

Brownfields Legal Issues and Cost Recovery

Donald M. Snemis, Ice Miller LLP



Building Better Communities
Brownfields Workshop
August 3, 2011

Legal Aspects of Cost Recovery Actions

□ Indiana State Statutes

- Environmental Legal Action Statute, Ind. Code § 13-30-9-1
- UST Statute, Ind. Code § 13-23-13-8
- Citizens Suits and Private Attorney General Actions, Ind. Code § 13-30-1

Legal Aspects of Cost Recovery Actions *(Cont'd)*

□ Federal Statutes

- CERCLA, 42 U.S.C. § 9601
- RCRA, 42 U.S.C. § 6901
- Others

Legal Aspects of Cost Recovery Actions *(Cont'd)*

□ Indiana Common Law Theories

- Trespass
- Nuisance
- "Stigma"
- Others



1910 - 2010

Common Defenses to Cost Recovery Actions

- Statute of Limitations
 - Six years/ten years

- Other Sources – Allocation of Liability

Collecting Cost Recovery Judgments

- ❑ Solvent Defendants
- ❑ Dissolved, Insolvent and Bankrupt Companies
- ❑ Insurance Issues
 - Pursuit of Insurers
 - Claims Made v. Occurrence Policies
 - Primary, Excess and Umbrella Policies
 - Policy Limits and Exhaustion

Collecting Cost Recovery Judgments *(Cont'd)*

- Common Policy Issues and Defenses
 - Notice and cooperation
 - Pollution exclusion
 - Owned property exclusion
 - Occurrence
 - Allocation Issues



1910 - 2010

Choosing an Appropriate Site

- ❑ Amount at Issue
- ❑ Identity and Status of the Defendant(s)
 - Dissolved companies
 - Active companies
 - Bankruptcy protection

Choosing an Appropriate Site *(Cont'd)*

- ❑ Standing To Sue – Who Owns the Property?
 - Has the city incurred any expenses?
 - Does the city own the property?
 - Has the city been ordered to remediate the property?

Choosing an Appropriate Site *(Cont'd)*

- ❑ Statute of Limitations Issues
 - Discovery of the contamination/damage
 - Date of an order to remediate



1910 - 2010

Choosing an Appropriate Site *(Cont'd)*

❑ Other Considerations

- Political issues

A grayscale image of a hand placing a puzzle piece into a larger puzzle. The puzzle piece being placed has the words "POLITICAL OUTCOME" written on it in a red, slanted font. The background is a light blue gradient with a faint circular pattern.

POLITICAL
OUTCOME

1910 - 2010

Example Cases

- ❑ New Albany:
 - *New Albany v. Double Seven Tire*
- ❑ La Porte:
 - *La Porte v. Allis-Chalmers*
- ❑ Indianapolis:
 - *Indianapolis v. Ertel Manufacturing*

Questions and Answers

Thank you.