SUMMARY OF 2002 INDIANA ENVIRONMENTAL LEGISLATION

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AIR TOXIC MONITORING

In a compromise, the Legislature hopes to trigger the development of a more cost effective and usable air toxic monitoring program. Business targeted the Indiana Department of Environmental Management's ("IDEM") proposed hazardous air pollutant monitoring rule as one of its priorities this past legislative session. That rule was projected to cost millions of dollars. Industry contended the rule was not focused, that IDEM had not defined a clear need or intended use for the quantity of data that would be gathered. Industry was concerned there would be no ability to explain to the public the significance of the data that was gathered. As a result, a three-part plan was passed by the Legislature. First, by November 2, 2002, IDEM and the Indiana State Department of Health ("ISDH") are to jointly develop a 5-year hazardous air pollutant strategy. That strategy must be submitted to the Environmental Quality Service Council ("EQSC") and must include at least the following:

(1) An inventory of known hazardous air pollutant emissions in Indiana, including the quantities and the types of sources;

(2) An assessment of the quality and usefulness of existing data on hazardous air pollutant emissions, air quality monitoring and human health impacts;

(3) A description of the gaps in existing data, alternatives to fill those gaps, and the departments' approach among those alternatives;

(4) Based on available information, IDEM and ISDH's top ten priorities to address significant risks posed by hazardous air pollutant releases and the basis for each priority;

(5) Based on available information, an inventory of commercial and industrial air pollutant sources, air pollutant source categories, and hazardous air pollutants that require additional study to determine potential human health impacts;

(6) A plan that identifies additional hazardous air pollutant data needs, including the intended uses, processes to be used to collect, and resources necessary to collect and assess the additional data.

(SEA 259, PL 166, SECTION 3, effective March 28, 2002.)

Second, the EQSC is to:

(1) Develop and propose a plan for the creation and funding of an effective hazardous air pollutant monitoring program to help assess potential health risks from hazardous air pollutants posed by urban air and significant sources;

(2) Consider methods for IDEM and ISDH to request and receive hazardous air pollution release information in a timely and effective manner and to communicate to the public the responses received as a result of the requests; and

(3) provide to the executive director of the Legislative Services Agency a report of its activities and an outline of the hazardous air pollutant program plan developed and proposed.

(SEA 259, PL 166, SECTION 2, effective March 28, 2002.)

Finally, IDEM is prohibited from requiring sources to report hazardous air pollutant emissions before January 1, 2004. The Air Pollution Control Board may adopt rules to require sources to report hazardous air pollutant emissions, if the reporting is necessary to demonstrate compliance with emissions and other performance standards established under the Federal Clean Air Act. The Air Pollution Control Board also may amend the air rules to require individual sources to report hazardous pollutant emission data for the purpose of site specific studies of hazardous air pollutant emissions and impacts. Finally the Air Pollution Control Board may amend and may adopt new air rules to establish general requirements for sources to report hazardous air pollutant emissions, so long as those rules do not require the reporting before January 1, 2004.

With this planned and studied approach, the goal is to develop hazardous air pollutant reporting requirements of data that is needed and has an intended use and that may be gathered in a more cost effective manner.

(SEA 259, PL 166, SECTION 1, Ind. Code 13-11-2-213, effective March 28, 2002.)

AQUATIC VEGETATION CONTROL

The Department of Natural Resources' ("DNR") law for chemical treatment to control aquatic vegetation was modified this year. Those changes take effect on July 1, 2002. The law has been broadened to prohibit not only chemical treatment of aquatic vegetation, but also to regulate mechanical, physical and biological control of aquatic vegetation. Effective July 1, 2002, a permit will be required before a person can mechanically, physically or biologically control aquatic vegetation in public waters or boundary waters of the state. Procedures to control aquatic vegetation must be conducted in accordance with rules adopted by DNR. An application and $5 application fee must be filed. Under this new law, when chemical control is to be used, DNR will not be allowed to issue the permit without approval from the Indiana Department of Environmental Management. Previously approval of the Indiana State Department of Health was required. The requirement to obtain a permit does not apply to control of aquatic vegetation in privately owned lakes, farm ponds or public or private drainage ditches. It also does not apply to a landowner or tenant adjacent to public waters or boundary waters of the state who is controlling aquatic vegetation in the immediate vicinity of a boat landing or bathing beach on or adjacent to the real property of the landowner or tenant, if the area where vegetation to be controlled does not exceed: (a) 25 feet along the legally established, average or normal shoreline, (b) to a water depth of 6 feet, where (c) the total surface area does not exceed 625 square feet.

(SEA 230, PL 19, Ind Code 14-22-9-10, Effective July 1, 2002.)

CEMETERY REMOVALS

The law providing for removal of remains of a deceased human has been changed to make the decision allowing removal one to be made by the Indiana State Department of Health ("ISDH"), the cemetery owner, and the relatives of the deceased, except where the removal is done by a coal company which owns or leases the property where the human remains exist. Coal companies must obtain a court order for such a removal.

Current law allowed remains of a deceased human to be removed from a cemetery if approved by the ISDH, with written consent of the owner of the cemetery or the owner's representative and written consent of the spouse of

the deceased or the parents of the deceased in the case of a deceased minor child, or alternatively upon issuance of a court order. As revised, on July 1, 2002 the court order option is eliminated for all removals except removals by coal companies. Coal companies may perform a removal only if they obtain a court order.

The amendment to the law also establishes the findings or steps that the ISDH must follow before providing a written order authorizing the removal. The ISDH must:

(1) Obtain written evidence of the legal ownership of the property from which the remains will be removed;

(2) Send written notice to the Department of Natural Resources ("DNR") Division of Historic Preservation and Archeology of the time, date and place from which the remains will be removed;

(3) Obtain written evidence that a licensed funeral director has agreed to be present at the removal and at the reinternment, reentombment or reinurnment of the remains and that he or she will cause the competed order the of the ISDH to be recorded in the office of the County Recorder of the county where removal occurs;

(4) Obtain written evidence that a notice of the proposed removal has been published, at least 5 days before a written order is issued by the ISDH, in a newspaper of general circulation in the county where the removal will occur; and

(5) Obtain a copy of the written consent of the spouse or parents of the deceased (or where neither person is available the determination of a court to waive the requirement).

If the removal is done by a coal company from property the coal company owns or leases, a court order must be obtained authorizing the disinterment, disentombment, or disinurnment. Before a court can issue such an order, it must hold a hearing and be satisfied as to the following:

(1) The property is owned or leased by the coal company;

(2) The coal company has obtained the written consent of the spouse of the deceased or the parents of a deceased minor child authorizing the action. If consent is not available, the court may waive that requirement after considering the viewpoint of any issue of the deceased.

(3) The DNR Division of Historic Preservation and Archeology has received at least 5 days written notice of the time, date and place of the hearing to be held by the court. The notice must have described the proposed place from which the remains will be removed;

(4) A licensed funeral director has agreed to be present at the removal and at the reinternment, reentombment, or reinurnment of the remains and he or she will cause the completed order of the ISDH [sic] to be recorded in the office of the County Recorder of the county where the removal occurs. (Because the ISDH does not issue such orders when the removal is done by a coal company, the law contains an error. It should have made reference to the Court's order allowing removal and have that order filed in the County Recorder's office);

(5) The coal company has caused a notice of the proposed removal to be published, at least 5 days before the court hearing, in a newspaper of general circulation in the county where the removal will occur; and

(6) The coal company will notify the DNR, Division of Historic Preservation and Archeology, after the hearing of the proposed time and date when the remains will be removed.

The ISDH is authorized to adopt rules necessary to implement the requirements of this law.

(HEA 1241, PL 155 SECTION 11, Ind. Code 23-14-57-1, effective July 1, 2002.)

CLEAN MANUFACTURING TECHNOLOGY BOARD

The membership of the Clean Manufacturing Technology Board was changed slightly by the Legislature. That change takes effect on July 1, 2002. Previously 2 members appointed by the governor were to be representatives of either public or private universities in Indiana, one which had to have expertise in occupational health and the workplace environment. The law is being changed to require that one member be from a public university in Indiana and that one be from a private university in Indiana. The requirement that one of those members have the specific qualification in occupational health and workplace environment is being removed.

(HEA 1329, PL 184, SECTION 26, Ind. Code 13-27.5-1-2, effective July 1, 2002.)

