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Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

SUMMARY OF 2003 ENVIRONMENTAL LEGISLATION

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Preamble

This legislative summary is being released before the Legislature's consideration of the Governor's veto of three important environmental acts. These three environmental acts were passed by significant majorities of both houses in the General Assembly and will be considered for a simple majority override of the veto. This means that they may yet become the law.

One of these acts, SEA 533, concerns Concentrated Animal Feeding Operations ("CAFO"). It would have established a general permit for these activities in lieu of the existing state water construction permit and federal general permit. It provided IDEM the ability to impose an individual NPDES permit on a CAFO if water violations occurred during operation under the general permit, but would have allowed CAFOs operating in compliance with state environmental laws the ability to operate a new or to expand an existing facility under the expedited provisions for general permits. SEA 533 also would have increased the penalties that IDEM could assess against a CAFO for water violations.

The second vetoed act, HEA 1798, would have given IDEM authority to regulate certain isolated wetlands and ponds by developing a state law for protection of wetlands and a system for classifying which wetlands should be protected. That act also would have provided certainty for an area of environmental law that has been unclear since (1) the United States Supreme Court ruled that the federal government did not have authority over isolated wetlands under the Clean Water Act, and (2) Marion County Judge Michael Keele ruled that IDEM did not have independent state authority to regulated isolated wetlands and ponds. Judge Keele stayed his decision until the Indiana Supreme Court hears IDEM's direct appeal. HEA 1798 also contained critical provisions needed by counties to implement federal stormwater requirements and contained provisions related to the Clark and Floyd Counties' automobile emissions testing program.

The third vetoed act is SEA 440. That act was passed by the General Assembly to address an urgent need to define emission data for purposes of confiden-

tiality protection. It was also intended to promote economic development by requiring IDEM to adopt by reference the new federal Clean Air Act New Source Review regulations under the expedited provisions for incorporation by reference.

The earliest opportunity for the Legislature to have considered a veto was June 19, 2003. It did not. Veto override may now be considered in November 2003, or consideration may be delayed until the 2004 session commences regular business in January 2004. Because these enrolled acts have been vetoed, they are not discussed in detail in this Legislative Summary.

LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

AIR

Open Burning Exception

In a nearly annual ritual, another legislative exception has been made to the Indiana Department of Environmental Management's ("IDEM") air pollution control rule that bans open burning. A specific exception is being added to allow open burning of vegetation from agricultural land, so long as that open burning occurs in an unincorporated area. Current law already allows open burning of vegetation from a farm, an orchard, a nursery, a tree farm, a cemetery or a drainage ditch when that open
burning is done as part of maintenance.

HEA 1657, SECTION 1, Ind. Code 13-17-9-1, PL 238-2003, effective July 1, 2003.

WASTE

Brownfields

A change is being made to how a "Brownfield" is defined. This change will ensure consistency with federal law and will allow inclusion of sites where abandoned methamphetamine labs formerly operated. Current law limits a brownfield to an industrial or commercial parcel of real estate. Effective July 1, 2003 any parcel of real estate, including residential or agricultural property, that is abandoned or inactive or not able to be operated at its appropriate use and on which expansion, redevelopment or reuse is complicated due to the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses risk to human health and the environment, qualifies as a Brownfield.

SEA 207, SECTION 1, Ind. Code 13-11-2-19.3, PL 203-2003, effective July 1, 2003.

Coal Combustion Product Exclusions From IDEM's Solid Waste Regulation

The existing law that prohibits the Solid Waste Management Board from including in its regulations provisions for control over coal combustion fly or bottom ash or coal combustion fly or bottom ash in mixture with flue gas desulfurization byproducts will be expanded on January 1, 2004 in two ways. First, the types of coal combustion byproducts excluded from the Solid Waste Management Board's regulations are

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exclusions apply to two broad categories. With this change it will apply to five specified waste materials, as defined by ASTM E-2201-02a: (1) fly ash, (2) bottom ash, (3) boiler slag, (4) fluidized bed combustion ash, and (5) flue gas desulfurization materials produced from combustion of coal or cleaning of stack gasses. Second, the exclusion will apply when those waste materials are used in three additional ways to the five uses now specified. The three new uses include: (a) as cover for coal processing waste disposal locations, so long as the Indiana Department of Natural Resources ("DNR") concurs that the materials and methods being employed are appropriate for the intended use, which must be a use related to inhibiting infiltration at surface and underground mines; (b) to provide buffering or enhance structural integrity for refuse piles at surface and underground mines, so long as the DNR concurs that the materials and methods being employed are appropriate for the intended use; and (c) in agricultural applications, so long as applied using appropriate agronomic amounts to improve crop or vegetative production.

SEA 417, SECTIONS 3 and 4, Ind. Code 13-11-2-15.5 and Ind. Code 13-19-3-3, PL 215-2003, effective January 1, 2004.

Solid Waste Management District Powers

The Legislature responded to a December 5, 2002 Court of Appeals' decision concerning the powers of Solid Waste Management Districts ("SWMD") by expressly providing that SWMDs do not have the power to require a permit for activities that IDEM already regulates by its permit program. This limitation to a SWMD's powers takes effect on July 1, 2003. In *Worman Enterprises, Inc. v. The Boone County Solid Waste Management District*, 779 N.E.2d 565 (Ind.App. 2002) the Court of Appeals held that SWMDs fall outside the Home Rule Act. The Court found that SWMDs are governed by the traditional rule that once applied to local governmental units. Under that traditional rule, the Court found that a SWMD was held to "possess such powers only as are granted by the Legislature in express words **and** those necessarily implied and incidental to those expressly granted, **and** those indispensable to the declared objects and purposes of the corporation, and to its continued achievements" (emphasis added). Applying that rule of construction, the court found that SWMDs have the authority to institute a permit system to regulate solid waste facilities and clean fill sites within the SWMD boundaries. The Court specifically found that such a permit system was not preempted by state law establishing IDEM's authority to regulate solid waste. The Court based its interpretation on the fact the General Assembly had granted SWMDs the power to promulgate regulations and the power to do all things necessary for the reduction, management, and disposal of solid waste within their borders, and the fact the General Assembly had not placed any limitations on a SWMD's power preventing such a permit program, so "long as the District's system mandates what materials cannot be accepted at a solid waste disposal site instead of dictating what type of materials must be accepted at a site." In response to this decision the Legislaflat

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ture placed a new limitation on the powers of SWMDs. Specifically that a SWMD's powers do not include "the power to issue permits for an activity that is already permitted by a state agency, except as expressly granted by statute." This law will not affect the Boone County SWMD's permit program at issue in the *Worman* case, because it applied to a clean fill site, which is not subject to any permit required by IDEM.

HB 1221, SECTION 3, Ind. Code 13-21-3-14, PL 231-2003, effective July 1, 2003.

