Plews Shadley Racher & Braun

Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

SUMMARY OF 2005 ENVIRONMENTAL LEGISLATION

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with

Jamie B. Dameron, Greg M. Gotwald, Todd J. Janzen, Thao T. Nguyen, David L. Pippen, Tina M. Richards, *and* Amy E. Romig

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LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ENVIRONMENTAL CRIMES TASK FORCE

Currently, the criminal penalty provisions of the state environmental laws only allow a prosecutor to charge knowing violators of environmental laws with either a Class D felony or a Class B misdemeanor. A law was passed this year establishing the Environmental Crimes Task Force ("Task Force"). That Task Force will study the appropriate class of criminal violation that should be assigned to each type of environmental crime. The Task Force consists of 18 members, including 2 members of the senate and 2 members of the house of representatives, 2 representatives of local government, 3 members of environmental advocacy groups, 2 members representing business and industry, the Commissioner of IDEM, 2 attorneys with expertise in environmental law, 1 representative of a business group, the director of the law enforcement division of DNR, 1 member nominated by the Attorney General and 1 member nominated by the Prosecuting Attorneys Council of Indiana. All appointments are to be made by July 1, 2005. Sue Shadley has been appointed to the task force as 1 of the 2 attorneys.

SEA 195, PL 63-2005, SECTION 1; effective April 22, 2005.

The Task Force is charged with conducting the necessary studies to prepare a final report to be filed before November 1, 2007, with the Governor, the Executive Director of the Legislative Services Agency and the Environmental Quality Service Council. The final report is to include a summary of environmental crimes from other states, a summary of the state delegated federal programs, a review of federal sentencing guidelines, recommendations about the types of

violations that should be considered a misdemeanor, D felony, or other class of felony, and if the Task Force determines it appropriate, make recommendations for specific legislative standards to deter mine criminal violations. IDEM is to provide staff to support the Task Force. A quorum of the Task Force must be present to conduct business. The Task Force may not take an official action unless the official action has been approved by at least a majority of the 18 members.

SEA 195, PL 63-2005, SECTION 1; effective April 22, 2005.

MINI SUPERFUND LAW DEFENSES

The State Mini Superfund law was amended this year to make the CERCLA defenses for contiguous property owners and bona fide prospective purchasers equally applicable to persons under Indiana law concerning hazardous substances. Ind. Code 13-25-4-8 had previously recognized only the section 107(b) CERLCA defenses that releases and damages were caused by an act of God, act of war, or acts of third parties contractually unrelated to the potentially responsible party.

HEA 1653, PL 25-2005, SECTION 3; Ind. Code 13-25-4-8, effective April 14, 2005.

PERSONS QUALIFIED TO CLEAN UP POLLUTED PROPERTY

As a result of legislation aimed at the methamphetamine problem, IDEM has been given a new program to implement. The legislature added to the definition of a "contaminate" chemicals used in the illegal manufacture of a controlled substance or an immediate precursor of a controlled substance and the waste produced from those manufacturing operations. IDEM must develop and keep a list of persons certified to inspect and clean property that is polluted by a contaminate. The list may note persons with particular expertise or experience in the inspection or cleanup of property contaminated by a chemical used in the illegal manufacture of a controlled substance and the waste from that manufacturing process. The list that IDEM must maintain is not limited to persons certified to inspect and clean property contaminated by methamphetamine, but is to be a list of persons certified to inspect and clean property contaminated by any solid, semi-solid, liquid or gaseous material, pollutant, hazardous waste, any constituent of a hazardous waste or any combination of those items that is injurious to human health, plant or animal life or property or that interferes unreasonably with the enjoyment of life or property. IDEM is required to adopt rules to implement this new program and for the inspection and remediation of contaminated property. The law provides that IDEM's rules "may" include the qualifications that a person must meet in order to be certified as a person to inspect and clean property polluted by a contaminate, perhaps providing some discretion to IDEM to not impose a certification program.

SEA 444, PL 192-2005, SECTIONS 5 and 6; Ind. Code 13-11-2-42 and Ind. Code 13-14-1-15, effective July 1, 2005.

SHOVEL-READY DEVELOPMENT SITES

One of Indiana Governor Mitch Daniel's "signature bills" for economic redevelopment establishes the Shovel Ready Site Development Center (SRSDC) within the Indiana Development Finance Authority (IDFA). While the establishment of the

SRSDC does not actually change any permit obligation in Indiana, the goal of the SRSDC is to make the permitting processes in Indiana more user-friendly and timely by providing the following:

1. Assistance and information on the types of permits, licenses, certificates, approvals, or registrations required;
2. Assisting permit applicants in working with other state government offices and agencies in obtaining permits; and
3. Encouraging federal and local agencies to participate in permit coordination.

This new law establishes a pre-permitting authority in Indiana. The primary goal of the SRSDC is to create and promote programs to allow local governments to obtain all or part of the permits to create sites that are "shovel ready" for economic development. The establishment of the SRSDC within the IDFA increases the utility of the IDFA's existing Brownfield redevelopment programs for local government, such as grants for Phase I and Phase II site assessments, low-interest loans for remediation, and petroleum-remediation grants. By allowing local governments to identify prospective development sites and obtain the environmental reviews, local building inspections, zoning changes, and some regulatory permits, the local governments will decrease costs and time, making Indiana industrial sites more attractive to businesses.