COAL MINING FEES AND FUND USES

The underground coal mining reclamation fee paid to the Department of Natural Resources ("DNR") will change permanently on July 1, 2003. All operators of underground coal mining operations (those with support facilities and those which only have shadow areas as a result of mining coals from reserved in Indiana) will be required to pay the 2 cent per ton fee on each ton of coal produced. Until July 1, 2003 the fee will remain 1 cent per ton for operators of underground coal mining operations that have no support facilities located within Indiana, but produce coal from reserves located within Indiana. The other underground coal mining operations already were subject to the 2 cent per ton reclamation fee. A temporary increase in reclamation fees for surface and underground coal mining operations will exist for the period April 1, 2002 until June 30, 2003. For that temporary period, the surface coal mining reclamation fee will be increased from 3 cents per ton of coal produced to 5.5 cents per ton and the underground reclamation fee will be increased from 2 cents a ton of coal produced to 3 cents per ton. This additional money and an appropriation of $250,000 taken from the post-1977 abandoned mine reclamation will be used to administer the surface coal mining and reclamation law. That money will be made available for DNR's use beginning July 1, 2002 and ending June 30, 2003. The Division of Reclamation is partially funded from federal money and from fees paid by those who it regulates and the general fund. As a result of the general fund appropriation made in 2001 not being adequate to meet DNR's needs, DNR found itself short of money needed to operate the surface coal mining and reclamation program. This compromise of taking money from the post-1977 abandoned mine reclamation fund, allows the Division of Reclamation to receive money it needs, while not directly passing all of those costs on to the regulated community.

(HEA 1241, PL 155 SECTIONS 10, 12, 13 and 14, Ind. Code 14-34-13-2 and non code sections, effective July 1, 2002 and April 1, 2002.)

COUNTERTERRORISM MEASURES THAT AFFECT THE ENVIRONMENT

Commercial Driver's Licenses

A comprehensive law for counterterrorism actions was passed this year. Its provisions effective either March 26, 2002 or July 1, 2002. Portions of that law may affect environmental activities. Under current law, a commercial driver's license is not required in Indiana to operate a motor vehicle used in the transportation of hazardous materials. However, the Bureau of Motor Vehicles may remove this exemption if upon notice and public hearing it determines the waiver is not in the interest of safety or if necessary to keep Indiana in compliance with applicable federal law. Ind. Code 9-24-6-1. One of the counterterrorism measures passed this year concerns commercial drivers licenses. The requirement for recognizing reciprocity with other states has been amended to require that it will be necessary for a commercial driver to pass a written license test, an operational skills test, and a hazardous materials endorsement written test and operational skills test, before a commercial driver's license based on reciprocity will be granted. In addition, the law has been amended to provide that a driver who applies for a hazardous materials endorsement can not obtain that endorsement if the driver has been convicted of a felony under Indiana law that results in serous bodily injury or death to another person or a crime in any other jurisdiction in which the elements of the crime are substantially the same. Those persons are disqualified for life from holding a hazardous materials endorsement. If a hazardous materials endorsement has been issued and the driver is convicted of a felony under Indiana law that results in serous bodily injury or death to another person or a crime in any other jurisdiction in which the elements of the crime are substantially the same, the endorsement is revoked upon conviction and that driver is disqualified for life from holding a hazardous materials endorsement.

(HEA 1101, PL 123 SECTION 15 and 16, Ind. Code 9-24-6-2 and 9-24-6-12, effective March 26, 2002).

Controlled Explosives

Another counterterrorism provision passed, adds a new article, Ind. Code 35-47.5, to the Indiana Code for regulation of "controlled explosives". It does not apply to fertilizers, propellant actuated devices, or propellant activated industrial tools manufactured, imported, distributed or used for designed purposes. It also does not apply to a pesticide that is manufactured, stored, transported, distributed, possessed or used for its designed purposes or in accordance the Federal Insecticide, Fungicide and Rodenticide Act. This new law will be implemented by the Fire Prevention and Building Safety Commission. Regulated explosives include a destructive device and an explosive, with certain relevant limited exemptions. Those exemptions from this law are for an explosive being transported on or in a vessel, railroad car, or highway vehicle in conformity with regulations of the United States Department of Transportation, a blasting explosive transported or used for agricultural purposes, if the quantity does not exceed 200 pounds, and ammonium nitrate or other explosive compounds kept for mining purposes at coal mines regulated by the Department of Natural Resources. The Office of the State Fire Marshal is required to carry out a program to periodically inspect places where regulated explosives are stored and shall issue a regulated explosives magazine permit to allow persons to store regulated explosives. A person requiring a regulated explosives storage permit must submit information on a form provided by the State Fire Marshal describing the location of the affected magazine, the types and maximum quantities of explosives that will be kept in the place covered by the application and the distance that the affected magazine will be located from the nearest highway, railway, and structure that is used as a place of habitation or assembly. Unless the applicant demonstrates through an inspection that smoking, matches, open flames and spark producing devices are not allowed within a room containing an indoor magazine, the application must demonstrate through an inspection that the magazine is constructed and located in accordance with rules adopted by the Fire Prevention and Building Safety Commission. The Commission may by rule adopt other exemptions from the requirements for this storage permit. If a person stores a regulated explosive, has control over a regulated explosive that is stored, or has control over a place where a regulated explosive is stored, the person must have the regulated explosive magazine permit for that activity. Failure to obtain the permit commits a Class C infraction.

(HEA 1001, PL 123, SECTION 50, Ind. Code 35-47.5, effective July 1, 2002.)

COMMERCIAL FISHING LICENSE
PERMIT FEE CHANGES FOR OHIO RIVER

The fee charged by the Department of Natural Resources ("DNR") for an Indiana or Kentucky resident to obtain a license to use and possess water seines, nets or other commercial fishing gear will change on July 1, 2002. The current fee of $72 for an Ohio River commercial fishing license and ten commercial gear tags increases to $125. The fee for each block of ten Ohio River commercial fishing gear tags is reduced from $21.50 to $15.

(HEA 1241, PL 155 SECTION 6, Ind. Code 14-22-13-2, effective July 1, 2002.)

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER CIVIL ENFORCEMENT AUTHORITY

New civil enforcement powers for the Department of Natural Resources ("DNR"), Division of Water take effect on July 1, 2002. This enforcement process will apply to all of the DNR statutes and implementing rules related to reservoirs, lakes, levees, dams, dikes, drainage districts, floodways, floodplains, navigable streams and rivers, found at Ind. Code 14-26, 14-27, 14-28 and 14-29. This new statute allows a division of water inspector or any person authorized by DNR to enter upon public or private property at reasonable times to determine if there is a violation of the water statutes and rules. If a violation is found by the Division of Water inspector, DNR (the responsibility of which may be delegated to the Division of Water inspector) may issue a written Notice of Violation ("NOV") to require actions to mitigate the violation. That NOV must describe the nature of the violation, the action appropriate to mitigate the violation and provide a date by which the violation must be mitigated. The NOV takes effect 30 days after received, unless the person receiving it requests administrative review within that time period. If a person who receives a NOV fails to correct the violation as directed in the NOV and does not appeal the NOV, the person will be liable for a civil penalty of up to $10,000 per day of violation or to having the applicable permit revoked or for both. Money collected through assessment of civil penalties will be placed in the Water Environmental Fund. That fund can accrue up to one million dollars and may be used by DNR to mitigate water violations, mitigate environmental damage from such violations or to protect the public from harm cased by water violations. DNR may expend up to $50,000 without the need for prior approval of the budget agency or governor. Money expended by DNR can be recovered from the responsible person. DNR may bring a civil action to recover a penalty assessed and to enjoin a person from continuing a violation. A civil penalty assessed when a NOV is not mitigated will be final and enforceable 30 days after receipt of the notice of assessment, unless administrative review is sought. In addition, DNR may revoke a water permit if the person has received a NOV and has failed to mitigate the violation within the time limit set, or has failed to secure from the Division of Water in writing an extension of time in which to mitigate the violation, or has not requested administrative review of the NOV. When a permit is revoked the former permittee is still liable for mitigating the violation. Alternatively DNR may mitigate the violation and then seek to recover the costs from the responsible person. In addition to these new civil remedies made available to DNR, knowing violations of the DNR water laws continue to constitute a Class B infraction, with each day of violation constituting a separate infraction.

(SEA 417, PL 145, Ind. Code 14-8-2-77, 14-8-2-107, 14-25.5, effective July 1, 2002.)

