were allowed to respond to these questions. Ms. Rhodes offered to look into training being conducted in counties for those who monitor compliance in order to provide more information to the Council.

Ms. Lawrence responded that permitting is not the Boone County Solid Waste Management District's primary focus. Rather, their primary mission is education. Ms. Lawrence shared that businesses that have had violations have not been asked to leave the district.

Mr. Thomas Easterly, Commissioner of IDEM, provided an opinion from the Indiana Attorney General's Office concerning local authority to regulate hazardous waste, substances, or materials (Exhibit 4).

Brownfield Update. James McGoff, General Counsel, COO and Director of Environmental Programs, Indiana Finance Authority (IFA), provided an update on the Indiana Brownfields

Program (Exhibit 5).

In response to questions, Mr. McGoff:

- Explained that the IFA does not maintain a list of all brownfield sites, but he would look into getting more information about the status of sites that are not active and the percentage of sites that are closed.
- Explained that the Trails and Parks Initiative utilizes EPA funding to assist communities in addressing environmental conditions so that areas may become a part of the state trail system.
- Shared that there are many sites with underground storage tanks that have not been remediated.

David Valinetz, CEO of Restorical Research, also provided testimony concerning brownfields. Mr. Valinetz suggested that more funding for brownfields projects could be secured by combining private insurance money with grants and loans.

Next Meeting. Rep. Wolkins announced that he is still in the process of determining a date for the next meeting, but that the agenda will include the following topics:

- Recycling issues.
- Implementation and collaboration of water program responsibilities currently assigned to various state agencies.
- IDEM notice of hearing for proposed air quality regulations.

Adjournment. Rep. Wolkins adjourned the meeting at approximately 2:50 p.m.

Exhibit 1
Environmental Quality Service Council
Meeting #2, Sept. 12, 2012

The Association of Indiana Solid Waste Management Districts, Inc.

Solid Waste Management District Permitting

Environmental Quality Service Council
September 12, 2012

AISWMD

Association of Indiana Solid Waste Management Districts

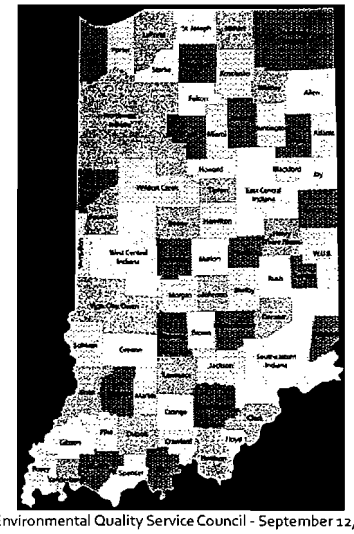
- 501 (c) 3 non-profit organization
- 70 solid waste management districts across the state
- Promoting integrated waste management, including:
  - Solid and hazardous waste management
  - Recycling
  - Composting
  - Disaster debris recovery
  - Pharmaceutical recovery
  - E-waste management/recycling
  - Bulky goods recycling/management
  - Environmental education

Solid Waste Management Districts (Districts)

Legislation effective 1990 set forth:

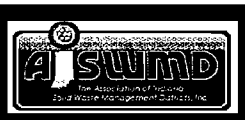
- Local control to -
  - Determine the programs and services to be provided to help the State meet its waste reduction goals
  - How those programs were to be funded
- All District Boards are totally composed of local elected officials from that District
- All District Budgets now have to be approved and adopted by County-Council (2010)

Solid Waste Management Districts (Districts)



Permitting by Solid Waste Management Districts

Permitting Examples



- Five counties permit/register trash trucks or haulers that operate in their counties.
  - Three (3) counties are permitting/registering through the solid waste management districts
    - Boone, Crawford and Dubois
  - Two (2) counties are permitting/registering by other agencies, i.e. the health department
    - Monroe and St. Joseph
- One county permits clean fill facilities
  - Boone County

Why Permit or Register?

- To protect public health and the environment
- To provide a local mechanism to ensure facilities and vehicles operating within the county or district are not leaking, spilling, eroding, polluting or contaminating the air, land or waterways
  - Can help MS4s meet storm water plan requirements
  - SWMDs can be the eyes and ears on the ground

Summary

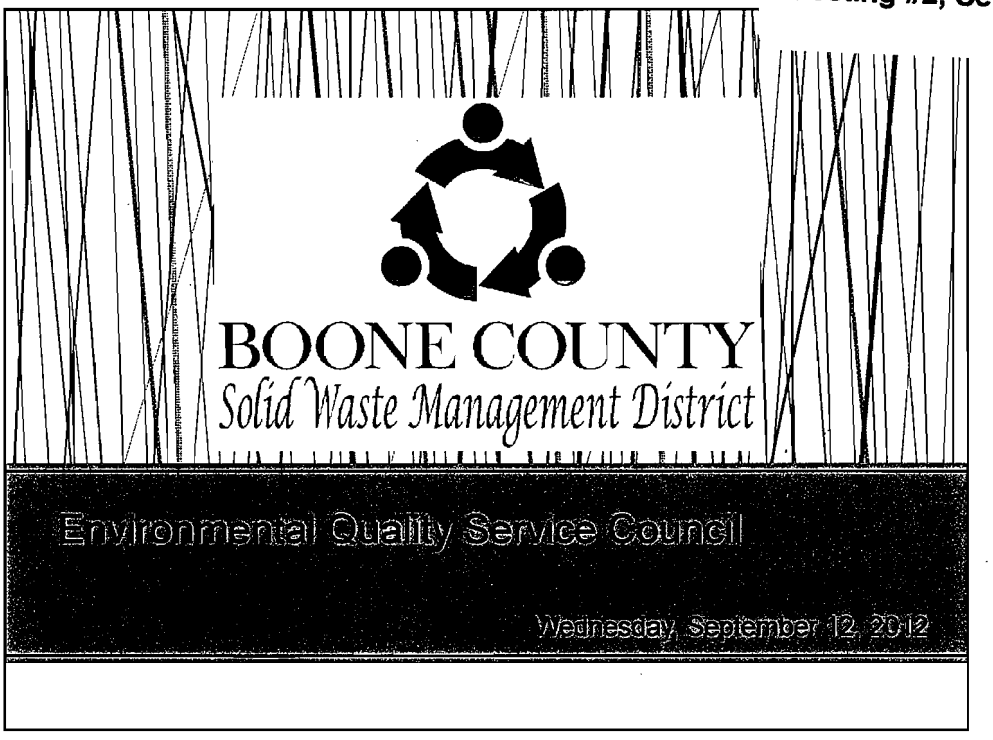
- SWMDs should be able to register or permit facilities and vehicles that operate waste-related activities in the district
  - Other county agencies able to do it
  - Avoiding violations save IDEM/taxpayers money in clean-up costs
  - Home rule decision