WATER

NPDES Variances

To address the federal Environmental Protection Agency's concerns with the existing water quality standard variance provisions, the Legislature has amended the existing law to provide that a variance from a water quality standard contained in an NPDES permit cannot be granted unless it meets the conditions of federal rule 40 CFR 132, Appendix F. Procedure 2.C, and rules of the Water Board. This change was sought by IDEM to address a section of the Great Lakes Initiative. This change means that a variance may be granted only if:

(1) the permittee demonstrates to IDEM that attaining the water quality standard is not feasible because:

(a) naturally occurring pollutant concentrations prevent attainment;

(b) natural, ephemeral, intermittent or low flow conditions or water levels prevent attainment, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable the standard to be met without violating state water conservation requirements;

(c) human-caused conditions or sources of pollution prevent attainment and cannot be remedied, or would cause more environmental damage to correct than to leave in place;

(d) dams, diversions or other types of hydrologic modifications preclude attainment and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in attainment;

(e) physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles and the like, unrelated to chemical water quality, preclude attainment; or

(f) controls more stringent that those required by section 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

(2) the permittee shows that the variance conforms to the requirements of Indiana's antidegradation procedures; and

(3) the permittee characterizes the extent of any increased risk to human health and the environment compared to what it would be if the water quality standard were met,

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and IDEM is able to determine that such increased risk is consistent with the protection of the public health, safety and welfare.

HB 1221, SECTIONS 1 and 2, Ind. Code 13-14-8-8 and Ind. Code 13-14-8-9, PL 231-2003, effective July 1, 2003.

Conservancy District Board of Directors

The law for establishment of a Conservancy District has been changed this year to require that the court order establishing a conservancy district include the procedures for election of the Board of Directors. After the Board of Directors is appointed as provided by the Court Order, that Board may later petition the Circuit Court to have the court order amended to have the procedure for election of directors that represent an area within the district based on a majority of the freeholders of the respective area.

HEA 1511, SECTIONS 1 and 2, Ind. Code 14-33-2-27 and Ind. Code 14-33-5-2, PL 88-2003, Effective July 1, 2003.

Outstanding Water Resources and Exceptional Use Waters

As a result of IDEM and the Water Pollution Control Board's failure to adopt rules that the Legislature directed be adopted by legislation passed in 2000, the Legislature has passed legislation made retroactively effective to December 31, 2000 and established a new deadline for IDEM and the Water Board to adopt these rules which they have been directed to do by the Legislature. The Legislature has adopted language identical to that passed in the 2000 legislative session, which was found in SEA 431 at SECTIONS 25 and 27, except that now IDEM and the Water Board have until July 1, 2004 to adopt the rules previously directed to have been adopted by January 1, 2001 and October 1, 2002. One of the sections of law readopted relates to "Current Outstanding State Resource Waters," which includes: (1) the Blue River in Washington, Crawford and Harrison Counties, from river mile 57 to river mile 11.5; (2) the North Fork of Wildcat Creek in Carroll and Tippecanoe counties from river mile 43.11 to river mile 4.82; and (3) the South Fork of Wildcat Creek in Tippecanoe County, from river mile 10.21 to river mile 0.00 and to waters designated as "Exceptional Use Waters" in 327 IAC 2-1-6(i). Those waters must be maintained and protected by not allowing degradation which will interfere with or become injurious to existing and potential uses and by maintaining the present high quality unless it is affirmatively demonstrated that limited degradation is justifiable on the basis of necessary economic or social factors and will not interfere with or become injurious to any beneficial uses made of or presently possible in those waters. IDEM may not require protection of these waters beyond the standard which was set forth in the 2000 legislation for Outstanding State Resources Waters. Any rule that is inconsistent or requires additional protection is and has been void since March 17, 2000. The other section of law readopted this year relates to "Exceptional Use Waters." This language is the same as that found in the 2000 SEA 431 at SECTION 27. Water bodies that IDEM has designated as Exceptional Use Waters are subject to the overall water quality

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improvements of the 2000 legislation for Outstanding State Resource Waters until July 1, 2004 (previously that date was October 1, 2002). These water bodies are not subject to a standard of having their water quality maintained and protected without degradation. The Water Pollution Control Board must consider whether to make those water bodies Outstanding State Resource Waters and complete rule-making to make those designations by July 1, 2004 (the previous date was October 1, 2002).

HEA 1221, SECTIONS 4 and 5, retroactively effective December 31, 2000 and December 31, 2002.

PERMITS

Renewal Permits

Effective July 1, 2003, a time frame in which IDEM must act on all renewal permit applications will be in effect. As a result of legislation passed this year, IDEM will be required to act on a permit renewal application before the permit sought to be renewed is scheduled to expire. When the original time frames for IDEM to act on permit applications were established, no time frame was set for action on renewal permit applications. Under current law, if a complete and timely application is filed to renew a permit, the existing permit remains in effect until IDEM acts on that renewal application. Because IDEM was behind in acting on permit applications, when the original time frame law was enacted it was determined that priority should be given to new permits and permit modifications. Time frames were established for IDEM to make a decision on all the other types of permit applications except renewals, in exchange for greatly increased permit fees and the establishment of procedures designed to ensure timely action on permit applications. Current law allows a permit applicant to require the permit fee paid to IDEM be used to hire a consultant if IDEM misses a permit time frame. This is intended to get the application reviewed and a permit determination made. Alternatively an applicant can seek to have its permit fee refunded and simply wait until IDEM does act on the application, or the permit applicant can prepare the permit review supporting documentation and a draft permit, upon which IDEM must act. Last year, as a result of IDEM not being willing to modify NPDES permits where the permit was administratively extended awaiting IDEM's action, the Legislature amended the permit law to provide similar remedies available to all other permit applicants to renewal permit applicants, in cases where IDEM failed to make a decision on a renewal permit before the existing permit was to expire. This became necessary because NPDES permittees needed modifications, which IDEM would not act on because the permit had not been renewed. The permittee was without any legal recourse to force IDEM to act on the renewal permit application. Even though not a single permit renewal applicant sought to have its permit application fee refunded, IDEM was concerned with that ability of renewal permit applicants and sought corrective legislation this past session. The Legislature addressed IDEM's concern and also attempted to address the regulated community's concern, by providing that permit fees

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for permit renewals are not refundable when IDEM fails to act timely on a renewal application, but IDEM must now act on all renewal permit applications before the permit sought to be renewed will expire. The remedies when IDEM fails to act on a permit renewal application established in 1999 (use of consultants to have the application reviewed and the ability to provide a draft permit for IDEM's action) remain, except that the permit fee cannot be refunded. In addition, the existing law providing that a permittee can continue to operate if it has filed a timely application and IDEM has not yet acted has not been changed. This means IDEM has many more permit time frames it must meet. It also means that permittees will be allowed to continue to operate under the existing permit, if IDEM misses its time frame for acting on renewal permits, or will be able to hire a consultant at its own expense in order to perform the review and prepare the necessary documentation or do that work itself to speed IDEM's decision on a renewal permit application.

HEA 1671 SECTION 10, Ind. Code 13-15-4-11 and Ind. Code 13-15-4-12.1, PL 240-2003, effective July 1, 2003.

