1997 ENVIRONMENTAL LEGISLATION

I. ADMINISTRATIVE ADJUDICATION

Office of Environmental Adjudication Budget

In a further effort to create an independent office to adjudicate decisions made by the Indiana Department of Environmental Management's ("IDEM") Commissioner, the Office of Environmental Adjudication is now responsible for preparing its own budget. Further, its funding is no longer included in IDEM's budget, removing the ability for IDEM to control that office through its funding. HEA 1992 (P.L. 5) §§ 2 and 3 and Ind. Code 4-21.5-5-7 and 8.

Office of Environmental Adjudication as Adjudicator of all IDEM appeals

Corrections were made this year to clean up incorrect provisions in the recodification of IDEM's laws where language had inadvertently been retained requiring the IDEM boards to conduct adjudicatory hearings on permit appeals. All appeals of IDEM decisions now lie with the Office of Environmental Adjudication. None of IDEM's boards retain the role or function of an administrative law judge under the Administrative Orders and Procedures Act. HEA 1992 (P.L. 25) §§ 4-9, 15-17 and Ind. Code 4-21.5-7.

Precedenial Effect of Prior Adjudications

In an effort to create an ability to rely on decisions IDEM and DNR make and to ensure equal treatment and consistency in application of the law, the Environmental Law Judge ("ELJ") reviewing IDEM decisions and the Administrative Law Judge ("ALJ") and Natural Resources Commission ("NRC") reviewing decisions of the Department of Natural Resources are statutorily required to take into consideration prior contested final orders that concern the same or similar circumstances. A "prior contested final order" does not include Agreed Orders or Consent Decrees. It includes only an order issued by the ELJ or ALJ after an adjudication of the parties' rights. This requirement applies and becomes enforceable only if a party to an adjudicatory proceeding raises that prior decision on the record of an adjudicatory proceeding. If the ELJ, ALJ or NRC deviate from the precedent established in a prior case, the ELJ, ALJ or NRC must be able to state legitimate reasons for deviating from that precedent. This new right and obligation took effect on July 1, 1997. HEA 1992 (P.L. 25) § 1 and Ind. Code 4-21.5-3-27(c).

II. AIR POLLUTION CONTROL

Open Burning

Once again, in what has become an annual event, the legislature has created an exemption from the Air Pollution Control Board's rule prohibiting open burning. Until January 1, 1999 units of local government can allow open burning of leaves by residents located in unincorporated areas in ozone nonattainment areas. As a result of this year's law, the burning may occur between October 1 and November 30 *and* during the month of April. Previously the legislature had created this exemption by a noncode provision[1], but the exemption allowed leaf burning to occur between October 1 and December 31. That noncode legislative provision was revised this year by changing the allowed dates. HEA 1301 (P.L. 248).

Trivial Permit Modifications

A second noncode law revision which was added last year has been amended this year. That noncode provision will give the Air Pollution Control Board until December 1, 1998 to adopt rules to put into effect the law authorizing "trivial" permit modifications without any registration or an operation or construction permit being issued. The exemption was scheduled to expire on July 1, 1997. Now the law's exemption will continue until December 1, 1998, or the date of adoption of the Air Board's rule, whichever occurs first. SEA 206 (P.L. 244).

III. COAL MINING

Disposal of Whole Tires at Mineral Excavation Site

In a clarification of the ban on the disposal of whole tires, the legislature passed a law this year to allow coal mines and other mineral extraction operations to dispose of whole tires so long as that disposal occurs at the mineral excavation site. Other conditions that apply before this whole tire disposal can occur include: (1) the person must own the whole tire and must own or lease the disposal site; (2) the tire must have a bead width of at least 14 inches and rim or wheel diameter of at least 24 inches; (3) the tire must have been used in off-road construction or mining vehicles or off-road construction or mining equipment; and (4) the whole tire must be

[1]A "noncode" provision is one that is not published in the Indiana Code and does not have a legal citation. It appears only in the Public Law but usually can be found in annotations to the code. Noncode provisions however, do have the same force and effect as a law printed in the code with a legal citation. It is important to be aware of these legal obligations or rights, as the legislature has been relying on noncode provisions frequently with environmental legislation. The usual reason a law is made a noncode provision is because it is only going to be in effect for a limited period of time.

buried under at least 25 feet of compacted cover. SEA 169 (P.L. 132) §§ 1 and 2 and Ind. Code 13-20-14-1 and 10.

Good Character for Underground Coal Miners

In a type of "good character" requirement, the legislature passed a law this year that prohibits persons from obtaining an underground coal mining certificate of competency if they have been convicted of a felony under the federal mine safety and health statutes and fewer than 5 years have elapsed from the person's date of discharge from probation, imprisonment, or parole from the felony. The certificate of competency of a person convicted of a felony under the mine health statute is automatically suspended and may not be reinstated until 5 years after the person's discharge from probation, imprisonment or parole from that felony. HEA 1345 (P.L. 165) and Ind. Code 22-10.

IV. FLOODWAY CONSTRUCTION

Boundary River Floodway Construction

An exception to the Department of Natural Resources ("DNR") laws related to construction of residences in the floodway was created this year. A new chapter was added to the DNR flood control laws for activities in a "boundary river floodway". A "boundary river floodway" has been defined as that part of the Ohio River that forms the boundary between Kentucky and Indiana that lies within the floodway. The reconstruction limitations that normally apply to persons who are already located in a floodway and whose residence is substantially damaged by flooding do not apply in the Ohio River boundary floodway. Neither do the provisions for additions to a residence in a floodway. Instead, the placement or replacement of a mobile home, the repair of a residence that has been damaged by flood water and the construction of an addition or improvement to a residential structure in the Ohio River Boundary Floodway is allowed if it will comply with the Federal Emergency Management Agency's National Flood Insurance Act regulations published at 44 CFR Part 59 through 60 and the person obtains a permit from DNR. To obtain that permit the person must submit an application to DNR, pay a $10 application fee and provide material facts concerning the project and the required plans and specifications for the construction, reconstruction or repair showing compliance with the federal rule. In resolving a dispute about the elevation of a site -- a dispute that frequently arises at DNR -- the elevation determined by a registered land surveyor must be accepted by DNR as the elevation.

Preemptory Rights of Local Government

Until December 31, 2000, for dwellings, including a mobile home, that were constructed before March 1, 1997, the mayor of a city, the president of a town council or the county commissioners, with jurisdiction over the area of land, have the right to not permit the repair, reconstruction or replacement, even though that activity would otherwise comply with the federal and state laws. HEA 1251 §§ 18 and 19, P.L. 135 and Ind. Code 14-28-1-26.5.

V. IDEM RULEMAKING

Purpose of Rulemaking Action

After gaining some experience with IDEM's new rulemaking procedure, it became evident that a problem existed because rules were being revised without there being any explanation of what was wrong with the old rule or how the change in the rule solved the problem. This year the legislature changed IDEM's rulemaking procedure to require the IDEM Boards to include in the first notice of rulemaking a statement identifying the problem that IDEM is seeking to resolve by the rulemaking. SEA 297 (P.L. 130) § 2 and Ind. Code 13-14-9-3.