DEPARTMENT OF NATURAL RESOURCES
NEW POWERS FOR REGULATION OF DAMS

Legislation takes effect on July 1, 2002, related to construction and maintenance of dams and their appurtenant works. Indiana Code 14-27-7.5 has been added to the Department of Natural Resources' ("DNR") law, replacing Ind. Code 14-27-7, the existing statutory provisions for the regulation of dams. This new law maintains the existing law's requirement that the owner of the structure maintain and keep the structure in the state of repair and operating conditions required to exercise prudence, due regard for life and property and the application of sound and accepted technical principles. The owner of a structure continues to be defined as the individual, firm, partnership, copartnership, lessee, association, corporation, executor, administrator, trustee, state, agency of the state, municipal corporation, political subdivision of the state, a legal entity, a drainage district, a levee district, a conversancy district, any other district established by law, or any other person who has a right, a title, or an interest in or to the property upon which the structure is located. DNR, instead of the Natural Resources Commission ("NRC") is given the statutory power and responsibility for supervising maintenance and repair of structures in, on, or along the rivers, streams and lakes of Indiana. The only dams and structures excluded from this new regulatory program are:

(1) a structure built for the sole purpose of erosion control, watering livestock, recreation, or providing a haven or refuge for fish or wildlife that has a drainage area above the dam of not more than 1 square mile, does not exceed 20 feet in height and does not impound a volume of more than 100 acre-feet of water and;
(2) a structure that is regulated under the federal Mine Safety and Health Act of 1977, which becomes subject to this law at the time when it is released from bond if it is retained as a permanent structure.

The prior law's exclusion for a levee, dike or floodwall that is under single private ownership and provides protection only to the land of that property under the single private ownership has not be retained in this law.

DNR, not the NRC, is to exercise care to see that structures are maintained in good and sufficient state of repair and operating conditions to perform their intended purpose. DNR continues to be required to establish a permitting program for the construction and operation of structures in, on, or along rivers, streams and lakes of Indiana and is to adopt rules for permitting, maintenance and operation that are necessary to protect life and property. DNR may vary its standards for permits, maintenance and operation based on consideration of the type and location of the structure and hazards to which the structure is or may be exposed and the peril to life or property if the structure fails to perform its function. This new law contains more details for the criteria for assigning a hazard classification to a structure based on the potential consequences resulting from the uncontrolled release of the structure's contents due to a failure. The hazard classification system must include 3 classes of structures: (1) High Hazard, (2) Significant Hazard, and (3) Low hazard. A low hazard includes a structure the failure of which may damage farm buildings, agricultural land or local roads. A Significant Hazard includes a structure the failure of which may damage isolated homes and highways, or cause the temporary interruption of public utility services. A High Hazard includes a structure the failure of which may cause loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways or railroads. A new requirement of this law relates to owners of High Hazard Structures. They will now be required to have a Professional Engineer ("PE"), licensed in Indiana, make a technical inspection of the structure and prepare or revise emergency action plans for the structure at least one time every 2 years. In addition the owner must submit to DNR a report of the PE inspection on a form approved by DNR. That report must: (a) include an evaluation of the structure's condition, spillway capacity, operational adequacy and structural integrity, (b) identify whether deficiencies exist that could lead to failure, (c) contain recommendations for maintenance, repairs and alternations to the structure which are needed to eliminate deficiencies, and (d) recommend a schedule for implementing the upgrades. If the PE determines maintenance, repairs or alternations to a High Hazard Structure are necessary, the owner must perform the recommended maintenance, repairs or alternation in the

time frame recommended by the PE. If the owner of a High Hazard structure fails to do so, DNR shall issue a NOV. DNR also may inspect high hazard structures to ensure compliance with these requirements.
For Significant Hazard structures, DNR is still required to make the technical inspections, but instead of DNR inspecting all dams once every 2 years, for Significant Hazardous structures DNR must inspect those structures at least once every 3 years. For Low Hazard structures, DNR is required to make its technical inspection at least once every 5 years. A copy of the DNR inspection report of each inspection conducted by must be kept in DNR's public files. The new law maintains the authority for DNR to issue a NOV to the owner, if DNR finds that a structure is: (a) not sufficiently strong, (b) not maintained in a good and sufficient state of repair or operating conditions, or (c) not designed to remain safe during infrequent loading events, or (d) is unsafe and dangerous to life and property. The NOV may require the owner to make or cause to be made at the owner's expense the maintenance, alternation, repair, reconstruction, change in construction or location or removal that DNR considers reasonable and necessary. The amount of time DNR gives to comply with necessary actions is to be based on the seriousness of the circumstances involving that structure. The former law provided a minimum of 90 days. That is no longer a mandatory minimum time frame. If at any time a condition of a structure becomes so dangerous to the safety of life and property that in DNR's opinion there is not sufficient time for issuance and enforcement of an order, DNR may immediately take the measures that are essential to provide emergency protection to life and property, including lowering the water level or a controlled breach of the structure. DNR may recover the costs of emergency measures from the owner. As with the former law, an owner who fails to take actions ordered by DNR commits a Class B infraction and each day of failure constitutes a separate infraction.

DNR's agents, engineers, geologists and other employees continue to have the right to enter upon any land or water in Indiana without liability for trespass for purpose of performing the technical inspections required by this law. Owners of the structure must cooperate with DNR, must facilitate access to the structure and must furnish, upon request plans, specifications, operating and maintenance data or other information pertinent to the structure.

Nothing in this law creates liability for damages against DNR or DNR's officers, agents and employees arising out of construction, maintenance, operation or failure of a structure or the issuance and enforcement of a NOV or rule to carry out DNR's responsibilities under this law.

DNR may continue to issue permits for dams under the existing law until rules for permitting under this new law take effect. Permits for a dam issued under the current law remain valid until expiration of the permit.

(SEA 508, PL 148, Ind. Code 14-27-7.5, effective July 1, 2002.)

ENERGY

Center For Coal Technology Research Created

Effective July 1, 2002, a Center for Coal Technology Research ("Center") has been created. It will be located at Purdue University in West Lafayette. The seven purposes of the Center are to:

(1) Develop technologies that can use Indiana coal in an environmentally and economically sound manner;

(2) Investigate the reuse of clean coal technology byproducts, including fly ash;

(3) Generate innovative research in the field of coal use;

(4) Develop new, efficient, and economical sorbents for effective control of emissions;

(5) Investigate ways to increase coal combustion efficiency;

(6) Develop materials that withstand higher combustion temperatures; and

(7) Carry out any other matter concerning coal technology research determined by the Center.

Purdue University is to cooperate with and may use the resources of the Indiana University Geological Survey and other state educational institutions, state or federal departments and agencies, political subdivisions, and interest groups representing business, environment, industry, science and technology.

The Director of the Department of Commerce or his designee, acting on behalf of the Center, has been given the power to:

(1) organize the Center;

(2) execute contracts for the operation of the Center and performance of any of the duties given the Center and any other services necessary to carry out the act;

(3) receive money from any source for carrying out its purposes;

(4) expend money for activities appropriate to its purposes; and

(5) execute agreements and cooperate with Purdue University and other state educational institutions, a state or federal department or agency, a political subdivision, and interest groups.

Subject to the approval of the Budget Agency, the Center also has the power to employ personnel necessary for efficient administration of its duties and purposes.

(SEA 29, PL 159 SECTION 1, Ind. Code 4-4-30, effective July 1, 2002.)

The Legislature also established a Coal Technology Research Fund ("Research Fund") to provide money for the Center to carry out its duties. The Budget Agency is directed to put money appropriated by the General Assembly as well as gifts, grants and bequests into that Research Fund. Money in the Research Fund does not revert to the general fund and is to be invested as with other public funds. This Research Fund is in addition to an existing fund for coal research grants ("Grant Fund"), found at Ind. Code 4-23-5.5-16. The existing coal research law also was amended this year. The amendment directs the Department of Commerce to pursue available private and public sources of money for that Grant Fund. That existing Grant Fund is used by the Indiana Recycling and Energy Development Board to provide grants for research and other projects designed to develop and expand markets for Indiana coal.

(SEA 29, PL 159 SECTION 2, Ind. Code 4-23-5.5-16, effective July 1, 2002.)

Inclusion of the Value of Qualified Pollution Control Property in Regulated Rates

Effective March 28, 2002 a utility that begins construction of a qualified pollution control property may request that the Indiana Utility Regulatory Commission ("IURC") add to the value of its property the value of the qualified

pollution control property for rate making purposes. For purposes of this new law, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology approved for use by the IURC that meets applicable state or federal requirements. "Clean coal technology" for purposes of this law includes a technology (including precombustion treatment of coal) that is used in new or existing energy generating facilities that directly or indirectly reduces airborne emissions of sulfur, mercury or nitrogen oxides or other regulated air emissions associated with combustion or use of coal that was not in general commercial use at the time of enactment of the Federal Clean Air Act Amendments of 1990 or that has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and was finally approved for such funding on or before the date of the Federal Clean Air Act Amendments of 1990.

