Indiana Perspective
Environmental Law Newsletter

Summary of 2012 Environmental Legislation

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[1] Sue Shadley is a founding partner and has prepared a summary of all new Indiana environmental laws since 1994. Past legislative summaries are available to review on our website: www.psrb.com. In this legislative summary we try to make it easy to understand how and sometimes why the law has changed and to organize the new laws in a way that allow you to see and read just the topics that interest you. Sue's complete bio can be viewed at http://www.psrb.com/attorneys/39.

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The 2012 session of the Indiana General Assembly once again focused on right to work legislation, which passed this year. In addition, a significant number of environmental and natural resources bills passed this session. Some of this year's environmental legislation was sponsored by the tireless effort of veteran Senator Beverly Gard (R-Greenfield), Chair of the Senate Energy and Environmental Affairs Committee, who will not be running again for election.

Plews Shadley Racher & Braun LLP is pleased to provide the following summary of new laws relating to the environment, natural resources, energy, and agriculture that became effective this year. We have been preparing this type of legislative summary since 1994. Our summary is unique in that it is organized by subject matter rather than by bill number, which allows the readers to more easily identify which laws may impact them and their businesses. In our summary we strive to explain in detail the new law or how an existing law has been changed by the new legislation. At the end of each summary is a citation to the House or Senate Enrolled Act and Sections where the language of this law can be found, along with its corresponding Public Law number and Indiana Code citations. While review of the actual language of any law is necessary to apply it to a specific situation, we hope that this summary will alert you to changes in Indiana law.

Legislative summaries from previous sessions are available on our webpage at www.psrb.com. We would be pleased to answer any questions you may have regarding these new laws, the application of existing law, or prospective legislation for the 2013 session of the Indiana General Assembly. Any one of our 39 attorneys, whose practices cover a wide variety of related sub-fields, can assist you with any legal issues you may have. Please contact us if we can be of service to you.

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LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT ("IDEM")

CLEAN MANUFACTURING

CLEAN MANUFACTURING TECHNOLOGY BOARD & INSTITUTE LAW REPEALED

The Legislature repealed the 1997 law that had established the Clean Manufacturing Technology Board and the Indiana Clean Manufacturing Technology and Safe Materials Institute. Under that law, the Clean Manufacturing Technology Board (1) provided consultation and recommendations to the Indiana Department of Environmental Management's ("IDEM") Commissioner on a grants program, (2) received public complaints and inquiries, and (3) directed the Clean Manufacturing Technology and Safe Materials Institute's research, programs, and data analysis. The Clean Manufacturing Technology and Safe Materials Institute (1) operated planning programs for individuals who desired to be qualified as clean manufacturing planners, and (2) assisted manufactures and manufacture organizations in the development and implementation of the most up-to-date clean manufacturing techniques and practices and encouraged manufacturers to develop multimedia clean manufacturing plans. All powers, duties, assets and liability of the Clean Manufacturing Technology Board were transferred to IDEM.
SEA 131 SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 19, 55, 56, 57 and 58, Public Law No. 37-2012, Ind. Code 13-11-2-17, Ind. Code 13-11-2-27.6, Ind. Code 13-11-2-54, Ind. Code 13-11-2-72, Ind. Code 13-11-2-110, Ind. Code 13-11-2-126, Ind. Code 13-11-2-127, Ind. Code 13-11-2-131, Ind. Code 13-11-2-233, Ind. Code 13-11-2-246, Ind. Code 13-11-2-249.5 and Ind. Code 13-14-1-16, Ind. Code 13-27.5, Ind. Code 13-27-2-8, Ind. Code 13-27-2-10, Ind. Code 13-27-2-11 and Ind. Code 13-27-7-2, effective July 1, 2012.

WASTE EXCHANGE REPEALED

In addition, the Legislature deleted the law requiring IDEM to establish a solid and hazardous waste materials exchange which had provided for the exchange of information between interested persons for treatment and recovery of solid and hazardous waste.
SEA 131, SECTIONS 18, Public Law No. 37-2012, Ind. Code 13-14-1-1, effective July 1, 2012.

ENVIRONMENTAL RULES BOARD

Effective January 1, 2013, the Legislature will abolish the Air Pollution Control Board, the Water Pollution Control Board and the Solid Waste Management Board and create one superboard for IDEM, to be known as the Environmental Rules Board. All powers, duties and liabilities of the abolished boards are transferred to the Environmental Rules Board on January 1, 2013.

The Environmental Rules Board will consist of sixteen members, five of whom are ex officio members. The five ex officio members are: (1) the Commissioner of IDEM or the IDEM Commissioner's designee, who serves as a nonvoting member of the Board, (2) the Commissioner of the State Department of Health, (3) the Director of the Department of Natural Resources, (4) the Lieutenant Governor, and (5) the Secretary of Commerce, or the Secretary's designee. The remaining eleven members are to be appointed by the Governor based on recommendations from representative constituencies. These eleven members must represent the following constituencies: (1) one representative of agriculture, (2) one representative of manufacturing, (3) one representative of environmental interests, (4) one representative of labor, (5) one representative of local government, (6) one representative of small business, (7) one health professional who holds a license to practice in Indiana, (8) one representative of the solid waste management industry, (9) one representative of a public utility that engages in the production and transmission of electricity, and (10) two representatives of the general public, who do not qualify to sit on the board under any of the other representative areas. The representative members must possess knowledge, experience or education that qualifies them to represent the constituency. No more than six of the appointed members may be of the same political party. All of the ex officio members may designate, in writing, a technical representative to serve when the ex officio member is unable to attend a board meeting. Annually the Governor is to select one appointed member to serve as chairperson and another appointed member to serve as vice chairperson.

Members will be appointed to four-year terms, but must continue until a successor is appointed and qualified. If a vacancy occurs, the Governor must appoint a new member within 90 days of the vacancy occurring for the remainder of the unexpired term created by the vacancy. The Governor may remove an appointed member for cause, which includes repeated failure to attend meetings.

Eight members of the Board, five of whom must be appointed members, constitute a quorum. A quorum must be present to transact business at a meeting. The Board is to select, from a list of three qualified individuals recommended by the Governor, an independent third party who is not an employee of the state to serve as technical secretary of the Board. The Technical Secretary must review all materials prepared for the Board by the IDEM and may make any necessary revisions. The Board may also select from a list of 3 qualified individuals recommended by the Governor, an independent third party who is not an employee of the state to serve as legal counsel. The Legal Counsel is to advise the Board on legal matters or proceedings arising from the exercise of the Board's duties, review all material prepared for the Board by IDEM for legal accuracy and sufficiency, and direct IDEM to make any necessary revisions. The Board may establish advisory committees for the purpose of giving advice on any matters pertaining to the business of the Board.

Between meetings of the Board, IDEM is to handle correspondence, make or arrange for investigations and surveys, and obtain, assemble, or prepare reports and data as directed by the Board.

HEA 1002 SECTIONS 68 - 161; Public Law No. 133-2012, Ind. Code 13-11-2-17, Ind. Code 13-11-2-18, Ind. Code 13-11-2-165, Ind. Code 13-12-4-5, Ind. Code 13-13-8, Ind. Code 13-14-1-3, Ind. Code 13-14-1-4, Ind. Code 13-14-1-7, Ind. Code 13-14-1-8, Ind. Code 13-14-1-9, Ind. Code 13-14-1-12, Ind. Code 13-14-2-2, Ind. Code 13-14-2-3, Ind. Code 13-14-2-6, Ind. Code 13-14-4-3, Ind. Code 13-14-5-5, Ind. Code 13-14-7-1, Ind. Code 13-14-8-1, Ind. Code 13-14-8-2, Ind. Code 13-14-8-5, Ind. Code 13-14-8-7, Ind. Code 13-14-9-1, Ind. Code 13-14-9-14, Ind. Code 13-14-11-4, Ind. Code 13-14-11-5, Ind. Code 13-14-12-2, Ind. Code 13-14-12-4, Ind. Code 13-15-1-1, Ind. Code 13-15-1-2, Ind. Code 13-15-1-3, Ind. Code 13-15-2-1, Ind. Code 13-15-2-2, Ind. Code 13-15-3-5, Ind. Code 13-15-3-6, Ind. Code 13-15-4-6, Ind. Code 13-15-7-4, Ind. Code 13-15-9-2, Ind. Code 13-15-9-3, Ind. Code 13-15-9-4, Ind. Code 13-15-9-5, Ind. Code 13-15-10-1, Ind. Code 13-15-10-3, Ind. Code 13-15-10-4, Ind. Code 13-15-10-5, Ind. Code 13-15-10-6, Ind. Code 13-15-11-1, Ind. Code 13-16-1-1, Ind. Code 13-16-1-3, Ind. Code 13-16-1-4, Ind. Code 13-17-1-1, Ind. Code 13-17-1-2, Ind. Code 13-17-3-6, Ind. Code 13-17-3-11, Ind. Code 13-17-5-1, Ind. Code 13-17-8-3, Ind. Code 13-17-13-1, Ind. Code 13-18-1, Ind. Code 13-18-3-1, Ind. Code 13-18-3-3, Ind. Code 13-18-3-12, Ind. Code 13-18-11-1.5, Ind. Code 13-18-12-1, Ind. Code 13-18-12-2.5, Ind. Code 13-19-2, Ind. Code 13-19-3-1, Ind. Code 13-19-3-7, Ind. Code 13-19-4-10, Ind. Code 13-20-1-5, Ind. Code 13-20-2-7, Ind. Code 13-20-3-5, Ind. Code 13-20-8-1, Ind. Code 13-20-8-5, Ind. Code 13-20-9-3, Ind. Code 13-20-10-3, Ind. Code 13-20-10-10, Ind. Code 13-20-13-9, Ind. Code 13-20-14-1, Ind. Code 13-20-14-6, Ind. Code 13-20-14-9.5, Ind. Code 13-20-15-1, Ind. Code 13-22-2-2, Ind. Code 13-22-2-6, Ind. Code 13-22-2-7, Ind. Code 13-22-8-1, Ind. Code 13-23-1-1, Ind. Code 13-25-4-7, Ind. Code 13-27-8-3, Ind. Code 13-28-1-3, Ind. Coe 13-29-1-13, Ind. Code 13-30-2-1, Ind. Code 13-30-3-11, Ind. Coe 13-30-4-1, and Ind. Code 13-30-7-7, effective January 1, 2013.

RESPONSIBLE PROPERTY TRANSFER LAW

The Legislature made a change to the responsible property transfer law ("RPT") affecting information to be provided by IDEM. With this change, when a person makes an inquiry about a piece of property, in addition to IDEM providing any information in its possession about whether the property meets the description of property subject to the RPT law, IDEM must now also provide any information in its possession about whether the property is subject to any restrictive covenants.
SEA 131 SECTION 53, Public Law No. 37-2012, Ind. Code 13-25-3-1, effective July 1, 2012.

The Legislature also amended the law related to the form that is completed and delivered by a transferor of property under this law. Now the transferor will provide environmental information on the regulatory program during ownership, site information when owning or operating, and the following two new disclosures: (1) any environmental defects, and (2) any existing restrictive covenants for the property.
SEA 131 SECTION 54, Public Law No. 37-2012, Ind. Code 13-25-3-7.5, effective July 1, 2012.