Time Frame for IDEM Permit Action

In addition to addressing IDEM's concern related to renewal permit application permit fee refunds, the Legislature also change the permit action time frames in which IDEM must act. Starting July 1, 2003, IDEM must act on any permit application for which a fee of more than $49 is required within 60 days, unless a specific time frame is otherwise established for that class of permit application. Prior law established this 60 day time frame, but only for permit applications with a fee of more than $100.

HEA 1671, SECTION 10, Ind. Code 13-15-4-1(b), PL 240-2003, effective July 1, 2003.

RULEMAKING

Nonrule Policies

Again this year, the Legislature is trying to improve upon IDEM's use of the nonrule policy authority that it has been given. IDEM is allowed to use nonrule policies to implement rules of the Boards. However these nonrule policies cannot be used if intended by IDEM to have the effect of law and are to be used only to interpret rules already enacted by the one of the Boards. In 1999 the Legislature modified the law to provide that nonrule policies IDEM intended to use could not take effect until 30 days after they were made available for public comment and had been presented to the appropriate Air, Water, Waste or Financial Assurance Board. This year, the Legislature has changed the law to require that IDEM make a proposed nonrule policy that will be presented to one of the Boards after June 30, 2003 available for public inspection by posting the proposed nonrule policy on IDEM's web site. This must be done 45 days before the nonrule policy is to be presented to the appropriate Board. IDEM must also advise the public, 45 days before presentation to the Board, how to access all materials IDEM relied upon to develop the proposed policy or statement, including health criteria, analytical methods, treatment technology; economic impact data, environmental assessment data and other background data. IDEM must give notice of the date, time

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and location when the proposed nonrule policy will be presented to the Board. The public must be advised of its opportunity to comment to the IDEM and the Board on the proposed policy. IDEM must present all public comment and the proposed nonrule policy to the Board, and a policy presented after June 30, 2003 cannot take effect until 30 days after compliance with these requirements and presentation to the Board.

HEA 1671 SECTIONS 3 and 13, Ind. Code 13-14-1-11.5, PL 240-2003, effective July 1, 2003.

OEA and IDEM Board Information Exchange

Legislation also passed this year attempting to improve the coordination between IDEM's rulemaking Boards and the Office of Environmental Adjudication ("OEA"). OEA is often required to determine the proper construction and interpretation of rules, which have been enacted by the Boards, when it resolves an appeal of an IDEM enforcement action or decision made on a permit application. Starting May 8, 2003, OEA must give notice to the Air, Water, Solid Waste or Financial Assurance Board each time it enters a final order that interprets a rule of that Board or interprets a statute which that Board is authorized to implement through rule making. Currently the Boards adopt rules but it is IDEM that enforces the rules. IDEM may interpret the rule in a way other than the Board originally intended. In addition, the OEA may, when acting upon an appeal either uphold IDEM's interpretation of the rule, or may impose its own interpretation. Currently there is no regular reporting to the Boards of those decisions. If the Board is not made aware of how IDEM is interpreting the rules, or how OEA is finding that rules are properly interpreted, there is no ability of the Boards to control and establish the policy that the Boards intended to put in place by adopting the rule. By ensuring that the Boards receive notice of OEA decisions, the Boards will be able to amend rules to correct interpretations given to the rules that are other than what the Board had intended.

HB 1671, SECTION 1, Ind. Code 4-21.5-7-3, PL 240-2003, effective May 8, 2003.

Rulemaking Procedure

A number of changes were made this year to improve the IDEM rulemaking process. These new procedures apply to all rules for which IDEM provides notice in the *Indiana Register* for the first public comment period after June 30, 2003.

First, starting July 1, 2003 time frames have been established for IDEM to comply with the existing requirement for the Legislative Services Agency's ("LSA") fiscal analysis of IDEM proposed rules. IDEM will be required to give written notice to LSA at least 66 days before the date of preliminary adoption of rules that will have an estimated economic impact on those who are to be regulated that is greater than $500,000. LSA must prepare the fiscal analysis at least 21 days before preliminary adoption. IDEM must provide the LSA fiscal analysis to the board not less than 14 days before the date of preliminary adoption. Current law already makes those fiscal analyses a public document and already requires that the agency proposing the rule consider the fiscal analysis as part of the rulemaking process. With these

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new deadlines, it will be possible for this information to be considered before preliminary adoption, not later in the rulemaking process.

HEA 1671 SECTIONS 2,6 and 13, Ind. Code 4-22-2-28 and Ind. Code 13-14-9-4.2, PL 240-2003, effective July 1, 2003.

Second, also effective on July 1, 2003, IDEM will be required as part of the *Indiana Register* first public comment period to include information on whether the rule alternatives being considered exceed federal law and the fiscal impact of rules being considered that exceed federal law. Specifically IDEM will be required to identify for each rule alternative under consideration whether the alternative is a requirement of federal law. If it is not a requirement of federal law, IDEM must explain how it differs from what is required by federal law. Finally if the alternative is different than federal law, IDEM must provide any information known to it about the potential fiscal impact of each of the alternatives that are not required by federal law. Because Indiana Code 13-14-8-4(b) already requires that the IDEM boards take into account the economic reasonableness of measuring for reducing any particular type of pollutant, IDEM should be required to have some fiscal information available about the alternatives under consideration and should not be able to escape providing fiscal information on rules being considered, even though the Legislature has only required that IDEM provide the information known to IDEM about the potential fiscal impacts.

HEA 1671, SECTION 4, Ind. Code 13-14-9-3(2), PL 240-2003, effective July 1, 2003.

Third, effective on July 1, 2003 as part of the *Indiana Register* second public comment period, IDEM also will be required to identify each element in the text of the proposed rule that imposes a restriction or requirement that is not imposed under federal law. For each of those requirements or restrictions IDEM must identify the environmental circumstance or hazard that is the basis for needing to exceed federal requirements in order to protect human health and the environment. IDEM also must provide examples where the federal law is inadequate to provide the protection intended to be provided by IDEM's additional requirement. IDEM must include, in the *Indiana Register* notice, the estimated fiscal impact of requirements that exceed federal standards and the expected benefits provided by exceeding federal law. Finally for those provisions that exceed federal requirements, IDEM must describe all materials it has relied upon to develop the requirement and specify where those materials are available for public inspection. The types of materials the Legislature expects IDEM to have consulted and relied upon and which must be identified and made available to the public include: (1) health criteria, (2) analytical methods; (3) treatment technology; (4) economic impact data; (5) environmental assessment data; (6) analyses of methods to effectively implement the proposed rule and (7) other background data.

HEA 1671 SECTION 5, Ind. Code 13-14-9-4, PL 240-2003, effective July 1, 2003.