(SEA 29, PL 159, SECTION 4, effective March 28, 2002, Ind. Code 8-1-2-6.8.)

Energy Policy for Indiana

The Legislature also added a new chapter to Indiana Code 8 for the purpose of enhancing Indiana's energy security and reliability. The Legislature established findings that are to be the basis for Indiana's energy policy. Indiana's energy policy clearly includes and emphasizes the use of Indiana coal. The Legislative findings include:

(1) Growth of Indiana's population and economic base has created a need for new energy generating facilities in Indiana.

(2) The development of a robust and diverse portfolio of energy generating capacity, including the use of renewable energy resources, is needed if Indiana is to continue to be successful in attracting new businesses and jobs.

(3) Indiana has considerable natural resources that are currently underutilized and could support development of new energy generating facilities at an affordable price.

(4) Certain regions of the State, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois Basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned efficiently while meeting strict state and federal air quality limitations. Specifically the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

The Legislature intends to enhance Indiana's energy security and reliability by ensuring that:

(1) Indiana's energy generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts;

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy generating facilities;

(3) The electric transmission system within Indiana is upgraded to distribute additional amounts of electricity

more efficiently; and

(4) Jobs are created as new energy generating facilities are built in regions throughout Indiana.

(SEA 29, PL 159 SECTION 6, Ind. Code 8-1-8.8, effective March 28, 2002.)

Programs to Encourage Clean Coal Technology

The Legislature is requiring that the IURC encourage clean coal and energy projects, by creating the following financial incentives for clean coal and energy projects:

(1) Timely recovery of costs incurred during construction and operation of projects at new energy generating facilities that employ the use of clean coal technology that are fueled primarily by coal or gasses derived from coal from the Illinois Basin, projects to provide advanced technologies that reduce regulated air emissions from existing energy plants that are fueled primarily by coal or gases from coal from the Illinois Basin such as flue gas desulfurization and selective catalytic reduction equipment; projects to provide electric transmission facilities to serve a new energy generating facility and projects to develop alternative energy sources, including renewable energy projects.

(2) The authorization of up to 3 percentage points on the return on shareholder equity that would otherwise be allowed to be earned on those same type of energy projects;

(3) Financial incentives for the purchase of fuels produced by a coal gasification facility, including cost recovery and the 3 percentage points on the return on shareholder equity;

(4) Financial incentives for projects to develop alternative energy sources including renewable energy projects; and

(5) Other financial incentives the IURC considers appropriate.

To qualify for the financial incentives, the qualifying business must file an application with the IURC for approval of the clean coal and energy project. The application may be consolidated with the application filed to obtain a certificate of necessity under Ind. Code 8-1-8.5 or Ind. Code 8-1-8.7.

"Clean Coal and Energy Projects" for purposes of this new Energy Policy include:

(1) Projects at new energy generating facilities that employ the use of clean coal technology that are fueled primarily by coal or gases derived from coal from the Illinois Basin;

(2) Projects to provide advanced technologies that reduce regulated air emissions from existing energy generating plants that are fueled primarily by coal or gases from coal from the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment;

(3) Projects to provide electric transmission facilities to serve a new energy generating facility;

(4) Projects to develop alternative energy sources, including renewable energy projects;

(5) The purchase of fuels produced by a coal gasification facility.

"Clean Coal Technology" for purposes of this new Energy Policy include a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) either was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of the 1990 Federal Clean Air Act Amendments or has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the 1990 Federal Clean Air Act Amendments.

An "eligible business" for purposes of the new Energy Policy includes an energy utility that:

(1) proposes to construct or to repower a new energy generating facility;

(2) proposes to construct or repower a project at a new energy generating facility that employs the use of clean coal technology fueled primarily by coal or gases derived from coal from the Illinois Basin or that provides advanced technologies that reduce regulated air emissions or provides eclectic transmission facilities to serve a new energy generating facility and projects to develop alterative energy sources, including renewable energy projects;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(4) purchases fuels produced by coal gasification facility.

A "New Generating Facility" for purposes of the new Energy Policy includes a facility that satisfies all of the following:

(1) the facility is fueled primarily by coal or gases from coal from the Illinois Basin;

(2) The facility is a newly constructed or newly repowered energy generating plant or a newly constructed generation capacity expansion at an existing facility, dedicated primarily to serving Indiana retail customers;

(3) The repowering, construction, or expansion of the facility is begins after July 1, 2002; and

(4) the facility has an aggregate rated electric generating capacity of at least 100 megawatts for all units at one site or a generating capacity of at least 400,000 pounds per hour of steam. (This requirement does not apply if the project is a clean coal and energy project involving alternative energy sources, including renewable energy projects.)

(SEA 29, PL 159 SECTION 6, Ind. Code 8-1-8.8, effective March 28, 2002.)

EXPLOSIVES

The requirement for obtaining a permit for storage of regulated explosive magazines was modified this year. Starting July 1, 2002, an applicant will be allowed the alternative of showing that smoking, matches, open flames and spark producing devices are not allowed in a room containing an indoor magazine. If that showing can be

made through inspection, then it will not be necessary for the magazine storage area to be constructed in accordance with the rules of the Fire Prevention and Building Safety Commission.

(SEA 104, PL 10, Ind. Code 22-14-4-5, effective July 1,2002.)

FLOODWAY CONSTRUCTION

The law for construction in a floodway was amended as of March 27, 2002 still aimed at protecting life and property from flooding. Any person receiving a permit to construct in a floodway or who can legally reconstruct a residence or abode existing in the floodway will be required to ensure that the lowest floor of a building that is constructed or reconstructed in the 100 year floodplain of an area protected by a levee is not lower than the 100 year frequency flood elevation plus one foot. This allowance will apply only if the levee has been inspected and is found to be in good or excellent condition by the United States Army Corps of Engineers.

(HEA 1228, PL 154, Ind. Code 14-28-1-22, effective March 27, 2002.)

IDEM WATER PERMITS

Due to the large backlog of NPDES permits, a law was passed this year that requires the Indiana Department of Environmental Management ("IDEM") to provide to the Environmental Quality Service Council ("EQSC") before July 15 of each year a list, current through July 1 of that year, of NPDES permits that have expired, but are administratively extended, pending IDEM's action on a timely filed renewal application. For each such permit IDEM must advise the EQSC of:

(1) the number of months that the permit has been administratively extended;

(2) the number of months IDEM has extended action on the application while waiting for a response to a request for additional information;

(3) the type of permit; and

(4) the date when public notice of a draft permit was given.

(HEA 1329, PL 184, SECTION 10, Ind. Code 13-15-4-9, effective March 28, 2002.)

IDEM PERMIT APPLICATION FEE ALLOCATION

As a result of the effort to increase by 30% the permit fees now paid and concerns by those who pay the fees for how the existing money has been used, the Indiana Department of Environmental Management ("IDEM") is being required by the Legislature to report to the Environmental Quality Service Council ("EQSC") every even numbered year, before September 1 of that year, how IDEM proposes to distribute the NPDES, solid waste and hazardous waste permit fees among those three permitting programs. IDEM must provide a rationale for the way in which it proposes to allocate those fees to the program areas and any difference between the proposed distribution and the actual distribution that was made by IDEM in the immediately preceding state fiscal year. In

addition IDEM must provide the results of an independent audit of IDEM's actual expenses related to each NPDES, solid waste and hazardous waste permit program and the distribution of permit application fee funds made by IDEM for the immediately preceding state fiscal year.

(HEA 1329, PL 184, SECTION 12, Ind. Code 13-15-11-6, effective March 28, 2002.)

LEAD-BASED PAINT ACTIVITY CHANGES

Changes to the Indiana Department of Environmental Management's ("IDEM") lead-based paint regulatory program will take effect on July 1, 2002. The Legislature has revised the existing law (which in general applies to residential housing built before January 1, 1978 and institutional, commercial, public, industrial, residential buildings or structures where children 6 years or younger are present 2 days a week for 3 hours each, 6 hours a week, or 60 hours a year) to add a new category for licenses for a "clearance examiner". Before July 1, 2003, the Air Pollution Control Board is required to adopt rules for persons who engage in clearance abatement activities for clearance examiner licenses, training courses and clearance nonabatement activities. Clearance nonabatement activities include things such as interim controls, paint stabilization, and on-going paint maintenance or rehabilitation. Under this new law, clearance nonabatement activities can be conducted by a clearance examiner in addition to the already existing categories of inspector and risk assessor.

The law also revises the license requirements to allow licenses for all lead based paint activities to be valid for a 3 year period, instead of the current one year period.