Comment Period for Substantial Change

To correct what had become an obvious problem with IDEM's new rulemaking procedures the legislature is now requiring IDEM's Boards in most instances to publish a third comment period. IDEM also will be required to provide a response to comments from the second comment period. Prior to this change, IDEM and the Boards had been accepting comments on the preliminarily adopted rule and then proceeding to final adoption without giving a chance for comment on the resulting final rule. That was legal so long as the change that had been made was a "logical outgrowth" of the comment. That has been changed. Now, unless IDEM adopts the preliminary rule in an identical form or "not substantially different" from that proposed in the second notice, this third comment period is required. This new procedural step is required for all rulemakings where the notice of the second public comment period is published after June 30, 1997. SEA 297 (P.L. 130) §§ 1, 3 - 6; Ind. Code 13-14-9-2, 13-14-9-3, 13-14-9-4.5, 13-14-9-5, 13-14-9-6.

VI. POLLUTION PREVENTION

Clean Manufacturing

Big changes were made to the current pollution prevention programs. First "pollution prevention" has been renamed "clean manufacturing". The Pollution Prevention Board was renamed the Clean Manufacturing Technology Board ("CMTB"). The President of the Indiana Economic Council has been added as a member to the CMTB. The Pollution Prevention and Safe Materials Institute will also be renamed. It will be called the Indiana Clean Manufacturing Technology and Safe Materials Institute ("CMTASMI"). The current Division of Pollution and Technical Assistance ("DPATA") has been replaced with a Division of Pollution Prevention. Many of the duties of the DPATA will be transferred to the CMTASMI, which will be operated not by an office within IDEM, but by one of the universities in Indiana or other nonprofit corporations located in Indiana. Other responsibilities of the DPATA will be transferred to the CMTB and CMTASMI. In addition a new definition has been added to Title 13 for "clean manufacturing technology". "Pollution prevention" has been redefined to be consistent with US EPA's definition. The new CMTB, which replaces the former Pollution Prevention Board, will consist of twelve members, with the Commissioner of IDEM and the President of the Indiana Economic Development Council serving as ex officio *nonvoting* members. The remaining ten members will be appointed by the Governor with two representing public or private universities (one who has expertise in occupational health and work place environment), three representing manufacturers (one from small manufacturers), one from a statewide environmental organization, one from organized labor, one from the public, one from county government and one from city government. Each member must demonstrate a knowledge of policy or technical matters concerning multimedia clean manufacturing to qualify to serve as a member of the CMTB. The Senate and House shall each have two nonvoting advisers to the Board. The CMTB must hold quarterly meetings. The meetings must be open to the public. The CMTB's duties include among other things: (1) appointing the Director of the Institute, (2) providing consultation and recommendation to IDEM's commissioner on the grants program and pilot projects, (3) assessing the effectiveness of the grants program, (4) directing the Institute to study and formulate recommendations on issues and problems that arise in implementing the law, and (5) directing the Institute to conduct research studies and programs, collect and analyze data and prepare reports, charts and tables. SEA 319 (P.L. 124), Ind. Code 13-11; Ind. Code 13-12-5-1, 2, 3, 4; Ind. Code 13-27-2-8, 9 & 10; Ind. Code 13-27-7-2, and Ind. Code 13-27.5.

VII. RESPONSIBLE PROPERTY TRANSFER LAW

Environmental Defect

The definition of an "environmental defect" for purposes of determining what must be disclosed under the Responsible Property Transfer law ("RPTL") when transferring real property has been amended. An "environmental defect" does not include a condition that was the subject of a voluntary remediation where a certificate of completion has been issued by IDEM. SEA 360 (P.L. 59) § 5 and Ind. Code 13-11-2-70.

Property Subject to Disclosure

The definition of "property" that is subject to the disclosure requirement under the RPTL has also been amended. The legislature deleted the reference to improvements. Property subject to the RPTL is now defined as a specific and identifiable parcel of real property containing a facility subject to reporting under the Community Right to Know Act, containing one or more USTs for which notification is required, or that is on the CERCLIS list. HEA 1730 (P.L. 127) §1 and IC 13-11-2-174

VIII. SOLID & HAZARDOUS WASTE

1. Brownfields Legislation

Brownfield Definition

The legislature succeeded this year in passing legislation to encourage the redevelopment of "brownfields". A "brownfield" is defined as an industrial or commercial parcel of real estate that is abandoned or inactive or that may not be operated at its appropriate use and on which expansion or redevelopment is complicated because of the actual or perceived presence of hazardous substances or petroleum released into surface or subsurface soil or groundwater that poses a risk to human health or the environment. Two new chapters, Ind. Code 13-19-5 and Ind. Code 6-1.1-42 have been added to the code to address brownfields.

Environmental Remediation Revolving Loan Program

These new chapters represent two big steps toward encouraging remediation of brownfields. First the legislature created an Environmental Remediation Revolving Loan Program. It is to be used to assist in the remediation of Brownfields by

encouraging political subdivisions to rehabilitate, redevelop and reuse such real property through loans or other financial assistance. The money is available to allow political subdivisions to identify and acquire brownfields for redevelopment, to do environmental assessments, to undertake remedial activities, to clear real property in connection with remediation activities and to engage in other activities necessary or convenient to completing remediation of brownfields. A loan can be made to or for the benefit of political subdivisions and will be administered by the Indiana Development Finance Authority. A political subdivision that takes title to a brownfield to conduct remedial action cannot be held liable under Indiana's mini superfund program. A priority ranking system is established for purposes of making loans or providing other financial assistance from the Revolving Loan Program fund. Not more than 10% of the Fund can be loaned to any one political subdivision. On July 1, 1997 $5,000,000 was transferred from the Hazardous Substances Response Trust Fund to start this program. An additional $2,500,000 will be transferred on July 1, 1998 and another $2,500,000 will be transferred on July 1, 1999. SEA 360 (P.L. 59) §§ 3, 6-15 and 29, Ind. Code 13-19-5.

Brownfield Revitalization Zone Tax Abatement Program

In addition a Brownfield Revitalization Zone Tax Abatement Program has been created. It can be found at Ind. Code 6-1.1-42. Under this program any person may apply to the appropriate political subdivision fiscal body to have an area designated as a Brownfield revitalization zone. The zone must be established *before* initiating a voluntary cleanup of a site within the zone. When applying the applicant must submit a statement of public benefits, based on the proposed remediation and redevelopment by estimating the number of individuals who will be employed or whose employment will be retained as a result of the remediation and redevelopment and an estimate of their annual salaries as well as an estimate of the value of the remediation and redevelopment. Each political subdivision fiscal body is allowed to establish an application fee to defray processing and administrative costs. In addition those entities may establish general standards for declaring an area as a Brownfield Redevelopment Zone. When an application is submitted, the designating body must prepare maps and plats to identify the zone or a simplified description of the boundaries of the zone and adopt a resolution of its intent to declare the area a Brownfield Revitalization Zone. Upon adopting that resolution a notice must be published and a copy of the notice and a statement of the economic benefits must be given to each taxing unit with authority to levy property taxes in the geographic area of the zone. A public hearing must be held in order to hear objections from interested persons.