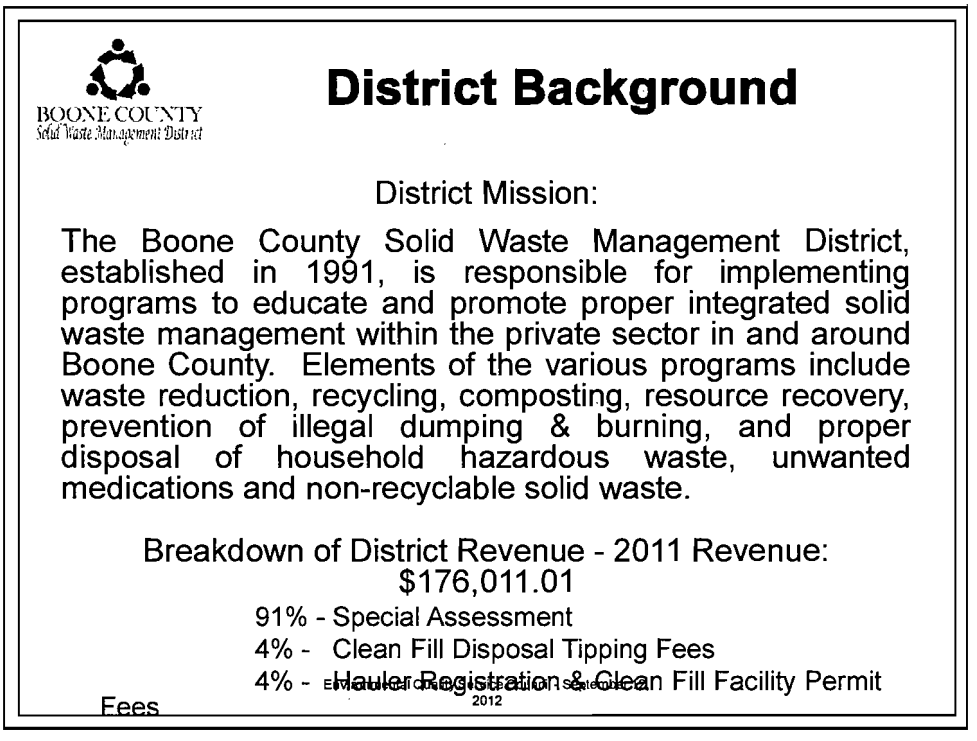
AISWMD
The Association of Indiana Solid Waste Management Districts, Inc.

Thank you!

Julie L. Rhodes, Executive Director
Association of Indiana Solid Waste Management Districts
317.371.2788 jrhodes@aiswmd.org

Exhibit 2
Environmental Quality Service Council
Meeting #2, Sept. 12, 2012





BOONE COUNTY
Solid Waste Management District

Clean Fill Permitting

BOONE COUNTY
Solid Waste Management District

Clean Fill Definition

Clean Fill – Solid waste consisting solely of one or more of the following: uncontaminated rocks, bricks, concrete, road demolition waste materials, uncontaminated and untreated natural vegetative growth, including tree limbs, logs, stumps, leaves and grass clippings, and sawdust from untreated natural wood and dimensional lumber.

Note: Soil is not included within the District definition for clean fill as it is not a regulated material

BOONE COUNTY
Solid Waste Management District

History of Clean Fill Permitting

- May 1995 – Resolution 95-1
  - Established requirements for Permitting & Operating Clean Fill Sites within the District
- July 1997 – Resolution 95-1A (Supersedes Res. 95-1)
  - Added language to include Solid Waste Facilities to the permitting requirements
- Sept 1998 – Resolution 98-3 (Amends Res. 95-1A)
  - Added language pertaining to required details as a part of the application process & renewal of permits
- Nov 2000 – March 2004 – Worman Enterprises sued the BCSWMD
  - March 2004 – Indiana State Supreme Court ruled in favor of the BCSWMD that permitting requirements were allowed under the current Indiana Law
- Nov 2011– Resolution 11-03 (Supersedes Res. 95-1A & 98-3)
  - Reworked language to remove facilities that were being permitted on a State or Federal level, removed requirements that were being handled within other

BOONE COUNTY
Solid Waste Management District

Indiana Cleanfill Violation

- 300 Emery Crossing, Clarksville, Clark County, Indiana
  - In 2010, estimate of 78,000 cubic yards of contaminated soil & concrete were illegally dumped at the 22 acre Clarksville site
  - Contamination noted - Arsenic, Petr pyrene
  - Contaminated Material violated numerous environmental statues & rules being potentially threatening human health & the environment
  - Retroactive steps were required by State & Local Environmental Inspectors

BOONE COUNTY
Solid Waste Management District

Clean Fill Permitted Facilities

Clean Fill Disposal Facilities:

Boone County Resource Recovery
Fairfield's Clean Fill Facility

Clean Fill Processing Facilities:

GreenCycle of Indiana
Worman Enterprises

No major violations have been tracked since each facility has obtained the correct District permit.

BOONE COUNTY
Solid Waste Management District

Permitted Facilities Fees

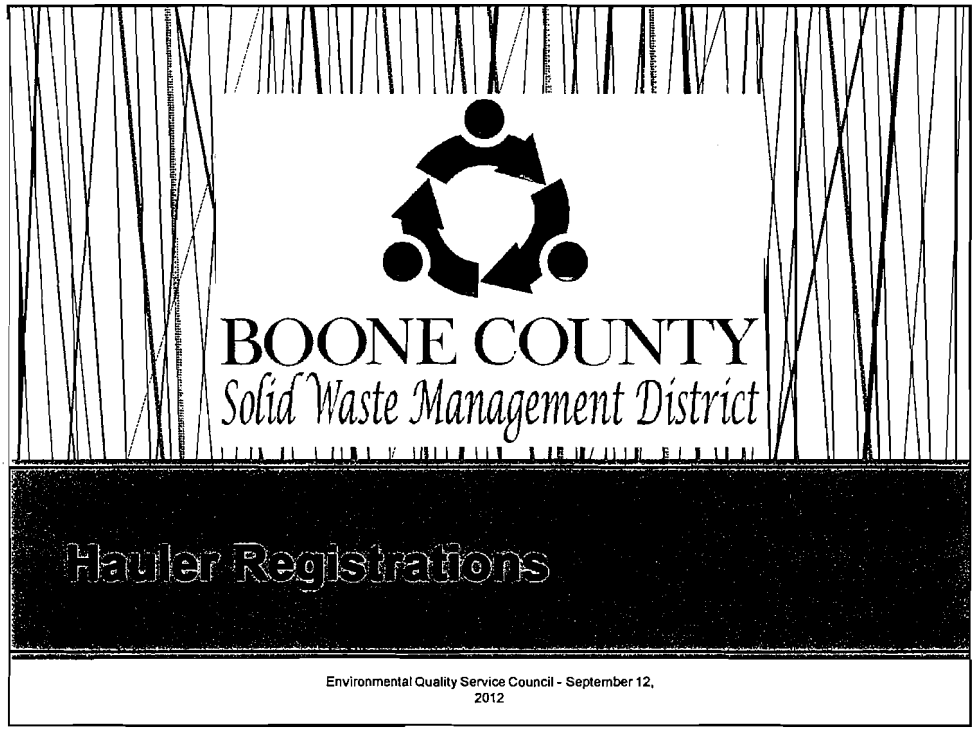
Current Fee Structure:

