



NONRULE POLICY DOCUMENT

Indiana Department of Environmental Management
Office of Land Quality
100 North Senate
Indianapolis, IN 46204
OLQ PH: (317) 232-8941

Title: Federal Brownfields Tax Incentive Qualified Contaminated Site Statement Policy

Identification Number: WASTE-0042-NPD (formerly OER-0009-NPD)

Date Originally Adopted: October 14, 1998

Dates Revised: None

Other Policies Repealed or Amended: None

Brief Description of Subject Matter: IDEM Brownfields Program's policy regarding issuance of a Qualified Contaminated Site statement for the federal brownfields tax incentive.

Citations Affected: 26 U.S.C. 198 (federal Internal Revenue Code)

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. A revision to this nonrule policy document may be put into effect by IDEM once the revised nonrule policy document is made available for public inspection and copying. IDEM will submit revisions to the Indiana Register for publication.

Policy Statement

As established by a September 28, 1997 letter issued by Governor Frank O'Bannon, the Indiana Department of Environmental Management is responsible for determining whether an entity has a "qualified contaminated site" (QCS) under the federal Internal Revenue Code. If an entity has a site that qualifies as a QCS, recent legislation allows the entity to treat cleanup costs as fully deductible in the year they are incurred. Normally, those costs would need to be capitalized and depreciated over the life of the asset.

Under Section 198 of the Internal Revenue Code, 26 U.S.C. 198, a tax paying entity must receive a statement from IDEM that its site is a QCS to deduct the cleanup costs in the year the costs are incurred. This Policy sets forth the elements that need to be established in the statement and the basic procedure for IDEM's issuance of that statement.

IDEM'S Requirements

Section 198 of the Internal Revenue Code requires IDEM to establish that two (2) elements are present before it can determine that a site is a QCS: 1) the site is within a **targeted area**; and 2) there has been a release (or threat of release) or disposal of any **hazardous substance** at the site.

A "**targeted area**" means:

- (i.) any population census tract with a poverty rate of not less than twenty percent (20%);
- (ii) a population census tract with a population of less than two thousand (2,000), if:
 - (I) more than 75 percent (75%) of the tract is zoned for commercial or industrial use, and
 - (II) the tract is contiguous to one (1) or more other population census tracts which meet the requirement of clause (i) without regard to this clause;
- (iii) any empowerment zone or enterprise community (and any supplemental zone)

- designated on December 21, 1994); and
- (iv) and any site announced before February 1, 1997 as being included as a brownfields pilot project of the Environmental Protection Agency.

A targeted area cannot include any site which is on, or proposed for, the National Priorities List under Section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as in effect on August 5, 1997.

A “**hazardous substance**” means any substance that is a hazardous substance as defined in Section 101(14) of CERCLA, and any substance that is designated as a hazardous substance under Section 102 of CERCLA. As set forth in Section 104(a)(3) of CERCLA, the term shall not include any substance that occurs naturally, is part of a building, or results from the normal deterioration of public or private drinking water supplies.

Applicant's Requirement

The tax paying entity must submit to IDEM a fully executed affidavit, an example of which is provided with this Policy. IDEM reserves the right to inspect the records documenting that the site is a QCS. The taxpayer shall maintain the documents supporting the QCS status for a period of five (5) years. Those records should include: 1) an ASTM Phase one and Phase two environmental assessment that demonstrates there are non-naturally occurring hazardous substances in environmental media at the site; and 2) site maps, legal description, county and town census information, including poverty rate.

Please send all affidavits or direct all questions to:
Gabriele Hauer, Brownfields Coordinator
Office of Environmental Response
Brownfields Program
100 North Senate
Indianapolis, Indiana 46204

Issuance of the QCS Statement

IDEM anticipates issuance of the QCS statement approximately thirty (30) days from the date of receipt of the affidavit. IDEM reserves the right to check census, zone status, population and poverty rate information with federal, State, and local agencies. If IDEM incurs any costs in that process the requestor shall be responsible to reimburse IDEM the entire amount.

The statement will be mailed to the signatory of the affidavit unless it is clearly directed to be sent elsewhere. If a response time less than thirty (30) days is required, the request should be marked “urgent/rush” and the request should explain the reason for the rush. IDEM will make every effort to meet the expedited time frame.

Sample QCS Affidavit

I _____, hereby certify, under penalty of perjury, that the
_____ site, located at _____,
_____ County, IN qualifies as a Contaminated Site for the following reasons
(check the appropriate boxes):

___ it is located in an area that has a census tract with a poverty rate of not less than 20 percent; or

___ it is located in an area that has a census tract with a population of less than 2,000 and more than 75 percent of such tract is zoned for commercial or industrial use, and such tract is contiguous to 1 or more other population census tracts which meet the poverty threshold of 20 percent or greater; or

___ it is located in any area that is an empowerment zone or enterprise community (and any supplemental zone designated on December 21, 1994); or

___ it is a brownfields pilot project of the Environmental Protection Agency, announced before February 1, 1997; and

___ is a site where a non-naturally occurring hazardous substance has been released, or is threatening to release, into the environment.

The documents and reports supporting the status of the site are permanently located at
_____.

(signature)

[seal]

Witness my hand and notary seal this ___ day of _____, 199__.

Notary Public

My commission expires: _____

County of Residence _____.