



Indiana Department of Environmental Management
Protecting Hoosiers and Our Environment Since 1986

Office of Land Quality



A State that Works

Excess Liability Trust Fund Financial Assurance Board Meeting August 9, 2018



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A State that Works

Excess Liability Trust Fund Fiscal Report

Kim Diller
Chief Financial Officer



Office of Land Quality

**IDEM Excess Liability Trust Fund
Fiscal Year 2018 Expenses as of June 30, 2018**

Appropriation	\$ 54,451,437
Less Reserve:	-
Total Available Budget	\$ 54,451,437
Expenses:	
Personal Services	\$ (3,701,408)
Utilities	(50,461)
External Services	(45,271)
Supplies, Materials, Parts	(6,265)
Equipment	(750)
Claim Payments	(43,303,470)
Administrative & Operating Expenses	(179,063)
Total Expenses	\$ (47,286,688)
Budget Balance as of 06/30/2018	\$ 7,164,749
Administrative Cost % of Prior Year Revenues	7.6%

**IDEM Excess Liability Trust Fund
Fiscal Year 2018 Revenue as of June 30, 2018**

UST Fuel Inspection Fee	\$ 46,144,727
Underground Storage Tank Fees	2,286
Total Revenue as of 12/31/17	\$ 46,147,013

**IDEM Excess Liability Trust Fund
Fund Balance as of June 30, 2018**

Ending Fund Balance	\$ 86,314,266
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Indiana Department of Environmental Management
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Underground Petroleum Storage Tank Excess Liability Trust Fund
Fiscal Year 2018 Revenue & Payouts
As of 6/30/2018

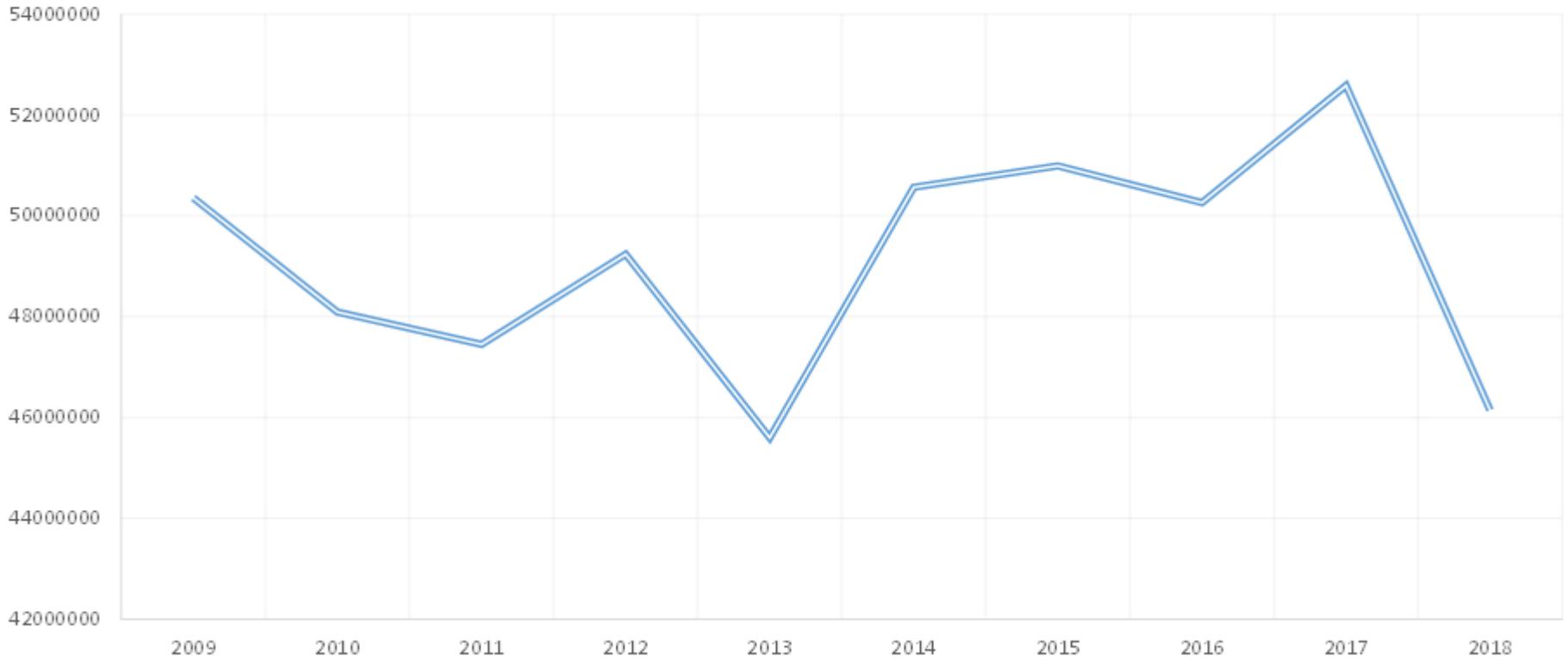
	July	August	September	October	November	December	January	February	March	April	May	June	Total
Revenue	\$ 4,178,460	\$ 3,828,830	\$ 4,065,389	\$ 3,862,570	\$ 3,707,227	\$ 4,045,519	\$ 3,825,651	\$ 3,646,937	\$ 3,347,415	\$ 3,850,811	\$ 3,741,689	\$ 4,046,514	\$ 46,147,013
Payouts	\$ (14,641,751)	\$ (2,414,812)	\$ (2,965,340)	\$ (3,434,247)	\$ (4,507,340)	\$ (2,785,733)	\$ (2,425,924)	\$ (3,387,343)	\$ (4,264,739)	\$ (165,609)	\$ (1,017,622)	\$ (963,009)	\$ (42,973,468)
Revenue Over/(Under) Expenses	\$ (10,463,291)	\$ 1,414,018	\$ 1,100,049	\$ 428,323	\$ (800,113)	\$ 1,259,786	\$ 1,399,728	\$ 259,594	\$ (917,323)	\$ 3,685,203	\$ 2,724,067	\$ 3,083,505	\$ 3,173,545