Fourth, all of this information identifying how IDEM's rule exceeds federal rerquirements and the benefits to such additional regulation, must be included

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in the notice IDEM gives for reconsideration of rules required to receive or maintain federal delegation, primacy or approval for Indiana's implementation of a program established under federal law. Currently Ind. Code 13-14-9.5-1.1 provides that those type of rules do not automatically expire, as do all other rules. IDEM is, however, required for those rules to publish notice in the seventh year after the effective date of the rule or amendment inviting written comment on how the rule should be changed and allowing the public to request review of those types of rules through a regular rulemaking process. With this requirement to specifically identify portions of the rule that exceed federal requirements in delegated programs, it will allow persons to have a rulemaking commenced after 7 years, to consider if it is still necessary for IDEM to exceed federal requirements.

HEA 1671 SECTION 8, Ind. Code 13-14-9.5-1.1, effective July 1, 2003.

Fifth, effective on July 1, 2003, as part of the *Indiana Register* third public comment period, IDEM will be required to publish with the text and summary of the rule, the fiscal analysis prepared by LSA.

HEA 1671, SECTION 7, Ind. Code 13-14-9-4.5, PL 240-2003, effective July 1, 2003.

Study by EQSC of the IDEM Rulemaking Process

Instead of a total overhaul to IDEM's rulemaking procedures this year, the Legislature has directed the Environmental Quality Service Council ("EQSC") to complete a study and submit a report to the Governor and the Director of LSA concerning the rulemaking function of the Air Pollution Control Board, the Water Pollution Control Board and the Solid Waste Management Board. This report is due November 1, 2003 and is likely to be a basis for legislation in 2004 to substantially change or to improve the IDEM rulemaking process. Specifically the EQSC is to consider (1) whether the rulemaking operations are sufficiently independent of the influence of IDEM and other state agencies or entities, and (2) the overall efficiency of the rulemaking operations. In undertaking this study, the EQSC is to examine: (a) the composition of the boards, (b) who appoints the members, (c) the extent to which the boards control the staff who serve them, (d) the sources and availability of data that are provided to the boards on the fiscal impact of rules and other aspects of the rules; (e) the involvement of employees of IDEM and other state agencies or entities in the rulemaking process; (f) the procedures used to initiate and adopt proposed new rules or changes to existing rules, (g) the procedures that are used to determine which issues are addressed by Board rules and which are addressed in IDEM nonrule policy documents; (h) the requirements for public notice and public participation in the rulemaking process; (i) how other states maintain independence and efficient operations of environmental rulemaking entities; and (j) any other matter the EQSC considers appropriate.

HEA 1671 SECTION 12, PL 240-2003, effective May 8, 2003.

Temporary Prohibition on Rules More Stringent than Federal Rules

Effective May 8, 2003 the Air Pollution Control Board, the Solid Waste Management Board and the Water Pollution

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Control Boards are prohibited from adopting a new rule that would be more stringent than what is established in a related federal regulation or policy for all of the following industries with the associated Standard Industrial Classification codes: blast furnaces and steel mills (3312), gray and ductile iron foundries (3321), malleable iron foundries (3322), steel investment foundries (3324), steel foundries (3325), aluminum foundries (3365), copper foundries (3366), and nonferrous foundries (3369). In addition, IDEM is prohibited from adopting any new policy that would be more stringent than the corresponding federal policy for theses same businesses. The Legislature identified the fact that these businesses have suffered at least a 10% job loss or a 10% decline in production during 2001 and 2002 as the basis for adopting this special legislation that applies to only these businesses. This prohibition on the Board and IDEM's powers will expire on July 1, 2005.

HEA 1221 SECTION 6, PL 231-2003, effective May 8, 2003.

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LAWS AFFECTING THE INDIANA DEPARTMENT OF NATURAL RESOURCES

CLASSIFIED WILDLIFE HABITAT

A new section has been added to the law to allow landowners to file with the Department of Natural Resources ("DNR") an application to have a parcel of land classified as wildlife habitat. Classified Wildlife Habitat, like Classified Forest Plantation and Classified Native Forests are assessed for property tax purposes at a value of one dollar per acre. Starting July 1, 2003, land will be able to be classified as Wildlife Habitat if it meets the following criteria: (1) it consists of at least 1 acre; (2) the acreage is contiguous to a parcel of land owned by the landowner that is already classified as wildlife habitat; (3) the parcel contains a good stand of vegetation that is capable of supporting wildlife species; (4) the parcel is conducive to wildlife management; (5) the parcel does not contain a dwelling or other usable building; (6) no part of the parcel is within a licensed shooting preserve; and (7) the landowner enters into an agreement with the DNR establishing standards of wildlife management for the parcel as that concept is understood by competent wildlife biologists. To have the parcel classified, it must be surveyed by a registered land surveyor, identified by section, township, range and county. In addition the surveyor must prepare ink plats in the scale and number prescribed by DNR.

HEA 1552, SECTION 26, Ind. Code 6-1.1-6.5-2.5, PL 186-2003, effective July 1, 2003.

CONSERVATION OFFICER ENFORCEMENT POWERS

The law will change on July 1, 2003 to add suspension of driver's licenses as a mechanism to enforce summons issued by a DNR conservation officer. Under current law if a person issued a summons for a violation committed in the view of a conservation officer fails

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to appear as commanded in the summons, that person will be held in contempt of court, can be arrested and can be fined no more than $20. The law is being changed to eliminate the $20 fine and instead to provide that if a warrant for arrest is issued and not executed within 30 days after it is issued, then the court is to forward a copy of the summons to the Bureau of Motor Vehicles ("BMV"), with the case marked as failure to appear on the court's records. For an Indiana resident, upon receipt of a copy of the summons for failure to appear, the BMV shall suspend the driving privileges of the person until the person appears in court and the case has been disposed of. Notice of driver's license suspension can be served by mailing the order by certified mail with return receipt requested to the defendant's last address shown on the defendant's BMV records. The order takes effect on the date it is mailed. If the person is a nonresident of Indiana, the BMV shall notify the BMV Commissioner of the other state of the nonresident defendant's failure to appear and of the action taken by the Indiana BMV to suspend Indiana driving privileges of the defendant. Service of an order of license suspension for a nonresident can be accomplished by mailing to the address that was given to the arresting conservation officer. If a defendant appears after receiving notice of driving license suspension, the court is to proceed to hear and determine the case in the same manner as other cases pending in the court. Upon final determination the court shall notify the BMV, which can then lift the driver license suspension.

HEA 1552, SECTION 65, Ind. Code 14-22-39-2, PL 186-2003, effective July 1, 2003.

DAM REGULATION

The Legislature has clarified the DNR's jurisdiction over the regulation of dams and impoundments to ensure that DNR has all of the jurisdiction necessary to protect public safety. The public freshwater lake law provides that DNR may not regulate or interfere with alterations of the shoreline or construction of impoundments made by a public utility on the Tippecanoe River that relate to the generation of hydroelectric power. This year that limitation to DNR's authority has been clarified to provide that the section of the freshwater lake law is not intended to restrict DNR's ability to regulate the safety or maintenance of a dam or control structure under the state law for regulation of dams.

HEA 1552, SECTION 70, Ind. Code 14-26-2-15, PL 186-2003, effective July 1, 2003.