The SRSDC will supplement or even replace the permitting assistance already provided by the Indiana Economic Development Corporation's regulatory ombudsman.

HEA 1653, PL 25-2005, SECTIONS 1 & 2; Ind. Code 4-4-11-44, effective April 14, 2005.

SOLID AND HAZARDOUS WASTE ISSUES

Good Character and Need Laws Changed

After 15 years of burdensome, very costly laws that provided little if any corresponding benefit, on July 1, 2005, changes were made both to the Good Character Law and the Need Demonstration Law. Both of these laws were passed as part of a 10-part plan of former Governor Bayh to stop out-of-state waste. Most of those 10 laws have been found unconstitutional or unenforceable. These two laws alone have survived, and finally 15 years later have been changed to remove some of the unnecessary burden and expense.

Acknowledgement Number No Longer Required

Starting July 1, 2005, the requirement to file good-character disclosures in order to obtain an acknowledgement number as a transporter, broker or transfer station operator and to file an annual update no longer is required. However, the requirement to accompany each load of municipal waste being transported from a transfer station or other type of processing facility with the municipal waste manifest continues to be the law. That municipal waste manifest — which is to be prepared by the owner or operator of the transfer station or other solid-waste processing facility from which the municipal waste is being transported — is to be given to the operator of the transporting vehicle and that operator must carry the municipal-waste manifest while trans-

porting the waste and present it to the land disposal or other facility where the waste is to be transported. The manifest will now contain only:

1. The amount in tons of municipal waste being transported,
2. The name and address of the solid waste processing facility from which the municipal waste is being transferred,
3. The destination for the municipal waste; and
4. The name of the person transporting the municipal waste.

The acknowledgement numbers for the transporter, broker and transfer station are no longer required.

SEA 279, PL 154-2005, SECTIONS 14, 15, 16 and 17; Ind. Code 13-20-4-7, Ind. Code 13-20-6-4, Ind. Code 13-20-6-8, Ind. Code 13-20-6-2, Ind. Code 13-20-6-3, Ind. Code 13-20-6-5 and Ind. Code 13-20-6-6, effective July 1.

Good Character No Longer Applies to Renewal Permits

In addition, good character disclosures are no longer required as part of an application to renew a solid or hazardous waste permit.

SEA 279, PL 154-2005, SECTION 1; Ind. Code 13-11-2-8(a)(2), effective July 1, 2005.

Some Transfer Station Permits Applications are Subject to Good Character

Previously transfer stations were exempt from the good character law that applies to permit applications. The law has been changed to require good character disclosures in connection with permit applications for a solid waste processing facility (which includes transfer stations), a solid waste disposal facility, and a hazardous waste facility, but only when applying for:

1. A new facility permit,
2. A major modification to a permit,
3. For some permit transfers, and
4. When the majority ownership (such as the purchase of the stock of an existing permittee) changes in an entity holding the permit.

However, an applicant for a transfer station permit, who holds a permit for another transfer station operating in Indiana, does not have to provide good character disclosures when applying for a new transfer station permit.

SEA 279, PL 154-2005, SECTION 4; Ind. Code 13-19-4-1(a)(1), effective July 1, 2005.

Good Character and Permit Transfers

The good character law has been relaxed to no longer apply to some permit transfers – generally for legal entities that already are operating in Indiana and for which IDEM previously has conducted a good-character evaluation. The law, however, was changed to require prospective new owners of a solid waste, hazardous waste or atomic radiation permit who the law continues to apply to, to file the good character disclosures 180 days prior to the permit transfer, which is a full 4 months before the time frame in which the other solid waste permit transfer information is required to be provided to IDEM by its rules.

SEA 279, PL 154-2005, SECTON 9; Ind. Code 13-19-4-8, effective July 1, 2005.

This 180-day advance filing of good character disclosures to transfer a permit is required unless one of the two following exceptions apply:

1. The permit transfer concerns a Transfer Station and the legal

entity seeking the transfer already holds a permit and is operating another transfer station, a solid waste disposal facility or a hazardous waste facility in Indiana.

SEA 279, PL 154-2005, SECTION 4, Ind. Code 13-19-4-1(a)(2), effective July 1, 2005.

2. The permit transfer concerns a solid waste disposal facility, and the legal entity seeking the transfer already holds a permit and is operating either another solid waste disposal facility or a hazardous waste facility in Indiana.

SEA 279, PL 154-2005, SECTION 4; Ind. Code 13-19-4-1(b), effective July 1, 2005.