Underground Petroleum Storage Tank Excess Liability Trust Fund
Fiscal Year 2017 Revenue & Payouts
As of 06/30/2017

	July	August	September	October	November	December	January	February	March	April	May	June	Total
Revenue	\$ 5,652,000	\$ 5,162,826	\$ 5,969,892	\$ 4,069,033	\$ 4,582,289	\$ 3,817,607	\$ 4,068,551	\$ 3,684,173	\$ 3,193,941	\$ 4,361,835	\$ 3,828,582	\$ 4,221,404	\$ 52,612,134
Payouts	\$ (15,171,220)	\$ (3,752,575)	\$ (3,196,030)	\$ (2,471,927)	\$ (3,775,561)	\$ (3,980,224)	\$ (3,190,559)	\$ (3,110,511)	\$ (3,844,528)	\$ (3,274,169)	\$ (2,131,382)	\$ (3,351,127)	\$ (51,249,813)
Revenue Over/(Under) Expenses	\$ (9,519,220)	\$ 1,410,251	\$ 2,773,863	\$ 1,597,107	\$ 806,728	\$ (162,617)	\$ 877,992	\$ 573,662	\$ (650,587)	\$ 1,087,666	\$ 1,697,200	\$ 870,277	\$ 1,362,321



INSPECTION FEES





ELTF Update

Douglas Louks
UST Branch Chief



Office of Land Quality

Petroleum Orphan Site Initiative (POSI)

Update – 3/31/18

- Addressing petroleum contamination on brownfield sites resulting from leaking underground storage tanks that cannot be addressed by the responsible party due to an inability-to-pay, bankruptcy, or other factors (orphan sites)
- Funding source: \$3MM ELTF transfer to Indiana Finance Authority/Brownfields Program for SFYs '14 & '15; \$2.91MM ELTF transfer for SFYs '16 & '17; \$3MM ELTF transfer for SFYs '18 & '19; reimbursements from IDEM Petroleum Trust Fund
- Site assessment, UST removal, and remediation
- Petroleum contamination from other on-site sources (e.g., hydraulic lifts, etc.) and hazardous substances also addressed if ELTF transfer or other brownfield funding is available
- **March 31, 2018 update** (first site approved in April 2014):
 - 50 sites approved for funding in 40 communities (35 counties)
 - Total \$ obligated: \$9,989,094 (135 % of appropriated funds available through SFY18)
 - Disbursed to date: \$7,209,384 (66 % of approved budgets)
 - Average project budget: \$199,782 (highest: \$804,483; lowest: \$22,245)
 - Closures: 15 No Further Action letters issued, 1 Site Status Letter issued, 6 NFAs/1 SSL in draft (32% of awarded sites)
 - 41 underground storage tanks removed, 2 closed in place
 - 7 fuel oil underground storage tanks removed
 - 2 hydraulic lifts removed
 - 14,494 tons of petroleum-impacted soil removed
 - 110,605 gallons of liquid/sludge removed



New ELTF Claims Applications

- New forms **MUST** be used for claims received on or after September 1, 2018
- ELTF Phase Application
 - Costs incurred after Jan. 1, 2018 = Mandatory
 - Costs incurred before Jan. 1, 2018 = Optional
- Personnel Rates did not change
- Email Letters
 - Be sure to include correct email addresses.



ELTF Scope of Work

- Appropriate form to fill out for cost effectiveness determination
- Contact Jill Berry jberry@idem.IN.gov after a CAP or CAPA has been submitted



Rule Amendments

- Rule “Approved” on July 20th
- Should be effective mid-September (approx. 6 weeks after approval by OAG)
- Technical Milestones still required for reimbursement until new rule is effective.