SOLID WASTE PROGRAM

SOLID WASTE GOALS UPDATED

The Legislature changed the law that had established a goal to reduce the incineration or disposal of solid waste by 35% before January 1, 1996, and by 50% before January 1, 2001. The Legislature created a new goal. That goal is for the state to encourage solid waste source reduction, recycling, and other alternatives to conserve environmental resources. In addition, the Legislature has imposed an annual reporting requirement on IDEM to produce a report on the state of the environment.
SEA 131 SECTION 25, Public Law No. 37-2012, Ind. Code 13-19-1-2, effective July 1, 2012.

"GENERAL ELECTRIC" INCINERATOR LAWS REPEALED

At the time General Electric was considering how to deal with the PCB contamination near Bloomington, special laws were passed, imposing legislative requirements for incinerator permit applications and specific air pollution control requirements. This year the Legislature repealed all of those special legislative mandates and gave the responsibility to the Solid Waste Management Board to adopt rules to regulate the construction and operation of waste incinerators.
SEA 131 SECTIONS 26, 27, 28, 29, 30 and 31, Public Law No. 37-2012, Ind. Code 13-20-8-1, Ind. Code 13-20-8-2, Ind. Code 13-20-8-3, Ind. Code 13-20-8-4, Ind. Code 13-20-8-6, and Ind. Code 13-20-8-8.

WASTE TIRE DEFINED

The term "waste tire" has been replaced with the term "passenger tire equivalent" for purposes of determining when a waste tire storage site is subject to regulation. Under prior law, a site at which at least 1,000 waste tires were accumulated outdoors or within a structure that was not completely enclosed or a site at which at least 2,000 waste tires were accumulated indoors within a completely enclosed structure were the waste tire storage sites subject to regulation. Now the Legislature has defined a passenger tire equivalent as a unit of waste tire material weighing twenty pounds, whether the waste tire material is comprised of one or more whole or altered tires. In addition, the Legislature has provided that a site that accumulates 1,000 passenger tire equivalents outdoors or within a structure that is not completely enclosed or 2,000 passenger tire equivalents indoors are the waste tire storage sites subject to regulation. Conforming changes were made to other laws to make reference to passenger tire equivalents.
SEA 131 SECTIONS 16, 31, 32, 37 and 38, Public Law No. 37-2012, Ind. Code 13-11-2-251, and Ind. Code 13-20-13-1, Ind. Code 13-20-13-5, Ind. Code 13-20-14-5 and Ind. Code 13-20-14-5.3, effective July 1, 2012.

REGULATED WASTE TIRE STORAGE AND PROCESSING ACTIVITIES

The Legislature has added two additional activities that do NOT trigger the requirement for a waste tire storage or a waste tire processing certificate of registration. A certificate of registration is not required to be issued for a waste tire amnesty day sponsored by a local government. A certificate of registration is not required for a facility that manufactures tires and keeps 5,000 or fewer waste tires indoors in an enclosed structure. Already excluded from registration are: (1) facilities operated as a solid waste processing facility under a permit issued by IDEM, (2) a facility that is used to retread tires where fewer than 5,000 waste tires are present indoors within a completely enclosed structure, (3) a vehicle or container in which waste tires are stored for less than 30 days, and (4) a vehicle that is properly licensed, capable of legally transporting waste tires and in which waste tires are completely enclosed.
SEA 131 SECTION 32, Public Law No. 37-2012, Ind. Code 13-20-13-1, effective July 1, 2012.

WASTE TIRE REGISTRATIONS THAT SATISFY THE REQUIREMENT FOR A SOLID WASTE PROCESSING PERMIT

The Legislature clarified the law to state those activities that may be regulated under a waste tire registration and not require a solid waste processing permit. Specifically, a solid waste processing permit is NOT required for the following activities covered under a registration: baling, transferring, cutting, or shredding, so long as the person processing the waste tires does it in accordance with the registration and requirements of the waste tire rules.
SEA
131 SECTION 35, Public Law No. 37-2012, Ind. Code 13-20-13-12, effective July 1, 2012.

ACCEPTABLE WAYS TO DISPOSE OF WASTE TIRES

Under prior law, waste tires had to be disposed of in one of seven ways: (1) delivery to a wholesaler or its agent, (2) delivery to a manufacturer of tires, (3) delivery to a facility that recycles tires or collects them for delivery to a recycling facility, (4) delivery to a permitted final disposal facility, (5) delivery to a waste tire storage site, (6) delivery to a facility permitted and operated as a waste tire cutting facility, or (7) delivery to a registered waste tire transporter or person operating under a municipal waste collection and transportation vehicle license. This year the law was changed in four ways. First, the only type of tire recycling facility to which tires may be delivered is a facility that retreads tires. Second, delivery to a waste tire storage site may only be to a registered waste tire storage site. Third, delivery can be to any registered waste tire processing operation, not just cutting facilities. Fourth, delivery must be to a registered waste tire transporter – not to a municipal waste collection and transportation licensed vehicle.
SEA 131 SECTIONS 36 and 37, Public Law No. 37-2012, Ind. Code 13-20-14-4, and Ind. Code 13-20-14-5, effective July 1, 2012.

ELECTRONIC WASTE PROGRAM YEAR

The Legislature changed the program year for the electronic waste program to a calendar year, replacing the prior law's program year of April 1 to March 31. In addition, the Legislature now requires any registered collector of electronic devices or any registered recycler of electronic devices to renew the registration not later than November 1 for the next program year.
SEA 131 SECTIONS 10, 41, 42, 43, 44 and 45 Public Law No. 37-2012, Ind. Code 13-11-2-172.1, Ind. Code 13-20.5-1-1, Ind. Code 13-20.5-1-4, Ind. Code 13-20.5-1-5, Ind. Code 13-20.5-2-1, Ind. Code 13-205-3-1 effective July 1, 2012.

SOLID WASTE MANAGEMENT DISTRICTS

FINANCIAL AND OTHER REQUIRED REPORTS

The Legislature increased the amount of reporting Solid Waste Management Districts ("District or SWMD") must do and the public's access to those reports. Under prior law, a report on each fund that contained District money had to be prepared disclosing the cash balance at the end of the year, a list of encumbrances on the fund that the District is obligated to pay, and the total expenditures from the fund. Now Districts will be required to do all the following additional reports and include all the following additional information in the reports:

(1) Include in reports nonreverting capital funds, and Solid Waste Management District bond funds;
(2) Insure the report complies with a form that is designed by the Department of Local Government Finance;
(3) Make the report accessible through the computer gateway administered by the Office of Technology;
(4) Include in the report any other financial information that is required by the Indiana Department of Environmental Management ("IDEM");
(5) Include programmatic information in the report that is required by IDEM;
(6) Include in the report the total amount of expenditures by the District for the year;
(7) Include in the report the per capita expenditures by the District for the year;
(8) Include in the report the amount of expenditures by the District that were for personnel costs;
(9) Include in the report the expenditures for the year for program costs (excluding personnel costs);
(10) Include in the report the total tons of solid waste disposed of in the District for the year for which the District was directly responsible;
(11) Include in the report the total tons of recycling for the year that was carried out and for which the District was directly responsible; and
(12) Publish the annual report on an Internet website that is maintained by the District or the Internet websites maintained by the counties that are members of the District.

SEA 131 SECTION 52, Public Law No. 37-2012, Ind. Code 13-21-3-13.5, effective July 1, 2012.

MERCURY EDUCATION BY SOLID WASTE MANAGEMENT DISTRICTS

The Legislature removed IDEM from the role of educating the public on mercury and left that the responsibility of Solid Waste Management Districts. IDEM, however, is tasked with developing and providing Solid Waste Management Districts with a curriculum model that includes educational core principles concerning the reuse, recycling, and collection of mercury. Solid Waste Management Districts are directed to implement educational programs that meet IDEM's minimum standards for a mercury curriculum model.
SEA 131 SECTION 40, Public Law No. 37-2012, Ind. Code 13-20-17.5-6, effective July 1, 2012.

EDUCATION ROLE OF SOLID WASTE MANAGEMENT DISTRICTS

IDEM has also been tasked with providing Solid Waste Management Districts a curriculum model for educating the public on the core principles concerning the reuse, recycling, collection, and proper disposal of solid waste. Districts must implement educational programs that meet the minimum standards established by IDEM in the curriculum model.
SEA 131 SECTIONS 49 and 51, Public Law No. 37-2012, Ind. Code 13-20.5-7-10, and Ind. Code 13-21-3-12, effective July 1, 2012.

FIVE YEAR REVIEW OF SOLID WASTE MANAGEMENT DISTRICTS.

Solid Waste Management Districts were first created in 1990. With the changes that have occurred over time, the Legislature decided this year to require, starting in 2015 and every fifth year thereafter, that the Legislative Council create an interim study committee or a statutory study committee to assess Solid Waste Management Districts and to determine whether any changes should be made to the statutes governing Solid Waste Management Districts. The interim study committee or statutory study committee that assesses Solid Waste Management Districts must issue a final report in an electronic format with the committee's findings and recommendations no later than November 1 of the year in which an assessment is conducted.
SEA 131 SECTION 50, Public Law No. 37-2012, Ind. Code 13-21-1-4, effective July 1, 2012.

COMMISSION ON STATE TAX AND FINANCING POLICY INTERIM STUDY COMMITTEE

The Legislature directed the Commission on State Tax and Financing Policy to study issues related to the financing of Solid Waste Management Districts during the interim in 2012 between sessions of the General Assembly. Specifically, they are to study property

tax levies, District final disposal fees, District solid waste management fees and any other funding sources that are available to and used by Districts.
SEA 131 SECTION 60, Public Law No. 37-2012, effective March 14, 2012.

ENVIRONMENTAL QUALITY SERVICE COUNCIL INTERIM STUDY COMMITTEE

The Environmental Quality Service Council ("EQSC") was also tasked with a Solid Waste Management District study to be done during the interim 2012 session of the General Assembly. The EQSC is to study issues concerning the powers of Solid Waste Management Districts to establish and issue permits and impose and collect fees that are not specifically authorized by statute.
SEA 131 SECTION 60, Public Law No. 37-2012, effective March 14, 2012.

UNDERGROUND STORAGE TANK PROGRAM

Effective July 1, 2012, IDEM has additional tools to deal with noncompliant underground storage tanks ("USTs") pursuant to federal authority. In 2005, the Energy Policy Act amended the Solid Waste Disposal Act by adding 42 U.S.C. 6991(k). This section prohibits the delivery of regulated substances to USTs identified as ineligible and gave the EPA authority to develop guidelines determining which UST systems are ineligible as well as providing notice to owners, operators, and suppliers regarding these determinations. States that receive funding from the Trust Fund must follow the EPA's procedures and EPA is encouraged to work with states to develop the guidelines. IDEM is authorized to develop rules in conformance with the federal delivery prohibition program. However, beginning on July 1, 2012, through January 1, 2015, IDEM may begin enforcement of the provisions of the delivery prohibition program requirements even before IDEM completes promulgation of its own rules.
SEA 133, SECTIONS 2 and 3, Public Law No. 38-2012; Ind. Code 13-23-1-2(c) (9), effective July 1, 2012.