The Legislature also has added a new regulatory program for remodeling, renovation and maintenance activities at target housing and child occupied facilities built before 1960. These requirements apply to residential dwellings if the residential dwelling is occupied during the renovation activities by someone other than the owner, or by a child who is less than 7 years of age (or another age determined by the Air Pollution Control Board in its rules) where the child has elevated blood lead levels. This new law will take effect on July 1, 2002 and will apply when exterior painted surfaces of more than 20 square feet are disturbed, when interior painted surfaces of more than 2 square feet in any one room or space are disturbed or when more than 10% of the combined interior and exterior painted surface area of components of the building are disturbed. The law prohibits all of the following methods to remove lead-based paint:
(1) open flame burning or torching;
(2) machine sanding or grinding without high efficiency particulate air local exhaust control;
(3) abrasive blasting or sandblasting without high efficiency particulate air local exhaust control;
(4) a heat gun that operates above 1,100 degrees Fahrenheit or that chars the paint;
(5) dry scraping, except when in conjunction with a heat gun or within one foot of an electrical outlet;
(6) dry sanding except when within one foot of an electrical outlet.

If the space is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical and a person may not allow visible paint chips or paint debris that contains lead-based paint to remain on the soil, pavement or other exterior horizontal surface for more than 48 hours after the exterior surfaces are completed.

Finally new public information on lead blood levels will result from this legislation. Starting July 1, 2002, a person that examines the blood of a child less than 7 years of age for the presence of lead is required to report to the Indiana State Department of Health ("ISDH")the results of the examination. That report must be provided not later than 1 week after completing the examination. The report must include the name, date of birth, gender, race and any other information required to qualify to receive federal funding of the child whose blood is examined as well as the date, type of blood test performed, the person's normal limits for the test, the test results, an

interpretation of the test results and the names, addresses and telephone numbers of the person examining the blood and the attending physician, hospital, clinic or other specimen submitter. In addition, the ISDH, the Family and Social Services Administration and local health departments are to share among themselves and with the federal Department of Health and Human Services information, including a child's name, address and demographic information gathered after January 1, 1990 concerning the concentration of lead in the blood of a child less than 7 years of age in order to determine the prevalence and distribution of lead poisoning in children. The ISDH and Family Social Services Administration and local health departments shall share information gathered after July 1, 2002 with organizations that administer state and local programs covered by the United States Department of Housing and Urban Development regulations concerning lead-based paint poisoning prevention in residential structures. The law specifically provides that persons who share data under these new laws are not liable for any damages caused by compliance with the law and that these disclosures of medical and epidemiological information may be disclosed to the public.

(HEA 1171, PL 99, Ind. Code 13-11-2-36.5, Ind. Code 13-17-14-3, Ind. Code 13-17-4.5, Ind. Code 13-17-14-5, Ind. Code 13-17-14-11, Ind. Code 13-17-14-12, Ind. Code 16-41-8-1, Ind. Code 16-41-39.4-1, Ind. Code 16-41-39.4-3 and Ind. Code 16-41-39.4-4, effective July 2, 2002.)

OFF-ROAD VEHICLE PENALTIES

The law will be revised effective July 1, 2002 to make it a Class C infraction for a person to violate the law that requires that off -road vehicles be driven over public property only after obtaining the consent of the state, state agency, or, where applicable, the United States Forest Service.

(HEA 1241, PL 155 SECTION 5, Ind. Code 14-16-1-29, effective July 1, 2002.)

OIL AND GAS FEES & BONDS

The oil and gas fees and bonding requirements have been revised this year. Those changes will take effect on July 1, 2002. With these changes, the $100 permit application fee that an oil and gas permit applicant submits will now be placed in the Oil and Gas Fund instead of the Oil and Gas Environmental Fund. The Oil and Gas Fund is used to fund the regulatory activities of the oil and gas division of the Department of Natural Resources ("DNR") and for research pertaining to exploration for development of and wise use of petroleum resources in Indiana. New annual fees have been added and must be paid by all oil and gas well owners or operators based on the number of wells for which the person has permits as of November 1 of each year. Prior law only required annual fees for Class II wells.

The new annual fees are as follows:
(1) For 1 permit, $150
(2) For 2 through 5 permits, $300
(3) For 6 through 25 permits, $750
(4) For 26 through 100 permits, $1,000
(5) For more than 100 permits, $1,500 plus $15 for each permit over 100.

The annual fees must be paid to DNR not later than February 1 and will be based on the number of oil and gas wells permitted the prior November 1. These annual fees will be placed in the Oil and Gas Environmental Fund established in 1995. The Oil and Gas Environmental Fund is used to supplement the cost required to abandon a well that has had a permit revoked, to cover the costs of remedial plugging and repairing of wells and to cover the costs to mitigate environmental damage or to protect public safety against harm caused by a well regulated by DNR's oil and gas law. If the amount in the Oil and Gas Environmental Fund is more than $1,500,000 on

November 1 of a year, the annual fees listed above are reduced by 75% or to $50 which ever is more. The lower annual fees remain in effect until the amount in the Oil and Gas Environmental Fund is less than $1,000,000 on November 1 of a year. When the Oil and Gas Environmental Fund has over $1,500,000, any amount exceeding $1,500,000 on November 1 of a year reverts to the Oil and Gas Fund. DNR must retain at least $500,000 in the Oil and Gas Environmental Fund. Any expenditures that would reduce the fund below $500,000 can only be made with approval of the Budget Agency. DNR is limited to expending 5% of the Oil & Gas Environmental Fund for purposes of administrating that fund.

The Legislature created a new exemption this year for noncommercial gas wells drilled on real estate owned by a resident of Indiana. If the Deputy Director of DNR waives the bonding requirements and the owner submits written proof of financial responsibility and submits an agreement to maintain and abandon the well in accordance with the law, then that permit holder does not have to pay the annual fees into the Oil and Gas Environmental Fund.

The Legislature also created exemptions from the bonding obligation for commercial oil and gas permittees. Under this change to the law only new operators and "bad actors" must provide the bonds (which can be cashed in when a permit is revoked). An applicant for an oil and gas permit who has never been granted a permit for a well for oil and gas purposes under Indiana's law and a person who has demonstrated a pattern of violations of the law in the previous 2 years, a person who has failed to pay a civil penalty imposed for violation of the oil and gas law and a person who has failed to pay an annual fee, must execute and file with DNR a bond of $2,500 for each permitted well or a blanket bond of $45,000 for any number of wells.

(HEA 1227, PL 48, Ind. Code 14-37-4-6, Ind. Code 14-37-5-1, Ind. Code 14-37-5-2, Ind. Code 14-37-6-1, Ind. Code 14-37-10-3, Ind. Code 14-37-10-4, effective July 1, 2002.)

PRIVATE ROAD TRAFFIC REGULATION

Authority to apply traffic regulations to private roads was added to Indiana law, effective March 26, 2002. These new traffic regulations will potentially affect the waste industry and collection of residential waste. Local governments have been given the right to adopt, by ordinance, traffic regulations for private roads within their jurisdiction. Local governments may only exercise this jurisdiction after a request has been made at a public meeting, or by certified mail to the legislative body from the property owner. The local government entity must adopt an ordinance to establish the traffic regulation. The ordinance must be recorded after passage in the office of the County Recorder. It may not conflict with or duplicate any applicable state law. It must include a contractual agreement between the local authority and the property owner setting forth the terms and responsibilities of the additional traffic regulations. The types of traffic regulations that may apply include:

(1) regulation of standing or parking of vehicles;
(2) regulation of traffic by police officer or traffic control signals;
(3) regulation or prohibition of processions or assemblages on the road;
(4) designation as a one-way road;
(5) designation as a through road, requiring that all vehicles stop before entering or crossing the private road;
(6) designation as a stop intersection, requiring all vehicles to stop at the entrance to the intersection;
(7) restricting use of the private road;
(8) regulating the operation of bicycles, requiring the registration and licensing of bicycles;
(9) regulating or prohibiting the turning of vehicles at the intersection;
(10) altering the prima facie speed limits; and
(11) adoption of other traffic regulations authorized by Ind. Code 9-21.

If the traffic regulation concerns the activities identified in numbers 4, 5, 6, 7, 9 or 10 above, the restriction takes effect only after signs giving notice of the traffic regulation are posted.

(HEA 1121, PL 128, Ind. Code 9-21-1-2, 9-21-1-3, 9-21-1-9, effective March 26, 2002.)

PUBLIC WATER SUPPLY SYSTEMS RENAMED

A technical correction was made to Indiana's water laws, necessary to meet Environmental Protection Agency requirements. The term Water Supply System has been changed to Public Water System.