Findings Required for Designation of a Brownfield Revitalization Zone

The designation of a brownfield revitalization zone can be made only if all of the following are found:

1. The applicant has never had any ownership interest in an entity that contributed to the contamination and the applicant has not contributed to the contamination that will be the subject of the voluntary remediation;
2. The area qualifies under standards to be developed by IDEM as a Brownfield;
3. The area is substantially under-utilized or nonproductive without remediation;
4. It will be possible to obtain a certificate of completion under the VRP;
5. The estimated value of the remediation and redevelopment is reasonable for projects of that nature;
6. The estimate of employment can reasonably be expected to result from the described remediation and redevelopment;
7. The estimated salaries can reasonably be expected to result;
8. The other benefits can reasonably be expected to result; and
9. The totality of benefits is sufficient to justify the establishment of a zone.

Appeals and Finality of Brownfield Revitalization Zone

The designation as a Brownfield becomes final only after considering the evidence and a final action being taken to confirm or modify and confirm, the proposed resolution. Appeals of the final determination may be taken by persons who file a written remonstrance before the end of the public hearing and who are aggrieved. The appeal must be filed within 10 days after final action is taken by filing in the clerk of the circuit or superior court. All appeals filed are to be consolidated. A bond must be posted to cover the costs of the appeal, which must be paid by the remonstrator it is determined against the remonstrator.

Expiration of Brownfield Revitalization Zone

The zone expires if the applicant fails to comply with the statement of benefits or fails to make reasonable progress toward completion of the remediation.

Reduction in Property Taxes

Persons with property in a brownfield revitalization zone may apply for an assessed valuation deduction for real and personal property (other than inventory) for tax

increases resulting from the increase in value resulting from the cleanup. The deduction for an improvement must be submitted to the designating body before the date the improvement is initiated or brought into the area. The procedure for obtaining an assessed valuation deduction follows the same procedure related to proposed resolutions, public comment, and conditions to qualify as discussed above. The deduction can be granted for a period of 3, 6 or 10 years. The property owner must file a certified deduction application on forms prescribed by the State Board of Tax Commissioners with the auditor of the county in which the property is located before May 10 of the year in which the addition to assessed valuation is made. The township assessor shall include a notice of the deadline for filing a deduction application with each notice to a property owner of an addition (as determined as a result of the remediation) to assessed value or of a new assessment. The amount and period of deduction are not affected by a change in the ownership of the property if the new owner of the property is a person who did not contribute to the contamination, continues to use the property in compliance with the standards established and files a timely application for deduction. The amount of deduction a property owner is entitled to receive is equal to the increase in the assessed value resulting from remediation and redevelopment multiplied by the allowed percentage ranging from 100% to 5% depending on the number of years of deduction. The State Board of Tax Commissioners is required to adopt rules to implement this program. SEA 360 (P.L. 59) §1, Ind. Code 6-1.1-42

Brownfield Redevelopment Work Group

IDEM has been given the authority to establish a Brownfield Redevelopment Work Group to provide advice to the Environmental Quality Service Council ("EQSC") and to assist the EQSC in collection of data. The particular advice which can be provided by that work group will concern the cleanup and development of brownfields in Indiana. The particular data collection that can be done relates to: (1) the number of Brownfield properties in Indiana, (2) the number and level of brownfield cleanups conducted, including those that fail to complete, and (3) the number and type of Brownfield Revitalization Zone tax abatements approved. This legislative authority expires on July 1, 1999. SEA 360 (P.L. 59) § 28.

Rulemaking Required

IDEM, the Indiana Development Finance Authority and the Budget Agency are to adopt rules before July 1, 1998 to implement these brownfield programs. SEA 360 (P.L. 59 § 26.

2. Voluntary Remediation Program

Purpose of Program

This year the legislature also made a number of changes to the Voluntary Remediation Program ("VRP"). First the purpose of the VRP was restated. Previously the declared purpose had been to perform action to comply with existing legal obligations to protect human health and the environment. The purpose has been changed to a more appropriate purpose, which experience shows it has been used for, "encouraging the voluntary remediation of hazardous substances and petroleum." SEA 360 (P.L. 59) § 16 and Ind. Code 13-25-5-1.

Municipality Exemption from Application Fee

To further encourage brownfield remediation, the VRP has been amended to allow municipalities to participate without paying the $1,000 application fee. SEA 360 (P.L. 59) § 17 and Ind. Code 13-25-5-2(c)(3).

Confidentiality

The confidentiality of information contained in a VRP application was clarified this year making that confidentiality protection last only until such time as the applicant and the commissioner sign a Voluntary Remediation Agreement. It had been unclear if this confidentiality was intended to continue or how it could continue once a site was being remediated under the VRP and the public participation provisions took effect. That has been clarified to allow confidentiality only until the site is accepted and proceeding under the program. Total confidentiality of the information included in the VRP application will only apply to sites that are voluntarily disclosed by an application to the VRP which do not proceed under that program to the first substantive step of entering into the Voluntary Remediation Agreement. SEA 360 (P.L. 59) § 17 and Ind. Code 13-25-5-2(b).

Voluntary Remediation Plans and Work Plans for Completed Projects

Once an application to the VRP has been approved, two additional options have been added to what the participant may submit to IDEM. The first is a proposed Voluntary Remediation Plan. The second is a Voluntary Remediation Work Plan for an already completed remediation project. Previously the only option was to submit a proposed work plan, even though the law allowed an application to be submitted for an already completed project and a site could be submitted to the program before the completion of the investigation and knowledge of what the work to remediate would include. SEA 360 (P.L. 59) § 18 and Ind. Code 13-25-5-7(a).

Work Plan Contents for Completed Projects

The contents of a work plan for a completed project are specified by law. At a minimum that work plan must include:

1. Detailed documentation of the investigation conducted and work performed to determine the nature and extent of the actual or threatened release;

2. The work performed;

3. Plans for quality assurance for implementation of and plans for future oversight of the remediation project, the sampling and analysis conducted before and after remediation, health and safety considerations, community comment, data management and record keeping and criteria used to determine remediation levels and remediation methodology; and

4. Other information IDEM determines is necessary to evaluate the work plan and determine if remediation objectives have been achieved. SEA 360 (P.L 59) § 18 and Ind. Code 13-25-5-7(c).