Long term Clean Fill Disposal Facility:
Application/Renewal - $800
Annual Operating Fee - $400 + $0.50/ton Clean Fill Disposal Fee
(Facility is rebated 10% of Disposal Fee to compensate for administrative costs)

Long term Clean Fill Processing Facility:
Application/Renewal - $800
Annual Operating Fee - $400

Temporary Clean Fill Disposal or Processing Permit - $150 + $50 if extended

Long term Permit – 5 years
Temporary Permit – 90 days with one allowable 30 day extension



Environmental Quality Service Council - September 12, 2012

History of Hauler Registrations

- Nov 1993 – Resolution 93-3
  - Established registrations for haulers & District Generator Fees (currently known as "Special Assessment" fees)
  - Hauler Registration –
    - $52/vehicle annually
  - Special Assessment Fees –
    - $1.00/house/month for Residential Accounts
    - $0.25/cubic yard for Industrial & Commercial Accounts
    - 1% rebate to haulers for administrative costs
- Aug 1999 – Resolution 99-1 (Amends Res. 93-3)
  - Allows for the registered hauler to receive a 10% rebate of the Special Assessment Fees collected to cover administrative costs
  - Based upon a recommendation made by a long standing local hauler
- July 2001 – Resolution 01-1 (Amends Res. 93-3 & 99-1)
  - Reduced the Residential Special Assessment Fees –
    - $0.25/house/month

Environmental Quality Service Council - September 12, 2012

BOONE COUNTY
Solid Waste Management District

2011 – Hauler Registration / 10% Administrative Fees Comparison

- Largest Hauler
  - 14 Registered Trucks - $728
  - Total Special Assessment Fees Collected - $58,750
  - Total 10% Rebate given to Hauler - $5,875
  - Rebate – Registration Fees = $5,147 (to be used by hauler)
    - Average of $430 per month for administrative costs
- Smallest Hauler
  - 2 Registered Trucks - $104
  - Total Special Assessment Fees Collected - $3,897
  - Total 10% Rebate given to Hauler - $390
  - Rebate – Registration Fees = $286 (to be used by hauler)
    - Average of $24 per month for administrative costs
- Conclusion: 10% rebate is fair to cover costs of registration & administrative fees to each hauler

Environmental Quality Service Council - September 12, 2012

BOONE COUNTY
Solid Waste Management District

BCSWMD Reporting – Recycling & Diversion Rates

- In 2011, Approximately 105,000 tons of Material was Diverted from the Landfill with Boone County's Facilities and Service Industry

Environmental Quality Service Council - September 12, 2012

Thank you!

Questions?

BOONE COUNTY
Solid Waste Management District

Environmental Quality Service Council - September 12, 2012

Exhibit 3
Environmental Quality Service Council
Meeting #2, Sept. 12, 2012

EQSC

September 12, 2012

Boone County Solid Waste Management District Resolution 99-1 amended a previous Resolution (93-3) pertaining to the registration of solid waste haulers.

"All solid waste haulers shall be required to register and obtain a permit from the Boone County Solid Waste Management Board while providing solid waste collection/disposal services within the Boone County solid waste district. The waste haulers shall provide, on a form provided by the Solid Waste Management Board the following information: Haulers full name; address; daytime telephone number; emergency telephone number; and designated responsible person to be in contact with concerning their day-to-day operations; general location of the waste hauler, and route designation of various areas served within the waste disposal district, and where possible, maps of service territories."

The Resolution further requires the hauler to provide for a recyclables collection method with no mention of whether the method needs to be economically viable.

The cost for license was noted to be $52.00 per vehicle. Haulers send different trucks into the solid waste district on different days and licensing all of them is not practical. Licensing is nothing more than a revenue stream with no benefit to the hauler other than a perceived benefit bestowed by the Solid Waste District of being able to do business in Boone County. It does, however, add to the cost of doing business in Boone County.

The licensing requirement is unnecessarily intrusive and asks in some cases for information we regard as proprietary.

Solid waste haulers are already licensed by the state of Indiana (plate) and registered with the Department of Transportation. The Solid Waste Industry believes the Boone County Solid Waste District has overstepped the bounds of its mission and intent and we respectfully request you recommend this function be curbed.

Thank you for your time and consideration.

Terry L. Guerin

Chairman, Indiana Chapter

National Solid Waste Management Association

Exhibit 4
Environmental Quality Service Council
Meeting #2, Sept. 12, 2012

STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET · INDIANAPOLIS, IN 46204-2770

STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

April 20, 2007

Dept. Of Environmental Management
Commissioner's Office

APR 20 2007

Tom Easterly, Commissioner
Indiana Department of Environmental Management
100 N. Senate Avenue
Mail Code 50-01
Indianapolis, Indiana 46204-2251

Re: Local Authority to Regulate Hazardous Waste, Substances or Materials

Dear Commissioner Easterly:

You requested a legal opinion on the following question:

May a local governmental entity adopt an ordinance or resolution purporting to give local officials the authority to regulate hazardous waste, substances or materials or to enforce State environmental requirements regarding hazardous waste?

Brief Answer

It is the opinion of this office that section 36-1-3-8(a)(7) of the Home Rule Act would preempt any local unit of government[1] from adopting an ordinance or resolution granting local officials the authority to regulate hazardous waste or to enforce State environmental laws and regulations. Oversight of hazardous waste, substances or materials for the purposes of protection of the environment in Indiana is already comprehensively regulated by IDEM to the exclusion of local regulation. A local governmental entity has no express statutory authority to regulate hazardous waste, substances or materials for environmental protection in Indiana or to assist IDEM in the enforcement of State law.

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[1] As defined by Indiana Code section 36-1-2-23, "unit" means a county, municipality or township. *See also* Ind. Code § 13-11-2-242.

