

## Sand Storage/Mix Site: Indiana Appellate Court Addresses Lessor Responsibility



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

06/01/2017

Co-Author: Caroline Currier

On May 16th, the Indiana Court of Appeals affirmed an Order that FLM, LLC, (“FLM”), bring its property, known to Indianapolis residents as “Black Mountain,” into compliance with City ordinances and to pay a \$500 fine.

FLM leased property to International Recycling Inc., (“IRI”) in 1999 as a site on which it could store and mix sand prior to transferring the mixture to construction sites for reuse. See *FLM, LLC v. Metropolitan Development Commission of Marion County, Indiana*, 2017 WL 2119213.

IRI eventually abandoned all removal efforts. The so-called Black Mountain was stated to reach 105,000-tons of sand stretching over two acres. Further, the sand is described as 50 feet high and “leaching multiple toxic chemicals into the ground beneath it.”

IRA went out of business in 2002.

Black Mountain is described as having been “looming over neighboring properties, polluting the City of Indianapolis, and violating multiple ordinances for over fourteen years.”

The Metropolitan Development Commission of Marion County, Indiana (the “City”) filed a claim against FLM to attempt to require it to abate ordinance violations on the property. The City was granted summary judgment.

FLM argued on appeal that:

. . . it did not cause, suffer, or allow its tenant’s ordinance violations and should not, therefore, be held liable for them.

FLM also argued the City is empowered to enter the property and abate the violations.

The Court of Appeals found that although IRI brought the sand to the site, FLM was constructively aware of the sand mountain, and its potential to violate City ordinances noting:

FLM has unquestionably and undeniably allowed this environmental hazard to remain, and it has done so for years.

FLM asserted that it lacked sufficient funds to remove the sand.

The Court rejected this argument as “ludicrous” based on the \$1.7 million recovery FLM received from IRI in insurance payments in 2013. It stated:

A lack of ability to pay does not constitute a defense to a parking ticket or virtually any civil claim we can think of, much less a lawsuit regarding an environmental scourge contained on the defendant's own property.

[A copy of the decision can be found here.](#)