ELTF Claims Section

- Personnel
 - New Section Chief!
 - Colleen Rennaker
- New Name
 - UST Operations Section
- Reorganization of Branch
 - New Database
 - Online Portal
 - E-enterprise Trade-off



ELTF Claims

Month Approved	Amt Requested	Amt Approved	Amt Reimbursed
March-17	\$7,641,560.73	\$6,343,288.72	\$5,866,726.68
April-17	\$4,575,366.16	\$4,047,418.59	\$3,703,907.02
May-17	\$3,545,314.54	\$2,886,527.59	\$2,671,949.47
June-17	\$4,512,702.28	\$3,879,599.55	\$3,684,538.30
July-17	\$5,850,707.92	\$5,152,346.55	\$4,787,372.10
August-17	\$3,492,990.10	\$3,167,498.09	\$2,865,986.64
September-17	\$3,564,519.63	\$3,092,384.18	\$2,893,879.59
October-17	\$4,232,452.54	\$3,971,838.20	\$3,624,930.41
November-17	\$3,307,983.48	\$2,919,933.69	\$2,493,263.34
December-17	\$4,463,583.26	\$4,070,015.30	\$3,649,339.75
January-18	\$2,869,428.38	\$2,668,251.27	\$2,347,703.97
February-18	\$4,491,087.24	\$3,979,117.41	\$3,604,453.66
March-18	\$5,235,441.82	\$4,766,901.62	\$3,796,134.84
April-18	\$1,348,490.84	\$335,747.79	\$303,033.22
May-18	\$992,270.60	\$115,222.72	\$47,265.11
June-18	\$2,812,076.92	\$2,249,910.08	\$1,933,795.97



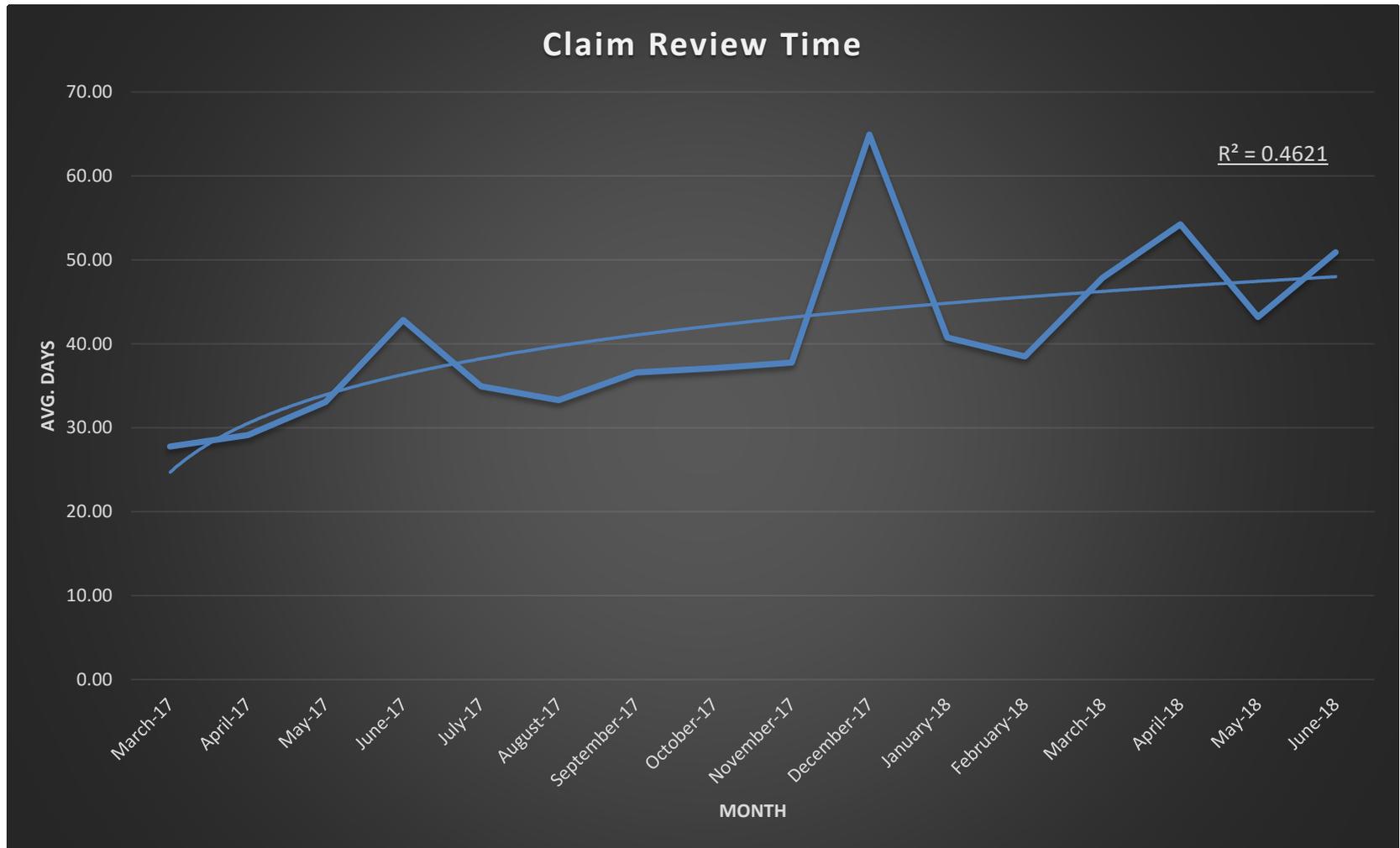
ELTF Claims

Month Approved	# Received	# Completed	Review Time	Final Approval
March-17	308	294	27.76	38.49
April-17	156	243	29.14	39.94
May-17	173	150	33.07	51.37
June-17	208	146	42.84	64.58
July-17	155	212	34.94	59.86
August-17	208	162	33.30	56.07
September-17	195	121	36.59	62.60
October-17	189	167	37.09	67.73
November-17	155	113	37.78	69.44
December-17	208	214	64.93	106.00
January-18	187	159	40.77	80.69
February-18	162	211	38.50	73.75
March-18	222	259	47.86	74.54
April-18	198	29	54.24	73.66
May-18	179	25	43.20	61.96
June-18	169	134	50.91	104.69



Office of Land Quality

ELTF Claims





ELTF Claims

- Cause(s) of Delay
 - Influx of Claims
 - Timing coincided with training new staff
 - Shift in Service – Prevent Resubmittals
 - Allowing amendments to Applications
 - Submission of Supplemental Information/Documents
- Main Cause: Party Validation Project



The Question

“What are we doing wrong?”