The new program is exempted from the requirement that a notice of violation must first be issued before an enforcement action is commenced. That same section of Indiana code also imposes a three year limit on the time for the agency to commence an enforcement action after discovery of a violation, which will not apply to this new program. Additionally, the section on AOPA dealing with special proceedings (Ind. Code 4-21.5-4 *et seq.*) will apply to actions under this program, rather than the typical administrative review available under Ind. Code 4-21.5-3 *et seq.*
SEA 133, SECTIONS 1, 3, and 6, Public Law No. 38-2012; Ind. Code 13-14-6-1, Ind. Code 13-23-4-1, effective July 1, 2012.

IDEM's new requirements must include notice to owners or operators when a UST is declared ineligible (this is in conformance with 42 U.S.C. 6991(k)(c)). It is a defense to a violation that the person was not provided with notice. It is also a defense to an emergency order issued under this new program that a person did not receive proper notice.

SEA 133, SECTIONS 2, and 7, Public Law No. 38-2012; Ind. Code 13-23-1-2(c)(9)(A), Ind. Code 13-23-14-4(b), effective July 1, 2012.

The new law allows IDEM to determine when a UST is ineligible to receive delivery, deposit, or acceptance of a regulated substance. The Commissioner may issue a temporary order prohibiting the use of a UST and demanding compliance if:

(1) A UST inspection shows failure to install equipment for corrosion protection, leak detection, overfill protection, or spill prevention;
(2) The owner or operator fails to properly maintain equipment for corrosion protection, leak detection, overfill protection, or spill prevention; or
(3) The owner or operator fails to register a UST or pay annual registration fees.

For the failure to install equipment referenced in (1) above – the temporary order cannot be issued until the commissioner gives written notice. For the failure to operate the equipment referenced in (2) above, the commissioner must give a written warning and allow the owner or operator at least thirty (30) days to bring the UST into compliance before implementing a temporary order. Finally, for failure to register the UST or to pay annual registration fees, the commissioner must give at least thirty (30) days to correct the noncompliance. If the ineligible UST is transferred, the new owner must comply with any orders issued to the previous owner.
SEA 133, SECTION 3, Public Law No. 38-2012; Ind. Code 13-23-1-4, effective July 1, 2012.

The Legislature repealed the section of Indiana's UST statute setting forth the penalties to be paid when UST owners failed to timely pay UST registration fees. (SEA 133, SECTION 5, repealing Ind. Code 13-23-12-7). However, once the Commissioner has entered an order requiring compliance with the fee payment requirements, the owner must comply within the time period set by the order (which must be at least thirty (30) days from the time of the order); otherwise, the Commissioner may seek additional penalties for noncompliance.

Pursuant to Indiana Code 13-23-12-1, owners of USTs are required to pay an annual registration fee. A tank owner's failure to pay UST registration fees could be used to reduce eligibility under the Indiana Excess Liability Trust Fund ("ELTF") in the event of a release from the USTs, yet some UST owners still fail to timely pay registration fees. This year the Legislature added an additional tool to allow the Department of Revenue and IDEM to enforce the obligation to pay these annual fees. A new code section, Indiana Code 13-23-7-10, has been added to the UST law allowing the state to impose a lien on the property of an owner or operator of USTs. The lien can be placed in an amount equal to the past due fees. Before IDEM may place such a lien, it is required to provide notice to the owner of record. If it cannot identify the owner then notice is to be provided to the tenant, operator, or other person in charge of the property. IDEM is required to record this lien with the county recorder where the property is located.
SEA 168, SECTION 1, Public Law No. 19-2012; Ind. Code 13-23-7-10, effective July 1, 2012.

Since Indiana Code 13-23-12-1 imposes the requirement to pay fees upon the owner of the tank (which may be different than the owner of the property on which the tanks are located), any party with an interest in property with USTs should ensure that it is clear which party is receiving the annual notice of fees and that such fees are being paid timely.

IDEM's regulations have allowed a potential UST buyer to bring UST registration fees current and to protect ELTF eligibility by notifying IDEM in advance of their intent to acquire the USTs and to reinstate eligibility and by paying past due fees, interest, and penalties. *See* 328 IAC 1-3-3(a)(7) and (d). This year the Legislature codified this provision – allowing a property transferee to restore eligibility to receive payment from the ELTF as long as the property transaction is a bona fide, good faith transaction that is negotiated at arm's length between parties with separate ownership. The new owner must pay all past due fees and interest for each tank within thirty (30) days of receiving notice of the past due amounts. This section only applies when IDEM has failed to file a lien on the property. As part of property transfers, potential buyers should complete due diligence regarding the existence of liens for unpaid tank fees.

328 IAC 1-3-3(d)(1) requires that the intent to acquire UST and reinstate eligibility be submitted to IDEM sixty (60) days before the transfer, and IDEM is to provide notice of the past due fees, penalties, and interest within forty-five (45) days of receiving the form, which, if the form was timely filed, the notice from IDEM will happen before the property transfer. The ELTF regulation requires payment within thirty (30) days after the transfer of the property or tanks. 328 IAC 1-3-3(d)(2). This new law, however, requires payment within thirty (30) days of IDEM's notice of the past due amount, which deadline could run before the regulation-imposed thirty (30) days after property transfer. Until it is clear how the existing regulation and new law will work together, property buyers should make sure to pay the past due fees within thirty (30) days of receiving notice to avoid any confusion or possible complications with ELTF eligibility.
SEA 168, SECTION 2, Public Law No. 19-2012; Ind. Code 13-23-8-4, effective July 1, 2012.

WATER POLLUTION PROGRAM

REPEAL OF SEPTAGE MANAGEMENT VEHICLE IDENTIFICATION NUMBER REQUIREMENT

Persons may not transport, treat, store, or dispose of septage without a permit. Under prior law, a person could not operate a vehicle for transportation of septage without a septage management vehicle identification number being issued. This year the requirement to have a vehicle identification number was repealed.
SEA 131 SECTIONS 20, 21, 22, 23, and 24, Public Law No. 37-2012, Ind. Code 13-18-12-2, Ind. Code 13-18-12-4, Ind. Code 13-18-12-5, Ind. Code 13-18-12-6.5 and Ind. Code 13-18-12-7, effective July 1, 2012.

PENALTY FOR FAILURE TO CONNECT TO SEWER

The powers of Regional Sewage Districts were amended this year to establish what constitutes a "reasonable" penalty for failure to comply with an order to connect to a sewer. Prior law allowed a District to establish by ordinance a reasonable penalty for failure to comply with an order to connect to a sewer. Starting July 1, 2012, the Legislature has amended the law to provide that a reasonable penalty may not exceed $100 per day.
HEA 1117, SECTION 9, Public Law No. 97-2012, Ind. Code 13-26-5-2, effective July 1, 2012.

FORECLOSURE FOR UNSATISFIED LIEN

Rate and fees, or charges made, assessed, or established by Regional Water, Sewage or Solid Waste Districts are a lien. The law was amended this year to provide that such a lien may not be the basis of a foreclosure, if that lien is the only lien on the property.
HEA 1117 SECTION 15, Public Law No. 97-2012, Ind. Code 13-26-14-4, effective July 1, 2012.

FLAT CHARGE FOR USE OF SEWAGE WORKS

Starting July 1, 2012, if a Board of Trustees of a Regional Sewage District proposes to use a flat charge as a factor to determine a rate or charge for use of sewage works, the Board of Trustees will be required to prepare a concise written statement that summarizes the calculations and processes used to determine the amount of the flat charge. In addition, the Board of Trustees must provide a copy of that written statement to each person who is required to pay the flat charge and to any other person who requests a paper copy of the summary.
HEA 1117 SECTION 12, Public Law No. 97-2012, Ind. Code 13-26-11-2, effective July 1, 2012.

Current law allowed a campground, which the Board of Trustees billed at a flat rate, the option of installing a meter to measure actual amount of sewage discharge. Starting July 1, 2012, youth camps are also provided this option of installing a meter, at the camp's own expense, to determine sewage charges. A youth camp is defined as an area that is established, operated, or maintained to provide more than seventy-two continuous hours of outdoor group living experience away from established residences for the educational, recreational, sectarian, or health purposes for at least ten children who are less than eighteen years of age and not accompanied by a parent or guardian. If a youth camp does not elect to install a meter, then each bed may not be charged more than 1/8 of a residential equivalent unit.
HEA 1117 SECTIONS 3 and 12, Public Law No. 97-2012, Ind. Code 13-11-2-270, and Ind. Code 13-26-11-2, effective July 1, 2012.

RIGHT TO CHALLENGE INITIAL RATE OR CHARGE FOR REGIONAL WATER, SEWAGE OR SOLID WASTE DISTRICT SERVICES

This year a new right was added to the law allowing a challenge to the Board of Trustees' initial ordinance passed to establish the rates or charges for water, sewer, or solid waste disposal or recovery services. Before this change, the law allowed a challenge to a change or readjustment of rates and charges. Now the ordinance establishing the initial charge can also be challenged. Starting July 1, 2012, the lesser of fifty ratepayers or 10% of the ratepayers of the regional district may file a written petition objecting to the initial rates and charges of the regional district. The written petition must contain the names and addresses of each petitioner, include the grounds for the ratepayers' objection and the petition must be filed with a member of the Regional District Authority not later than thirty days after the Board of Trustees of the Regional District adopts the ordinance. The Regional District Authority does not have any Board of Trustee members and consists of an odd-numbered group ranging from three to eleven persons. The District Authority must set the appeal for a public hearing not less than ten business days nor more than twenty business days after the appeal is filed. The District Authority must send notice by certified mail to the first petitioner and publish the notice of hearing in a newspaper of general circulation in the counties in the District. The District Authority is to hear the evidence presented and then decide whether the Board of Trustees followed the procedures required by law and whether the rates and charges are just and equitable rates and charges. The District Authority, by majority vote, may sustain the ordinance establishing the rates and charges, or sustain the petition, or make any other ruling appropriate in the matter. The Order of the District Authority may be appealed to the Circuit Court of the County in which the District is located. The Court is to try the appeal without a jury and determine if proper procedures were followed and if the rates and charges are just and equitable. An appeal of the circuit court's decision can be made in the same manner as other civil cases.
HEA 1117 SECTION 13, Public Law No. 97-2012, Ind. Code 13-26-11-13, effective July 1, 2012.

LIMITATIONS ON DISTRICT POWER OF EMINENT DOMAIN

The Legislature also amended the power of Regional Districts to exercise the power of eminent domain. Previously Regional Districts had the power of eminent domain. Starting July 1, 2012, that power is limited when a District is siting sewer or water utility infrastructure. Now the power of eminent domain may only be used after the Regional Water or Sewage District first attempts to use existing public rights-of-way or easements for siting sewer or water utility infrastructure.
HEA 1117 SECTION 9, Public Law No. 97-2012, Ind. Code 13-26-5-2, effective July 1, 2012.