A Change in Ownership of a Permittee Triggers Good Character

If a permit transfer is not required because the permit will continue to be held in the same permittee's name, but there will be at least a 50% change in ownership or control of the entity that holds a solid waste, hazardous waste or atomic radiation permit, the new (more than 50%) owner of the entity must provide good character disclosures to IDEM no later than 30 days after the change in ownership or control is completed. This provision will apply where persons buy the stock of another company, and continue to operate the facility under the current permit, or where a partnership holding a permit has a change in the majority owning partner, or in any instance where the ownership of the entity holding a permit is changed by more than 50%. In these instances a permit transfer is not required, but IDEM will be able to review the same good character information on that new legal entity having more than 50% control of the permittee.

SEC 279, PL 154-2005, SECTION 9; Ind. Code 13-19-4-8(e), effective July 1, 2005.

Serious sanctions exist in the law for a failure of that new (more than 50%) owning entity to timely provide the good character disclosures. By law, if an entity fails to submit to IDEM a timely disclosure, IDEM "shall" revoke the permit. If the disclosures are timely provided, IDEM is to review the good character disclosures, may investigate and verify the information in the disclosure statement and may revoke the permit, if it is determined that the information provided would have served as a basis for denying a permit that was applied for under the good-character law. By law, these disclosures must be filed no later than 30 days "after" the change in ownership interest, but may be filed earlier, which would avoid any risk associated with a change in ownership on the validity of a permit.

SEA 279, PL 154-2005, SECTION 9; Ind. Code 13-19-4-8(f) and (g), effective July 1, 2005.

Need Demonstration No Longer Required for a Transfer Station Permit Application

Starting July 1, 2005, applications for a transfer station permit will no longer be required to include as part of the permit application a demonstration of need. By law IDEM's need rule for transfer stations has been declared void and the Solid Waste Management Board must amend its rule to be consistent with the law. All other types of permit applications for solid waste processing facilities and solid waste disposal facilities continue to be subject to the need demonstration requirement. In addition, the definition of what is a solid waste processing facility has been expanded to include 3 additional types of solid

waste management activities. Those activities include: (1) a medical or infectious waste treatment facility, (2) a solid waste solidification facility that is not located on an operating, permitted landfill; and (3) a facility that uses plasma arc or another source of heat to treat solid waste.

HEA 279, PL 154-2005, SECTION 3, 11, and 18; Ind. Code 13-11-2-212, and Ind. Code 13-20-1-2, effective July 1, 2005.

Due to what appears to be a drafting error in SEA 279, IDEM is only allowed to deny a solid waste disposal facility if it determines that there is not a local or regional need in Indiana for that disposal facility. There was no corresponding provision added to the law allowing IDEM to deny a permit for a solid waste processing facility, based on a finding that a need does not exist.

SEA 279, PL 154-2005, SECTION 12; Ind. Code 13-20-1-4, effective July 1, 2005.

Clarification of Need Exclusion for Captive Sites

The current law that exempts an individual, a corporation, a partnership or a business association from the Need Demonstration requirement based on the fact that entity produces solid waste as byproduct of or incidental to its regular business activity and disposes of the solid waste at a site owned by it and limited to its use, has been clarified to say that the exclusion also applies to limited liability companies under those same circumstances.

SEA 279, PL 154-2005, SECTION 10; Ind. Code 13-20-1-1, effective July 1, 2005.

C&D Facility Setbacks

The solid waste law was amended this year to include a provision relating to setbacks for new solid waste disposal facilities that accept only construction/demolition ("C&D") waste. This new section applies only to new C&D facilities and specifically excludes expansions of C&D facilities with permits issued before January 1, 2005. The new provision applies the Municipal Solid Waste Landfill half-mile setback from public schools to these new C&D landfills. The purpose of this new provision presumably is yet another effort to hinder the continued development of the proposed Mallard Lake Landfill located in Madison County, which has been successfully challenging resistance from local groups and IDEM since it first sought a construction permit in 1982.

HEA 1200, PL 189-2005, SECTION 2; Ind. Code 13-19-3-9, effective January 1, 2005 (Retroactive).

VX Nerve Gas Disposal and Transportation

In reaction to the Army disposing of the VX nerve agent stored at the facility in Newport, Indiana, the Legislature amended the law regulating the treatment and disposal of VX and passed a new law for transportation of VX. Under the law, facilities that wish to generate or treat VX or hazardous waste related to VX must show that the proposed technology will destroy 99.9999% of the VX or to another specific level approved by IDEM. Under this law, IDEM must also create and implement an inspection protocol to assure these standards are met.

In order to ship VX or a hazardous waste derived from the bulk neutralization and destruction of the agent VX, the transporter must:

1. Coordinate with appropriate state agencies through which the waste

will travel; and
2. File with IDEM, the state police, and the state emergency management agency:
    a. A written evaluation of risks assessing, inter alia, the most likely types of incidents and their likelihood of occurrence, and
    b. A written transport safety plan, which addresses the risks identified above, driver certification, appropriate response personnel availability, and the amount of VX waste being shipped.

The transporter must amend the risk evaluation and transportation plan if the proposed route changes. Finally, this amendment requires that transportation shall occur at times which provide maximum public safety.

HEA 1059, PL 172-2005; Ind Code 13-22-3-10 and Ind. Code 13-22-7.5, effective March 6, 2005.