~ Greg Cobb, 3/8/2018 FAB Meeting



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Validation

- Began project in mid-March
- Review all open incidents in Indiana
- Validate/verify:
 - Responsible Party
 - Liable Party
 - Eligible Party
 - Consistency in submissions to IDEM/ELTF
 - Invoicing (ELTF Only)



Validation (cont.)

- Approx. 650 ELTF Eligible Incidents
- Review Prioritization:
 - Incidents with Claims In-house
 - FIFO Basis
 - Other ELTF Incidents
 - Non-eligible LUST Incidents
 - Active UST Sites w/o Active Incidents
 - Inactive Incidents
- Validating information in regular COB



The Validation Process

- Goal:
 - Ensure IDEM is communicating with and reimbursing the appropriate parties
- Method:
 - Perform multi-tiered review of historic records and data
 - Start with sites with ELTF claims in-house



Eligible Party

- Eligible Party listed on the ELTF application should match the party assigning rights (AOR) and appointing a Power of Attorney (POA)
- Eligible party should match the recipient of the consultant's invoice



Validation (cont.)

- Categorize Incidents based on Agency Records
 - 3 Main Categories (Tier System)
 - Tier 1 – Validated (Processed and Reimbursed)
 - Tier 2– Need some information
 - Simple fixes, usually; handled via email communication and supplemental documentation.
 - Tier 3 – ELTF Denial/Suspension
 - Information submitted consistently inconsistent
 - Voluntary remediation (party not liable or responsible)
 - » Especially if RP is viable



Corrective Action Documents

- Eligible Party on ELTF application should match party listed in corrective action documents
 - “work on behalf of ABC, Inc.”
 - Eligible party = ABC, Inc.



Notification Form

- Locate the Notification Form on file for the Eligible Party

IC 13-11-2-62.5 "Eligible party"

Sec. 62.5. "Eligible party", as used in [IC 13-23](#), means any of the following:

- (1) An owner, as defined in [IC 13-11-2-150](#).
- (2) An operator, as defined in [IC 13-11-2-148\(d\)](#) and [IC 13-11-2-148\(e\)](#).
- (3) A former owner or operator of a UST.
- (4) A transferee of property upon which a UST is located.
- (5) A transferee of property upon which a UST was located but from which the UST has been removed.

As added by P.L.96-2016, SEC.2.



Initial Incident Report

- Locate the IIR submitted to IDEM
- Determine the owner/operator at the time of the release
 - This owner/operator is claiming ELTF as their FR mechanism



Notification Form

- Locate the Notification Form on file at the time of the release
- The owner/operator at the time of the release should have had a valid NF on file
- The owner/operator on this NF should match the owner/operator on the IIR



Validation Letters

- If the administrative record is consistent, we can continue **communicating with and reimbursing** the validated party
- Validation letters will be issued outlining IDEM's information



Inconsistent Records

- Tier 2 review
 - More thorough examination
 - Parties will be notified if additional information is needed



Validation Process Hurdles

- NF inconsistencies
 - Conflicting or overlapping information
- Business entity inconsistencies
 - Business vs. Individual
 - Secretary of State INBiz Portal
- Unsolicited information



Validation Data

- 256 Incidents Reviewed and Processed
 - 138 Validated (54%)
 - 48 Need Information (19%)
 - 70 Denial/Suspension (27%)
 - 66% from one firm
 - 79% from this firm in denial/suspension tier



Financial Responsibility

- Why are we all here?
 - FAB is to oversee IDEM administration of an FR mechanism: the ELTF
 - It is a UST Compliance requirement
 - Federal and therefore State level
 - It ensures a funding source liabilities related to a release
 - Twin Pillars:
 - Foundational preventative elements of UST programs
 - Work conjunctively to prevent harm and protect health and the environment



Financial Responsibility

United States
Environmental Protection
Agency

Solid Waste And
Emergency Response
5403W

EPA 510-K-95-004
July 1995



Dollars And Sense

Financial Responsibility Requirements For Underground Storage Tanks

United States
Environmental Protection
Agency

Solid Waste And
Emergency Response
5401G

EPA 510-B-00-003
January 2000
www.epa.gov/oust/



Financial Responsibility For Underground Storage Tanks: A Reference Manual



Financial Responsibility

- Federal requirement under RCRA
 - 42 USC 6991b(d)
- \$1M minimum (per occurrence) *required*
 - Floor, not ceiling.
 - \$1M (100 or less) and \$2M (101+)
 - 329 IAC 9-8-4(b)



Financial Responsibility

Why are there financial responsibility requirements?

