# Brownfields Legal Issues and Cost Recovery

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#### Legal Aspects of Cost Recovery Actions

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



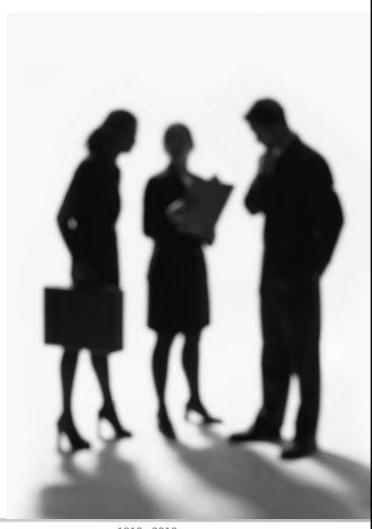
### Legal Aspects of Cost Recovery Actions (Cont'd)

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



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

- Indiana Common Law Theories
  - o Trespass
  - o Nuisance
  - o "Stigma"
  - o Others





### Common Defenses to Cost Recovery Actions

- Statute of Limitations
  - o 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
  - o 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



#### 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?
  - o Has the city incurred any expenses?
  - o Does the city own the property?
  - o Has the city been ordered to remediate the property?



#### Choosing an Appropriate Site (Cont'd)

■ Statute of Limitations Issues

Discovery of the contamination/damage

o Date of an order to remediate





#### Choosing an Appropriate Site (Cont'd)

Other Considerations

o Political issues



#### **Example Cases**

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



## Questions and Answers

Thank you.