ENTOMOLOGY & PLANT PATHOLOGY FUND

A new dedicated fund will be created on July 1, 2003 called the Entomology and Plant Pathology Fund. Fees collected from nurseries will be deposited in this fund.

HEA 1552, SECTION 66, Ind. Code 14-24-10-1, PL 186-2003, effective July 1, 2003.

FEE INCREASES FOR DNR PROGRAMS

The DNR was successful this year in being allowed to increase other fees to support the DNR programs and in establishing some new fees. All the following fees have been increased by law, effective July 1, 2003 (see table next page).

In addition, the temporary increase in surface and underground coal mining

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TYPE OF FEE:	CURRENT FEE	FEE ON 07/01/03
Nursery Dealers	$30	$50
Certified Nurseryman who paid inspection fee	$10	$20
Nursery Inspection	$20 + $1.50/acre	$50 + $3/acre
Permit to change shoreline or alter bed of public freshwater lake	$25	$100
Permit for construction in floodway	$50	$200
Ginseng Dealer's License	$25	$100
Permit to drill, deepen, operate or convert a well for oil & gas or conduct a geophysical survey	$100	$250
Application or Renewal as Timber Buyer	$80	$105
Timber Buyer Agent License	$5 /agent	$10 /agent

THE FOLLOWING NEW FEES HAVE BEEN ESTABLISHED:	NEW FEE
Significant Hazard Dam Inspection	$200
Low Hazard Dam Inspection	$100
Expedited Permit to drill, deepen, operate or convert a well for oil & gas or conduct a geophysical survey	$750
Permit Transfer Oil & Gas Well	$15 /well up to 50 wells $10 /well over 50 wells

reclamation fees that was scheduled to expire on June 30, 2003 has been extended to make those higher fees payable through June 30, 2005.

HEA 1552, SECTIONS 66, 69, 73,75,76, 77, 78, 79, 80, and 84 Ind. Code 14-24-10-1, Ind. Code 14-26-2-9, Ind. Code 14-27-7.5-10, Ind. Code 14-28-1-22, Ind. Code 14-31-3-8, Ind. Code 14-37-4-6, Ind. Code 14-37-4-14, Ind. Code 25-36.5-1-7, Ind. Code 25-36.5-1-15, PL 186-2003, effective July 1, 2003 and May 7, 2003.

FLOODWAY CONSTRUCTION

In general, homes are not allowed to be constructed in a floodway. The Legislature has made a limited exception this year for a new residence to be constructed within the floodway of that part of the Ohio River that forms the boundary between Indiana and Kentucky. Under this law, a person can now construct a new residence within that floodway if a permit is obtained from the DNR and the lowest floor is at least 2 feet above the 100 year frequency flood elevation.

HEA 1222 SECTION 1, Ind. Code 14-28-1-26.5, PL 121-2003, effective July 1, 2003.

FOREST PLANTATIONS & NATIVE FOREST LANDS

A number of technical corrections and changes were made to the laws related to classified forest plantations and classified native forest lands. Land classified as forest plantation or native forest is assessed at a rate of $1 per acre for general property taxation purposes.

First, for land to be classified as a forest plantation, commencing July 1, 2003 the law will require that what is understood to be a "good stand of timber producing trees" is to be the

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standard used by a district forester or a professional forester. Current law allows the use of any competent forester.

HEA 1552, SECTION 1, Ind. Code 6-1.1-6-2, PL 186-2003, effective July 1, 2003.

Second, for land to be classified as native forest land, it will no longer be necessary that land never have been plowed or cultivated. In addition, the number of trees that must exist on the land is reduced from 1000 per acre to 400 per acre. This means that effective July 1, 2003, the definition of "native forest land" will be land containing at least forty feet of basal area per acre or at least 400 timber producing trees, of any size, per acre.

HEA 1552, SECTION 2, Ind. Code 6-1.1-6-3, PL 186-2003, effective July 1, 2003.

Third, the list of trees that do not constitute a "timber producing tree" is modified effective July 1, 2003. On July 1, 2003 willows, sassafras, and persimmon trees will be removed from the list of "not timber producing" trees. However the state forester is given the authority to develop a list of trees that are not to be considered timber producing, in addition to those listed by statute. The trees designated by the Legislature as not considered timber producing will include: dogwoods, water-beech, ironwood, red bud, pawpaw, black haw, pomaceous trees and Christmas trees grown for commercial purposes.

HEA 1552, SECTION 4, Ind. Code 6-1.1-6-4, PL 186-2003, effective July 1, 2003.

Fourth, the law has been amended to allow open areas, nonforest areas and water bodies to exist on classified forest plantations and native forest lands, if they meet certain limitations. Open areas may exist if they do not exceed the lesser of five acres or 10% of the total area to be classified as native forest land or forest plantation. Nonforest areas that are considered a good stand of vegetation capable of supporting wildlife and conducive to wildlife management also are allowed within a native forest land or forest plantation. A good stand of vegetation must include a diverse stand of vegetation, other than monotypic stands or tall fescue, unless the state forester allows tall fescue to be used for erosion control. Nonforest wetland areas, a body of water than is less than two acres in size or that has an average depth less than four feet and isolated bodies of water also may exist on classified native forest lands and forest plantations. Before a nonforest area can be created on already classified native forest land or a forest plantation, a special permit must be obtained from DNR.

HEA 1552, SECTION 3, Ind. Code 6-1.1-6-3.5, PL 186-2003, effective July 1, 2003.

Fifth, the minimum acreage and shape of classified native forest land or forest plantation is being changed. Starting July 1, 2003 the parcel must contain at least 10 contiguous acres and can be any shape so long as it is at least 50 feet wide. Under current law there was no minimum width and the law had failed to make clear that the ten acres had to be contiguous acres.

HEA 1552, SECTION 5, Ind. Code 6-1.1-6-5, PL 186-2003, effective July 1, 2003.

Sixth, a new section has been added to the law allowing landowners to have

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parcels of land that are at least one acre in size, that have at least 40 square feet of basal area per acre or 400 timber producing trees of any size per acre, classified as native forest land or a forest plantation if that acreage is contiguous to a parcel of land also owned by the landowner that is already classified as a forest plantation or native forest land. An application must be filed with the State Forester, the acreage must be described by a registered land surveyor by metes and bounds or other professionally accepted practices that has reference to an established corner, and must be assessed at its fair market value, including any mineral, stone, oil or gas value it may have, without giving value to the standing timber on the land.

HEA 1552 SECTIONS 6, 8 and 9, Ind. Code 6-1.1-6-5.5, Ind. Code 6-1.1-6-9 and Ind. Code 6-1.1-6-10, PL 186-2003, effective July 1, 2003.

Seventh, the existing law provides that land may not be classified as native forest land or as a forest plantation if a dwelling or other building is situated on the parcel, but allowed such classification if the building is used to maintain a sugar camp or for operating a sawmill. That provision is modified effective July 1, 2003 to delete the two exceptions. This means that there can be no dwelling or other building on land that is to be classified forest plantation or native forest.