(HEA 1329, PL 184, SECTIONS 1, 2, 3, 4, 5, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, Ind. Code §§ 4-21.5-3-4, 13-11-2-108, 13-11-2-177.3, 13-11-2-259, 13-11-2-264, 13-15-8-1, 13-18-11-12, 13-18-16-1, 13-18-16-5, 13-18-16-6, 13-18-16-7, 13-18-16-8, 13-18-16-10, 13-18-16-11, 13-18-16-12, 13-18-16-13, 13-18-17-6, 13-18-20-9, 16-41-27-10, and 16-41-27-22, effective July 1, 2002)

RENEWAL PERMIT OPTIONS TO HAVE IDEM PERMIT DECISION MADE

The backlog of water permits and the position of the Indiana Department of Environmental Management ("IDEM") that administratively extended permits could not be modified, resulted in a small but potentially important change to the law that governs IDEM's actions on water and waste permit applications. This change took effect on March 28, 2002. Previously, there was no time set in the law for IDEM to act on renewal applications that did not involve either a minor or major modification to the permit. The theory at the time had been that IDEM should focus on new permits and permits seeking modifications, since permits with a timely filed renewal application remain in effect until IDEM makes a decision on the permit renewal application. However, when IDEM took the position that a permit that has expired, even though a renewal application had been timely filed and the permit remains in effect, could not be modified, problems were created and the need for a time frame for action on those renewal permits became a priority for permit applicants. The Legislature sought to solve that problem this year by making the options under the permit timing law available for renewal permit applications whose permits have expired and no decision has yet been made by IDEM. Under this law, if a renewal permit application is not acted on before the date the permit is to expire by its terms, the permit applicant can request a refund of its application fee and then just wait for IDEM to act, or if issuance of the permit is needed, the permit applicant can notify IDEM that it is electing to proceed under either an option for hiring a consultant to do the permit application review, or an option to prepare a draft permit and submit that draft permit to IDEM for action within a time set by the law. Renewal applicants will be allowed to hire an outside consultant to prepare a draft permit and the required supporting technical justification and IDEM will be required to review the draft permit and approve it, with or without revision, or deny it. The permit applicant and IDEM will jointly select the consultant who must be authorized to begin work no later than 15 working days after IDEM is given notice that the permit applicant has elected to proceed in this manner. The permit applicant must pay the costs of the consultant under this option and will not get a refund of the permit application fee that was paid. The consultant will have 35 working days from the date notified by the applicant and commissioner of its selection to review and prepare the draft permit and technical justification. IDEM will have 25 working days after receiving the draft permit to make a decision, or 55 working days, if the type of permit requires public comment or a public hearing.

If the renewal applicant elects the option of drafting the permit and technical justification itself, it will receive a refund of the permit application fee that it paid and it must submit the required documents for IDEM review and action within 35 working days of notifying IDEM it has elected this option. IDEM has the same 25 working days after receiving the draft permit to make a decision, or 55 working days, if public participation is required for the

application. The law allows for these time frames to be extended only upon the agreement of both IDEM and the applicant.

(HEA 1329, PL 184 SECTIONS 6, 7, 8 and 9, Ind. Code 13-15-4-11, Ind. Coded 13-15-4-14 and Ind. Code 13-15-4-15 and Ind. Code 13-15-4-16, effective March 28, 2002.)

SEWAGE

Four different pieces of legislation passed this session, dealing with sewage, demonstrating the Legislature's increasing concern with Indiana's reliance on septic systems and the problems being created by faulty septic and sewer systems.

County Works Board Authorized to Construct Systems on Private Property

One effort will allow county Works Boards to install private sewage disposal systems on land owned by private entities and allow that private entity to pay the cost through an assessment that can extend over 10 years, in 20 equal semiannual installment payments. For purposes of this law, a sewage disposal system means a septic tank, waste holding tank, seepage pit, cesspool, privy, composting toilet, interceptor or trap, portable sanitary units and other equipment or facility or devices used to store, treat, make inoffensive or dispose of human excrement or liquid carrying waste of a domestic nature. A Works Board will construct such private systems only if:

(1) the owner of the land applies to the Works Board for construction of a system that the board determines is appropriate for sewage disposal needs of the location;

(2) the owner of the land supplies in the application information sufficient to prepare a preliminary resolution to approve construction of the system;

(3) the Works Board adopts a preliminary resolution approving construction of the system; and

(4) the Works Board has on file at the time of the preliminary resolution cross sections, general plans, specifications and an estimate of the cost.

The cost of the system includes all incidental, inspection and engineering costs caused by the proposed construction, but the private land owner will not be assessed and charged for salaries and expenses of the necessary and regularly employed personnel of the engineering department of the county, or the ordinary operating costs of the Works Board. However if the Works Board determines that it is necessary to employ additional engineering services to construct a particular system, the cost of the additional service actually incurred in connection with the system will be included in the cost to be paid by the land owner.

A hearing must be held after public notice after the Works Board adopts a preliminary resolution approving the construction. The Works Board must hear all interested persons and decide whether the benefits to the property liable to be assessed for construction of the system will equal the estimated cost of the construction of the system. Notice of the cost of construction of the system and the incidental, inspection and engineering costs that will be assessed to the land owner must be sent to the property owner.

Ten days before the date fixed for hearing, the county engineer of the county must file with the Works Board an estimate of the maximum cost of construction of the system proposed. The county may not enter into a contact under the preliminary resolution if the contact exceeds the engineer's estimate.

If the Works Board finds that the benefits will not equal the maximum estimated cost of construction of the system, the board cannot proceed. If the Works Board finally orders construction of a system, the board must advertise for bids and perform the work under Public Works Contracting requirements of Ind. Code 36-1-12. If the Works Board does award a contract for construction of the system and the system is constructed, as soon as a contract for construction has been completed the Works Board shall have the assessment prepared and the property on which the system is constructed is liable for the assessment. The Works Board cannot levy a special assessment for an amount that is more than the cost of construction of the system. The assessment must include:

(2) the name of the owner of the property;

(3) a description of the property or key number or parcel number; and

(4) the total assessment against the property.

A mistake in the name of the owner or the description of the property does not void the assessment or lien against the property. The assessment is presumed to be the special benefit to the lot, parcel or tract of land. The assessment is final and conclusive unless it exceeds the engineer's estimate or is challenged. The Works Board must notify the owner, in writing, of the assessed amount, that the basis for the assessment is on file and may be inspected at the Works Board's office and the time and date before which an objection must be filed. If an objection is filed, the Works Board must hold a hearing. After the hearing, the Works Board will sustain or modify the assessment by confirming, increasing or reducing the presumptive assessment. The decision must be based on the Works Board's findings concerning the special benefits that the property has received or will receive on account of construction of the system. When the certified copy of the completed assessment is filed with the county auditor, the auditor must notify the affected person of the amount of the assessment against the person's property. The amount is due 30 days after approval of the assessment, or the person may entered into a written agreement to pay it in 20 equal semiannual installments, with interest. If the assessment is less than $100, it may not be paid in installments. SEA 43, PL 7; Ind. Code 36-9-40, effective July 1, 2002.

(SEA 43, PL 7, SECTION 1, Ind. Code 36-9-40; effective July 1, 2002.)

Real Estate Disclosure

A second bill that passed requires the Real Estate Commission disclosure form for residential property to be amended. Instead of being limited to a disclosure of matters related to the existing structure, the owner will now be required to also advise a potential buyer that the sewage disposal system will need to be improved, if the buyer intends to add on to the property being bought.

(SEA 79, PL 160, Ind. Code 24-4.6-2-7, effective July 1, 2002.)

On-Site County Waste Management Districts

The third sewage bill passed will allow counties, starting on July 1, 2002, to form a county onsite waste management district for one of more of the purposes listed below related to sewage disposal systems. For purposes of this law, as with SEA 43, PL 7, sewage disposal system means a septic tank, waste holding tank, seepage pit, cesspool, privy, composting toilet, interceptor or trap, portable sanitary units and other equipment or facility or devices used to store, treat, make inoffensive or dispose of human excrement or liquid carrying waste of a domestic nature. The purposes are:

(1) Inventorying the existing systems;

(2) Inspecting systems;

(3) Monitoring the performance and maintenance of systems;

(4) Establishing standards for installation and inspection of systems that must be no less stringent than standards established by the Indiana State Department of Health and for procedures to enforce those standards;

(5) Seeking grants for system maintenance and any other activity allowed by this law;

(6) Establishing rates and charges for the operation of the onsite waste management district;

(7) Establishing policies and procedures for the use of grants and other revenue of the district for installation, maintenance, and other activities of the district that relate to septic systems in the district;

(8) Seeking solutions for disposal of septage from systems;

(9) Education and training of system service providers and system owners;

(10) Coordination of activities of the district with activities of local health departments, IDEM, DNR and the ISDH; and

(11) Other function as determined by the governing body of the district.