Voluntary Remediation Agreement Objectives

The law was also revised this year to add new requirements for the Voluntary Remediation Agreement -- the first document that is entered into upon being admitted to the program. The agreement now has to specify the proposed remediation objectives to be achieved. In addition the agreement must require that the applicant submit its voluntary remediation work plan not later than 180 days after the date the agreement is signed or a longer period to which IDEM is willing to agree. SEA 360 (P.L. 59) § 19 and Ind. Code 13-25-5-8.

Voluntary Remediation Work Plan Objectives

The law was revised to add this same requirement to specify the remediation objections for the site in the VRP Work Plan. The legislation further provides that the remediation objectives must be based on either:

(1) Background levels that occur naturally on the site; or

(2) An assessment of the risks posed by the site taking into consideration the future use of the site and measurable risks to human health, natural resources, and the environment and based on the activities that will take place and the environmental impact on the site.

SEA 360 (P.L. 59) § 20, Ind. Code 13-25-5-8.5.

Risk-Based Remediation Objectives

In order remediate to the objective that is based on "risk" the legislature has required IDEM to develop three alternatives for risk-based remediation objectives. Those three alternatives include:

(1) Levels of contamination calculated using standard equations and default values for particular hazardous substances or petroleum;

(2) Levels of contamination calculated using site specific data for the default values used in IDEM's standard equations; or

(3) Levels of contamination developed based on site specific risk assessments that take into account site specific factors.
SEA 360 (P.L. 59) § 20 and Ind. Code 13-25-5-8.5(d).

Certificate of Completion and Covenant Not to Sue

The law now specifically provides that if the nature and extent of the contamination has been adequately characterized and demonstrated to be below background levels that naturally occur on site or the risk based levels that IDEM develops, then no additional action will be required under the VRP in order to receive a certificate of completion and the ensuing covenant not to sue. SEA 360 (P.L. 59) § 20 and Ind. Code 13-25-5-8.5(c).

Commencement of Protection Against Legal Actions

The VRP currently protects persons against legal actions related to contamination that is being remediated through the VRP. That protection was made even broader this year. The protection had been available only after the site was accepted into the program, the remediation agreement with IDEM had been signed *and* the work plan had been approved by IDEM. It was broadened this year to prevent any lawsuits or administrative enforcement actions from being filed related to that contamination once the Voluntary Remediation Agreement has been signed. Protection does not have to wait until the work plan has been approved. Protection against lawsuits is also now afforded to persons who are proceeding under the VRP on behalf of the applicant. With this added benefit of receiving this protection even earlier, the legislature also specified that the protection will cease to exist under any of four circumstances that could occur after it has first become available: (1) the applicant fails to file a voluntary remediation work plan within a reasonable time, (2) the commissioner rejects the work plan and that rejection is upheld in any appeal

brought, (3) the applicant fails to complete the voluntary remediation in accordance with the plan, or (4) the commissioner withdraws the approval of the work plan. SEA 360 (P.L. 59) § 21 and Ind. Code 13-25-5-18(e).

Applicability of Protection Against Lawsuits and Enforcement Actions

This same protection against lawsuits and enforcement actions requiring remediation of the contamination being addressed in the VRP will be available to any person who purchases the property that is the subject of a voluntary remediation agreement at the time the property is purchased to the same extent as to the person who owned the property at the time the agreement was submitted. SEA 360 (P.L. 59) § 21 and Ind. Code 13-25-5-18(f).

Technical Corrections and Changes

Additional technical corrections or changes were made to the VRP as a result of experience with the program. First it has been made clear that when the Governor issues the covenant not to sue, it will only relate to the hazardous substance or petroleum contamination that was actually addressed in the approved voluntary remediation work plan. The covenant does not serve as protection against all future actions for any type of contamination at the site. SEA 360 § 21 and Ind. Code 13-25-5-18. Second, a specific appeal right has been added to the law to allow an applicant to appeal IDEM's withdrawal of its approval of a voluntary remediation work plan. Technically that appeal right already existed, as an appeal can be taken under the Administrative Orders and Procedures Act ("AOPA") of any "order" issued by IDEM's commissioner that determines the rights of an individual. Since the withdrawal of approval would serve to impact the rights of an individual, that appeal right already existed. This new legislation makes absolutely clear that the appeal must be prosecuted under the agency-friendly standards of the AOPA. SEA 360 § 22 and Ind. Code 13-25-5-19. Third, as a result of inconsistencies that can occur in the different program areas at IDEM, and as a result of the aggressive position of the RCRA staff in insisting that cleanups occur under the RCRA program rather than the voluntary program -- even though that can take much longer to occur -- the legislature has required IDEM to establish a procedure for ensuring that remediation and closure goals, objectives, or standards for activities performed under the hazardous waste laws (Ind. Code 13-22) and the Underground Storage Tank laws (IC 13-23) are not inconsistent with those of the Voluntary Remediation Program (IC 13-25-5). Those procedures must be in place by July 1, 1998. SEA 360 (P.L. 59) § 27.

Voluntary Remediation Contractor Certification Program

Finally in an effort to assist the public in knowing that they are getting experienced persons who can properly assist them in getting a site into and through the VRP, the

Solid Waste Management Board has been given the authority to develop a new certification program for persons who remediate sites where releases of hazardous substances or petroleum have occurred. Persons will not be required to be certified in order to do such work, but can apply to obtain that certification if they choose. In the rules the SWMB is to establish minimum eligibility criteria for certification and procedures to suspend or revoke a certification after it has been issued, as well as an application fee. Once in place IDEM can audit remediation work done by a person who has been certified and the certification will be subject to suspension or revocation in accordance with IDEM's rules. SEA 359 (P.L. 131) § 1 and Ind. Code 13-19-3-7.2

3. Indiana's Mini Superfund Program

Removal of Site from Indiana' Mini Superfund List

In the past, once a site was listed as one of Indiana's Superfund sites under Indiana's mini Superfund program, it was virtually impossible to remove the site from the list. This soon will no longer be a problem. The Solid Waste Management Board has been told it must adopt rules before July 1, 1998 to amend the Indiana Scoring Model used to assess hazardous substance response sites to allow sites that have been successfully remediated to be removed from the list of sites for action. Those rules must establish a minimum score for being listed and then allow sites addressed under the Voluntary Program or another clean up program or a site which falls below that minimum score to be removed from the ranking. SEA 360 (P.L. 59) § 25 and 329 IAC 7.

4. Solid Waste

Special Waste Exclusions

The special waste program has once again been changed by the legislature. This year slag from steel and iron producing industries has been removed from the category of a generic special waste and provided a complete exemption from the special waste requirements. In addition refractory brick, fire clay refractory earth, fire brick and ceramic block materials that fall within the chemical constituent levels of a Type III restricted waste are exempt from the special waste program. Previously those waste streams had been classified as a generic special waste, still requiring special management practices, without the added step of IDEM certification as a special waste. HEA 1541 (P.L. 129) § 1 and Ind. Code 13-11-2-215.1(b)(9) and (10).