Waste Tires

The Legislature expanded the waste tire fee. The waste tire fee of $0.25 assessed at the purchase of new tires now applies to the purchase of tires for farm tractors, implements of husbandry, and semi trailers. Future legislation is expected. Specifically, the amount collected may go towards subsidizing the use of waste tires as fuel for energy or as inert material in other processes.

HEA 1033, PL 208-2005, SECTION 12; Ind. Code 13-11-2-245, effective July 1, 2005.

Fiscal Management of Solid Waste Management District Funds

The Solid Waste Management District law was amended this year to remove discretion and to make it mandatory for the controller of a solid waste management district to deposit money in the district fund that is not currently needed in the same manner as other county money. In addition, the law has been revised to provide that such money must be invested consistent with the provisions of Ind. Code 5-13, the law that applies to investments by the state and political subdivisions.

HEA 1120, PL 214-2005, SECTION 58 and 59; Ind. Code 13-21-3-10 and 13-21-13-2, effective July 1, 2005.

Solid Waste Management District-Owned Landfills

Solid Waste Management Districts that own landfills were provided additional flexibility when constructing or closing landfill cells. These districts are no longer required to receive approval for the use of property tax revenue in the district if the district had already received approval from the county fiscal body to construct or close the landfill cell.

HEA 1200, PL 189-2005, SECTION 4, Ind. Code 13-21-3-16, effective July 1, 2005.

Additionally, a solid waste management district that owns a landfill is now allowed 60 days after the close of the fiscal year (rather than 30 days) in which to file a report with the state board of accounts.

HEA 1200, PL 189-2005, SECTION 1, Ind. Code 5-11-1-4, effective July 1, 2005.

Solid Waste Management District Board Membership for Single County District with No City

The Solid Waste Management District law was also revised this year to allow a single county Solid Waste Management

District, which does not contain a city, to change the composition of the Solid Waste Management District Board, if the county executive and county fiscal body agree. Specifically the Board may now be composed of 9 or 10 members, as follows:

1. The three County Commissioners;
2. Two members of the County fiscal body;
3. One member of each of the town legislative bodies of the 4 or 5 towns in the County having the largest population.

Previously the Board's membership was to be:

1. The three County Commissioners;
2. One member from the County Fiscal body;
3. The mayor of the city having the largest population in the County or the president of the town, if the town is the municipality with the largest population in the County;
4. One member of the legislative body of the municipality with the largest population in the County; and
5. One mayor of a city in the County that is not the municipality having the largest population in the County; or a member of the legislative body of a town that is not the municipality having the largest population in the County.

HEA 1200, PL 189-2005, SECTION 3, Ind. Code 13-21-3-5, effective July 1, 2005.

INCREASED FUNDING TO THE ELTF

In an attempt to bring the Environmental Liability Trust Fund (ELTF) out of priority-payment mode, the Legislature increased the inspections fees and added diesel fuel inspection fees. Historically, leaking underground storage tanks containing diesel fuel could recover under the ELTF even though there were no diesel inspection fees subsidizing the ELTF. With this change to the law, the inspection fee for gasoline and kerosene was also increased from $0.40 per barrel to $0.50 per barrel. The law imposes the $0.50 per barrel inspection fee on diesel fuel sold or used for motor vehicles.

HEA 1120, PL 214-2005, SECTIONS 60–61; Ind Code § 16-44-2-18, 16-44-2-18.5, effective July 1, 2005.

WATER ISSUES

Combined Sewer Overflows

Legislation was passed this year to offer IDEM and the more than 100 combined sewer overflow (CSO) communities in Indiana additional flexibility to deal with CSO issues. The cost to correct CSOs throughout the state is currently estimated at approximately $15 billion. Many CSO communities have submitted Long Term Control Plans (LTCP) that have not been approved by IDEM because even after the LTCPs are implemented, wet weather overflows will cause exceedences in current recreational water quality standards for bacteria. Communities required to meet recreational water quality standards during wet weather conditions were faced with burdensome and nearly impossible investments such as requiring full sewer separation rather than the more cost-efficient option of storage for later treatment. This new law reflects a necessary compromise between removing sewage from waters of the state and working with communities to allow realistic, cost-effective and sustained progress in addressing CSO issues. Although the law was primarily directed at CSO issues, other NPDES permit holders

will be able to benefit from the changes to the requirements for variances from water quality standards.

Under this new law, each variance application from water quality standards must include a pollutant minimization plan for the specific pollutant for which the variance is requested. For CSOs, the NPDES permit holder must prepare a LTCP implementing nine controls specified by federal law. The Indiana specific restriction limiting variances from water quality standards to one permit term and one renewal (total of ten years) is removed. The removal of this restriction applies to all variances, not just those applying to CSOs and wet weather events. Variances may be renewed each time the affected NPDES permit is renewed. If an NPDES permit is administratively extended, the variance is extended as well until IDEM takes action on the renewal application.

SEA 620, PL 54-2005, SECTION 1; Ind. Code 13-14-8-9, effective April 21, 2005.