Analysis

1. Department of Environmental Management

The Indiana General Assembly has deemed Indiana's Environmental Policy Act at Indiana Code title 13 as providing the basis for "comprehensive environmental development and control on a statewide basis." Ind. Code § 13-12-3-1(1). Indiana's environmental laws are intended to "unify, coordinate and implement programs" for the use of State resources while preserving and protecting the environment. Ind. Code § 13-12-3-1(2) to (3). The Environmental Policy Act, "being necessary for the public health, safety, and welfare . . . shall be liberally construed to effectuate the purposes of [title 13]." Ind. Code § 13-12-3-1. Title 13 further declares it is "the continuing responsibility of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources . . . ." Ind. Code § 13-12-4-4.

The Indiana Department of Environmental Management (IDEM) is established at section 13-13-1-1. IDEM is the designated State agency for federal environmental matters and has been authorized by the United States Environmental Protection Agency (EPA) to implement the federal hazardous waste laws contained in the Resource Conservation and Recovery Act (RCRA) at 42 U.S.C. § 6901 et seq. (1976). Ind. Code § 13-13-5-1(2). IDEM's regulations must conform to the federal hazardous waste program in order for IDEM to maintain its federal authorization as the designated State agency for implementing RCRA in lieu of the EPA. 42 U.S.C. §6926(b).

IDEM's general statutory duties include continual surveillance and inspection of "actual or threatened sources of environmental pollution by contamination, radiation, odor, or noise." Ind. Code § 13-14-1-2. IDEM must ensure that "*comprehensive*, long term programs" are established by the Air Pollution Control, Water Pollution Control and the Solid Waste Management Boards and that the rules and regulations established by those boards are followed. Ind. Code § 13-14-1-3 to 4 (emphasis added).

IDEM maintains broad oversight of hazardous waste through the Solid Waste Management Board ("SWMB"). Ind. Code ch. 13-19-3. "Hazardous waste" includes hazardous materials and hazardous substances. Ind. Code § 13-11-2-96; -98 to 99. Section 13-19-3-1(1) provides that the SWMB shall adopt rules to "regulate solid and hazardous waste and atomic radiation in Indiana." At 329 Indiana Administrative Code (IAC) 3.1, the SWMB has promulgated over one-hundred pages of detailed regulations regarding hazardous waste in Indiana.

Pursuant to section 13-14-1-12, only the Commissioner of IDEM has the authority to enforce rules adopted by the SWMB regulating hazardous waste. IDEM maintains the right of entry to inspect and investigate possible violations of the State laws regarding hazardous waste. Ind. Code § 13-14-2-2; 13-30-3-1. Administrative proceedings and orders resulting from violations of environmental management laws may be initiated only by the Commissioner of

IDEM. Ind. Code § 13-30-3-2 to 12. Civil penalties that may be imposed by IDEM for violations of laws and regulations are set out at section 13-30-4-1.

The State's environmental laws also make a brief reference to local units of government. IDEM may encourage and assist local units of government in their development of pollution control programs and facilities. Ind. Code § 13-14-1-10; 13-14-3-1. However, any facility or standard of a local unit must meet minimum State standards. Ind. Code § 13-14-3-2. Outside of an action for declaratory or equitable relief under Indiana Code chapter 13-30-1 as noted below, title 13 does not expressly grant a local unit with the independent authority to enforce State laws or regulations pertaining to hazardous waste, materials or substances. Nor does IDEM maintain the authority to delegate to a local governmental entity the authority to pass an ordinance or resolution which is inconsistent with IDEM's statutory authority.

A governmental or non-governmental entity other than IDEM, including a county agency and officer, may bring a court action on behalf of the State to enforce its environmental laws. Ind. Code §13-30-1-1 *et seq.* However, the statutory scheme requires the entity first notify IDEM, the Office of the Attorney General ("OAG"), and the Indiana Department of Natural Resources ("IDNR") "as a condition precedent to maintaining an action." Ind. Code § 13-30-1-2(a). The OAG must also promptly notify "all *state administrative agencies having jurisdiction over or control* of the pollution, impairment, destruction, or protection of the environment for which relief is sought." Ind. Code § 13-30-1-2(b) (emphasis added). Furthermore, a party bringing such an action must satisfy certain statutory prerequisites showing that the State has received notice of the party's intended lawsuit and the State has failed to take any action or has failed to diligently pursue action if commenced. Ind. Code § 13-30-1-3. IDEM, OAG, and IDNR maintain primary authority to enforce the State's environmental laws.

2. Local Authority to Regulate Hazardous Waste, Substances or Materials under the Home Rule Act

The Home Rule Act ("Act"), enacted by the legislature in 1980, extends to all local units of government those powers specifically granted by statute, and all other powers necessary to conduct affairs even though not granted by statute. Ind. Code §36-1-3-4.

a. The Home Rule Act Prohibits Local Regulation of Matters Reserved for State Agency Regulation

Under the Act, a local unit may not exercise power that is either expressly denied by the Indiana Constitution or by statute, or expressly granted to another entity. Ind. Code § 36-1-3-5(a). Additionally, the Act withholds certain powers from local control. Ind. Code § 36-1-3-8. Specifically, the Act prohibits local units from regulating conduct "that is regulated by a state agency, except as expressly granted by statute." Ind. Code § 36-1-3-8(a)(7). Thus, even though the home rule policy of the State promotes local governance, section 36-1-3-8(a)(7) "specifically provides that a local government seeking to regulate conduct licensed, inspected or prohibited by

the state may do so only where expressly allowed by statute." *Sisters of St. Francis Health Serv. Inc. v. Morgan Co. Ind.*, 397 F.Supp. 2d 1032, 1052 (S.D. Ind. 2005).

Triple G. Landfills, Inc. v. Board of Commissioners of Fountain County, 774 F.Supp 528 (S.D. Ind. 1991)[2] illustrates the application of section 36-1-3-8(a)(7). In *Triple G. Landfills*, the Board of Commissioners of Fountain County adopted an ordinance that both imposed a moratorium on landfill construction and established a permit application procedure at the county level for landfill operators. *Id.* at 529. The ordinance was challenged under 36-1-3-8(7) as being preempted by State law which granted IDEM the exclusive authority to issue permits and determine the suitability and safety of a site for landfill use. *Id.* at 530.