HEA 1552, SECTION 7, Ind. Code 6-1.1-6-6, PL 186-2003, Effective July 1, 2003.

Eighth, the law is amended as to what types of animal use may exist on native forest land or a forest plantation. Currently the land cannot be grazed by domestic animals. Starting July 1, 2003, the land cannot be grazed by domestic animals or by confined nondomesticated animals. In addition the law is being changed to prohibit grazing by domestic fowl. Previously grazing fowl were acceptable if they did not have a detrimental effect on timber production. The law will now prohibit grazing by domestic and confined nondomesticated animals and by domestic fowl.

HEA 1552, SECTION 8, Ind. Code 6-1.1-6-7, PL 186-2003, effective July 1, 2003.

Ninth, the Natural Resources Commission must establish by rule minimum standards of good wildlife management in addition to the existing requirement to have established minimum standards for good timber management.

HEA 1552, SECTION 14, Ind. Code 6-1.1-6-16, PL 186-2003, effective July 1, 2003.

Tenth, the amount of land upon which the state forester can issue special permits to allow other uses has been increased from one acre to the lesser of 10% of the total acreage or five acres.

HEA 1552, SECTION 15, Ind. Code 6-1-1-6-17, PL 186-2003, effective July 1, 2003.

Eleventh, the four signs required to be posted to designate classified forest land or forest plantation now may be placed either at the place most conspicuous to the public (required by current law), or at the property corners.

HEA 1552, SECTION 16, Ind. Code 6-1.1-6-18, PL 186-2003, effective July 1, 2003.

HUNTING, TRAPPING & FISHING LICENSE PROGRAM

By July 1, 2005, DNR is to develop and implement an automated point of sale

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licensing system for use in Indiana for the sale of hunting, fishing and trapping licenses. That system will be used for both residents and nonresidents of Indiana. Money to maintain the system will come from the dedicated Fish and Wildlife Fund.

HEA 1552, SECTIONS 57, 58, and 61, Ind. Code 14-22-12-7.5, 14-22-3-5 and 14-22-4-6, PL 186-2003, effective July 1, 2003.

LOW FLOW/DROUGHT PRIORITY USE SCHEDULE

A House Concurrent Resolution was passed this session addressing the development of an expanded water shortage plan for the State of Indiana. In 1994, following the 1988 drought DNR prepared a water shortage plan. That plan established guiding principles and listed possible actions that could be taken in the future when facing a drastic water shortage. That plan did not contain any provision on who had priorities for use, how those priorities would be communicated and how priority uses would be enforced when that becomes necessary. For that reason the Legislature has directed DNR to update and expand the 1994 work plan. DNR must involve all affected parties and develop a low flow/drought priority use schedule. This revised and expanded recommended work plan is to be presented by DNR to the Water Resources Study Committee by August 1, 2003.

HCR 72.

MARINE ENFORCEMENT & LAKE PROJECT FUNDING

The Legislature has increased the amount of lake and river enhancement fees required to be paid by all boat owners who are required to have boat excise decals. Effective July 1, 2003, the lake and river enhancement fees paid by boat owners changes from a flat fee of $5 for all boat owners to a graduated fee ranging between $5 and $25, based on the value of the boat. The following fees will apply:

VALUE OF BOAT	FEE
Less than $1,000	$5
At least $1,000 but less than $3,000	$10
At least $3,000 but less than $5,000	$15
At least $5,000 but less than $10,000	$20
At least $10,000	$25

The revenue raised from those fees will be split with two-thirds being deposited in the Lake and River Enhancement Fund and the remaining one-third being placed in a new fund created for Conservation Officer Marine Enforcement. The new Conservation Officer Marine Enforcement Funds are to be used exclusively for marine enforcement efforts associated with recreational boating on Indiana waters. Money in the Marine Enforcement Fund remaining at the end of the year does not revert to the General Fund and DNR is given the discretion to transfer up to 20% of that fund at the end of the year to counties with special boat patrol needs. The Legislature also has broadened the uses for the Lake and River Enhancement Fund fees. Current law provides that those fees are to be used exclusively for lake and river

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enhancement projects. Lake and river enhancement projects are currently limited to controlling sediment and associated nutrient inflow into lakes and rivers and other actions that will forestall or reverse the impact of that inflow and enhance the continued use of Indiana lakes and rivers. With this legislation one-half of the money will continue to be used for those purposes and the other one-half will be used for projects involving removal of sediment or control of exotic or invasive plants or animals from lakes.

HEA 1336, Ind. Code 6-6-11-12, Ind. Code 6-6-11-12.5, Ind. Code 14-8-2-107, Ind. Code 14-9-8-21.5, Ind. Code 14-9-9-5, PL 233-2003, Effective July 1, 2003.

MOREL MUSHROOM, ARCHEOLOGY, HUNTING & MORE PROHIBITED ON PRIVATE PROPERTY WITHOUT PERMISSION

Under current Fish and Wildlife laws a person may not fish, hunt, chase or shoot with any kind of firearm upon privately owned land without having the consent of the owner or tenant of the land. Starting July 1, 2003, persons also are prohibited from shooting archery equipment, searching for or gathering any plant member of the kingdoms of Fungi and Plantae or searching for or gathering archeological objects (objects made or shaped by human workmanship before December 11, 1816) on private property, unless the owner or tenant has given permission. Plantae includes plants such as mosses, ferns, conifers and flowering plants. Fungi include the favorite Indiana springtime sponge or morel mushrooms. This will mean that private land owners can seek DNR involvement to keep morel hunters off their property and will not have to resort only to the court system.

HEA 1552, SECTION 59, Ind. Code 14-22-10-1, PL 186-2003, effective July 1, 2003.

NURSERY CERTIFICATE AND NURSERY DEALER LICENSE HOLDER NAMES AVAILABLE ON INTERNET

DNR is being required to publish on the internet a directory of persons who have obtained nursery certificates and nursery dealer licenses from the Division of Entomology & Plant Pathology. This directory is to be made available by July 1, 2003.

HEA 1552, SECTION 67, Ind. Code 14-24-10-4, PL 186-2003, effective July 1, 2003.