When Congress amended Subtitle I of the Resource Conservation and Recovery Act in 1986, it directed the U.S. Environmental Protection Agency (EPA) to develop financial responsibility regulations for owners and operators of underground storage tanks (USTs) storing petroleum.



Financial Responsibility

Who needs to demonstrate financial responsibility?

Either the owner or the operator of the UST must demonstrate financial responsibility, if the owner and operator are different individuals or firms. It is the responsibility of the owner and operator to decide which one will demonstrate financial responsibility.

***The financial
responsibility
requirements
are found in the
Code of Federal
Regulations,
40 CFR Part 280.***



FR Mechanisms

- Insurance
- Surety Bond
- Letter of Credit
- Self-Insurance
- Trust Fund
- Guarantee
- State Fund (ELTF)



Financial Responsibility

- Protect the *owner/operator*
 - 3rd Party Indemnity
 - Indemnify against Corrective Action Demands
- Remedy for 3rd Parties
 - Ensures owner/operator can compensate others for injury/damage from UST release
 - Equitable transfer to party harmed by UST release



Financial Responsibility

- FR applies for duration of operator/ownership
 - Assures funds to complete corrective action obligations of **owner/operator**
 - Obligations arise from releases *during* operator/ownership
 - Owner/operator cannot be released from FR requirement until obligation is fulfilled
- * The FR mechanism belongs to the owner/operator.



Owner/Operator

- Definitions
 - IC 13-11-2-148 “Operator”
 - IC 13-11-2-150 “Owner”
- Exclusions – BFPP Status
- Liability for Corrective Action



ELTF – State Fund

- EPA does not require any state to establish and maintain a state fund
- Most state funds, ELTF included, are designed assuming that responsible party (RP) – lead corrective action will occur
- State funds may not provide FR for UST owners/operators
 - New Jersey is an example



ELTF – State Fund

- To meet federal requirements to establish FR, a state fund *must* be approved by the EPA
- About 30 states have fund approved for FR
 - ELTF approved by EPA in 1995



ELTF – State Fund

- Maintaining approval
 - Capable of providing full coverage - soundness
 - EPA tracks and reviews fund soundness annually
 - Fund approval scrutinized during SPA review
 - IDEM currently in SPA review period
- EPA Review
 - Certainty of availability of funds
 - Amount of funds to be made available (flow)



ELTF – State Fund

- As early as 1999, transition from state funds to private insurance began.
 - Major impetus? Lack of solvency
 - Claims exceeding fund balance and/or income leads legislators/officials to sunset funds



Commercial Insurance

- Why not?
 - Eligibility issues
 - Coverage gaps
 - Exclusions
 - Premiums
- Sunset funds resurrected
 - Arizona and Michigan



Audit Recap

- 2010 Indiana Avg. Cost per Incident
 - \$191,760
- 2015 Indiana Avg. Cost per Incident
 - \$341,135
- 178% Increase
- 2015 National Avg. Cost per Incident
 - \$157,347
- Indiana 217% > the National Average



Audit Recap cont.

- Indiana 3rd Highest Cost/Payout
- Neighboring Competition Comparison:
 - Illinois: **-194%**
 - Kentucky: **-282%**
 - Ohio: **-316%**
- Bureau of Economic Analysis Regional Price Parities
 - Indiana = 91.4% of National Avg.



Audit Update

- 2016 National Avg. Cost per Incident
– \$155,245 (↓ 1.3%)
- 2016 Indiana Avg. Cost per Incident
– \$375,572 (↑ 10.1%)
- Indiana = 242% > National Avg.



Audit Update cont.

- Nationally
 - » **#1 – Indiana**
 - #2 – Pennsylvania
 - #3 – California
 - #4 – New York
- Neighboring Competition Comparison:
 - Illinois **-223%** (-194% in 2015)
 - Kentucky **-482%** (-282% in 2015)
 - Ohio **-343%** (-316% in 2015)



Audit Update cont.

- 2017 Indiana Avg. Cost per Incident (182)
 - **\$524,638** (↑39.7%)
 - Indiana = **338%** > 2016 National Avg.
- 2018 – Indiana Avg. Cost per Incident (144)
 - **\$441,965**
 - ↓15.8% from 2017 CPI
 - ↑17.7% from 2016 CPI
 - Indiana = **285%** > 2016 National Avg.
- * 2017 National Average Cost per Incident not yet published.
 - * National Average over previous 6 years ≈ \$145k