PUBLIC MEETING TO BE HELD BEFORE PETITIONING FOR CREATION OF A REGIONAL WATER, SEWAGE OR SOLID WASTE DISTRICT

Under current law, any area may be established as a Regional Water, Sewage, or Solid Waste District for one or more of the following purposes: (1) to provide a water supply for domestic, industrial, and public use to users inside and outside the District; (2) to provide for the collection, treatment, and disposal of sewage inside and outside the District; or (3) to provide for the collection, treatment, and disposal of solid waste and refuse inside and outside the District. The law was changed this year to give more opportunity for owners of property proposed to be served by the district to get involved before the District is formed. Under current law, any representative of an entity who received approval of the fiscal body could file a petition with IDEM. Now, before that petition can be filed with IDEM, the representative must provide notice to all owners of property to be served by the proposed District and hold a public meeting to discuss and receive comments on the proposed District. Thirty days before the public meeting the representative must publish notice one time each week for three consecutive weeks in at least two newspapers of general circulation in each of the counties that are in whole or part proposed to be included in the District. If there is only one newspaper of general circulation in a county, a single publication each week for three consecutive weeks will satisfy the law. The representative must also either give US mail postage prepaid notice to each freeholder within the proposed District or broadcast at least three public services announcements three times each day for fourteen days on at least two radio stations operating in each county, to be in the proposed District, beginning fourteen days before the date of the public meeting. The representative that seeks to file a petition to establish a District must then conduct the public meeting to discuss and receive comments on the proposed District. The Board of Trustees must allow any person an opportunity to be heard in the presence of others who are present to testify. The Board may limit testimony at a public meeting to a reasonable time stated at the opening of the meeting. The Representative may not file a petition with IDEM to establish a District more than 180 or less than 60 days after giving the newspaper and US mail or radio notice or less than 30 days after the public meeting is held.

When the petition is filed, the petition must now also include the median income for households in the proposed District, based on the most recent federal decennial census and must include a summary of alternatives to creating a District.
HEA 1117 SECTIONS 4, 5 and 8, Public Law No. 97-2012, Ind. Code 13-26-2-2.5, Ind. Code 13-26-2-3, and Ind. Code 13-26-4-8, effective July 1, 2012.

LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES

GENERAL

ADVISORY COUNCILS

Effective July 1, 2012, the number of members of the Department of Natural Resources Bureau of Water and Resource Regulation and Bureau of Lands and Cultural Resources Advisory Councils has been reduced from twelve members to seven members. In addition, the law was amended to no longer require those Advisory Councils to meet every two months. Instead, now they are required to meet once in January and are to hold other meetings as called by the Chairperson.
HEA 1002 SECTIONS 168, 169, 170 and 171, Public Law No. 133-2012, Ind. Code 14-9-6-2, Ind. Code 14-9-6-3, Ind. Code 14-9-6-6 and Ind. Code 14-9-6-7, effective July 1, 2012.

DEPOSIT OF FUNDS

Current law requires an office of the Department of Natural Resource ("DNR") to deposit funds on hand the business day following receipt of the funds. An exception is made if the funds do not exceed $100. That amount not requiring deposit the following day was raised this year to $500.
HEA 1279 SECTION 4, Public Law No. 151-2012, Ind. Code 5-13-6-1, effective July 1, 2012.

REPEAL OF RURAL COMMUNITY WATER SUPPLY SYSTEM LOAN PROGRAM

The law that had allowed entities with a population of not more than 1,250 to borrow up to $150,000 from DNR's Flood Control Revolving Fund for construction, enlargement, maintenance, or operation of a water system has been repealed, effective July 1, 2012.
HEA 1002 SECTIONS 162, 163, 164, 172, and 175, Public Law No l33-2012, Ind. Code 14-3-2-48, Ind. Code 14-25-11, Ind. Code 14-8-2-107, and Ind. Code 14-10-2-5, effective July 1, 2012.

REPEAL OF COURTHOUSE PRESERVATION ADVISORY COMMISSION

The 2008 law creating the Courthouse Preservation Advisory Council was repealed, effective July 1, 2012. That Council was to have done the following: (1) assessed potential courthouse rehabilitation projects; (2) provided technical assistance for courthouse rehabilitation projects: (3) reviewed and provided recommendations on architectural and engineering plans for courthouse related projects; (4) provided information on funding sources for courthouse preservation projects and assessed the importance of preserving historic courthouses to the history and identity of county seats; (5) assessed the importance of preserving historic courthouses to economic revitalization

of county seats; (6) investigated the need for rehabilitation, restoration, and maintenance of historical courthouses; and (7) studied the condition of historic courthouses and needs of county officials in planning for the successful restoration, rehabilitation, and maintenance of historic courthouses.
HEA 1002 SECTION 174, Public Law No. 133-2012, Ind. Code 14-21-4, effective July 1, 2012.

REPEAL OF WATER SHORTAGE AND WATER RESOURCES TASK FORCES

In addition, the Water Shortage Task Force was repealed this year, effective July 1, 2012. That Task Force had been created in 2009 for the purpose of implementing the 1994 water shortage plan when necessary, recommending a state policy on desired baseline flow maintenance, and promoting water conservation. The Water Resources Task Force, also created in 2008 to study and make recommendations concerning water availability as an economic and environmental necessary, has been repealed effective July 1, 2012.

These laws have been replaced with a new plan to have the Indiana Utility Regulatory Commission get involved in studying water shortages and helping the state put in place a plan.
HEA 1002 SECTIONS 176, 177, and 178, Public Law No. 133-2012, Ind. Code 14-25-14, Ind. Code 14-25-16 and Ind. Code 14-25-15-9, effective July 1, 2012 and SEA 132 SECTIONS 1 and 3, Public Law No. 87-2012, Ind. Code 8-1-30.5, effective March 16, 2012.

STATE LAND OFFICE

The State Land Office has been moved from the Department of Administration to the Department of Natural Resources, effective July 1, 2012. The Department of Administration had five divisions and will now continue with just four divisions, those being general services, property management, information services and public works. The same duties for the State Land Office that existed when it was part of the Department of Administration now exist as part of the Department of Natural Resources. The rules adopted by the Indiana Department of Administration before July 1, 2012, will now be considered to be rules of the Natural Resources Commission and all powers, duties, assets, liabilities, records, property appropriations, and employees of the State Land Office within the Department of Administration are transferred to the State Land Office within the Department of Natural Resources.
HEA 1279 SECTIONS 1,2, 8 and 9, Public Law No. 151-2012, Ind. Code 4-13-1-3, Ind. Code 4-20.5-1-9, Ind. Code 14-9-4-1 and Ind. Code 14-18-1.5, effective July 1, 2012.

CONSERVANCY DISTRICTS

CONSERVANCY DISTRICT BOARD COMPENSATION

Starting July 1, 2012, the law for Conservancy Districts is changed for how the District Board of Directors may be compensated. Conservancy Districts are established for (1) flood prevention and control; (2) improving drainage; (3) providing for irrigation; (4) providing water supply for domestic, industrial, and public use; (5) providing for the collection, treatment, and disposal of sewage and other liquid wastes; (6) developing forests, wildlife areas, parks, and recreational facilities; (7) preventing the loss of topsoil from injurious water erosion; (8) storage of water for augmentation of stream flow; and (9) the operation, maintenance, and improvement of water-based recreational activities,. Under prior law, the Directors were entitled to be compensated not more than $100 per day for not more than two regular or specially called meetings per month and not more than $50 per day for up to five days per month devoted to the work of the District, as ordered by a court of law. Under this year's law, the Directors may now receive an increase in the initial court ordered compensation if approved by a majority vote of the Board of Directors and authorized by the Court. The increase may be a reasonable amount, but that reasonable amount cannot be based upon increases in any tax, assessment, rates, or charges of the District.
SEA 22, Public Law No. 113-2012, Ind. Code 14-33-5-16, effective July 1, 2012

CONSERVANCY DISTRICT POWERS

Starting July 1, 2012, Conservancy Districts have a new power to contract with or enter into agreements with not just a person, the federal government, and the state government, but also with local governmental agencies. In addition, these contracts now are not just for construction, maintenance, and operation, but also for security of the Conservancy District.
SEA 378, PL 52-2012, Ind. Code 14-33-6-13, effective July 1, 2012.

ENTOMOLOGY

CERTIFICATION THAT NURSERY IS FREE FROM PESTS AND PATHOGENS

The Division of Entomology must annually inspect each nursery that imports or exports nursery stock. When the inspection is completed, the Division is to issue a certificate that discloses that the nursery stock is apparently free from pests and pathogens. Under prior law, that certificate expired September 30 following the date of the inspection. The law was amended this year to extend that date to December 31.
HEA 1279 SECTION 29, Public Law No. 151-2012, Ind. Code 14-24-4-3, effective July 1, 2012.

FISH & WILDLIFE

PROHIBITED USE OF SPOTLIGHTS, SILENCERS IN TAKING OR ATTEMPTING TO TAKE WILDLIFE

A new exception to the DNR laws that prohibit use of a spotlight or silencer in taking or attempting to take or hunting wildlife was added to the law this year. Current law provides that it does not apply to employees of DNR or an employee of a federal wildlife management agency. This year a new exception was added for individuals who are acting in accordance with the conditions of a license and who have the express written consent of the Director of DNR for the person's action.
HEA 1279 SECTIONS 10 and 11, Public Law No. 151-2012, Ind. Code 14-22-6-7 and Ind. Code 14-22-6-11, effective July 1, 2012.

SEASON FOR TAKING RACCOONS

The law that closed the season for nonresidents of Indiana to take raccoons has been repealed.
HEA 1279 SECTION 18, Public Law No. 151-2012, Ind. Code 14-22-11-2, effective July 1, 2012.

TAKING OF FISH FROM WATERS OF THE STATE

This year the ban on use of a crossbow for taking of fish from waters containing state owned fish, waters of the state, or boundary waters of the state has been removed from the law. That means now individuals may not take fish by means of a weir, an electric current, dynamite or other explosive, a net, a seine, a trap or a firearm or hands alone. However, even those practices may be used if a special permit is issued by the Director of DNR.
HEA 1279 SECTION 15, Public Law No. 151-2012, Ind. Code 14-22-9-1, effective July 1, 2012.

TEN YEAR HUNTING FISHING LICENSES

A new section has been added to the law that allows individuals each decade to obtain both a resident license to fish and a resident license to hunt that is valid for ten years. A reduced fee of $27.50 is charged for that decade-long license.
HEA 1279 SECTION 20, Public Law No. 151-2012, Ind. Code 14-22-12-1.5, effective July 1, 2012.

NONRESIDENT FISHING LICENSE FOR OHIO RIVER

The law allowing DNR to issue a ten-year commercial fishing license for $125 for the Ohio River has been extended to nonresidents of Indiana.
HEA 1279 SECTION 21, Public Law No. 151-2012, Ind. Code 14-22-13-2, effective July 1, 2012.

NONRESIDENT ROE HARVESTING LICENSE

The law allowing residents to harvest, possess, and sell roe from shovelnose sturgeon, paddlefish, and bowfin has been extended this year to allow licenses to nonresidents. However, DNR is to give priority to issuing licenses to individuals who are residents of Indiana.
HEA 1279 SECTION 21, Public Law No. 151-2012, Ind. Code 14-22-13-2.5, effective July 1, 2012.