Most important, this new law establishes a "CSO Wet Weather Limited Use Subcategory" as an alternative to the recreational use designation for waters affected by CSO discharges. This subcategory suspends water quality standards that cannot be met due to the CSO. The limited use subcategory only applies if IDEM has approved the CSO community's LTCP and it specifies the water-quality based requirements applying to the CSOs during and immediately following wet weather events. If a CSO community has implemented their LCTP, the subcategory is available for a time period not to exceed four days after a CSO occurs for which the recreational use designation cannot be met. IDEM is directed to seek approval of the CSO Wet Weather Limited Use Subcategory from the EPA and to implement the category when approved by EPA.

SEA 620, PL 54-2005, SECTION 4, Ind. Code 13-18-3-2.5, effective April 21, 2005.

Where appropriate, NPDES permits will now contain compliance schedules outlining specific steps by the permittee to achieve compliance with standards, limitations, and other requirements. For CSO communities, the NPDES compliance schedules may be extended during the development of the LTCP, and may even exceed one permit term.

SEA 620, PL 54-2005, SECTION 5; Ind. Code 13-18-3-2.6, effective April 21, 2005.

IDEM is required to revise its guidance document developed for CSO communities and to revise its rules by October 1, 2006, to reflect the changes of this law.

SEA 620, PL 54-2005, SECTIONS 4, 5 and 6; Ind. Code 13-18-3-2.5, and Ind. Code 13-18-3-2.6, effective April 21, 2005.

Isolated Wetlands

Clarification was made to the isolated wetlands program, which was legislatively created last year and is found at Ind. Code 13-18-22 et seq. Specifically, "exempt isolated wetland" now includes those isolated wetlands located on land subject to regulation under the federal Wetlands Reserve Program (a program to provide financial incentives for landowners willing to return and protect wetlands in return for retiring marginal land from agriculture). Previously the only federal program recognized to exempt land from IDEM's wetlands' regulation was Swampbuster. This change clarifies that exempt isolated

wetlands include both those under the federal Wetlands Reserve and Swampbuster programs. More importantly, however, the law was amended this year to specify that either an isolated or a jurisdictional (or non-isolated wetland) may be used for the compensatory mitigation of an isolated wetland. The new wetland rules passed by the Water Pollution Control Board in March 2005 did not specify that jurisdictional wetlands could be used to mitigate for impacts to isolated wetlands. This new legislation clarifies to IDEM that jurisdictional wetlands are an acceptable substitute for mitigation.

HEA 1431, PL241-2005, SECTIONS 3 and 4; Ind. Code 13-11-2-74.5 and Ind. Code 13-18-22-6, and 327 IAC 17-1-5 effective July 1, 2005.

LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES

BOATING REGULATION

The law allowing boats operating on a small lake over a fixed marked course permitted by the Department of Natural Resources (DNR) while competing in a boat race to attain any speed which the boat is capable was amended this year. Starting April 13, 2005, no speed limit applies to a boat in a boat race, a water ski event, or other organized boating activity, when operating over a fixed and marked course for which DNR has issued a permit.

As introduced, the bill would have allowed the Natural Resources Commission to exempt a lake containing more than 45 acres (rather than 70 acres) from the 10 miles per hour speed limit under Ind. Code § 14-15-3-11. The expansion of the application of this section to include a larger number of lakes was eliminated from the law that did pass leaving only the speed limit exception for water ski events and any other organized boating activity.

HEA 1183, PL 21-2005; Ind. Code 14-15-3-13, effective April 13, 2005.

CENTER FOR COAL TECHNOLOGY RESEARCH

The law that establishes the duties of the Center for Coal Technology Research was amended this year to add a new duty, specifically to investigate uses and reuses of coal bed methane. Coal bed methane is considered both an untapped energy resource and an environmental concern as a byproduct of coal production. Coal stores many times more methane than the equivalent rock volume of a conventional natural gas reservoir. For production of coal bed methane, pressure must be reduced within the coal bed by removing groundwater. The center for coal technology research must now investigate the reuse of byproduct coal bed methane and the use of coal bed methane as renewable or alternative fuel and energy source.

HEA 1078, PL 174-2005, SECTION 1; Ind. Code 4-4-30-5, effective July 1, 2005.

In addition, the existing law that lists and defines “clean coal and energy projects” has been revised to specifically include projects which will be fueled by the use of

coal bed methane. This means that now the following projects will also be considered clean coal and energy projects:

1. Projects at new energy generating facilities that employ the use of clean coal technology and that are fueled primarily by coal bed methane;
2. Projects to provide advanced technologies that reduce regulated air emissions from existing energy generating plants that are fueled primarily by coal bed methane, such as flue gas desulphurization and selective catalytic education equipment; and
3. Projects to provide electric-transmission facilities to serve a new energy generating facility using coal-bed methane.

HEA 1078, PL 174-2005, SECTION 2; Ind. Code 8-1-8.8-2, effective July 1, 2005.