Foundry Sand

Further the legislature added a new section to the law that requires IDEM to allow foundry sand meeting a Type III constituent classification to be beneficially used for certain specified uses, without the issuance of *any* permit. Those uses include:

1. As daily cover for litter and vermin control at a landfill, if the landfill has approval through its permit to use such materials as an alternate daily cover material;
2. As protective cover for a landfill leachate system, if approved in the permit;
3. For use as capped embankments for landfill ground and sight barriers if less than 10,000 cubic yards, or in any quantity for embankments for airports, bridges, or overpasses;
4. As a structural fill base, if capped by clay and or concrete, for the following:
    a. roads;
    b. road shoulders;
    c. parking lots;
    d. floor slabs;
    e. utility trenches;
    f. bridge abutments;
    g. tanks and vaults;
    h. construction or architectural fill;
    i. other similar uses;
5. As a raw material constituent incorporated into another product including:
    a. flowable fill;
    b. concrete;
    c. asphalt;
    d. brick;
    e. block;
    f. portland cement;
    g. glass;
    h. roofing material;
    i. rock wool;
    j. plastics;
    k. fiberglass;
    l. mineral wool;
    m. lightweight aggregate;
    n. paint;
    o. plaster;
    p. or other similar products.

IDEM is allowed to require compliance with established guidance for those beneficial uses, but cannot impose any permit requirement when the foundry sand is used in that way. HEA 1541 (P.L. 129) § 2 and Ind. Code 13-19-3-7.

Special Waste Task Force to Develop Foundry Sand Use Guidelines

A noncode provision was added to the law this year amending the duties of the special waste task force which was created in 1996 by another noncode provision. The task force has been given the new duty of developing guidelines for IDEM to implement the foundry sand alternate use statute. That guidance document is to be available before January 1, 1998. HEA 1541 (P.L. 129) § 3.

Environmental Quality Service Council Shredder Task Force

In another creative effort to make use of waste materials, the Environmental Quality Service Council ("EQSC"), an existing legislative/public committee, has been assigned the duty of developing a task force, with members from both IDEM and the EQSC, to study the technical feasibility of using shredder fluff as daily cover at landfills. In undertaking this study the Task Force has been specifically directed to consider the effect of shredder fluff as daily cover on human health and the environment. A Report of the Task Force's Findings and Recommendations is to be presented to the Solid Waste Management Board and General Assembly before January 1, 1998. HEA 1541 (P.L. 129) § 4.

Open Dumping

Open dumping is becoming even more expensive for those who get caught. A new statutory right to recover attorney fees has been created for a county, city or town that successfully brings a civil action to abate or enjoin a nuisance caused by unlawful open dumping of solid waste. As originally introduced this power would have been given to Solid Waste Management Districts. In the ever continuing analysis of how much power Solid Waste Management District should have and whether that power more appropriately lies with existing government entities, the legislature decided this was an important step to take, but chose to give this power to counties, cities or towns, not to Solid Waste Management Districts. HEA 1728 (P.L. 206) § 1 and Ind. Code 34-1-52-2.

Municipal Solid Waste Landfill Corrective Action Contingency Fund

Effective retroactively to July 13, 1996, by a noncode amendment, the Solid Waste Management Board's rule 329 IAC 10-21-14, requiring municipal solid waste landfills to establish a corrective action contingency fund, has been declared void. The Board must amend its rule to delete this requirement, adopt rules consistent with the federal rule and require establishment of financial assurance for corrective action no earlier than its establishment is required under the federal rule. Further, IDEM must allow the use of all financial assurance mechanisms allowed under the federal rule. To complete the loop, the publisher of the Indiana Register was required to remove that rule from the Indiana Administrative Code by September 1, 1997 and IDEM was required to issue a generic permit modification -- which it did -- that removes the requirement of that now void rule from all existing permits. Landfills are required to establish financial responsibility and undertake corrective action as specified in the Federal Subtitle D rule, 40 CFR 258.73 using any of the financial assurance mechanisms allowed by the federal rule. Because the federal rule does not currently allow commercial waste companies to use the corporate financial guarantee test, this change still does not make available to other than government permittees the financial test for establishing financial responsibility. However the federal government has reserved a section in its rules for the development of a corporate guarantee. 40 CFR 258.74(e). Once that rule is developed this law will make it possible for Indiana waste companies to use a financial test for corrective action financial responsibility. HEA 1339 (P.L. 45) §§ 24 and 25.

Solid Waste Fee Exemptions for Daily Cover

To partly resolve the confusion that has existed on when the state and solid waste management district fees must be paid, the legislature had to pass special laws this year. The recurrent question has been whether the fees must be paid for waste materials that are beneficially used as alternate materials for daily cover at the receiving landfill or that are used as construction components of the receiving landfill's leachate system or for roads. IDEM had issued a nonrule policy guidance document to address this, requiring a fee to be paid, unless there was no corresponding charge made by the landfill for disposing of the waste material. The legislature has made clear that neither IDEM nor a solid waste management district may assess a fee on waste materials when they are used as alternate daily cover that is authorized in the landfill's permit. Left unanswered is whether the fee applies when wastes are used for other legitimate construction uses. IDEM's November 1997 nonpolicy guidance document addresses that issue and continues to require that the fee be paid, unless there is no charge for disposal. IDEM does make allowance for charges that would be associated solely with transportation of the

waste materials. HEA 1339 (P.L. 45) §§ 7 and 8, Ind. Code 13-16-1-6 and 13-20-22-1(e) and IDEM Nonpolicy guidance, November 1997.

5. Infectious Waste

Definition of Transfer Station

Undoing the Court of Appeals' decision in Medical Disposal Services v. Indiana Department of Environmental Management, 669 N.E.2d 1054 (Ind. App. 1996), the definition of what is a "transfer station" has been amended. A transfer station now specifically *excludes* transfers between two vehicles of infectious waste where the infectious waste has been packaged in compliance with the State Department of Health's requirements and the packages of infectious waste are not opened at any time during the transfer. SEA 478 (P.L. 128) § 2, Ind. Code 13-11-2-235. This stands in stark contrast to IDEM's rule for other -- less dangerous -- solid wastes where the transfer of a completely enclosed container from one vehicle to another is regulated and required to be permitted as a transfer station.

Label Requirements

In another change that makes the movement of infectious waste somewhat less burdensome, the current State Department of Health rules for labeling of infectious waste must be revised as a result of a new law. Currently those rules require that a container of infectious waste that is shipped off-site must contain a label that states the name, address and telephone number of the generating facility as well as the treatment facility to which the waste is being shipped. 410 IAC 1-3-28. The legislature is requiring the State Department of Health to adopt a new rule establishing an alternative to labeling containers of infectious waste that does not specifically identify the generating facility or treatment facility to which it is destined, but which ensures that the identify of those two facilities can be readily obtained based on the information that is included on the label. SEA 478 (P.L. 128) § 9, Ind. Code 16-41-16-8.