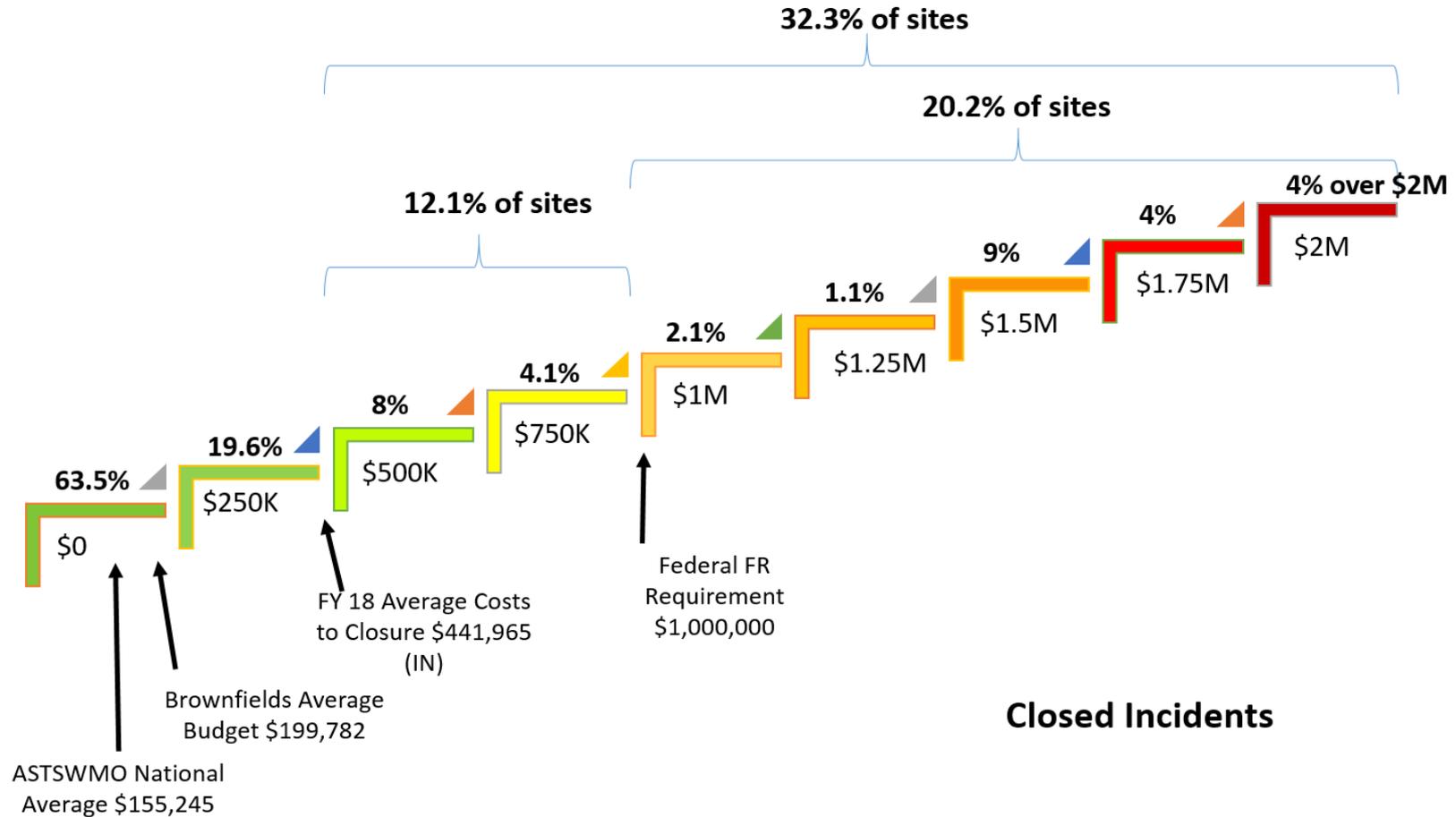
Audit Update cont.

- 2017/2018 Indiana Avg. CPI: **\$488,120**
- National Comparison*:

<u>State</u>	<u>Avg. CPI</u>	<u>% More in Indiana</u>
Utah	\$ 150,398	325%
Colorado	\$ 236,737	206%
Washington	\$ 141,192	346%
Tennessee	\$ 104,000	469%
Florida	\$ 240,527	203%
New Hampshire	\$ 159,100	307%
Massachusetts	\$ 161,164	303%
Connecticut	\$ 236,737	206%
New York	\$ 252,955	193%
California	\$ 350,000	139%
Pennsylvania	\$ 365,520	134%