SNOWMOBILE & OFF-ROAD VEHICLE REGULATION

The off-road vehicle program found at Ind. Code 14-16-1 was passed to balance (1) safety for persons and property, (2) responsible enjoyment in connection with the use of off-road vehicles, and (3) the rights of all citizens of Indiana. That law is being expanded on July 1, 2003 to include snowmobiles. Under this new law snowmobiles may not be operated on public property unless registered with DNR. In addition all snowmobiles purchased after December 31, 2003 must be registered. That registration must be renewed every 3 years. The registration fee is $30. A registered vehicle will be issued two decals indicating the vehicle's registration number and the year in which it expires. The decals must be attached to the vehicle on the forward half of the vehicle. Decals are to be maintained in

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a legible condition and displayed only for the period for which the registration is valid. Duplicate decals will be issued for lost or destroyed decals. The registration fee for off-road vehicles is also being increased from $6 to $30. Revenues collected based on the off-road vehicle and snowmobile registration program will be deposited into a new fund that has been created, the Off-Road and Snowmobile Fund. That fund is to be administered by DNR and used to enforce the off-road and snowmobile program and for constructing and maintaining off-road vehicle and snowmobile trails. Existing law contains 14 conditions for operation of off-road vehicles. Those same conditions will now apply to operation of snowmobiles. In addition the law has been clarified. Current law provides that off-road vehicles cannot be operated at a rate of speed greater than is reasonable and proper having due regard for existing conditions. On July 1, 2003 that standard is being modified to say that off-road vehicles and snowmobiles also cannot be operated at a rate of speed or in a manner that unnecessarily endangers the person or property of another. A county, city or town is allowed to pass an ordinance to regulate the operation of off-road vehicles and snowmobiles, if the ordinance meets substantially the minimum requirements of the state law. Current law provides that counties, cities and towns cannot impose a fee for a licence and cannot specify accessory equipment that must be carried. As a result of a change made this year, counties, towns and cities also are prohibited from requiring that the vehicle operator possess a driver's license in order to operate an off-road vehicle or snowmobile. The law is being further clarified with respect to when accidents involving off-road vehicles and snowmobiles must be reported. Existing law provided for such reports if the vehicle's accident resulted in injuries or death or property damage estimated to be at least $100. Starting July 1, 2003 the only reports required will be accidents involving vehicles if they result in "serious" injury or death or property damage estimated to be at least $750. The penalties for violation of the off-road vehicle law will also be modified slightly. Currently violation of this law is punishable as a Class C infraction. Starting July 1, 2003, certain violations are reclassified Class B misdemeanors. Those include: (1) the requirement to operate at a rate of speed and in a manner that does not endanger persons or property with regard to existing conditions; (2) the requirement to not operate under the influence of intoxicating liquor or under the influence of a narcotic or other habit-forming or dangerous depressant or stimulant drug; (3) the requirement to report an accident resulting in serious injury, death or property damage estimated to be at least $750, and (4) violation of the requirements imposed on dealers. Finally, the law is being revised to provide that DNR can purchase land for off-road and snowmobile trails only from willing sellers. This means that DNR cannot exercise any condemnation powers in order to purchase and provide off-road and snowmobile trails.

HEA 1552, SECTIONS 35-55, Ind. Code 14-16-1-1, 14-16-1-2, 14-16-1-3, 14-16-1-5, 14-16-1-6, 14-16-1-7, 14-16-1-8, 14-16-1-

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9, 14-16-1-10, 14-16-1-11, 14-16-1-11.5, 14-16-1-14, 14-16-1-16, 14-16-1-22, 14-16-1-23, 14-16-1-23, 14-16-1-25, 14-16-1-29 14-16-1-30, PL 186-2003, effective July 1, 2003.

STATE PARK FUNDING

A new dedicated fund will be created on July 1, 2003 for operation of the state parks and reservoirs. The Fund will be referred to as the State Park and Reservoirs Special Revenue Fund. All revenues accruing to DNR from the operation of state parks and the operation of reservoirs will be placed in that Fund, along with any other sources that may be specified by law. DNR's director must submit a suggested budget for appropriation and expenditures from the Fund. DNR may only use money appropriated by the General Assembly from the Fund.

HEA 1552, SECTION 56, Ind. Code 14-19-8, PL 186-2003, effective July 1, 2003.

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OTHER LAWS OF INTEREST

COAL RESEARCH GRANT FUND

This year the Legislature has amended the law passed in 2002, which created the Center for Coal Technology Research ("Center"), located at Purdue University. The Center was provided seven duties last year. Starting July 1, 2003, the Center has been given the additional duty of administering the Indiana Coal Research Grant Fund. This Grant Fund had been administered by the Indiana Recycling and Energy Development Board. The Center is required to appoint a panel of at least eight members to review and make recommendations to the Center about each application that is filed. Those applications may be filed by businesses and manufacturers to do research or other projects designed to develop and expand markets for Indiana coal. To be a member of the advisory panel a person must be a scientist, a professional engineer registered in Indiana or other professional who is familiar with coal combustion, coal properties, coal byproducts and other coal uses.

HEA 1166 SECTIONS 1 and 2; Ind. Code 4-4-30-5 and Ind. Code 4-23-5.5-16; PL 171-2003, effective July 1, 2003.

DRAINS WITHIN A MUNICIPALITY OR SANITARY DISTRICT

A new type of drain maintenance fund will be created effective July 1, 2003 for drains over which a County Drainage Board transfers jurisdiction to a municipality or to a Sanitary District. In 1981 a law was enacted to create County Drainage Boards for purposes of classifying and establishing work priorities for maintenance and reconstruction of drains. Under the 1981 law, counties were allowed to relinquish jurisdiction over ditches and drains located in a municipality or Sanitary District to that municipality or Sanitary District, if that municipality or Sanitary District was willing to accept jurisdiction. The law is being amended this year to establish a Municipal or Sanitary District Drain Maintenance Fund for each drain over

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which that municipality or Sanitary District accepts jurisdiction from a County Drainage Board. On or after the date the County Drainage Board transfers jurisdiction over a drain, the county treasurer is required to transfer the balance of the County's Maintenance Fund into this new Municipal or Sanitary District Drain Maintenance Fund, except for that portion that was paid out of the general drain improvement fund, unless the County Drainage Board and municipality or Sanitary District agree to a different proper allocation. Expenses of a municipality or Sanitary District shall then be paid from that fund for the necessary or proper repair, maintenance, study or evaluation of the particular drain or combination of drains for which the fund was established. The law is further amended to provide that if jurisdiction over a drain is transferred by the County Drainage Board to a municipality or Sanitary District, the municipality or Sanitary District is to have the same right of entry and right-of-way powers over private land that are given to the County Surveyor or Drainage Board under the drainage board law.

SEA 304, Ind. Code 36-9-27-20.5 and Ind. Code 36-9-27-20.6, PL 111-2003, effective July 1, 2003.

MINE SAFETY

A new Mine Safety Fund has been created this year. It will be administered by the Commissioner of Labor and will be used to provide funding for purchase and maintenance of underground mine rescue equipment. Underground coal mine operators will be assessed a fee to raise the necessary money for this fund. The Mining Board is required to mail written notice to underground coal mine operators of the meeting during which the assessments for the Mine Safety Fund are to be discussed.

HEA 1553, SECTIONS 1, 2 and 3, Ind. Code 22-1-1-11, Ind. Code 22-10-1.5-5 and Ind Code 22-10-12-16, PL 187-2003, effective July 1, 2003.

Annually the Mining Board is to report to the Commissioner of the Department of Labor any need that exists for additional mine inspectors. The report received from the Mining Board is to be forwarded by the Commissioner of Labor to the Legislative Council, who is to make a request of the General Assembly for funding necessary for the additional mine inspectors needed.

HEA 1553, SECTIONS 1 and 2, Ind. Code 22-1-1-11 and Ind. Code 22-10-1.5-5, PL 187-2003, effective July 1, 2003.