6. Solid Waste Management Districts

Annual Reports for District Funds

Due to concern that some rogue Solid Waste Management Districts were accumulating large cash reserves and that some had even made efforts to hide that money from legislative scrutiny, all Solid Waste Districts will now be required to prepare an annual report for each fund they have. This annual reporting

requirement does not apply to three specific funds: (1) the non-reverting capital fund which was allowed to be created by legislation in 1996, (2) the funds containing the proceeds from the sale of bonds, and (3) the funds containing special real property taxes that are collected to pay bonds. The new annual report requires a disclosure for all other funds of the cash balance at the end of the year, with a list of all encumbrances on the fund that the district is legally obligated to pay, the fund balance and the total expenditures from the fund for the year. Because of the distrust that has been created, the district must include a copy of documentation that supports each encumbrance listed. In addition the report must disclose the total of all fund balances and the total of all fund expenditures. The report must be provided to IDEM, the State Board of Tax Commissioners and the EQSC by February 1 of each year. HEA 1339 (P.L. 45) §§ 14, Ind. Code 13-21-3-13.5.

LaPorte County Solid Waste District Fee Reduction

As a result of the large amount of money the LaPorte County Solid Waste Management District had accumulated, the LaPorte County Solid Waste Management District was singled out for a change in the amount of district fee that it can impose on waste disposed of in a final disposal facility. Now LaPorte County cannot have a fee any higher than $2.50, even though previously it was allowed a higher fee because it had that higher fee ($4.50) in place when the law capping the fee at $2.50 was passed. HEA 1339 (P.L. 45) § 15 and Ind. Code 13-21-13-1.

District Power to Receive and Disburse Money

Most of the legislation affecting districts this year was aimed at limiting what districts can do. First, the powers and duties of Solid Waste Management Districts were narrowed, or at least clarified, in order to bring Districts into line with legislative desires. A District's power to receive and disburse money is now clearly and specifically limited to activities where the *primary* purpose is to carry out the provisions of the solid waste management district statute. In addition the District's general ability to "do all things necessary to reduce, manage, and dispose of solid waste" has been limited again to actions where the primary purpose is to carry out the solid waste management district law. HEA 1339 (P.L. 45) § 13 and Ind. Code 13-21-3-12.

IDEM Guidance for Grants and Loans

A second effort to limit solid waste management districts is embodied in a new law passed this year that requires IDEM to make available a policy guidance document that describes how decisions are made on which solid waste districts are awarded grants and loans from the 50¢ state solid waste fee. Complaints had been lodged that some districts with the largest budgets and funds available to them were

receiving the majority of the state money. Further IDEM was making grants to districts to do things the private sector was already doing, in some instances displacing the private sector with a government-provided, tax-supported service. That will no longer be possible. IDEM has been required to consider the economic need of a district when deciding whether to award a grant. And, IDEM will no longer be able to make grants and loans to a district to do something that is already being done by the private sector which would be displaced by the district project under the grant program. IDEM's non-policy guidance document for how loans and grants will be awarded under these new legislative restrictions was published in the September 1997 Indiana Register. HEA 1339 (P.L. 45) §§ 10 and Ind. Code 13-20-22-2.1.

Uses for the 50¢ State Solid Waste Fee

As a third way to refocus solid waste districts and limit their powers, the uses for the 50¢ state solid waste fee, which is collected on each ton of waste disposed of or incinerated in Indiana, have been changed. The legislature is gradually refocusing districts' purposes to one of education. IDEM will now be allowed to make loans and grants to solid waste districts for purposes of education on recycling and the use of recycled materials, waste reduction and management of yard waste. In addition the loans and grants will be allowed to be used for promoting the use of recycled materials, waste reduction and management of yard waste. HEA 1339 (P.L. 45) § 9 and Ind. Code 13-20-22-2.

Allocation of the 50¢ State Solid Waste Fee

In addition how the 50¢ state solid waste fee is allocated for further distribution was also changed -- diverting money away from Districts. Only half of the money will go to IDEM for loans and grants to districts to promote recycling. The other half will now go to the Indiana Recycling Promotion and Assistance Fund. HEA 1339 (P.L. 45) § 11 and Ind. Code 13-20-22-12.

Definition of Waste Management Service

In a fourth effort to limit the powers of Solid Waste Management Districts, the very broad definition of "waste management services" which was added to the law last year to limit the activities Solid Waste Management Districts were allowed to engage in was clarified. Because that definition had been applied in a context other than solid waste management districts, the legislature chose to keep that broad limiting definition, but clarify this year that it applies only in the context of Solid Waste Management Districts. HEA 1339 (P.L. 45) § 6, Ind. Code 13-11-2-247.5.

Expiration of the Solid Waste Planning Advisory Council

As a last effort to diminish the Districts powers, the Solid Waste Planning Advisory

Council, which was created in 1991, will go out of existence on June 30, 1999. Many believe that Council has turned into a support group for the Solid Waste Districts and has not functioned as originally intended in overseeing the Districts. The EQSC has had to step in to perform this function eliminating the need for this council. HEA 1339 (P.L. 45) § 12 and Ind. Code 13-21-2-9.

Solid Waste District Claims Payment Procedures

In the only good news for Districts this year, Solid Waste Districts have been exempted from paying claims under the procedure applicable to state agencies. Instead Districts are now allowed to pay claims using the procedures for cities, counties, school corporations and others. Under that procedure the District will be able to pay an itemized invoice without any certification of correctness being required. HEA 1339 (P.L. 45) §§ 1, 2 and 26 and Ind. Code 5-11-10-1 and Ind. Code 4-11-10-1.6.

7. Hazardous Waste

Local Approval required for TSDs

When the Hazardous Waste Facility Site Approval Authority was eliminated a year ago with the repeal of that law, a provision was added to the law to require instead county executive approval for construction of hazardous waste treatment, storage and disposal ("TSD") facilities. This year a correction was made to that new county executive duty. The author indicated an error was made in attempting to provide for local approval of a hazardous waste facility. She had not intended the county commissioner approval to be required where local approval was already provided through zoning. Last year's law had required that the county commissioners approve the proposed construction of a hazardous waste disposal facility, even if that facility had obtained local approvals from a city zoning authority -- creating a potentially conflicting situation where the facility was already situated in a city. The possibility for a conflict in jurisdiction has been remedied. Now the county commissioner approval will only be required if the county or city does not have zoning. If no zoning exists and a person intends to construct a hazardous waste TSD in that area, then approval will be required from the county commissioners prior to commencing construction. If zoning does exist, a second approval in addition to zoning from the county commissioners will not be required. HEA 1339 (P.L. 45) § 19, Ind. Code 13-22-10-5.