The commissioners in *Triple G. Landfills* argued that under Indiana Code section 13-7-3-10 (currently at section 13-14-1-10), they were given express authority to adopt such an ordinance. *Id.* at 532. Section 13-7-3-10 provided that IDEM "shall encourage and assist local units of government in developing programs and facilities for air, water, radiation, odor and noise pollution control, wastewater treatment, water resource development, and solid waste management." *Id.* The court held that section 13-7-3-10 "did not amount to the express authorization required by section 36-1-3-8(7) to avoid preemption." *Id.* The general wording of 13-7-3-10, the court noted, does not provide the commissioners with the authority to adopt detailed regulations regarding landfill operations. *Id. But see Bd. Of Comm'n of LaPorte Co. v. Town & Country Util., Inc.*, 791 N.E.2d 249, 256 (Ind. Ct. App. 2004) (distinguishing the case from *Triple G. Landfills* by noting that a zoning ordinance is not preempted by the Home Rule Act since the authority to zone is the express authority to regulate).

The court in *Triple G. Landfills* found the entire county ordinance to be preempted by State law, despite the ordinance's savings clause, because the subject was already comprehensively regulated by IDEM. *Id.* at 532, n.2. *See also Hopkins v. Tipton Co. Health Dept.*, 769 N.E.2d 604 (Ind. Ct. App. 2002) (finding Indiana State Department of Health had been granted the authority to regulate residential sewage disposal systems and had adopted detailed rules regarding requirements for such systems, thus section 36-1-3-8(7) preempted local law regulating the same conduct); *Sisters of St. Francis Health Serv., Inc. v. Morgan Co.*, 397 F.Supp. 2d 1032 (S.D. Ind. 2005) (holding local ordinances imposing moratorium on or county approval for hospital construction are preempted by section 36-1-3-8(7) since the ordinance attempts to regulate the same conduct that the Indiana State Department of Health regulates, that being the construction of new hospitals or their expansion).

Thus, a local law that contains various provisions that replicate those duties expressly reserved by the legislature for IDEM regarding hazardous waste, substances or materials is preempted by the Home Rule Act. The legislature has delegated the oversight of hazardous waste in Indiana to IDEM and further authorized IDEM, with its specialized expertise, to adopt

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[2] Affirmed by the Seventh Circuit Court of Appeals on the issue of whether the ordinance was a proper zoning ordinance in *Triple G. Landfills. V. Board of Commissioners of Fountain County*, 977 F.2d 287 (7th Cir. 1992).

appropriate regulations. Ind. Code §13-19-3-1(1). IDEM has adopted detailed regulations that may only be enforced by its Commissioner. Ind. Code §13-14-1-12. A local governmental entity has no express statutory authority to regulate hazardous waste in Indiana or to assist IDEM in the enforcement of State regulations.

b. The Validity of Supplemental Local Laws under the Home Rule Act

Under the Home Rule Act, a local unit of government is not precluded from enforcing an ordinance it enacts even if the legislature has not expressly granted a local unit the authority to pass such an ordinance. Ind. Code § 36-1-3-4(c); *See Beta Steel Corp. v. Porter Co.,* 695 N.E.2d 979, 982 (Ind. Ct. App. 1998). However, municipal ordinances are subordinate to State laws. *City of Indianapolis v. Fields*, 506 N.E.2d 1128, 1131 (Ind. Ct. App. 1987) (citations omitted). Therefore, when the legislature intends for State law to occupy an area to the exclusion of municipal regulation, a local unit of government may not legislate further by ordinance. *Id.* "If a city attempts to impose regulations in conflict with rights granted or reserved by the legislature, such ordinances or regulations are invalid." *Id.* (citations omitted). One must review the breadth of a statute to determine if it excludes local regulation of a subject matter. *See DeHart v. Town of Austin, Indiana*, 39 F.3d 718, 723 (7th Cir. 1994).

The legislature intended for Environmental Policy Act at Indiana Code title 13 to be a "comprehensive" set of laws allowing for "control on a statewide basis." Ind. Code § 13-12-3-1(1). The laws also make reference to "unifying" and "coordinating" programs to protect the State's environment. Ind. Code § 13-12-3-1(2) to (3). State environmental laws emphasize the centralized oversight of the State's resources and environmental issues.

Presumably, the legislature recognized that, in the case of hazardous waste, any regulation should be organized and implemented at the State level given that the subject is one in which the whole State is interested. *See Graham Farms Inc. v. Indianapolis Power & Light Co.*, 233 N.E.2d 656, 666 (Ind. 1968) (noting local regulation must fail where it attempts to control an activity in which the whole State is interested). Hazardous waste discharges may pollute land and waterways outside of local governmental boundaries. Therefore, a coordinated central administrative body with specialized expertise to evaluate environmental hazards for all possible adverse impacts on surrounding land and waterways is critical.

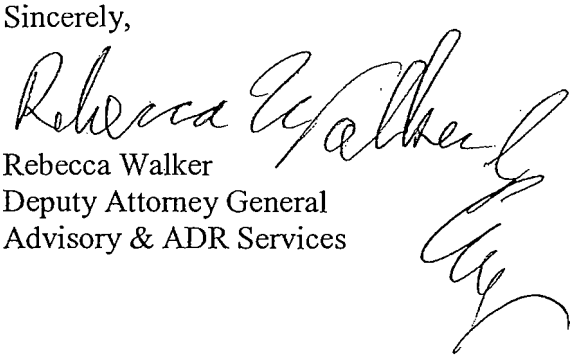
At the same time, the State must consistently apply and enforce the standards of the EPA's federal hazardous waste program in order to maintain its status as the designated State agency for implementing federal hazardous waste laws in lieu of the EPA. Local ordinances that duplicate IDEM's duties may frustrate or even compromise IDEM's oversight of hazardous waste and cause the State to lose this important designation. *See* 42 U.S.C. § 6926(e) (requiring the administrator of the EPA to withdraw authorization of a State program and establish a federal program where state is not administering and enforcing RCRA in accordance with federal requirements).

Furthermore, by establishing IDEM as the State agency responsible for all hazardous waste oversight in Indiana, the legislature has relieved local entities of the burden of developing and maintaining an expertise in hazardous waste abatement and management.

Conclusion

The legislature has granted IDEM the sole authority to implement the State's comprehensive environmental laws regarding hazardous waste, substances and materials. It is the opinion of this office that the Home Rule Act at section 36-1-3-8(a)(7) preempts any local law purporting to grant local officials the authority to regulate hazardous waste or enforce State environmental laws and regulations.