The governing body of the district will be the county commissioners. The county commissioners are given the sole discretion to establish a district or to decide to dissolve a district once established. A district may include areas that are not contiguous and may not include a municipality unless the municipal legislative body adopts an ordinance or resolution designating its area to be included in the district. If the district believes an area located within a municipality in the county should be part of the district, the commissioners shall identify the areas it believes should be part of the district and request the municipality to adopt an ordinance or resolution to be included.

If a district is to be established, a notice of intent to establish must be prepared and must include:

(1) The proposed name of the district;

(2) The place in which the district's principal office is to be located;

(3) the need for the proposed district;

(4) The purpose to be accomplished by the district;

(5) How the district will be conducive to the public health, safety, convenience or welfare;

(6) An accurate description of the territory to be included in the district (which need not be metes and bounds or by legal subdivision);

(7) The plans for financing the cost of operations of the district until the district is in receipt of revenue from its operations;

(8) Estimates of the costs of accomplishing the purposes of the district;

(9) Estimates of the sources of funding for the costs; and

(10) Estimates of the rates and charges that will be required.

The County Commissioners must appoint a hearing officer to preside over public hearings concerning establishing a district. The hearing officer shall select the date, time and a place inside or within 10 miles of the proposed district for holding a hearing and publish notice 1 time 10 days before the hearing in a newspaper of general circulation in the county and by giving certified mail notice at least 2 weeks before the hearing to IDEM and ISDH. Any person that resides in or partially resides in an area affected by the proposed establishment of a district may on or before the date set for hearing file written objections and may be heard at the hearing. After the hearing the hearing officer shall make findings and recommendations as to whether the establishment of the district should be approved, approved with modifications, or denied. In making the finding the hearing officer shall consider whether the proposed district complies with the conditions of the law for establishment and whether the proposed district appears capable of accomplishing its purpose or purposes in an economially feasible manner and whether the district is needed. After the hearing, if the County Commissioners determine that the findings of the hearing officer show that the proposed district appears capable of accomplishing the purpose or purposes of the district in an economially feasible manner, the district may be established. The Commissioners must adopt an ordinance and must give notice by mail of the adoption of the ordinance to each person who filed a written objection. Notice shall also be given to the local health departments, IDEM, DNR and ISDH. The ordinance must include the name of the district, the need for the district, the purpose to be accomplished by the district, an accurate description of the territory included in the district, the estimates of costs of the operations of the district and the plan for financing the cost of operations of the district by the county or counties in which the district is located. If an ordinance to establish a district is adopted, a person who filed a written objection against establishment may file an objecting petition in the office of the county auditor. The petition must be filed within 30 days after notice the date the notice of adoption of the ordinance is mailed to the person. The petition must state the person's objections and reasons why the person believes the establishment of the district is unnecessary or unwise. The county auditor shall immediately certify a copy of the petition to the county legislative body. The county legislative body must fix a time and place for a hearing on the matter. The hearing must be held not less than 5 days and not more than 30 days after receipt of the certified documents and must be held in the county where the petition arose. Notice of the hearing must be given to the petitioner at least 5 days before the date of hearing. After the hearing the county legislative body must approve or deny the establishment of the district. The decision is final.

The same procedures for appointment of a hearing officer and holding of public hearings applies when considering dissolving the district.

Once a district is formed it may do the following:

(1) make contracts for services necessary for the operations of the district, including management by any public or private entity;

(2) adopt, amend and repeal bylaws for the administration of the district's affairs;

(3) fix, alter, charge, and collect reasonable rates and other charges, to be imposed in the area served by the district with respect to every person whose premises are, whether directly or indirectly, served by the district, in order for the district to:

(a) fulfill the terms of contracts made by the district;

(b) pay the other expenses of the district;

(4) refuse continued services if the rates and other charges are not paid by the user;

(5) control and supervise all licenses, money, contracts, accounts, books, records, maps, or other property rights and interests conveyed, delivered, transferred or assigned to the district;

(6) make provision for, contract for, or sell the district's byproducts or waste; and

(7) adopt and enforce rules to establish procedures for the governing board's actions or for any other lawful subject necessary to the operation of the district and the exercise of the powers granted.

A district may not:

(1) make contracts or incur obligations if they cannot be paid from revenue the district is permitted to raise or from federal, state or other grants or contributions;

(2) make expenditures or take other actions for the benefit of a property served by a system if there is an available sanitary sewer within 300 feet of the property line, unless the sanitary system operator refuses connection;

A district plan for operation must include a detailed statement of the activities that the District plans to undertake and a timetable for the activities. Each district must keep records showing the District's finances. The district may impose rates and charges based on either a flat charge for each system, variable charges based on the capacity of the system or other factors that the governing body determines are necessary to establish just and equitable rates and charges. In Lake County and St. Joseph County, the rates and charges can be imposed only after approval by the county legislative body. Unless the governing body directs otherwise, the district is considered to benefit every lot, parcel of land and building served by a system and rates and charges are to be billed and collected accordingly. A rate and charge is just and equitable if it is sufficient to produce revenue to pay all expenses incidental to the operation of the district. Rates and charges too low to meet financial requirements are unlawful. Rates and charges can only be established after a public hearing is held at which all owners of systems and other interested persons have had an opportunity to be heard concerning the proposed rates and charges. The rates are to be established by ordinance. After introduction of the ordinance initially fixing rates and charges, but before it is finally adopted, notice of the hearing must be given by publication one time each week for 2 weeks in a newspaper of general circulation in the county. The last notice must be published at least 7 days before the date of the hearing. The rates and charges made and assessments that are served by a District constitute a lien against the lot, parcel of land or building. A lien attaches on the date the rates and charges become 60 days delinquent. This lien is superior to and takes precedence over all other liens, except a lien for taxes. If rates and charges are not paid within the time fixed and become delinquent, a penalty of 10% of the amount of the rates and charges attaches. In addition, the governing body may recover the amount due, the penalty and reasonable attorneys fees. The lien will be enforceable against a subsequent owner of property if the lien has been recorded with the county recorder before the conveyance to the subsequent owner.

Nothing in this law limits the formation and operation under Ind. Code 8-1-2-89 of a sewage disposal company to provide sewage disposal service to an area within a district, or the granting of a certificate of a territorial authority under Ind. Code 8-1-2-89 encompassing a part of the area within a district.

(SEA 99, PL 161, Ind. Code 36-11, Ind. Code 6-2.1-3-33, effective July 1, 2002.)

Special Allen County Provisions for Sewage Systems

The fourth sewage related law that passed this year applies only to Allen County. It is intended to address a special problem that Allen County faces. In what was a tightrope walk, the Legislature has passed a law that will allow the issuance of an operating permit in Allen County for a system that involves a point source discharge of treated sewage from a dwelling. All of the following provisions must be met before the local health department can issue such a permit:

(1) The discharge must also be authorized under a general permit issued under 40 CFR 122.28;

(2) The onsite residential sewage discharging disposal system must be one that is installed to repair a sewage disposal system that fails to meet public health and environmental standards;

(3) The local health department must adopt procedural rules to monitor the onsite residential sewage discharging disposal system, which must include fines or penalties or both for noncompliance that will ensure that required maintenance is performed on the system and the system does not discharge effluent that violates water quality standards;

(4) The local health department must certify that:

(A) the system is capable of operating properly;
(B) the system does not discharge effluent that violates water quality standards;
(C) an acceptable septic soil absorption system cannot be located on the property served by the system because of soil characteristics, size or topographical conditions of the property;
(D) the system was properly installed by a qualified installer and provides the best available technology for residential discharging onsite sewage disposal systems; and
(E) the local health department has investigated all technologies available for repair of the failing sewage disposal system other than the use of an onsite residential sewage discharging disposal system and determined that it is the only possible technology that can be used to effect a repair of the system without causing unreasonable economic hardship to the system owner;

(5) The system for which the permit is issued cannot be connected to a sanitary sewer because either (a) there is not a sanitary sewer connection available, (b) the sanitary sewer operator refuses connection, or (c) unreasonable economic hardship would result to the system owner because of the connection requirements of the sanitary sewer operator or the distance to the sanitary sewer.