IDEM Delisting Rules

IDEM has been required to start the process to adopt delisting rules by January 1,

1999 that will establish a procedure to petition the Commissioner for delisting of a hazardous waste. Currently the only basis for obtaining a delisting from IDEM is where the person has sought and obtained from EPA an exclusion. Under this new law, IDEM is required to apply to U.S. EPA not later than January 1, 1998 for authorization to accept petitions to delist hazardous waste, independent from the existing U.S. EPA delisting program. SEA 478 § 5, 11, and 12, Ind. Code 13-22-2-3; HEA 1339 (P.L. 45) §§ 17, 19, 23 and 25, Ind. Code 13-22-2-3(d) and (e).

Use of Hazardous ByProducts, Spent Materials, Sludges, Discarded Commercial Chemical Products and Scrap Metal

In addition to trying to foster delisting of wastes classified as hazardous which no longer present environmental threats, effective July 1 of this year new relaxed statutory provisions for use of hazardous byproducts, spent materials, sludges, discarded commercial chemical products and scrap metal have been adopted. When those hazardous wastes are used in an industrial or manufacturing process to make a usable product they will, where legally permissible, be exempted from the hazardous waste regulations. These materials, which are considered "secondary materials" under RCRA Subtitle C, will be relieved of the hazardous waste requirements for storage, transportation and permitting when they are being utilized. IDEM's Office of Technical Assistance ("OTA") is required to gather information on secondary material utilization and provide that information and advice on secondary material utilization upon request of an active business in Indiana. The OTA is also allowed to provide information to businesses in the absence of a request if the Commissioner finds that providing that information would assist the business in reducing, eliminating or avoiding the generation and disposal of hazardous waste. This program is set forth in a new chapter added to the hazardous waste requirements, Ind. Code 13-22-11.5. The legislature has made clear that any such use cannot result in IDEM's hazardous waste program being less stringent than the corresponding federal RCRA provisions and that persons proceeding under this new program must exercise reasonable precautions in handling hazardous secondary materials when proceeding under this new authorization. The program is intended to provide that secondary materials being utilized in an industrial or manufacturing process (not including reclamation) will not be a solid waste so long as no significant increase in the threat it poses to health or the environmental is presented. By defining it not to be a solid waste, it does not become subject to RCRA Subtitle C regulation. Persons seeking to be regulated under this relaxed regulatory program may request IDEM to acknowledge in writing the person that is entitled to the exemption of the program and IDEM must respond to such a request within 90 days. If proceeding under this program, any residue of the utilization of a secondary material will have to be managed like any other waste, subject to being classified as hazardous or non hazardous as any other waste stream. IDEM must adopt a rule to implement this program not later than January 1, 1999. That rule will have to be

approved by EPA as consistent and not less stringent than RCRA. HEA 1339 (P.L. 45) § 4, 5, 16, 18, 20, 21, 22, and 23 and Ind. Code 13-11-2-197.5, 13-11-2-244.5, 13-22-2-2, 13-22-3-4, 13-22-11-1, 13-22-11.5 and 16-42-18-1; SEA 478 (P.L. 128) § 1, 3, 4, 6, 7, 8, 10, and 11, Ind. Code 13-11-2-197.5, Ind. Code 13-11-2-244.5, Ind. Code 13-22-2-2, Ind. Code 13-22-3-4, Ind. Code 13-22-11-1, Ind. Code 13-22-11.5-2, Ind. Code 16-42-18-1.

Consistency required in Remediation and Closure Goals, Objectives and Standards

Because the requirements of the Voluntary Remediation Program the hazardous waste regulators, before July 1, 1998 IDEM must establish a procedure for ensuring that remediation and closure goals, objectives, or standards for activities performed under the hazardous waste laws are not inconsistent with those of the Voluntary Remediation Program (IC 13-25-5). The clear intent of this legislation is for the VRP standards, not the RCRA Subtitle C standards, to be the ones that apply. SEA 360 (P.L. 59) § 27.

IX. STATUTORY RIGHT TO COST RECOVERY

Statutory Right to Bring a Legal Action

A new statutory right to bring a legal action against a person who caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater posing a risk to human health and the environment will take effect on February 28, 1998. This new statutory remedy will allow recovery of reasonable costs of a removal or remedial action. It applies to actions brought by the state or a private person. It does not apply to an action brought by the state if the action arises from a site on the NPL scoring at least 25 under Indiana's scoring model or is deemed by the commissioner to pose an imminent threat to human health or the environment. An "environmental legal action" is defined as any legal action brought to recover reasonable costs associated with a removal or remedial action involving a hazardous substance or petroleum release into surface or subsurface soil or water that poses a risk to human health or the environment. In an effort to be more fair than Superfund in resolving an environmental legal action, the court is to allocate the costs of the removal or remedial action in proportion to the acts or omissions of each party, without regard to any theory of joint and several liability. Instead the court is to use legal and equitable factors that the court determines are appropriate, including the following:

(1) The degree of care exercised by each party with respect to the release of the hazardous substance or petroleum caused or contributed to by each party;
(2) The amount and characteristics of the hazardous substance or

petroleum that was released;

(3) The risks posed by the hazardous substance or petroleum based on the use of the site at the time the hazardous substance or petroleum was released into the environment and the cost effectiveness of the removal or remedial action to address the risk;

(4) Whether a party's acts or omissions violated a federal, state, or local statute, rule, regulation or ordinance;

(5) The extent to which each party exercised actual and direct managerial control over the site where the hazardous substance or petroleum was released at the time of the release;

(6) Whether an award of reasonable costs, including attorney's fees, to a party involved in the environmental legal action is appropriate;

(7) Other equitable factors, including unjust enrichment that the court deems appropriate.

Effect of Private Contracts

If the parties have entered into a contract that allocates the costs or responsibility for the removal or remedial action, the terms of that contract control the allocation between the parties. The contract cannot however be used to prevent the state from recovering costs, unless the state was also a party to the contract. Actions brought to recover costs associated with a release from a UST can be brought under either this new provision or the UST law, but not both. Persons who have received a covenant not to sue under the VRP cannot be sued under this law. SEA 360 (P.L. 59) § 23 and Ind. Code 13-30-9.

X. UNDERGROUND STORAGE TANK PROGRAM

Removal of State Fire Marshall & the Fire Prevention & Building Safety Commission from rulemaking

The State Fire Marshall and the Fire Prevention and Building Safety Commission have been removed from the current role as a joint agency with IDEM in the adoption of rules concerning UST release detection, prevention and corrective action. That responsibility will rest solely with IDEM, although IDEM may contract with other state agencies for assistance in operating the program. If IDEM does contract with another state agency it must make the memorandum of agreement specifying the duties of each agency available to the public for inspection. SEA 359 (P.L. 131) § 2, Ind. Code 13-23-1-1.