Sincerely,



Rebecca Walker
Deputy Attorney General
Advisory & ADR Services

380349

Exhibit 5
Environmental Quality
Service Council
Meeting #2, Sept. 12, 2012

Environmental Programs

Brownfields

Indiana Brownfields Program

EQSC Update

September 12, 2012

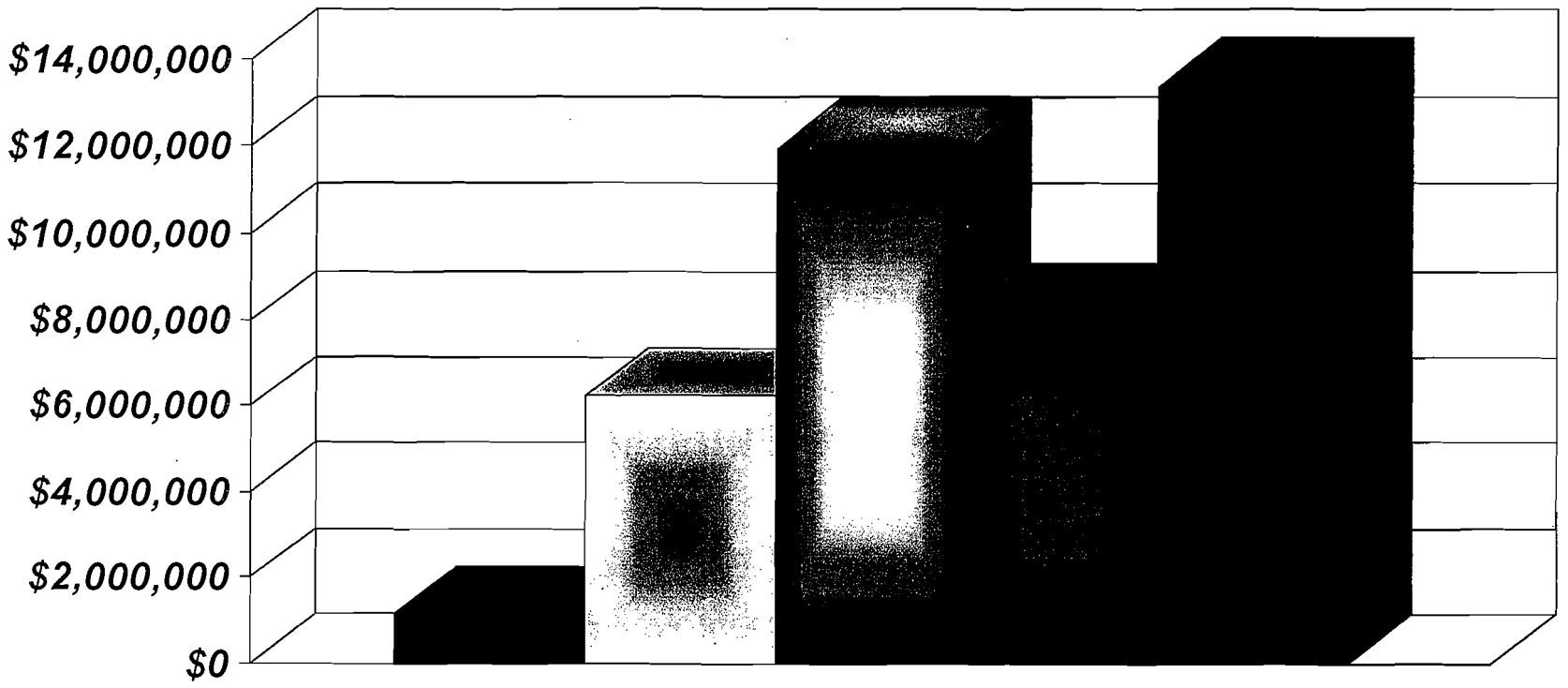
Program Basics

- **Financial Incentives** - Environmental Assessment and Remediation Grants and Loans
- **Technical Resources** - Environmental Evaluations and Field Work Oversight
- **Education and Outreach** – Workshops, Trainings, Community Meetings and EPA Assistance
- **Legal Assistance** - Liability Interpretations and Determinations

Program Basics

- # of Program sites: approximately 1,100
  - Active sites: approximately 200
  - Closures in past two years: 64 (NFAs issued)
  - Liability clarifications in past two years: 176 (CL/SSL/NFA issued)
- Initial funding:
  - $10M from Hazardous Substances Response Trust Fund (1998)
  - $9M from Excess Liability Trust Fund (2001)
- Last State appropriation: $1M for SFY10/11; rescinded 11/09
  - Down from $5M for SFY 00/01, 02/03, 04/05 & $2.5M for 06/07, 08/09
- Staff size: 11 + a shared Admin Asst. (down from 15)

Total Awards FY 1997-2012: *$40,845,597*



- *Federal Matching Grants*
- *Petroleum Remediation Grants*
- *Low-Interest Loans*
- *Remediation Grants*
- *Assessment Grants*

Financial Incentives

- **Federal Competitive (U.S. EPA) Funding ($9.8M)**
  - **2011:** $600,000 Supplemental Brownfield Revolving Loan Fund (RLF) Grant (*includes $100,000 IFA Match*)
  - **2010**: $600,000 Supplemental Brownfield RLF Grant (*includes $100,000 IFA Match)*
  - **2009**: American Recovery & Reinvestment Act of 2009 (ARRA)
    - $2,500,000 Brownfield RLF Grant
    - $4,039,000 Leaking Underground Storage Tank (LUST) Grant
  - **2008**: Two Brownfield RLF Grants
    - $2,831,044 *(includes $471,840 IFA Match)*
  - **2007**: Two Brownfield Assessment Grants
    - $600,000 *(includes $200,000 IFA Match)*
    - Established Trails & Park Initiative

Financial Incentives
(since Nov. 2009 funding suspension)

- Stipulated Assessment Grants: 0
- Stipulated Remediation Grants: 0
- Federal Matching Grants: 0
- State Remediation Loans: 0
- **Federal Remediation Loans**: 3 loans, $2,472,000
  - ($722,000 regular RLF dollars; $1,750,000 ARRA RLF dollars)
- Petroleum Remediation Grants: 26 awards, $1,320,980
- **Trails and Parks Initiative**: 8 awards, $232,074
- **LUST ARRA**: 35 awards, $4,039,000
- Auto Sector Initiative: 6 awards, $503,640
- **128(a)**: 10 awards, $512,401
- SEPs: 4 awards, $179,826

- Total State Awards: $2,372,597 (incl. $57,659 of TPI funding)
- Total **Federal** Awards: $7,197,816

Trails & Parks Initiative

- **Grant Period (October 2007 – March 2011):**
  - $200,000 for hazardous substances assessment
  - $200,000 for petroleum assessment
  - $200,000 IFA assessment match