NUCLEAR WASTE SHIPMENTS

When the legislative session began there was a threat that many waste fees would be increased to support all sorts of governmental wants and needs. Most did not pass. One waste fee increase that did pass this session relates to fees for shipments of high level radioactive waste and low level radioactive waste. Three funding related changes were made to the existing nuclear waste shipment law. First, the fee on high level radioactive waste shipments within Indiana was changed from $1,000 for each shipment to $1,000 for each cask of nuclear waste in a shipment. Second, a fee of $100 was newly established for a shipment of low level radioactive waste within Indiana. Third, persons who transport low level or high level radioactive waste

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in Indiana were made responsible for reimbursing each governmental entity that provides security for a shipment for those entities' reasonable and necessary expenses incurred to provide security. In addition, the Legislature broadened the uses for the Nuclear Response Fund, into which the shipment fees are placed. The money previously was only used to provide education, training and equipment to local emergency responders in counties affected by the transportation of high level radioactive waste. Starting July 1, 2003 that money can also be used to prevent, prepare for, and respond to acts of terrorism.

SEA 160, Ind. Code 10-8-3-3, Ind. Code 10-14-8-3, Ind. Code 10-14-8-3.1, Ind. Code 10-14-8-6 and Ind. Code 10-14-8-9, PL 148-2003, effective July 1, 2003.

PARTITION FENCES

The current law concerning partition fences will be revised July 1, 2003 to limit its applicability to partition fences that divide property, where one of the properties is agricultural land. Current law provides that a fence that is used by adjoining property owners to divide two separately owned parcels is considered a partition fence and shall be repaired, and maintained and paid for as specified by law, unless the two property owners otherwise agree. On July 1, 2003 the law is being amended to provide that the partition fence law only applies if one of the two adjoining properties is agricultural property. For purposes of this law agricultural property is defined as land that is zoned or otherwise designated as agricultural and, used for growing corps or raising livestock or reserved for conservation, whether enclosed, or unenclosed, cultivated or uncultivated, wild or wood lot.

SEA 292, Ind. Code 32-26-9-0.5 and Ind. Code 32-26-9-2, PL 57-2003, effective July 1, 2003.

SEWAGE DISTRICT FEES

Controversy over a campground's charges for sewage services by the LaGrange County Sewage District resulted in legislation passed this year attempting to correct any unintentional provisions in existing law for how a Sewage District establishes fair sewage fees. Current law allows a sewage works to determine rates or charges based on: (1) a flat charge for each connection, (2) the amount of water used on the premises, (3) the number and size of water outlets on the premises, (4) the amount, strength, or character of sewage discharged into the sewers, (5) the size of sewer connections, (6) whether the property served has been or will be required to pay separately for cost of any sewage facilities, or (7) any combination of those factors that is necessary to establish just and equitable rates or charges. Effective July 1, 2003 when combining factors to set fees the fee must also result in a nondiscriminatory charge. In addition the Legislature has addressed the specific problem concerning a campground, by allowing the campground's rates to be based on metered flow instead of a flat fee for each connection. This exception that allows the campground to elect the basis for its rates applies only to a campground that brought a legal action after January 1, 2000 but before April 1, 2003 against a sewage district board concerning sewage services billed at a

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rate. Any such campground may elect to be billed by installing, at its own expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers, instead of the flat fee being charged. The campground must meter the quantity of sewage discharged for a year. It must then determine the highest week's use and use that week to determine the resident unit equivalent for the campground. The basic monthly charge for the campground must be equal to the residential equivalent units multiplied by the rate charge by the board for a residential unit. The legislation, however, also allows the sewage board to impose additional charges on the campground if the board incurs additional costs that are caused by unique factors that are due to providing sewage service for a campground, such as having to install oversized pipes or other unique equipment and excessive biochemical oxygen demand.

HEA 1659, SECTION 1, Ind. Code 13-26-11-2(a) and (b), PL 239-2003, effective July 1, 2003.

SOIL AND WATER CONSERVATION DISTRICTS

The Legislature has amended the law this year to require that the audit of counties by the State Board of Accounts include an audit of county Soil and Water Conservation Districts. To ease the fiscal impact of this requirement the Legislature has limited the amount such districts can be charged by the State Board of Accounts for performing examinations and investigations. Current law provides that taxing units pay a flat fee of $45 per day for each field examiner, private examiner, expert, or employee of the State Board of Accounts who makes examinations or investigations. All other entities are charged the actual cost of performing the examination or investigation. As a result of legislation passed this year, effectively July 1, 2003 Solid and Water Conservation Districts are also to pay the flat fee of $45 per day, as opposed to the actual cost.

HEA 1622, SECTION 1, Ind. Code 5-11-4-3, PL 191-2003, effective July 1, 2003.

The Legislature also has added Soil and Water Conservation Districts to the list of government entities that must not pay a claim by drawing a warrant or issuing a check unless (1) there is a fully itemized invoice or bill for the claim, (2) the invoice or bill is approved by the person receiving the goods and services, (3) the invoice or bill is filed with the entity's fiscal officer, (4) the fiscal officer audits and certifies, before payment, that the invoice or bill is true and correct, and (5) payment of the claim is allowed by the Soil and Water Conservation District Board.

HEA 1622, SECTION 2, Ind. Code 5-11-10-1.6, PL 191-2003, effective July 1, 2003.

TAX DEDUCTIONS & CREDITS FOR USE OF WASTE COAL PRODUCTS

New state personal property tax deductions will be available starting in 2005 and new state adjusted income tax credits will be available starting in 2004. This personal property tax deduction and income tax credit is available on investment property used by manufacturers who use coal combustion products for manufacturing recycled components. Recycled components includes aggregates, filler, cementitious

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clarified and expanded. The current materials, or any combination of aggregates, filler, or cementitious materials when used to make masonry construction products, normal and lightweight concrete, blocks, bricks, pavers, pipes, prestressed concrete products, filler media and other products that are approved by the Center for Coal Technology Research. To qualify for the deduction or credit, the coal combustion products must constitute at least 15% by weight of the ingredients. Coal combustion products includes boiler slag, bottom ash, fly ash and scrubber sludge from an Indiana facility and can come from a fluidized bed boiler. These deductions/credits are available to new businesses, to existing businesses who expand their manufacturing process to include the use of coal combustion waste materials and to existing businesses who already are using coal combustion product, if they increase their purchase of coal combustion byproducts. The tax deduction is 15% of the assessed value of the personal property purchased. The income tax credit is $2 per ton of coal combustion products. The tax credit is available for 10 consecutive years after the beginning year in which the manufacturer first claims a credit. There is a maximum tax credit per fiscal year of two million dollars, made available to the first to file. A taxpayer cannot obtain both a deduction and a credit for the same investment property.

SEA 417, SECTIONS 1, 2 5 and 6, Ind. Code 6-1.1-44 and Ind. Code 6-3.1-25.2, PL 215-2003, effective January 1, 2004.

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❖ **Other Laws of Interest**

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