New Members added to FAB

Four new members will be added to the Financial Assurance Board ("FAB") creating a 16 member Board. The new members will represent the following interests: (1) a member representing businesses that own petroleum USTs but who are not engaged in the sale of petroleum; (2) a second member representing the independent petroleum retail distributor marketer industry (that member must own or operate more than 12 USTs); (3) a third who representing the property and casualty insurance industry; and (4) a fourth who is the commissioner of the Department of State Revenue or his designee. In addition the current representative of the service station dealer industry must now be a representative who owns or operates less than 13 petroleum USTs. The vote of the FAB will be changed to allow a majority of those "present" to carry a vote. However to transact business 9 of the 16 members must be present. SEA 359 (P.L. 131) §§ 4 and 5, Ind. Code 13-23-11-2 and Ind. Code 13-23-11-6.

ELF money may be Available before Corrective Action Plan has been Approved

The law was also changed to allow an operator or owner of a UST to receive money from the ELF before the corrective action plan has been approved by IDEM or deemed approved. This can occur under three difference circumstances. First, where payment involves work that was done in an emergency situation and immediate removal in response to a petroleum release needs to be done to abate an immediate threat of harm to human health or property. The second situation involves payment for work to characterize the site if that site characterization was done in accordance with the UST Branch Guidance Manual. The third situation involves payment for work where IDEM has not acted on a corrective action plan within 90 days after the plan was received or application for reimbursement was filed whichever is later. SEA 359 (P.L. 131) § 3, Ind. Code 13-23-8-4(b).

Administration of the ELF

After a number of years of frustration with the excess cost and delay with IDEM administering the Excess Liability Fund ("ELF"), the FAB will take from IDEM the responsibility for administering that Fund. The FAB can employ a Director of the fund and personnel necessary to administer the fund. The duties of the Solid Waste Management Board for the Underground Storage Tank Program now require the Board to consult with the Department of Administration on administering of the underground petroleum storage tank excess liability trust fund in developing uniform policies and procedures for revenue collection and claims administration of the fund. The board must also consult with IDEM on alternative means of administering the fund in a cost effective and efficient manner. SEA 359 (P.L. 131) §§ 6 and 7, Ind. Code 13-23-11-7.

Consistency in Remediation and Closure Goals, Objectives and Standards

Before July 1, 1998 IDEM must establish a procedure for ensuring that remediation and closure goals, objectives, or standards for activities performed under the Underground Storage Tank laws are not inconsistent with those of the Voluntary Remediation Program (IC 13-25-5). SEA 360 (P.L. 59) § 27.

Voluntary Remediation Contractor Certification Program

Finally, in an effort to assist the public in knowing that they are hiring experienced and qualified persons who can properly assist them in remediating petroleum contamination, the Solid Waste Management Board has been given the authority to develop a new certification program for persons who remediate sites where releases of hazardous substances or petroleum have occurred. Persons will not be required to be certified in order to do such work, but can apply to obtain that certification if they choose. In the rules the SWMB is to establish minimum eligibility criteria for certification criteria and procedures to suspend or revoke a certification after it has been issued as well as an application fee. Once in place IDEM can audit remediation work done by a person who has been certified and the certification will be subject to suspension or revocation in accordance with IDEM's rules. SEA 359 (P.L. 59) § 1 and Ind. Code 13-19-3-7.2

XI. UNDER OR ABOVE GROUND HEATING OIL TANK CLOSURE

Residential Heating Oil Tank Closure

A new residential heating oil tank closure requirement was created this year. When a homeowner abandons the use of heating oil as a fuel in heating a property, the owner of an above ground or underground heating oil tank must remove all flammable or combustible liquids and all piping, and remove the outside filling pipe. The outside filling pipe can be retained if instead the homeowner secures the tank against accidental filling. A contractor or subcontractor proposing to convert a residential property from heating oil to another heat source shall inform the property owner of this requirement and include in its contract the cost for labor and material to properly remove and dispose of all flammable or combustible liquid and either remove the outside filling pipe or permanently secure the tank against accidental filling. SEA 359 (P.L. 131) § 7, Ind. Code 22-12-9.

XII. WATER

Spill Reporting

The special state law for spill reporting has been repealed in favor of IDEM's new spill reporting rule. This repeal suggests that the legislature is satisfied with the compromise and changes made to IDEM's spill rule when it adopted the new spill report rule which took effect on March 27, 1997. HEA 1730 (P.L. 127) § 2.

Permit Requirement for Construction, Installation or Modification of Public Water Supply Facilities, Equipment and Devices

The approval required for construction, installation or modification of public water supply facilities, equipment or devices has been modified. Now instead of IDEM approval, a permit must be obtained. The exemption for water main extensions constituting less than an increase of 5% in the total number of customers or less than 2,500 feet has been repealed and the Water Board must promulgate a rule establishing a permit by rule for those water main extensions. HEA 1992 (P.L. 25) §§ 10-12, Ind. Code 13-18-16-1, 13-18-16-8 and 13-18-16-12.

Wellhead Protection

The wellhead protection provisions were modified this year in favor of landowner rights. Rules adopted by IDEM's Water Board and zoning establishing protection zones around community water system wells may not restrict any activity by an owner of the land, a mineral owner or a mineral leasehold of record, *unless* the owner or leaseholder is sent written notice of and has an opportunity to be heard on the establishment of the zone *and* of the construction of the community water supply system that caused the zone to be created. The person seeking the permit to construct the community water system or wellfield protection zone has the responsibility for giving the notice required by this law. HEA 1992 (P.L. 25) § 13 and Ind. Code 13-18-17-6.

Stormwater Run-off Associated with Construction Activities

The Water Pollution Control Board was directed to publish notice in the Indiana Register by July 1, 1997 of its intent to adopt a rule concerning storm water run-off associated with construction activities. That notice appeared in the June Indiana Register. By enacting this law the legislature directed IDEM and the Water Board to address (1) the liability for all parties and when it is appropriate for liability to terminate; and (2) and transfers of ownership of property that are subject to storm water run off construction general permits. HEA 1992 (P.L. 25) §§ 1 and 19.

Drinking Water Revolving Loan Program and Loan Fund

A Drinking Water Revolving Loan Program and Drinking Water Revolving Loan Fund was created for the purpose for providing money for loans and other financial assistance to political subdivisions. These political subdivisions may use the money for:

(1) planning, designing, constructing, renovating, improving or expanding drinking water system that will facilitate compliance with national primary drinking water regulations; and

(2) conducting all other activities that are allowed by the federal Safe Drinking Water Act.

SEA 340 (P.L. 126) § 30 and Ind. Code 13-18-21.

Supplemental Drinking Water Assistance Program and Assistance Fund

A supplemental drinking water assistance program and supplemental drinking water assistance fund was also created to provide money for grants, loans and other financial assistance for the benefit of political subdivisions or public water systems that serve economically disadvantaged municipalities. The fund is to be used for planning, designing, acquisition, construction, renovation, improvement or expansion of drinking water treatment and water supply systems. SEA 340 (P.L. 126) § 21 and Ind. Code 13-18-13.