LICENSE FOR LIVE MINNOW CRAYFISH FOR BAIT

The law requiring a license for live minnow or crayfish bait has been modified to now only require a license for selling or bartering live minnows or crayfish for bait. Prior law had also required a license to take or catch live minnows or crayfish for bait.
HEA 1279 SECTION 23, Public Law No. 151-2012, Ind. Code 14-22-16-1, effective July 1, 2012.

FREE SPORT FISHING DAYS

The law that had allowed the Director of DNR, with the permission of the Natural Resources Commission, to designate not more than two days each year as free sport fishing days, has been changed this year to allow up to four days of free sport fishing.
HEA 1279 SECTION 24, Public Law No. 151-2012, Ind. Code 14-22-18-1, effective July 1, 2012.

LICENSE FOR SALE OF NONMIGRATORY GAME BIRDS, GAME MAMMALS OR FURBEARING MAMMALS

The law that required a license for sale of nonmigratory game birds, game mammals, furbearing mammals for breeding purposes, or for release and sale of nonmigratory game birds for food purposes, has been modified this year to allow—under that same license—the sale of game mammals or furbearing mammals for food purposes. The law has also been amended to now only require an individual who acquires a living furbearing mammal, legally in open season or from a licensed game breeder, to apply for a breeder's license within five days of acquiring the animal. If the license is not obtained, the person must release the furbearing mammal. Prior law applied that same requirement to obtain a breeder's license to individuals who acquired a game bird or game animal.
HEA 1279 SECTION 25, Public Law No. 151-2012, Ind. Code 14-22-20-2, effective July 1, 2012.

BREEDING, RAISING, PRODUCING, AND MARKETING OF FURBEARING MAMMALS

The law that classified the breeding, raising, producing in captivity, and marketing of martens, nutria, mink, chinchilla, domesticated rabbits (other than cottontail), and swamptail rabbits as an agricultural pursuit, subject to registering with DNR and making

annual reports concerning the number of animals held and sold, has been modified this year. No longer are nutria (large South American rodent like animals) or swamp rabbits included within this law.
HEA 1279 SECTION 26, Public Law No. 151-2012, Ind. Code 14-22-20-4, effective July 1, 2012.

SPECIAL LICENSE FOR NONRESIDENTS TO HUNT ON SHOOTING PRESERVES

The law that required nonresidents of Indiana to possess a special license to shoot on licensed shooting preserves has been repealed. Now both residents and nonresidents of Indiana may take game birds and exotic mammals on a shooting preserve if the person has a regular Indiana hunting license.
HEA 1279 SECTION 27, Public Law No. 151-2012, Ind. Code 14-22-31-8, effective July 1, 2012.

OFFICIAL RIFLE OF INDIANA

The Legislature designed the Grouseland Rifle as the official rifle of the State of Indiana this year. The Grouseland Rifle was made by Colonel John Small of Vincennes, Indiana, between 1803 and 1812. Any duplication or reproduction or sale of any duplication or reproduction of the Grouseland Rife must be authorized by the Grouseland Foundation of Vincennes, Indiana.
HEA 1283 SECTION 1, Public Law No. 84-2012, Ind. Code 1-2-13, effective July 1, 2012.

FORESTRY

INSPECTION OF LAND CLASSIFIED AS NATIVE FOREST LAND, FOREST PLANTATION OR WILDLANDS

The law requiring the state forester or the state forester's deputy to inspect each parcel of land classified as native forest land, a forest plantation, or wildlands at least once every five years, was amended this year. That mandatory inspection must now occur once every seven years.
HEA 1279 SECTION 5, Public Law No. 151-2012, Ind. Code 6-1.1-6-19, effective July 1, 2012.

LAKES AND RESERVOIRS

LAKE AND RIVER ENHANCEMENT FUND USAGE

Current law allows half of the Lake and River Enhancement Fund to be used for lake or river projects to remove sediment, control exotic or invasive plants or animals, or remove logjams or obstructions. Current law provides that the fund may not be used for projects

related to a manmade ditch or waterway. That law was changed this year to provide that the fund may not be used for projects on any ditch, whether manmade or not.
HEA 1279 SECTION 5, Public Law No. 151-2012, Ind. Code 6-6-11-12.5, effective July 1, 2012.

OIL & GAS

OIL AND GAS ENVIRONMENTAL FUND

The sources of money for the Oil and Gas Environmental Fund, which is used to supplement the cost to abandon a well that has had a permit revoked, to cover the costs of remedial plugging and repairing of wells, to pay the expenses of remedial action to mitigate environmental damage and protect public safety against harm caused by a regulated well, and for pipeline safety, now will also include money from bonds that are forfeited. Previously, the source of funds was just the annual fees for oil and gas wells, accrued interest and other investment earnings of the fund, civil penalties collected, and gifts, grants, donations, or appropriations from any source. Whenever a permit is revoked, DNR is to forfeit the bond that must be posted in the amount of $2,500 per well or a blanket bond of $30,000 and all of that forfeited bond money will be deposited in the Oil and Gas Environmental Fund.
HEA 1279 SECTION 31, Public Law No. 151, Ind. Code 14-37-10-3, effective July 1, 2012.

HYDRAULIC FRACTURING REPORTS

The Natural Resources Commission ("NRC") is required to adopt rules that will require reporting and disclosure of information regarding hydraulic fracturing treatment. Hydraulic fracturing is defined to include the process of pumping fluids into a closed wellbore with sufficient downhole pressure to crack or fracture the formation, allowing the injection of a proppant into the fractures, creating a high-permeability plane thorough which fluids can flow. Base fluid is a fluid into which additives are mixed to form the hydraulic fracturing fluid that transports proppants into a geologic formation. In the continuing controversy over hydraulic fracturing, Indiana, like many other states, is requiring more disclosures. The rules NRC is to propose must require that the owner and operator disclose the following: (1) the volume and source of base fluid used, (2) a description of each additive product used in a hydraulic fracturing treatment, (3) the volume of each additive product used in a hydraulic fracturing treatment, expressed as a maximum percentage of the total fracturing fluid volume, (4) the maximum surface treating pressure and injection treating pressure, and (5) any other information the NRC considers necessary.
HEA 1107, Public Law No. 16-2012, Ind. Code 14-8-2-19.5, Ind. Code 14-8-2-128.4 and Ind. Code 14-37-3-8, effective July 1, 2012.

REGULATION OF WATER RECREATION

MOTOR BOAT REGULATION

Effective July 1, 2012, the criminal penalty provisions currently found at Indiana Code 14-15-8 for operating a motorboat while intoxicated have been removed from DNR's law and added to the criminal law and procedures at Ind. Code 35-46-9. SEA 154 SECTIONS 14 and 21, Public Law No. 40-2012, Ind. Code 14-15-8 and Ind. Code 35-46-9, effective July 1, 2012. Two changes were made to the law when moved. First, the court is no longer required to order a person to not operate a motorboat for at least one year for committing a misdemeanor or two years for committing a felony. Second, a defense is added to prosecution for a controlled substance if the accused person consumed it under a valid prescription or order of a physician or dentist acting in the course of the physician or dentist's professional practice. Conforming changes were made to the laws to reference the correct citation.
SEA 154, Public Law No. 40-2012, Ind. Code 7.2-1-3-13.5, Ind. Code 9-30-5-10, Ind. Code 9-30-6-5.5, Ind. Code 9-30-6-8, Ind. Code 11-13-3-4, Ind. Code 14-8-2-135, Ind. Code 14-8-2-40 Ind. Code 14-8-2-56, Ind. Code 14-8-2-148, Ind. Code 14-8-2-238, Ind. Code 14-8-2-251, Ind. Code 14-8-2-212, Ind. Code 14-15-4-4, Ind. Code 14-15-8, Ind. Code 14-15-11-14, Ind. Code 14-15-11-15, Ind. Code 14-15-11-17, Ind. Code 14-15-12-5, Ind. Code 14-15-13-2, Ind. Code 35-38-2-2.3, Ind. Code 35-46-9, and Ind. Code 35-51-14-1, effective July 1, 2012

WATER RIGHTS & RESOURCES

MEDIATION OF SURFACE WATER USE

The law that had detailed how to mediate a dispute between users of surface water in a watershed has been repealed, and now the mediation is to proceed as all other mediations do under the Administrative Orders and Procedures Act, Ind. Code 4-21.5.3.5
HEA 1279 SECTION 30, Public Law No. 151-2012, Ind. Code 14-25-1-8, effective July 1, 2012.

PROGRAM FOR CONTAINING AND REDUCING INVASIVE ANIMAL SPECIES IN THE WABASH RIVER

The 2011 law requiring DNR to establish and implement a pilot program to contain and reduce invasive animal species in the Wabash River has been turned into a permanent program this year.
HEA 1270 SECTION 16, Public Law No. 151-2012, Ind. Code 14-22-9-11, effective July 1, 2012.

LAWS AFFECTING AGRICULTURE

RIGHT TO FARM ATTORNEY FEES FOR FRIVOLOUS LITIGATION

Indiana farms that are the victims of "nuisance" suits by neighbors who do not like the smell, sounds, or sights associated with farming are generally protected by Indiana's Right to Farm Act. The Right to Farm Act bars nuisance suits against "agricultural operations" that have been in operation for more than one year at the time the alleged "nuisance" begun. Ind. Code 32-30-6.

In spite of the strength of Indiana's Right to Farm Act, nuisance suits against Indiana farmers persist, due to the expansion of small farms combined with the number of non-farmers moving into rural areas. This year the Legislature tried to bolster the Right to Farm Act by giving farmers that successfully defended against "frivolous" lawsuits an award of attorneys' fees. The final bill that was passed and signed into law states: "If a court finds that an agricultural operation that is the subject of a nuisance action was not a nuisance under section 9 of this chapter and that the nuisance action was frivolous," the court may award attorneys' fees. However, in a nod to the opposition to CAFOs, the Legislature added a corollary attorneys' fees provision that arises if the plaintiff prevails and demonstrates that the assertion of the Right to Farm Act defense was "frivolous." Under this new law, a determination that an action was initiated or maintained frivolously may not be based on the mere fact that a party did not prevail. In determining what "reasonable" attorney fees are, the court is to base the calculation on reasonable and customary hourly rates charged in the county in which the action occurred and may include fees for only one attorney, no matter how many attorneys were actually employed by the party.
HEA 1091 SECTION 1, Public Law No. 73-2012, Ind. Code 32-30-6-9.5, effective July 1, 2012.

FARMER MARKET VENDOR EXEMPTION FROM DEPARTMENT OF HEALTH FOOD ESTABLISHMENT STANDARDS

Effective May 31, 2012, the Legislature has expanded the current exemption from food establishment standards for farmer markets and roadside stands. Prior Department of Health law for regulation of food safety exempted an individual vendor's food product that had been made at the vendor's primary residence. Now also excluded from the food establishment requirements are vendor food products that have been grown, or raised by the person on property it owns or leases. The law requires the Department of Health to adopt rules that allow limited sales of home-processed, uninspected poultry at farmer's markets and roadside stands. The law also requires the Legislative Council to establish a study committee to study obstacles to local food production, processing, and distribution and to make recommendations for actions that will encourage farmers and residents to produce, process and distribute locally grown food. A final report is due to the Legislative Council before November 1, 2012, and will include recommended legislation concerning the issue of local food production, processing, and distribution.
HEA 1312, Public Law No. 86-2012, Ind. Code 16-42-5-29, effective May 31, 2012.