CLEAN WATER INDIANA FUND

One-sixth (1/6th) of the money from the cigarette tax fund was allocated this year to the Clean Water Indiana Fund – the Fund established by Ind. Code 14-32-8-6 in 1999. The purpose of that Fund is to provide financial assistance to implement conservation practices to reduce non-point sources of water pollution. Indiana legislators allocated $1 million to the Fund in 2001. That had been the only funding for the program to date. In prior legislative sessions, legislators attempted to introduce specialty taxes (bottled water and landfill fees) in an attempt to fund the program. Those bills did not pass. Funding was found this year, by reallocating money already dedicated to the Department of Natural Resources. Before this law was passed, the Department of Natural Resources, which oversees the Clean Water Indiana Fund, received one-third of the cigarette tax revenue. That money was to be spent as follows:

1. At least 2% but not more than 21% on flood control and water resource projects, including multiple-purpose reservoirs and applied research related to technical water-resource problems;
2. At least 36% to construct, reconstruct, rehabilitate, or repair general conservation facilities or to acquire land; and
3. At least 43% for soil conservation and lake and river-enhancement purposes.

Now, half of that amount, or one-sixth of the cigarette tax fund, will be dedicated to the Clean Water Indiana program and DNR will continue to spend the remaining one-sixth of the cigarette tax fund according to the percentages and for the purposes listed above.

HEA 1431, PL 241-2005, SECTIONS 1, 2, and 5; Ind. Code 6-7-1-29.1, Ind. Code 6-7-1-29.3, and Ind. Code 14-32-8-6, effective July 1, 2005.

RIGHT TO FISH

The House of Representatives and the Senate have passed a joint resolution to amend Article I of the Indiana Constitution concerning the bill of rights. The resolution proposes to amend Article I of the Constitution by adding a new section that would read as follows:

Section 38. The people have a right to hunt, fish, and harvest game, which are a valued part of our heritage and shall be forever preserved for the public good, subject to laws prescribed by the General Assembly and rules prescribed

by virtue of the authority of the General Assembly.

To be effective, this proposed amendment must be agreed to by two consecutive general assemblies and ratified by a majority of the state's voters voting on the question. This is the first general assembly to agree to this proposed amendment.

HJR 4, approved by both houses March 22, 2005.

FORESTRY OPERATIONS SHIELDED FROM NUISANCE ACTIONS

A law was passed this year to protect forestry operations from actions to abate or enjoin a nuisance brought by persons who allege that their property has been injuriously affected or because their personal enjoyment has been lessened due to forestry operations. A definition of forestry operation has been added to the law on nuisance actions. Forestry Operation includes facilities, activities, and equipment used to plant, raise, manage, harvest or remove trees on private land. The term specifically includes site preparation, fertilization, pest control, and wildlife management.

In a form of protection against "coming to a nuisance," a new section was added to the law to provide that a forestry operation that existed before a change in land use or occupancy of land within one mile of the boundaries of where that forestry operation exists, which would not have been a nuisance before the change in land use, cannot by law be determined to be a private or public nuisance by or on behalf of those who now occupy the new adjoining land use. In addition the law now provides that a forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation cannot be prosecuted as a private or public nuisance as a result of any of the following:

1. A change in ownership or size of the forestry operation;
2. Enrollment in a government forestry conservation program;
3. Use of new forestry technology;
4. A visual change due to removal of timber or vegetation;
5. Normal noise from forestry equipment;
6. Removal of timber or vegetation from a forest adjoining the location of the forestry operation; and
7. The proper application of pesticides and fertilizers.

For purposes of this law a forestry operation is considered to be in continuous operation if the specific land area upon which forestry operations are conducted supports an actual or developing timber crop.

Neither of these protections against nuisance actions applies if the forestry operation is being operated negligently.

Under this new law, a forestry operation may recover its attorney's fees if a forestry operation successfully defends against a nuisance action.

SEA518, PL 82-2005, SECTIONS 2, 3, 4 and 5; Ind. Code 32-30-6-1.5, Ind. Code 32-30-6-3, Ind. Code 32-30-6-7 and Ind. Code 32-30-6-11, effective July 1, 2005.

This new law further voids any ordinance adopted after March 31, 2005, by a local unit of government that makes a forestry operation a nuisance or provides for abatement of a forestry operation as a nuisance, trespass, or zoning violation.

In addition, if the owner of a property owned the property before the enactment of an ordinance restricting forestry operation, which is not voided by this new law, that property owner is exempt from the ordinance, if the forestry operations on the property comply with generally accepted best management practices, comply with the practices established in the Indiana Logging and Forestry Best Management Practices ("BMP") Field Guide, as published in September 1, 1999, by the DNR, Division of Forestry and have been in continuous operation on the property.

SEA 518, PL 82-2005, SECTION 6; Ind. Code 36-7-2-10, effective July 1, 2005.

Finally, this law revised the zoning laws to provide that units desiring to exercise planning and zoning powers must do so in a manner that recognizes the needs of forestry in future growth.

SEA 518, PL 82-2005, SECTION 7; Ind. Code 36-7-4-201, effective July 1, 2005.