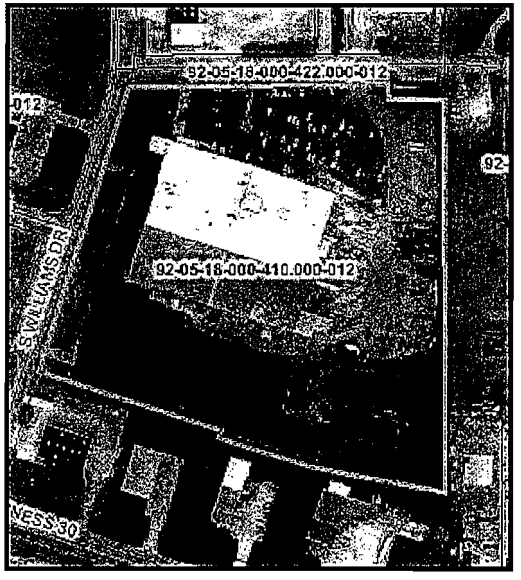
- **15 Sites Assessed in 11 Communities:**
  - 8 Phase I & 26 Phase II assessments completed
  - 107.64 acres assessed; 36.84 acres redeveloped
  - 7 Sites redeveloped or redevelopment imminent
  - 2.61 linear miles completed for 2 trails under development
  - 5 Sites need remediation funding

Automotive Sector Brownfields Assessment Initiative

- Established to address the growing problem of idled, abandoned, and closed auto dealerships, parts suppliers, and assembly & manufacturing facilities related to the downsizing of the automotive manufacturing sector
- Funds can be used to conduct Phase I & Phase II environmental site assessments, asbestos-containing material & lead-based paint surveys, remediation work plan development, limited demolition, site stabilization, and controlling site access/site security
- Funding source is retained repayments of a loan of 1997 federal grant funds
- As of August 31, 2012: $503,640 awarded for 6 sites, obligating 95% of available funds

Automotive Sector Brownfields Assessment Initiative

- Former Ft. Wayne Foundry, 2300 E. Cardinal Drive, Columbia City, Whitley County
- Site manufactured aluminum sand castings for automotive engine components, particularly for General Motors Corporation, from 1989 to 2009
- Financial assistance award to Fort Wayne Metals Research Products Corp. (Fort Wayne Metals) of $95,000 + $19,000 investment match by awardee
- Activities include site security and stabilization, including removal of oil-impacted sand from two open pit areas and identification and disposal of containerized chemicals
- Redevelopment is expansion of Fort Wayne Metals' production of medical grade wire and cable; plans to hire 68 new employees & invest $15M in equipment and facility upgrades



Supplemental Environmental Projects (SEPs)

- Result from settlement of IDEM enforcement actions
- Since 2007, 24 SEPs for $718,856
- 22 projects funded in 18 communities
- SEP activities include: Phase I ESA, Phase II, groundwater monitoring, remediation, waste removal, demolition

Leaking Underground Storage Tank - ARRA Summary

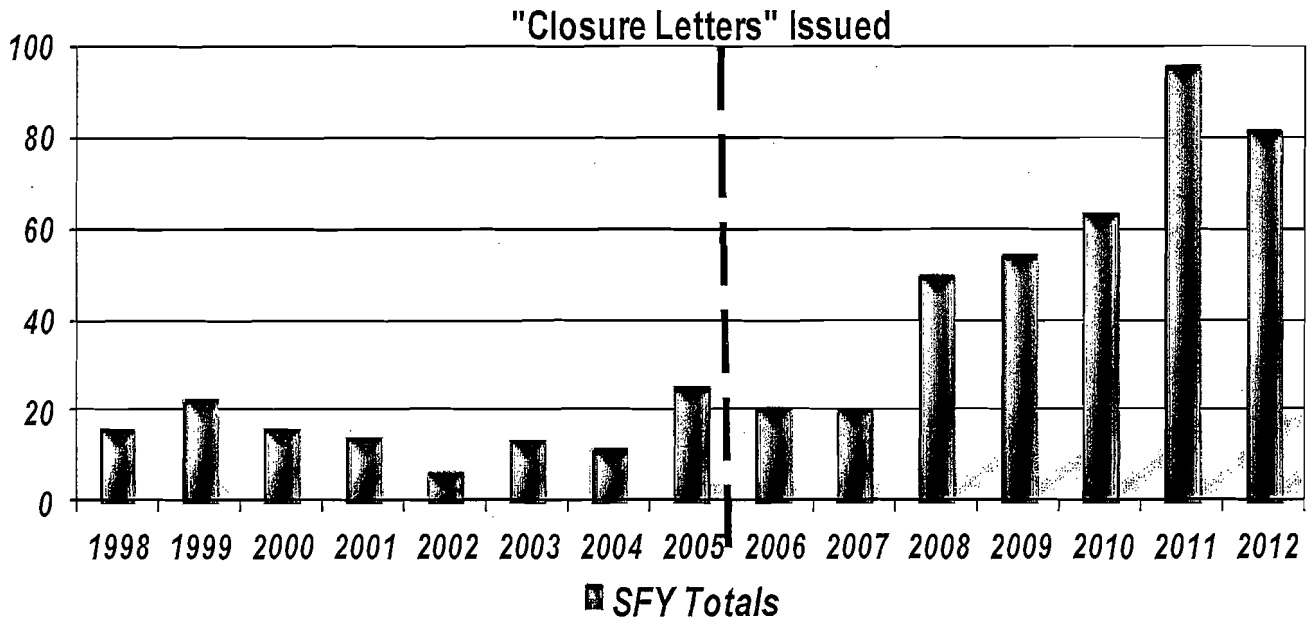
- **$4,039,000 awarded through EPA Cooperative Agreement executed on 8/4/09**

- **LUST ARRA funds could be used for cleanup activities necessary as a result of a release from a federally-regulated underground storage tank (UST)**
  - oversee assessment and clean up of UST leaks, or
  - directly pay for assessing and cleaning up leaks from federally regulated tanks where the responsible party is unknown or unwilling or unable to pay for the cleanup, or the cleanup is an emergency response.

- **28 petroleum sites cleaned up, 7 underway**
  - 85 Underground Storage Tanks removed
  - 2 Aboveground Storage Tanks & 7 fuel oil underground storage tanks removed (with state petroleum remediation grant (PRG) funds)
  - 11 Hydraulic Lifts removed (with state PRG funds)
  - 26,092 tons of petroleum-impacted soil removed
  - 32,979 gallons of petroleum-impacted liquid removed
  - 26 No Further Action letters issued, 2 in process

(as of 8/31/12)