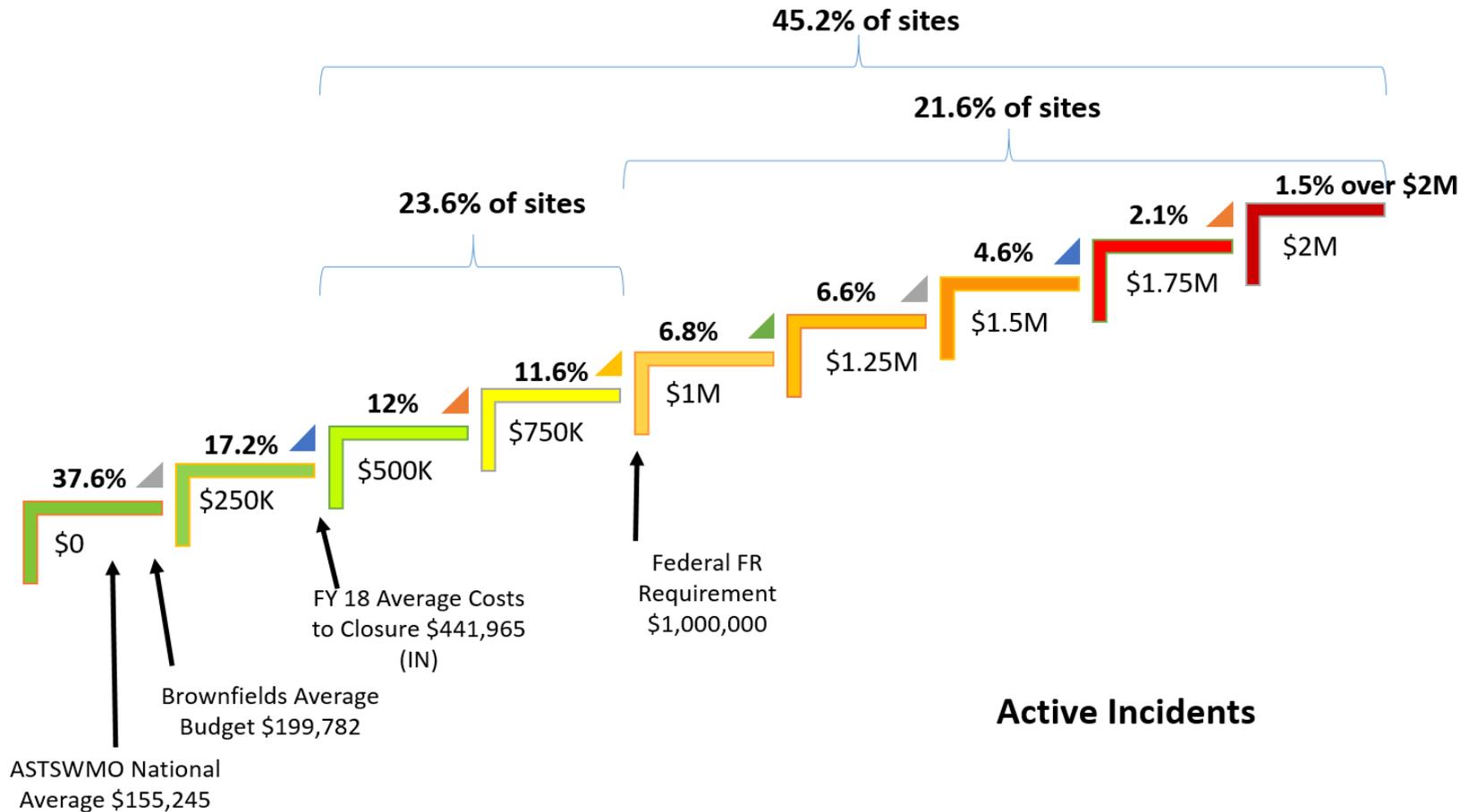


Closed Incidents





Active Incidents





The Question

“What are we doing wrong?”

~ Greg Cobb, 3/8/2018 FAB Meeting



Task Costs - Overview

- Field work is elevated, but within normal range
- Equipment and Materials are average
- Labor (“Office”) is unreasonable and much more than other states
 - QM Prep Time
 - Report Writing
 - Claims Prep
 - CAP/A Development Costs



Labor - Quarterly Monitoring

- Prep Time
 - Time used to “prepare for quarterly monitoring”
 - Wide Range
 - 10 hrs. to upwards of 70
 - Based on submissions over the previous quarter
 - Average of hrs. difficult to discern (7 diff. rates)
 - Avg. Cost = \$924.61
 - Max. Cost = \$3,382.02
 - 50+ hrs. to prepare for 50th+ Quarter



Labor - Report Writing

- Associated with all phases (Investigation through NFA)
- Max. for QMR = **\$10,968**
 - 1Q Avg. = **\$2,484.85**
- Subsequent Quarterly Monitoring Reports
 - \$9,700 for 50th+ QMR
 - Owner/operator Conversation
- Common for report to cost more than the field portion and lab analysis



Claims Prep

- P.L. 200-2017 Sec. 15 – Effective July 1, 2017
- Average - \$1,861.76 (per release)
- Max. = **\$20,036.08**
- Example: \$5,600 for 2 claims
 - 89+ hours; over a full work week for each claim
- 12 Incidents already over \$5k in 1 yr.
 - California Cost Guidelines - \$5k *total* per incident
- Site example – Claims Prep costs doubled once became ELTF eligible



CAP/A Development

- Range from \$1,000 to \$60,000
 - Average 10 recent CAP/As Submitted:
 - \$17,500
 - Example
 - 400+ PM Hrs
 - 87 SrPM
 - 25 Principal
 - **\$60k Total**
- * Previous Consultant:

* \$4k for CAPA; \$18k for Pilot Study/Report = **\$22k Total**



Comparison of Costs (CAP/A)

California	\$11,500
Kentucky (CAP)	\$5,600
Kentucky (CAPA)	\$3,200
Tennessee	\$5,300
Minnesota	\$6,500
North Carolina	\$5,000

*Avg. of 10 recent CAP/As in Indiana - \$17,500



Comparison of Costs (QMR)

Kentucky	\$900
Kentucky (w/ System)	\$1,200
Tennessee	\$2,000
Minnesota (12 Wells)	\$1,200
California	\$3,000
North Carolina (initial)	\$1,250
North Carolina (subs.)	\$625

*Indiana Avg. (approx.) - \$2,500



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Comparison of Costs (Claims Prep)

California (per incident max.)	\$5,000
Wisconsin	\$600
Louisiana (incl. field)	\$333
Louisiana (report only)	\$125
Virginia (per phase)	\$275
Virginia (≤ 10 line items)	\$100

*Indiana Avg. - \$1,800 (per Incident)



Case Study

- 1993 and 2006 Releases
 - USTs were removed with over-excavation of soils
 - 3,000+ tons removed in 2016/7
 - Still recovering “Free product”
 - 5.8 gallons over 5 quarters
 - .97 gallons in most recent quarter
 - Consultant suggested active remediation



Case Study (cont.)