INCREASE IN SURFACE COAL MINING AND RECLAMATION FEES

The reclamation fees paid to DNR for every ton of coal produced, which are used to fund the activities of the Division of Reclamation, increased on July 1, 2005, for both surface and underground coal mining operations. Under this new law, surface coal mine operators will pay five and one-half cents per ton of coal produced, an increase of two and one-half cents. Underground coal mine operators will pay three cents per ton of coal produced which is an increase of one cent. According to State Representative Russ Stilwell, the fee increase is necessary to maintain necessary funding for the DNR's Division of Reclamation.

HEA 1078, PL 174-2005, SECTIONS 3 and 4; Ind. Code 14-34-13-1, 14-34-13-2, effective July 1, 2005.

WELLS ASSOCIATED WITH GEOPHYSICAL SURVEYING

DNR will no longer regulate wells associated with geophysical surveying. One geophysical method includes the use of explosives buried 5 to 10 feet below the surface to create seismic activity used for recording various rock layers. The data is then used to determine potential locations for oil and natural gas. Before this change to the law, the law required permitting of oil and gas wells and permits for geophysical surveying. All of the references to geophysical surveying were removed from the existing law in order to promote and encourage expansion of oil and gas production. Indiana Code 35-47.5-5-4.5 now excludes regulation of geophysical surveying activities which use explosives and are associated with oil and natural gas exploration, development, production, or abandonment activities. Companies carrying out geophysical surveying will no longer have to pay the $5,000 permit application fee to DNR or deal with cumbersome notification requirements.

SEA 442, SECTION 7, Ind. Code 35-47.5-4-4.5, SECTION 8, Ind. Code 14-8-2-114, 14-37-3-14, 14-37-6-6, 14-37-8-17, effective April 25, 2005, PL 80-2005.

Leaving geophysical surveying out of oil and gas regulations is consistent with exploration rules and laws in other oil and gas production states.

SEA 442, PL 80-2005, SECTIONS 1 through 5; Ind. Code 14-37-4-1, Ind. Code 14-37-4-1, Ind. Code 14-37-4-10, Ind. Code 14-37-4-11, and Ind. Code 14-37-7-1, effective July 1, 2005.

DRILLING OIL AND GAS WELLS THROUGH A COAL MINE OR COAL SEAM

The existing oil and gas law was amended this session to clarify the requirements for drilling an oil and gas well through a coal mine or coal seam. An appeal before the Natural Resources Commission (NRC) brought to both coal operators' and oil and gas well operators' attention a problem arising from a previous amendment of the statute, which had left unclear whether the protection of an intermediate string of casing was required for an oil and gas well being advanced through a pillar in an active mine. In the case before the NRC, the well operator requested a variance from the requirements of Ind. Code 14-37-7-3 and argued that the requirements of Ind. Code 14-37-7-3, requiring an intermediate string of casing, did not apply because he was drilling through a pillar. The intermediate string of casing is used to prevent the escape of gases and liquids from the oil and gas well into the coal seem or coal mine. DNR argued that the statute did not allow for variances from the requirements and that the well had to be completed with an intermediate string because the statute required that type of well construction in an active mine.

The amendments made to the oil and gas well construction law addresses the concerns raised by DNR, the well operator and the coal companies. Language was returned to the statute to clarify that any wells drilled through a pillar in an active or inactive mine require an intermediate string of casing. However, a variance provision was added which will allow DNR to grant a variance and allow the well to be advanced without an intermediate string of casing if:

1. the owner or permittee of the coal resource provides written consent to the well operator, and
2. the director of DNR approves the well operator's written request.

DNR will use existing requirements to review whether or not a variance from the intermediate string casing requirements should be granted. Existing law and the amendments specify that oil and gas wells are required to be installed in a manner that prevents waste, water pollution, blowouts, cavings, seepages, fires, and unreasonably detrimental effects upon fish, wildlife and botanical resources. Even with the coal owner or permittee's written consent, a variance likely would not be granted if DNR determines that seepage of fluids and gases would occur without an intermediate string of casing.

SEA 442, PL 80-2005, SECTION 6; Ind. Code 14-37-7-3, effective April 25, 2005.

LAWS AFFECTING THE ENVIRONMENTAL QUALITY SERVICE COUNCIL

EQSC Made Permanent

A law passed this year to make the Environmental Quality Service Council (EQSC) permanent and to reestablish the Compliance Advisory Panel (CAP) (established under Section 507 of the Clean Air Act, 42 U.S.C. § 7661(f), to assist small business stationary sources in determining applicable requirements and receiving permits in a timely and efficient manner) as a committee of the EQSC. A new chapter was added to IDEM's laws at Ind. Code 13-13-7, creating the EQSC and CAP.

