

Brownfields tax incentive available

An important brownfields tax incentive appears to be a best-kept secret. It has yet to be utilized since it was signed into law as part of the 1997 Taxpayer Relief Act.

The law allows a taxpayer to deduct cleanup expenses in the year incurred, instead of capitalizing the costs over several years, thus reducing the taxpayer's income tax liability. Before the brownfields tax incentive was passed, taxpayers could not recover cleanup costs for tax purposes until the land was sold.

The taxpayer must receive a statement from IDEM that its site qualifies under the law, with two determining factors: Whether the site is within a **targeted area**, and there has been a release (or threat of release) or disposal of any **hazardous substance** at the site (see box right).

IDEM established a nonrule policy to provide guidance on how the agency issues statements determining a site eligible for the tax incentive. In brief, the taxpayer must submit to IDEM a fully executed affidavit with supporting documentation that a site qualifies for the tax deduction. Documentation should include phase I and II environmental assessments, site maps, county and town census information and other supporting documents. Upon review-

ing each set of documents, Brownfields Program staff will issue a response approximately 30 days from the date of receipt of the affidavit. If a response time less than 30 days is required, IDEM will make every possible effort to meet the expedited time frame.

For a copy of IDEM's nonrule policy document with a sample affidavit and list of frequently asked questions about the brownfields tax incentive, contact Dana Reed Wise.

Targeted areas

- Census tracts with poverty rates of 20% or more.
- Census tracts with populations of less than 2,000 where more than 75% of the tract is zoned for commercial or industrial use, and the tracts are adjacent to one or more census tract(s) with poverty rates of 20% or more.
- Federally designated empowerment zones and enterprise communities.
- U.S. Environmental Protection Agency designated Brownfields Pilot sites announced before Feb. 1, 1997.

A site need only meet one of the above criteria to satisfy the target area factor. Sites on the National Priorities List, which are commonly referred to as Superfund sites, are not eligible for the deduction. Only expenses incurred between August 1997 and January 2001 that are necessary for cleaning the site qualify for the tax break.

Hazardous substances

Where's the legal definition? Section 101 (14) and Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

What isn't a hazardous substance? Any substance that occurs naturally, is part of a building, or results from the normal deterioration of public or private drinking water supplies.

How does petroleum fit in? The law contains a qualified exclusion for petroleum, including crude oil and its components. However, hazardous substances that are mixed with petroleum products qualify as hazardous substances under CERCLA and may also qualify under the brownfields tax incentive.

Current Activities

Indiana wins federal brownfields grant

The Indiana Department of Environmental Management received a \$350,000 Brownfields Cleanup Revolving Loan Fund pilot grant from the U.S. Environmental Protection Agency.

Funded under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), EPA's pilot grants are designed to allow eligible states, cities, towns, counties, U.S. territories and federally recognized tribes to capitalize revolving loan funds to clean up brownfields for sustainable reuse.

IDEM wants to involve public and private sectors as well as community organizations in the brownfields cleanup process. Unlike the State Environmental Remediation Revolving Loan Fund, private entities will be eligible to apply for a loan under the new federally supported program.

Given the relatively small grant award, IDEM recognizes it will allow for only a small number of cleanup activities. So, the agency's focus is on finding ways to leverage the funding by partnering with key players in communities. IDEM requires applicants to show evidence of their intent to involve local residents and community organizations in the cleanup process, and describe how cleanup efforts will create and sustain jobs.

Contact Dana Reed Wise of IDEM or Courtney Tobin of Indiana Development Finance Authority for additional information.

Questions & Answers

Q: How can I learn what's happening with the development of brownfields in my region and across the nation?

A: Go to IDEM's Web site!



www.state.in.us/idem/oer/brownfields/index.html

Brownfields Task Force

As Indiana's brownfields initiative was being developed, IDEM recognized other state and federal agencies' vested interest in brownfields redevelopment. To fully address Indiana's brownfield concerns and properties, the Indiana Interagency Brownfields Task Force was formed. The result is a well-rounded group of key agencies dedicated to the promotion of responsible brownfields redevelopment.

The task force will achieve its goal through two mechanisms: a Brownfields Redevelopment Resource Guide currently in production (see last quarter's issue of *Brownfields Bulletin*) and the Interagency Brownfields Advisory Team.

The advisory team is a subgroup of the task force. Its focus is education and outreach with a goal to address brownfields redevelopment concerns and issues that are common and specific to projects around Indiana. The team set an objective to conduct three regional meetings allowing public and private stakeholders to discuss brownfield issues, as

well as one-on-one discussions regarding any specific brownfields property issues.

The first regional meeting was held in New Albany on December 16, in conjunction with the Southern Indiana Rural Development Project, which created its own task force to specifically address brownfield properties within its 34 participating counties.

Look for time, date and location announcements for the two remaining regional forums on IDEM's Brownfields Program Web page and in the next issue of *Brownfields Bulletin*.

To arrange a one-on-one conference, contact Kyle Hendrix, who serves as the Interagency Brownfields Advisory Team coordinator.