- Routine Costs (QMR, NAPL Recovery, Claims)
 - Planning for QM - \$7,400
 - 64 hours of PM time
 - Over 1.5 work weeks
 - > 50 Qs of monitoring
 - Field Cost for QM - \$2,700
 - Report Writing - \$9,700
 - Monthly NAPL Recovery - \$7,500
 - Claims Prep - \$9,000+

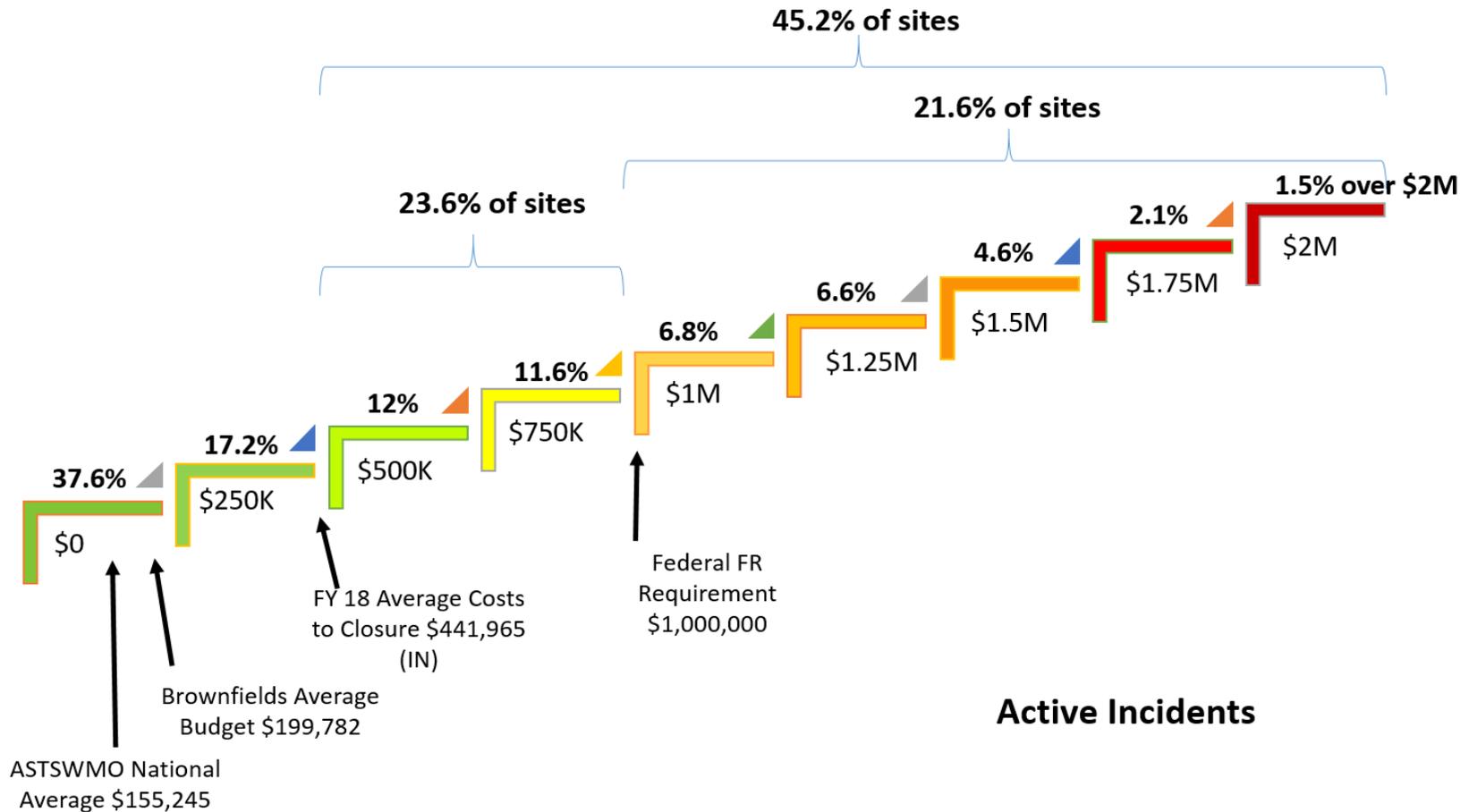


Case Study (cont.)

- Total last Quarter = \$32,247.61
- NAPL Recovery = \$7,500
 - Last Q = \$7,731.96/gal.
 - Annual = \$6,465/gal.
- Total Annually = \$219,000
 - This is just for routine costs
- ELTF Reimbursed to date = \$1.56M
 - \$1.8M requested for reimbursement



Active Incidents





Next Steps

- Improve Relationship with Owners/Operators
 - Control to the party responsible
 - Better education (legal and technical)
 - Better communication
 - Make agency accessible to the owner/operator
- Cost Guidelines
 - Curtail systematic waste and abuse
- Validation Report