STATE CHEMIST PENALTY AUTHORITY FOR AGRICULTURAL AMMONIA LAW

Under the Agricultural Ammonia law, persons may not: (1) install facilities for distribution of ammonia or ammonia solutions without first obtaining written approval of the State Chemist for the location; (2) distribute ammonia or ammonia solutions from a location unless approved by the State Chemist; or (3) distribute, store, transport, or use ammonia or ammonia solutions in violation of the law or the rules. Under the law before this change, a knowing and intentional violation was a class A misdemeanor enforced by the prosecutor. The State Chemist had authority to seek an injunction. This year the Legislature added civil penalty authority for the State Chemist to enforce the law and rules. Starting July 1, 2012, if a person violates the law or rules, the State Chemist may warn, issue a citation to, or impose a civil penalty on the person. The State Chemist may also deny, suspend, revoke, or amend the person's license, certificate, registration, permit, or application under the law. The State Chemist may adopt by rule a schedule of civil penalties to be imposed. Those penalties are to be recommended by the Indiana Fertilizer Advisory Board.

In addition, the State Chemist has been given the power to request a court to issue subpoenas to compel the attendance of witnesses or the production of books, documents, and records as part of an authorized investigation or hearing affecting the authority or privilege granted by a license, certificate, application, registration, or permit issued under the Agricultural Ammonia law.
HEA 1129 SECTIONS 1, 2 and 3, Public Law No. 99-2012, Ind. Code 15-16-1-3.5, Ind. Code 15-16-1-14 and Ind. Code 15-16-1-16, effective July 1, 2012.

STATE CHEMIST SUBPOENA AUTHORITY TO ENFORCE COMMERCIAL FERTILIZER LAW

Under the Commercial Fertilizer law, the State Chemist issues registrations to persons who distribute commercial fertilizer and issues permits for reporting tonnage of commercial fertilizer sold. In addition, commercial fertilizer must have a written statement of net weight, and the law establishes storage requirements for commercial fertilizer. The State Chemist already possessed civil penalty authority like that added this year for the Agricultural Ammonia law. But added to the Commercial Fertilizer law this year was the right of the State Chemist to request a court to issue subpoenas to compel the attendance of witnesses or the production of books, documents, and records as part of an authorized investigation or hearing affecting the authority or privilege granted by a license, certificate, application, registration, or permit issued under the Commercial Fertilizer law.
HEA 1129 SECTION 4, Public Law No. 99-2012, Ind. Code 15-16-2-38, effective July 1, 2012.

ACTIVITY INCLUDED IN THE DEFINITION OF PRODUCE UNDER THE FERTILIZER LAW

Effective July 1, 2012, the Legislature has redefined what is meant by "produce" under the fertilizer law, expanding the activities that are prohibited under the law. Under the fertilizer law, a person may not produce within Indiana (1) any pesticide product that has not been registered under the law; (2) any pesticide product if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration; (3) any pesticide product if the composition of the product differs from the composition as represented in connection with its registration; (4) any pesticide (except a bulk pesticide or a pesticide in a container designed and constructed to accommodate the return and refill of the container) unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to that container, and to any outside container or wrapper of the retail package through which the required information on the immediate container cannot be clearly read, the required label; (5) any pesticide product that is adulterated or misbranded; (6) any pesticide in containers violating the rules; (7) a highly volatile herbicide except on written permission by the State Chemist; or (8) any bulk pesticide unless it is accompanied in all transfers of custody or ownership by or held in storage vessels to which is affixed a proper label. Produce previously included manufacturing, preparing, compounding, processing, or changing the container of a pesticide product or an active ingredient. With the changes this year to the definition of produce, it also includes formulating a pesticide product or an active ingredient that is used in producing a pesticide product and the packaging, repackaging, labeling, relabeling, or otherwise changing the container of a pesticide product.
HEA 1129 SECTION 5, Public Law No. 99-2012, Ind. Code 15-16-5-35, effective July 1, 2012.

INDIANA PESTICIDE REVIEW BOARD DUTIES CHANGED

The Legislature made changes to the duties of the Pesticide Review Board. Under prior law, the Board was required to collect, analyze, and interpret information on matters related to use of pesticides. The law changed July 1, 2012, to now make it discretionary instead of mandatory for the Board to undertake those tasks and adds to the tasks collecting, analyzing, and interpreting information related to the "registration" of pesticides, not just the "use" of pesticides.
HEA 1129 SECTION 7, Public Law No. 99-2012, Ind. Code 15-16-4-48, effective July 1, 2012.

INDIANA PESTICIDE REVIEW BOARD RULEMAKING AUTHORITY EXPANDED

In addition, the Pesticide Review Board's rulemaking authority was expanded in three ways. First, the Board is allowed to adopt rules to provide for safe production of pesticide products. Before, the Board's rules were to deal with safe handling, transportation, storage, display, distribution, and disposal – but not production.

Second, the Pesticide Review Board may now adopt rules to determine the time and conditions of the sale, distribution, or use of all pesticide products. Previous law only dealt with the time and conditions of the sale, distribution, or use of pesticides designated as "restricted use" pesticides and pesticides "for use by prescription only".

Finally, the Pesticide Review Board rules may now allow the State Chemist to require all persons issued permits, certificates, licenses, or registration to maintain records of all pesticide products, not just records related to "restricted use" pesticides and pesticides "for use by prescription only".
HEA 1120 SECTION 8, Public Law No. 9902012, Ind. Code 15-16-4-59, effective July 1, 2012.

STATE CHEMIST DUTIES EXPANDED

Starting July 1, 2012, the State Chemist or his agent may examine and copy records relating to the production, use, transportation, and sale of pesticide products subject to rules adopted under the Federal Insecticide, Fungicide, and Rodenticide Act. Under prior law, the State Chemist was limited to examining and copying records of pesticide products subject to Indiana's law and rules.
HEA 1120 SECTION 9, Public Law No. 99-2012, Ind. Code 15-16-4-55, effective July 1, 2012.

PESTICIDE LAW EXPANDED

Starting July 1, 2012, it constitutes a violation of Indiana's pesticide law to produce, distribute, display, sell or offer for sale within Indiana or deliver for transportation or transport in intrastate commerce or between points within Indiana through any point outside Indiana any pesticide that violates the Federal Insecticide, Fungicide, and Rodenticide Act or any regulations adopted in Indiana.
HEA 1129 SECTION 10, Public Law No. 99-2012, Ind. Code 15-16-4-57, effective July 1, 2012.

It also will now be a violation of Indiana law for a person to neglect, or after notice, refuse to comply with the Pesticide law and the rules or a lawful order of the State Chemist of Pesticide Review Board.
HEA 1129 SECTION 11, Public Law No. 99-2012, Ind. Code 15-16-4-59, effective July 1, 2012.

It will also be a violation of Indiana law to produce pesticide products in a manner so as to endanger humans, the environmental, food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticide products. Under current law it was already a violation of law for a person to handle, transport, store, display, or distribute pesticide products causing those impacts. Now it is also a violation of the law to produce pesticides that will do that.
HEA 1129 SECTION 13, Public Law No. 99-2012, Ind. Code 15-16-4-67, effective July 1, 2012.

Under current law, it was unlawful for a person to (1) transport, (2) store, or (3) dispose of any pesticide or pesticide container in a manner that causes injury to humans, beneficial vegetation, crops, livestock, wildlife, or beneficial insects or that pollutes any waterway in a way harmful to wildlife. Starting July 1, 2012, it is also unlawful to (1) produce or (2) handle any pesticide product in a manner that causes that type of injury. In addition, current law gives the Pesticide Review Board to right to adopt rules governing the storage and disposal of pesticides or pesticide containers. Starting July 1, 2012, the Pesticide Review Board will have the right to also adopt rules governing the production, transportation, and handling of all pesticide products.
HEA 1129 SECTION 17, Public Law No. 99-2012, Ind. Code 15-16-5-64, effective July 1, 2012.

The law requiring persons to register in order to act as a pesticide consultant has been repealed.
HEA 1129 SECTION 14 and 16, Public Law No. 99-2012, Ind. Code 15-16-5-42 and Ind. Code 15-16-5-53, effective July 1, 2012.

COMMERCIAL FEED LAW

ADULTERATED COMMERCIAL FEED

Indiana's commercial feed law, which applies to feed for animals and pets, was amended this year to add six additional reasons for considering a commercial feed adulterated and for which a Class A Infraction applies when a person knowingly engages in the manufacture or distribution of it. Those six additional reasons are: (1) it consists in whole or in part of any filthy, putrid, or decomposed substance or it is otherwise unfit for feed; (2) it has been prepared, packed, or held under unsanitary conditions where it may become contaminated with filth, or where it may have been or becomes injurious to health; (3) it is in whole or part the product of a diseased animal or of an animal that has died by means other than slaughter; (4) it is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act; (5) its container is composed of any poison or deleterious substance that may render the contents injurious to health; or (6) it has been intentionally subjected to radiation that did not conform to the standards of the Federal Food, Drug, and Cosmetic Act.
HEA 1129 SECTION 36, Public Law No. 99-2012, Ind. Code 15-19-7-29, effective July 1, 2012.

RULES FOR SPECIALTY PET FOOD

The law has been amended to give the State Chemist the right to adopt rules for specialty pet food – specialty pets being defined as a domesticated animal normally maintained in a cage or tank, including a gerbil, hamster, bird, fish, snake, and turtle, which is in addition to the current authority to adopt rules for commercial feed and pet foods.
HEA 1129 SECTIONS 30 and 39; Public Law No. 99-2012; Ind. Code 15-19-7-22 and Ind. Code 15-19-7-34, effective July 1, 2012.

CRIMINAL PENALTIES TOUGHENED

The commercial feed law was amended this year to change the criminal penalty from a Class C Infraction (maximum $500 penalty) to a Class A Infraction (maximum $10,000 penalty) and it created two new types of "knowing conduct" that constitute an infraction. One is the distribution of raw milk for use as a commercial feed for any species if the raw milk is not prominently labeled "Not for Human Consumption". The other is distributing any animal feed that is stated, promoted, or advertised by the person to be suitable for human food unless the feed meets all federal, state, and local health laws and labeling requirements for human consumption.
HEA 1129 SECTION 42, Public Law No. 99-2012, Ind. Code 15-19-7-40, effective July 1, 2012.

STUDY OF UNPASTEURIZED MILK SALES

The Legislature also required the Indiana State Board of Animal Health to conduct a study of the issue of farmers selling unpasteurized milk to consumers. That law took effect on March 16, 2012, with the study to be concluded before November 1, 2012. The Board of Animal Health is to prepare a report of the study's results by December 1, 2012, and present the report to the Governor and the Legislative Council and make copies available to the public.
HEA 1129 SECTION 43, Public Law No. 99-2012, Non Code Amendment effective March 19, 2012.