Program Assistance Letters

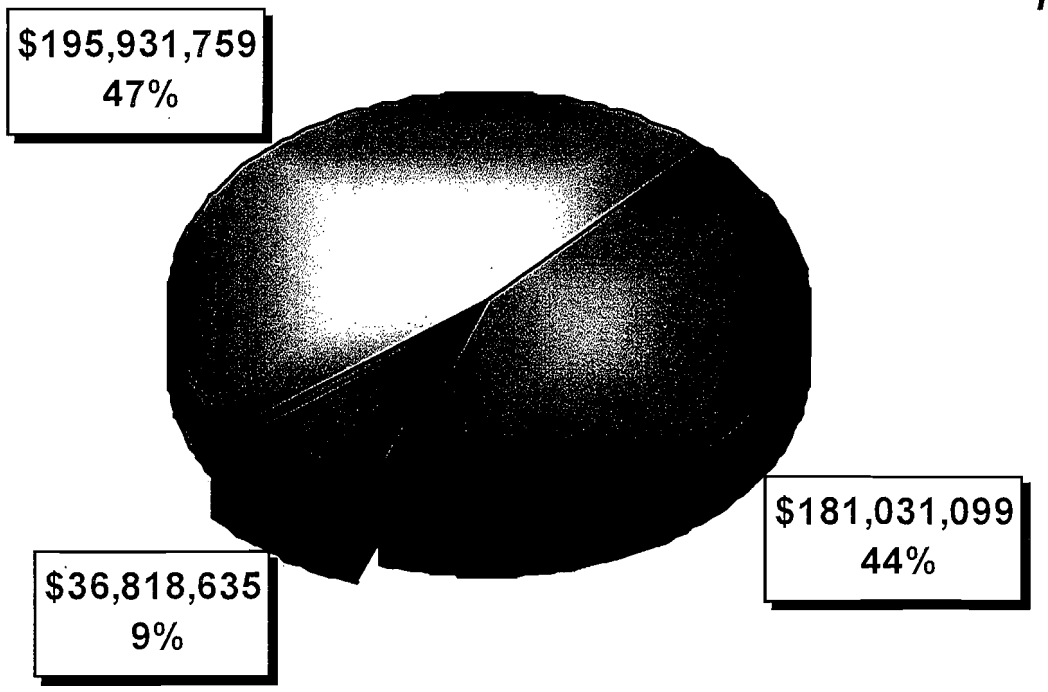


SFY	Totals
1998	16
1999	22
2000	16
2001	14
2002	6
2003	13
2004	11
2005	25
2006	20
2007	20
2008	49
2009	54
2010	63
2011	95
2012	81
	505

Project Funding Mix
1997 – 2012

Actual Funds Leveraged for ***IFA-funded Projects***

ROI $9:$1

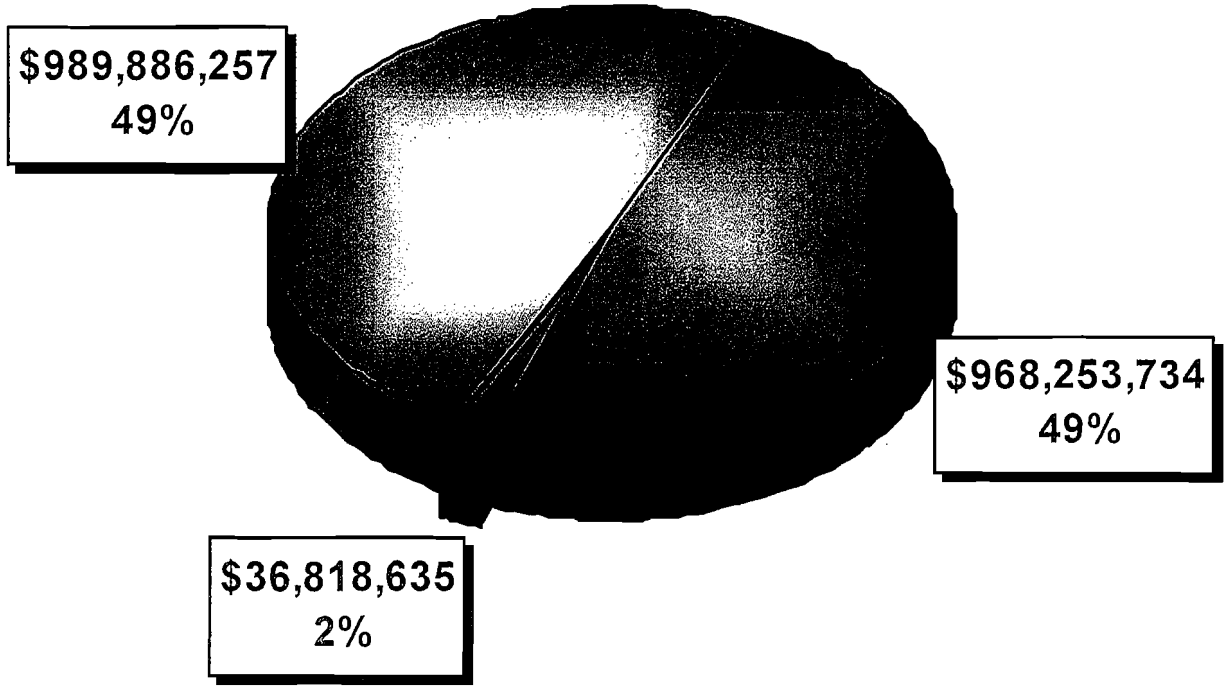


IFA Investment ***Private Leveraged Funds*** ***Public Leveraged Funds***

Project Funding Mix
1997 – 2012

Actual Funds Leveraged for ***All Projects***

ROI $53:$1



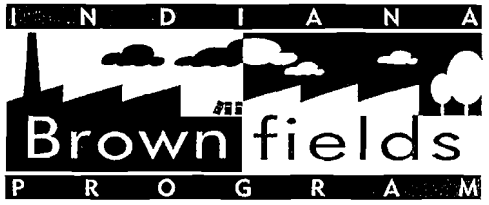
IFA Investment *Private Leveraged Funds* *Public Leveraged Funds*

Prototypical Program Site

Brownfield Site Averages: **573 sites reporting**

- Site size: **6.2 acres**
- # of jobs created: **12.5**
- # of jobs retained: **8.2**
- IFA investment: **$64,256**

- Additional public investment: **$4,677,567**
- Additional private investment: **$6,869,845**



Return on Investment Survey Project Totals

	2007	2008	2009	2010	2011	2012
Total sites reporting	247	453	485	541	547	**573**
Jobs created	2,268	2,869	6,906	5,723	5,835	**7,159**
Jobs retained	1,984	3,010	3,161	3,420	3,692	**4,714**
Businesses created	96	124	145	154	169	**252**
Businesses retained	55	75	72	73	80	**153**
Total IFA Investment	$30,564,490	$27,057,199	$27,131,124	$35,708,448	$37,298,474	**$36,818,635**
Actual Private Funds Leveraged	$352,596,159	$337,825,867	$397,314,499	$406,650,289	$859,579,203	**$989,886,257**
Actual Public Funds Leveraged	$698,921,534	$801,136,222	$812,322,494	$844,602,353	$853,082,139	**$968,253,734**