Task Force member agencies

- Indiana Dept. of Natural Resources
- Indiana Dept. of Commerce
- Indiana Development Finance Authority
- Indiana State Dept. of Health
- Indiana Housing Finance Authority
- Federal Highway Administration
- Indiana Dept. of Transportation
- Indiana Association of Cities & Towns
- Dept. of Housing & Urban Development
- Indiana Dept. of Agriculture
- Indiana Dept. of Environmental Mgt.

In Brief

Get your own EPA grant!

The U.S. Environmental Protection Agency offers grants for Brownfields Assessment Demonstration Pilots to help Indiana communities. Assessments address environmental unknowns that often accompany property transactions.

Former recipients of this federal grant include the Northwest Indiana Brownfields Redevelopment Project and the cities of Indianapolis and Fort Wayne.

Brownfields assessment pilots may receive up to \$200,000 for two years. EPA expects to select up to 100 additional national assessment pilots by the end of May.

Proposed brownfields pilot projects must meet the evaluation criteria in the EPA application. To get your copy of the guidelines call Michele Oertel, or EPA's Regional Brownfields Coordinator Jim Van der Kloot at (312) 353-3161.

IDEM encourages communities — cities, towns, counties — to take advantage of this opportunity. IDEM's Brownfields Program Web site links to more information about this EPA program.

Application deadline for the next round of U.S. EPA grants
March 22, 1999

Fort Wayne gets federal AND state assistance

The city of Fort Wayne received multi-faceted support on its cleanup and redevelopment of the former Bowser Pump property.

The U.S. Environmental Protection Agency awarded the city a \$200,000 demonstration pilot grant for the project. Fort Wayne will conduct a phase II investigation. It also will use a portion of the grant, along with other funding sources to create a local loan and grant program.

Next, Fort Wayne received a \$500,000 low-interest loan from the Indiana Development Finance Authority. This loan will be used for property acquisition costs, asbestos abatement, building demolition and underground storage tanks removal, remediation and end use planning.

IDEM and EPA conducted an environmental site assessment at the property. The assessment included a subsurface investigation that confirmed the presence of several underground storage tanks. A surface soil screening was performed and detected low levels of hydrocarbons at multiple areas on the site. The results of the assessment enabled the city to further its redevelopment plans.

Issues

Comfort letters clear legal, technical barriers

IDEM's comfort letters are valuable tools that assist communities and other parties in brownfields redevelopment. These comfort letters help parties determine the liability potentially incurred by the purchase, lease, acquisition through bankruptcy or tax sale, or financing of a brownfield. Comfort letters unravel who is liable for contamination and facilitate transactions essential to the redevelopment of unused and under-used property.

Different statutes apply to various types of contamination and liability differs for current or former property owners. Also, the legislature has carved out liability exceptions for government entities and lenders to encourage brownfields redevelopment.

IDEM's brownfields comfort letters help navigate through these complex legal issues and establish whether environmental conditions should be an impediment to redevelopment. In specific instances, IDEM provides brownfields comfort letters to parties explaining that the agency will forego enforcement against parties specifically exempted from liability by statute.

Brownfields Program Score Card



Correction

Brownfields Bulletin apologizes for a mistake in last quarter's issue. McFarling (not McFarland) Foods in Indianapolis was issued a No Further Action letter by IDEM for its underground storage tank.



Brownfields Bulletin is published quarterly by the Indiana Department of Environmental Management to inform local government officials, local business representatives and local interest groups about brownfields redevelopment initiatives and success stories from within and beyond the state. A brownfields site is an industrial or commercial property that is abandoned, inactive or underutilized due to actual or perceived environmental contamination. IDEM's overall mission is to make Indiana a cleaner, healthier place to live. IDEM's brownfields initiative helps communities remove barriers for sustainable growth.

Comments and ideas are welcome; e-mail IDEM's Brownfields Program Section Chief Dana Reed Wise.

Who Can Help

Technical and planning assistance
Indiana Department of Environmental Management
Brownfields Program Staff (listed right)
 P.O. Box 6015
 Indianapolis, IN 46206-6015
www.state.in.us/idem/oer/brownfields/index.html

Financial assistance
Indiana Development Finance Authority
 Courtney Tobin, General Counsel
 One N. Capitol, Suite 320
 Indianapolis, IN 46204
 (317) 233-4332
 e-mail: ctobin@idfa.state.in.us

IDEM Brownfields Program Staff

E-mail address/Phone number

Dana Reed Wise <i>Section Chief</i>	dreedwis@dem.state.in.us (317) 308-3058
Patty McArtor <i>Administrative Assistant</i>	pmcartor@dem.state.in.us (317) 308-3131
Susan Gross <i>Information Specialist</i>	sgross@dem.state.in.us (317) 308-3112
Michele Oertel <i>Environmental Manager</i>	moertel@dem.state.in.us (317) 308-3057
Kyle Hendrix <i>Environmental Manager</i>	khendrix@dem.state.in.us (317) 308-3098
Thomas W. Baker <i>Attorney</i>	twbaker@dem.state.in.us (317) 233-1207

(800) 451-6027, press 0 and ask for a person by name or number.
 Or, dial direct.

Printed with soy ink on recycled paper, 100% post-consumer content.