LAWS AFFECTING ADMINISTRATIVE ADJUDICATION

STUDY CREATION OF CENTRALIZED DEPARTMENT OF ADMINISTRATIVE LAW JUDGES

Once again the Legislature is urging the Legislative Council to study the topic of creating a centralized department of administrative law judges ("ALJs") to be located within the Office of the Attorney General. This noncode section took effect on March 15, 2012. If the study is undertaken, the Legislature directs the Legislative Council to consider the experience of Texas and other states that have implemented the Texas model. In addition, the study should include a study of the experience of other states that have similar models, the fiscal impact of a centralized department of ALJs, the practicality and logistics of a centralized department of ALJs, and any other related issues. If the study is undertaken, the Legislature directs a final report of findings and recommendations and recommended legislation to be issued no later than November 1, 2012.
HEA 1273, noncode amendment, effective March 15, 2012.

LAWS AFFECTING ADMINISTRATIVE RULEMAKING

COST BENEFIT ANALYSIS OF RULES

A new law took effect on July 1, 2012, requiring the Office of Management and Budget ("OMB") to perform a cost benefit analysis of the rule's effect on Indiana businesses for rules three years following the date the rule took effect. This new requirement applies only to a rule that was adopted after December 31, 2011. It does not apply to any rule for which the OMB has not performed a cost benefit analysis. It also does not apply to any rule that is an incorporation by reference of a federal law, regulation, or rule that has no substantive effect on the intended scope of the federal law or rule, nor to a rule that is a technical amendment with no substantive effect on the existing Indiana rule, so long as the agency passing the rule provides information and the OMB finds that the rule qualifies for the exclusion.

In 2005 a new law passed creating the OMB and requiring the OMB to perform a cost benefit analysis of each proposed rule. That analysis is to be submitted to the Governor and the Administrate Rules Oversight Committee. Under prior law since 1985, the rulemaking statute had required the Small Business Ombudsman to review a proposed rule that imposed requirements or costs on small businesses which the agency determined would have a total impact greater than $500,000 dollars on all persons regulated. The Small Business Ombudsman was supposed to suggest alternatives to reduce any regulatory burden of the proposed rule on small businesses or other businesses. The analysis performed by the OMB replaces any previously performed cost benefit analysis done under Indiana Code 4-22-2 by the Small Business Ombudsman, if the impact is at least $500,000.

Under this new law for determining the impact of rules three years after the rules are in effect, the OMB is to provide the Governor and the Administrative Rules Oversight Committee, not later than 6 months after the third anniversary of a rule's effective date, the following:

(1) The cost benefit analysis done before the rule's adoption;
(2) An estimate of the primary and direct benefits of the rule on consumer protection, worker safety, the environment, and business competiveness;
(3) An estimate of secondary or indirect benefits of the rule;
(4) An estimate of any cost savings to regulated persons as a result of the rule including savings from a change in existing requirement or imposing of a new requirement;
(5) A statement of the number of regulated persons, classified by industrial sector, subject to the rule;
(6) A comparison of the cost benefit analysis for the rule before implementation and the actual primary and direct benefits of the rule;
(7) The actual costs and benefits of the rule during the first three years of the rule's implementation;

(8) For each element of the rule that is also the subject of restrictions or requirements imposed under federal law, a comparison of the requirements imposed under the rule and the restriction imposed under federal law; and
(9) Any other information that the Governor or the Rules Oversight Committee requests in writing.

The OMB must consider in its analysis any verified data voluntarily provided by parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. OMB does not, however, have the power to require interested parties or regulated persons to provide materials, documents, or other information. If the OMB is unable to obtain verified data for the cost benefit analysis, the OMB must state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis. Although the cost benefit is a public record, OMB is required to ensure adequate protection of information that has been provided that is confidential or proprietary business information. The OMB must make the cost benefit analysis and other related public documents available to interested parties, regulated persons, and nonprofit corporation whose members may be affected by the rule at least thirty days before presenting that information to the Governor and the Administrative Rules Oversight Committee.
SEA 311, Public Law No. 131-2012, Ind. Code 4-22-13 and Ind. Code 4-22-13.1, effective July 1, 2012

LAW AFFECTING PUBLIC RECORDS

DEFINITION OF PUBLIC RECORD

The Legislature added to what is classified as a public record "electronic media". Before this change, a public record was all documentation of the informational, communicative, or decision making processes of state government, its agencies and subdivisions made or received by any agency of state government or its employees in connection with the transaction of public business or government successors as evidence of its activities or because of the informational value of the data in the document, which is generated on paper or paper substitutes, photographic or chemically based media, magnetic or machine readable media, or any other materials, regardless of form or characteristics. To make it completely clear the Legislature this year has added that a public record includes electronic media.
HEA 1283 SECTION 15, Public Law No. 84-2012, Ind. Code 5-15-5.1-1, effective July 1, 2012.

DUTIES OF THE COMMISSION ON PUBLIC RECORDS

The Commission on Public Records has been assigned a new duty of coordinating the use of all scanning equipment in state government. The Commission already has the responsibility for (1) establishing a forms management program for state government; (2) establishing a central state form numbering system and central cross index filing system of all state forms; (3) approving purchases of photo-ready copy for forms; (4) establishing a statewide records management program for record making and

recordkeeping, (5) coordinating utilization of all micrographics equipment in state government; (6) assisting the Department of Administration in coordinating utilization of all duplicating and printing equipment in the executive and administrative branches and purchase of records storage equipment; (7) establishing and operating a distribution center for receipt, storage, and distribution of all material printed for an agency; (8) establishing and operating a statewide archival program; (9) establishing and operating a statewide record preservation laboratory; (10) preparing, developing, and implementing record retention schedules; (11) establishing a central records center to accept all records transferred to it prior to destruction in accordance with approved retention schedules; (12) demanding from persons who illegally possess an original state or local government record, return of the record; (13) establishing standards to ensure preservation of adequate and permanent computerized and auxiliary automated information records of agencies of state government; and (14) establishing a schedule of fees for services provided to patrons of the Indiana state archives.
HEA 1283 SECTION 18, Public Law No. 84-2012, Ind. Code 5-15-5.1-5, effective July 1, 2012.

MISC. LAWS OF INTEREST

LIQUIDATED DAMAGES DUE TO PROPERTY OWNERS WHEN PROPERTY USED FOR MANUFACTURE OF METHAMPHETAMINE OR MARIJUANA

The Legislature added a new provision to the criminal law for sentences imposed for a felony or misdemeanor. This provision provides the right to order the person convicted of dealing in methamphetamine and who manufactured the methamphetamine on property owned by another person, without the consent of the property owner, to pay $10,000 as liquidated damages to the property owner. In addition, a court is to order a person who is convicted of dealing in marijuana who manufactures the marijuana on property owned by other person, without the consent of the property owner, to pay $2,000 as liquidated damages to the property owner.
HEA 1091 SECTION 2, Public Law No. 73-2012, Ind. Code 35-50-5-3, effective July 1, 2012.

LIMITATION ON EASEMENT FOR NOT-FOR-PROFIT SEWER UTILITY

Not-for-Profit Sewer utilities that appropriate or condemn land to acquire an easement or right-of-way will now be limited to a fifty-foot wide easement, under a law passed this year.
HEA 1117 SECTION 2, Public Law No. 97-2012, Ind. Code 8-1-8-1, effective July 1, 2012.

NOT-FOR-PROFIT UTILITY

As of July 1, 2012, the Legislature has redefined a Not-for-Profit Utility. Before this change, a not-for-profit utility was defined as a public water or sewer utility that does not have shareholders, does not engage in any activities for the profit of its trustees, directors,

incorporators, or members, and is organized and conducts its affairs for purposes other than pecuniary gain. This year the legislature specified three types of utilities that are not included in a not-for-profit utility: (1) a Regional District established under IDEM's regulated Regional Water, Sewage, and Solid Waste District law; (2) a Conservancy District established under DNR's regulated Conservancy Districts, and (3) for certain limited purposes, a utility company owned, operated, or held in trust by the City of Indianapolis.
HEA 1117 SECTION 1, Public Law No. 97-2012, Ind. Code 8-1-2-125, effective July 1, 2012.

20 YEAR EXEMPTION FROM REQUIREMENT TO CONNECT TO SEWER

Current law allows a not-for-profit public sewer utility to require a property owner that produces sewage or similar waste to connect to its sewer system, requiring the property owner to discontinue use of privies, cesspools, septic tanks and similar structures, if the property is located within 500 feet of the point of connection to its sewer system. That law changed on July 1, 2012. Now not-for profit public sewage utilities may require connection to its sewer, unless the property owner qualifies for an exemption that may be granted for septic systems that are less than twenty years old. When giving notice to connect, the not-for-profit utility must now tell the property owner that it may qualify for an exemption. A property owner is exempt from the requirement to connect to a not-for-profit public sewer system only if the property owner's sewage disposal system is a septic tank soil absorption system that was new at the time of installation and approved in writing by the local health department. In addition, the property owner must do all the following to be entitled to the exemption: (1) the property owner, at its own expense, must obtain and provide the not-for-profit sewer utility with a certification from the local health department that the sewage disposal system is functioning satisfactorily; (2) the property owner must give the not-for profit utility notice that it is eligible for an exemption no later than sixty days after being notified it must connect; and (3) within sixty days after giving the notice of eligibility for an exemption, the property owner must provide the not-for profit utility with the local health department certification. If a local health department denies the issuance of a certificate that the sewage disposal system is functioning satisfactorily, the property owner may appeal the denial to the Board of the Local Health Department. The Decision of the Board is final and binding. Once a property owner gives notice that it qualifies for the exemption, the not-for-profit public sewer utility shall suspend the requirement to discontinue and connect until the property owner's eligibility is determined. A property owner who qualifies may not be required to connect for a period of ten years beginning on the date the new sewage disposal system was installed. The property owner may apply for two five-year extensions. If ownership of the property is transferred during a valid exemption period, the exemption applies to the subsequent owner of the property for the remainder of the exemption period. The total period during which a property owner may be exempt from the requirement to connect to a district sewer system is twenty years. When a property owner who qualifies for an exemption subsequently discontinues use of the property owner's sewage disposal system and connects to the not-for-profit public sewer utility's sewer system, the property owner is only required to pay the connection fee the property owner would have paid if it

had connected on the first date the property owner could have connected and any additional costs considered necessary and supported by documentary evidence provided by the not-for-profit public sewer utility.

In addition, a not-for profit public sewer utility may not require a property owner to connect if the property is located on a least ten acres and all of the following are met: (1) the owner can demonstrate the availability of at least two acres on the property for collection and treatment of sewage that will protect human health and the environment; (2) the waste stream from the property is limited to domestic sewage from a residence or business; (3) the system has a maximum design flow of 750 gallons per day; and (4) the owner, at its expense, obtains and provides a certification from the local health department that the system is functioning satisfactorily.

A property owner who connects to a not-for profit public sewer utility sewer system may provide its own labor, equipment, and material to connect to the sewer system, subject to inspection and approval by the not-for-profit public sewer utility.

Nothing in this new law affects the authority of the State Department of Health or a local Health Department or County Health officer with respect to sewage disposal systems.
HEA 1117 SECTION 1, Public Law No. 97-2012, Ind. Code 8-1-2-125, effective July 1, 2012.