In addition, the Legislature is requiring the Indiana State Department of Health ("ISDH") to conduct a study of the use of:

(1) effluent filters;
(2) recirculation media filters;
(3) aeration treatment units;
(4) drip irrigation;
(5) graveless trenches; and
(6) new technologies

for residential septic system that will cause systems to perform satisfactorily as alternatives to currently operating systems that do not perform satisfactorily because of soil characteristics, lot sizes, topographical conditions or high water tables. The ISDH is also to develop plans and specifications for use of those technologies in residential septic systems. The ISDH is to adopt rules to govern the issuance of operating permits for residential septic systems installed in compliance with those specifications to govern the Allen County Health Department's permitting authority. The ISDH is to report to the Environmental Quality Service Council ("EQSC") on its progress

in conducting the study and promulgation of the required rules in August and October of 2002.

Finally the Legislature is requiring IDEM to take all actions necessary to apply for and obtain from the United States Environmental Protection Agency ("USEPA") the general permit under 40 CFR 122.28, which is a condition precedent for Allen County being able to allow a point source discharge to waters of treated sewage from an onsite residential sewage discharging disposal system. IDEM must also report to the EQSC in August and October on its progress in obtaining the general permit authority from USEPA.

(SEA 461, PL 172, Ind. Code 13-18-12-9 and Ind. Code 16-19-3-27, effective March 28, 2002.)

SOLID WASTE MANAGEMENT DISTRICTS

Effective March 20, 2002, the ability of a county to withdraw from a joint solid waste management district and to join with other counties to be part of a different joint district was made easier. After a number of years of problems with joint solid waste management districts and the ability of one county to withdraw, the Legislature this year established clear authority to allow such withdrawals to occur unilaterally, without the approval of all counties constituting the joint district. The Legislature also made it possible for the withdrawing county to join with other counties to form a new joint district or to join an already existing different joint district. This eliminates what would have been the result under the current law where the withdrawing county's only the option was to be a single county district. The changes made to the law also make it possible for counties in a joint district to remove a county without the consent of the county being removed. Whichever county or counties are the proponent of the change must pay the cost of preparing an analysis concerning the legal obligations that remain after the county withdraws or is removed. In addition the state examiner of the State Board of Accounts is given responsibility for examining the legal obligations entered into by a joint solid waste management district when one county withdraws or is removed and must within 120 days after the effective date of that change issue a report of the examination to the Board of Directors of the joint district and to the executive of the county that withdrew or was removed. This report may be used as evidence in any action that seeks to enforce the payment of legal obligations entered into by a joint district. A withdrawing county is responsible for its share of legal obligations of the joint district. The law establishes a cut off date for legal obligations, being all obligations of the joint district entered into before the September 20 that occurred before the date of the resolutions to withdraw or remove a county. Legal obligations include contracts, repayment of loan agreements, payment of bonds issued or any other legal obligation entered into by the joint district while the withdrawing or removed county was a member of the joint district. The county must pay its share of the legal obligations to the remaining joint district before the second January that follows after the September 20 date that ends the district's joint legal liability. The county executive of the withdrawing county or county that is removed must enter into a written agreement specifying the legal obligations of that county and the joint district not more than 60 days after the date the state examiner has issued its report. A public meeting or meetings must be held by the county executive of each of the counties in the joint district and the board of the joint district, individually or jointly with the others to make public disclosure of the agreement reached on the division of liability for the joint district's legal obligations.

A withdrawal or removal of a county from a joint district takes effect either on the date the required resolutions have been adopted and delivered as required by law or a later date that is contained in resolutions. The withdrawing county or removed county will have one year to prepare its own solid waste management plan for submittal to IDEM. During the time its new plan is being prepared the applicable provisions of the joint district plan continue to apply to that county.

(SEA 283, PL 74, Ind. Code 5-11-1-9.7, Ind. Code 13-21-3-1, Ind. Code 13-21-4-2, Inc. Code 13-21-4-2.5, Ind.

Code 13-21-4-3, Ind. Code 13-21-4-4, Ind. Code 13-21-4-5, Ind. Code 13-21-4-6, Ind. Code 13-21-4-7, Ind. Code 13-21-4-7, Ind. Code 13-21-5-21, effective March 20, 2002.)

STATE MUSEUM PAYMENT FOR CULTURAL/HISTORICAL ITEMS

The purchasing law for state agencies was amended this year to allow the State Museum to pay in advance for exhibits, artifacts, specimens or other unique items of cultural or historical value or interest. Unless there is a specific exception make by law, state agencies can only pay for services, supplies, materials or equipment upon receipt of such services, supplies, materials or equipment by the state. A exception was made this year that will allow the State Museum, if it has the prior approval of the budget agency, to pay in advance for these type of items of special cultural and historical interest.

(HEA 1241, PL 155 SECTION 1, Ind. Code 4-13-2-20, effective July 1, 2002.)

WETLANDS

One of the more confusing and important issues this last session was wetlands. Before the session started, by both a non-rule policy and not yet completed rulemaking actions, IDEM was attempting to regulate isolated wetlands, which the United States Corps of Engineers and federal law no longer considered wetlands for protection under the Federal Clean Water Act. During the legislative session, Marion County Superior Court Judge Michael Keele ruled that IDEM did not have authority under State or federal law to promulgate a rule for protection of isolated wetlands which were not waters of the United States or waters of the State. A number of bills were introduced and considered during this legislative session. House Bill 1306, as amended, passed. It did three things. It: (1) retained the law's current definition of waters of the state, ensuring that it existed as it did before the recodification of the environmental laws, (2) temporarily stopped IDEM and the Water Pollution Control Board from proceeding with rulemaking action, and (3) gave the Environmental Quality Service Council ("EQSC") the job of assisting with the development of a state policy on wetlands.

Existing law provides that private ponds are not included within the waters of the state and that off-stream ponds, reservoirs and facilities built for reduction or control of pollution or cooling of water before discharge are not waters of the state unless there is a discharge from the pond, reservoir or facility that causes or threatens to cause water pollution. Legislative Services Agency ("LSA") formatting changes made during the recodification were changed back with this law to ensure the law remains as it was before the recodification.

This law prohibits IDEM and the Water Pollution Control Board from adopting or amending an administrative rule that concerns the definition of wetlands or isolated wetlands and prohibits enforcement of any administrative rule promulgated after January 1, 2002 that concerns the definition of wetlands or isolated wetlands. This prohibition continues until the EQSC has submitted its final report to the Governor and Executive Director of the Legislative Services Agency or May 1, 2003, which ever occurs first.

The EQSC is given 5 tasks. It is to consider, to the extent it determines these issues are involved in developing a rational wetlands management policy:

(1) Protection of surface and ground water quality
(2) Control of location of accumulations of water
(3) Water rights
(4) Agricultural land use
(5) Nonagricultural land use
(6) Flood control

(7) Natural habitat protection
(8) Any other matter the EQSC identifies

The EQSC is to recommend principles for addressing state or local government management of and, with respect to state management, state agency responsibility for:

(1) land areas with wetland characteristics
(2) location and quantity of nonwetland surface water not under jurisdiction of the federal Clean Water Act.

The EQSC is to recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives and responsibilities, including recommendations on:

(1) a long term strategy, with the types and functions of wetlands that are valued in particular geographic areas; and
(2) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.

The EQSC is to recommend the appropriate role and components of banking programs as part of a mitigating rule to foster private initiatives to restore wetlands in the context of a rational statewide wetland strategy.

The EQSC is to consider the options for a statutory definition of private pond and explain the implications of each option.

The EQSC is to submit its final report on the above matters before November 1, 2002. The report will be given to the Governor and the Executive Director of LSA.

In carrying out these responsibilities EQSC is to consult with the Director of the Department of Natural Resources and representatives of all federal agencies involved in the regulation of wetlands.

(HEA 1306, PL 183, Ind. Code 13-11-2-265 and non code sections, effective March 28, 2002.)

WILD ANIMALS

The existing law allowing a free permit to take, kill or capture a wild animal that is damaging property has been expanded. (For purposes of this law, "take" is defined as kill, shoot, spear, gig, catch, trap, harm, harass or pursue or attempt to engage in such conduct.) Current law only made that permit available to the owner of the property being damaged. The law will change on July 1, 2002 to apply to any person (including an individual, a partnership, an association, a fiduciary, an executor or administrator, a limited liability company, a corporation, other legal entity, the state or an agency, a political subdivision or another instrumentality of the state) that owns or has an interest in the property being damaged. In addition the law has been changed to provide that the Director of the Department of Natural Resources shall not only prescribe in the permit the manner of taking the wild animal and the length of time allowed for that to occur, but also for the disposition of the animal taken by the permit.

(HEA 1241, PL 155 SECTIONS 3, 7 and 8, Ind. Code 14-8-2-202, Ind. Code 14-22-23-1 and Ind. Code 14-22-28-2, effective July 1, 2002.)

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