PROFESSIONAL LICENSING

Current law had required that examinations for professional land surveyors, land surveyors-in-training, and professional engineers had to be a written exam. The law was changed this year to allow the examination to also be computer-based. In addition, the minimum time of eight hours for each part of the examination for each of these licenses has been eliminated.
HEA 1148, Public Law No. 9-2012, Ind. Code 25-21.5-6-1, Ind. Code 25-21.5-6-3, and Ind. Code 25-31-1-14, effective July 1, 2012.

A correction was made to the professional land surveyor examination. Current law had required the second section of the test to only include four of the five areas of expertise, omitting the fifth one—being able to understand and correctly apply the principles of mathematics related to the practice of land surveying. That fifth element was added to the second section of the land surveyor's examination.
HEA 1148 SECTION 1, Public Law No. 9-2012, Ind. Code 25-21.5-6-1(B), effective July 1, 2012.

Finally the Professional Engineers licensing law was changed this year to allow three instead of two attempts to pass each part of the examination, and giving to the licensing board the authority to allow an applicant, upon evidence of acquiring additional knowledge, to approve the applicant retaking a partial examination.
HEA 1148 SECTION 3, Public Law No. 9-2012, Ind. Code 25-31-1-14, effective July 1, 2012.

USE OF HAZARDOUS WASTE DISPOSAL TAX

The Hazardous Waste Disposal Tax that is split between the State and the County where a hazardous waste disposal facility is located was amended this year to expand the uses for the county's share of the tax money. Under current law the county could only spend the money on (1) establishing monitoring wells on land near the site of the disposal facility, (2) analyzing samples from those monitoring wells, (3) conducting other types of testing and surveillance for hazardous waste contamination of land near the disposal facility, (4) providing training for county and local public health and public safety officers in the proper procedures for dealing with emergencies involving hazardous substances or hazardous waste, (5) providing special clothing and equipment needed by county and local public health and public safety officers for dealing with emergencies involving hazardous substances or hazardous waste, (6) funding research on alternatives to land disposal as a means of eliminating hazardous waste, (7) paying the cost of hazardous waste, hazardous substance, or solid waste removal and remedial action at a site located within the county, (8) meeting the county's requirements under Indiana Code 13-21 for the planning and implementation of a solid waste management district plan, (9) paying the costs associated with the construction or rehabilitation of a facility used for training, (10) paying the costs associated with any other project that has identifiable environmental benefits, and (11) paying the costs associated with the construction, structural rehabilitation, and equipment of a facility used for a county public safety central dispatch or county emergency operations center. With the change made this year not more than 10% of the balance in the county's fund may now be used for maintenance or repair of county roads. This new use does not apply in Allen County.
HEA 1060, Public Law No. 15-2012, effective July 1, 2012, Ind. Code 6-6-6.6-3.

MINE ELECTRICIAN CERTIFICATION

An emergency law that took effect on February 29, 2012, amended the Department of Labor, Mine, and Mining Safety law to require certification of the person serving as a mine electrician. A mine electrician includes the individual who performs electrical work in a surface coal mine, the surface areas of an underground coal mine, and in underground coal mines. The Mining Board is now required to examine persons applying for a certificate for mine foreman, shot-firer, mine examiner, hoisting engineer, belt examiner, and mine electrician. To pass the certification as a mine electrician the person must receive a passing grade of not less than 80%. All other certifications require a passing grade of at least 75%. An applicant for a mine electrician certificate must have sufficient experience in performing electrical work, but not less than one year. The applicant must prove to the Mine Board by written and oral examination, and by demonstration that the applicant has a thorough knowledge of the requirements of Indiana coal mining laws, with particular emphasis on laws pertaining to electrical energy in coal mines, direct and alternating current theory and application, electric equipment and electrical circuits in coal mines, permissibility of electric equipment, and all of the topics set out in 30 CFR 75 Subparts F-K and 30 CFR 77 Subparts F-J and S.

A person may not be certified if the person has been convicted of an act that constitutes grounds for disciplinary sanction under Indiana Code 22-10-3-11.1(b) or a felony that has direct bearing on the applicant's ability to act competently as a mine electrician. Disciplinary sanctions under Ind. Code 22-10-3-11.1(b) are imposed on a practitioner for employing or knowingly cooperating in fraud or material deception in order to obtain a certificate; engaging in fraud or material deception in the course of professional services or activities; advertising services in a false or misleading manner; being convicted of a crime which has a direct bearing on the practitioner's ability to continue to practice competently; knowing violations of the coal mine safety law or rules; continuing to practice as certified after becoming unfit to practice due to professional incompetence; failure to keep abreast of current professional theory or practice; physical or mental disability, or addiction or severe dependency upon alcohol or other drugs which endangers the public by impairing a practitioner's ability to practice safely; having engaged in a course of lewd or immoral conduct in connection with the delivery of services to clients; and allowing the person's name or certificate to be used in connection with any individual who renders mining services beyond the scope of his training, experience, or competence.

A mine electrician who is properly certified by the Federal Mine Safety and Health Administration of another state that recognizes mine electrician certification in Indiana may serve as a mine electrician and receive an Indiana certification without the requirement to apply for examination.

It is unlawful for a mine operator to employ a mine electrician who is not properly certified.
HEA 1018, Public Law No. 10-2012, effective February 29, 2012, Ind. Code 22-10-3-1, Ind. Code 22-10-3-9, Ind. Code 22-10-3-10, Ind. Code 22-10-3-11, Ind. Code 22-10-3-12, and Ind. Code 22-10-12-16.

PROPERTY TAX DEDUCTION FOR SOLAR POWER DEVICES

Retroactively back to January 1, 2012, the owner of real property equipped with a solar power device installed after December 31, 2011, may have deducted annually from his or her property tax, the assessed value of the solar power device. A solar device includes a device such as a solar thermal, a photovoltaic, or other solar energy system that is designed to use the radiant light or heat from the sun to produce electricity. This deduction is not available to a person that provides electricity at wholesale or retail to another person, unless the person is participating in net metering or a feed-in-tariff program offered by an electric utility or the person owns or hosts the solar power device and consumes on site the equivalent amount of electricity that is generated by the solar power device on an annual basis. To claim the deduction, the person must file a certified statement in duplicate on forms prescribed by the department of local government finance with the auditor in the county during the year for which the person desires to obtain the deduction.
HEA 1072, SECTIONS 15 and 16, Public Law No. 137-2012, Ind. Code 6-1.1-12-26.1 and Ind. Code 6-1.1-12-27.1, effective January 1, 2012.

SALES TAX EXEMPTION FOR RECYCLING

A new sales tax exemption was added to the law on July 1, 2012, for returnable containers. Current law does not impose a sales tax on sales of wrapping material and empty containers if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that the person adds to the container. Starting July 1, 2012, sales tax will also not be charged on wrapping material and empty containers if the person acquiring the material or container acquires them for use as nonreturnable packages and ships or delivers tangible personal property owned by another person or that is processed or serviced for the owner and the container is sold in the same form or as a part of other tangible personal property processed by the owner in the owners business of manufacturing, assembling, construction, refining, or processing.
HEA 1072 SECTION 48, Public Law No. 137-2012, Ind. Code 6-2.5-5-5.1, effective July 1, 2012.

Also retroactively back to January 1, 2012, a sales tax will not be charged on sale of tangible personal property if the property constitutes, is incorporated into, or is consumed in the operation of a device, facility, or structure predominately used and acquired for purposes of complying with any state, local, or federal environmental law and the person acquiring the property is engaged in recycling. That sale tax exemption already existed for persons engaged in the business of manufacturing, processing, refining, mining, and agriculture. Added as of January 1, 2012, are persons engaged in the business of recycling.
HEA 1072 SECTION 49, Public Law No. 137-2012, Ind. Code 6-2.5-5-9, effective January 1, 2012

WATER UTILITY REPORTS

In another effort to establish a state drought plan, as a first step, beginning with calendar year 2012, water utilities will be required to provide a report to the Indiana Utility Regulatory Commission ("IURC") on the types of water resources that are used to provide water service and the operation and maintenance costs to provide water services. The water utilities required to provide these reports include all of the following that provide water service to the public in Indiana for a fee, whether or not they are under the jurisdiction of the IURC:

1. A public utility, which includes every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that own, operate, manage, or control any plant or equipment within the state for the delivery, or furnishing of water;
2. A municipally owned utility;
3. A not-for-profit utility, which includes a water utility that does not have shareholders, does not engage in any activities for the profit of its trustees, directors, incorporators, or members, and is organized and conducts its affairs for purposes other than the pecuniary gain of its trustees, directors, incorporators, or members;

4. A cooperatively owned corporation;
5. A Conservancy District established under the Department of Natural Resources' law;
6. A Regional Water District established under the Indiana Department of Environmental Management's law.

The report is to be provided on a form prescribed by the IURC. The IURC is to develop the form, and adopt rules, including emergency rules that take effect by a date that enables a water utility subject to this new law to comply by calendar year ending December 31, 2012, which includes the process, the deadline and other requirements for submitting the reports. At a minimum the IURC shall collect the following information:

1. The number of Indiana customers served by the utility;
2. A description of the water utility's service territory in Indiana;
3. The total utility plant in service with respect to the water utility's Indiana customers;
4. The amount and location of the water resources used by the utility to provide the water service to its Indiana customers;
5. The availability and location of additional water resources that could be used, if necessary, to provide water service to Indiana customers; and
6. The amount of funding received from a state revolving loan program, the office of community and rural affairs, the United State Department of Agriculture rural development loans and grants, the Indiana bond bank and the issuance of any debt instruments for the purpose of raising capital to fund infrastructure projects.

The IURC must provide an annual report to the Regulatory Flexibility Committee and the Legislative Council no later than November 1 of each year. The annual report must include a summary of the data and information from the reports, which is aggregated in a manner to protect the confidentiality of information of individual water utilities. The IURC must include a recommendation in the report concerning the efficient use of financial resources by utilities, the necessary infrastructure investments by utilities and the actions designed to minimize impacts on the rates and charges imposed on water and wastewater customers.
SEA 132 SECTIONS 1 and 3, Public Law No. 87-2012, Ind. Code 8-1-30.5, effective March 16, 2012.

COMMON LAW FOR WATER RIGHTS

The Town of Avon had passed an ordinance to regulate the taking of water from a watercourse both inside and within ten miles of the Town's municipal boundaries. In that ordinance, the Town defined watercourse to include aquifers and/or any other body of water whether above or below ground. Litigation occurred which was resolved on November 22, 2011, by the Indiana Supreme Court, upholding the town's definition of a watercourse as including an aquifer. This created a storm of controversy and belief that the Court had changed Indiana's common law on water, which allows persons to use groundwater as they wish. Passing emergency legislation that took effect on March 16,

2012, the Legislature undid the Supreme Court's decision by adding to the definition of watercourse a qualification that it does NOT include an underground aquifer or water in an underground aquifer.
SEA 132 SECTIONS 2 and 3, Public Law No. 87-2012, Ind. Code 36-9-1-10, effective March 16, 2012.