The EQSC will consist of 17 voting members and 1 nonvoting member. The members and how they are to be appointed are:

1. Two members of the Indiana Senate appointed by the President of the Senate, who may not be from the same political party and who must be owners of or have an interest in small business stationary sources;
2. Two other member of the Indiana Senate, appointed by the President of the Senate;
3. Two members of the Indiana House appointed by the Speaker of the House, who may not be from the same political party and who must be owners of or have an interest in small business stationary sources;
4. Two other member of the House Senate, appointed by the Speaker of the House;
5. Two individuals representing business and industry, appointed by the Governor, who may not be from the same political party;
6. Two individuals representing local government, appointed by the Governor, who may not be from the same political party;
7. Two individuals representing environmental interests, appointed by the Governor, not more than one of whom may be a solid waste management district director, and who may not be from the same political party;
8. One individual representing semipublic permittees appointed by the Governor;
9. One individual representing agriculture, appointed by the Governor;
10. One individual representing the public who is not an owner of a small business stationary source or a representative of owners of small business stationary sources, appointed by the Governor;
11. The Commissioner of IDEM or his or her designee, who is the non-voting member.

The CAP consists of 7 voting members. The members and how they are to be appointed are:

1. The two members of the Indiana Senate appointed by the President of the Senate to the EQSC, who are owners of or have an interest in small business stationary sources;

2. The two members of the Indiana House appointed by the Speaker of the House to the EQSC, who are owners of or have an interest in small business stationary sources;
3. The one individual representing the public who is not an owner of a small business stationary source or a representative or owners of small business stationary sources, appointed by the Governor to the EQSC;
4. One of the two individuals appointed by the Governor to the EQSC representing environmental interests, appointed by the Governor;
5. The Commissioner of IDEM, or his or her designee.

Appointments to the EQSC and CAP were to be made by July 1, 2005. Membership on the EQSC and CAP is valid for 2 years after the date of appointment. A member can continue to serve beyond the 2-year term until a new appointment is made.

If a vacancy occurs on the EQSC or the CAP, the appointing person is to appoint a replacement within 60 days. For members of the EQSC and CAP who are not members of both the EQSC and CAP, if no replacement has been named within 60 days, then the Chairman of the Legislative Council is to fill the vacancy.

The Chairman of the Legislative Council designates one of the legislative members to serve as Chair of the EQSC and Chair of the CAP.

The EQSC and CAP must meet at least one time each calendar year. The CAP may only meet on a date when the EQSC is meeting. The Chair of the EQSC may designate committees to meet between EQSC meetings requiring the committee to report back to the full EQSC.

The EQSC is required to do the following:

1. Study issues designated by the Legislative Council;
2. Advise the Commissioner of IDEM on policy issues decided by the EQSC;
3. Review the mission and goals of IDEM and evaluate the implementation of the mission;
4. Serve as a council of the General Assembly to evaluate:
    a. Resources and structural capabilities of IDEM to meet IDEM's priorities; and
    b. Program requirements and resource requirements for IDEM;
5. Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions; and
6. Submit a final report to the legislative council, that contains at least the following:
    a. An outline of activities of the EQSC;
    b. Recommendations for IDEM action;
    c. Recommendations for legislative action.

IDEM's commissioner is required to report to the EQSC each month concerning the following:

1. Permitting programs and technical assistance;
2. Proposed rules and rulemaking in progress;
3. The financial status of IDEM; and
4. Additional matters required by the EQSC.

The CAP is required to carry out the duties established under Section 507 of the federal Clean Air Act. The CAP is not required to submit an annual report to the Legislative Council.

SEA 44, PL 12-2005, SECTIONS 1-6; Ind. Code 13-11-2-46, Ind. Code 13-11-2-151.6, Ind Code 13-13-7, Ind. Code 13-21-1-3 and Ind. Code 13j-28-3-2, effective July 1, 2005.

EQSC to Research and Report on Energy

The EQSC has been directed to research and report on methods to increase research, development, production, and use of the following types of alternative fuels:

1. Biofuels, such as biodiesel, ethanol, and other agricultural-based alternatives to petroleum;
2. Clean coal technology;
3. Wind and solar power;
4. Waste tires; and
5. Other sources of renewable energy.

Those sources that provide maximum economic and environmental benefits in Indiana, are to be given priority.

The EQSC is to provide recommendations on these matters in its final 2005 report to the General Assembly, the Commissioner of Agriculture and the Indiana Economic Development Corporation.

HEA 1033, PL 208-2005, SECTION 15, non-code provision, effective March 11, 2005.

LAWS AFFECTING AGRICULTURE

NEW DEPARTMENT OF AGRICULTURE CREATED

For years, Indiana stood as one of the few states without any organized Department of Agriculture. This came to an end with the passage of House Enrolled Act 1008, Public Law 83-2005. This new law creates a Department of Agriculture for the State of Indiana. The department is to be headed by the "Director," who will be appointed by the Governor and report to the Lieutenant Governor, in her role as the Secretary for Agriculture and Rural Development.

The Department of Agriculture is to undertake a number of marketing and administrative tasks, including providing administrative staff and support for the Center for Value Added Research, the State Fair Board, the Indiana Corn Marketing Council, the Indiana Organic Peer Review Panel, the Indiana Dairy Industry Development Board, the Indiana Grain Indemnity Corporation, the Indiana Land Resources Council, the Division of Soil Conservation and the Indiana Grain Buyers and Warehouse Licensing Agency. The Department will also administer the election of State Fair board members.

HEA 1008, PL 83-2005, SECTION 11 and 14, Ind. Code 15-9-3, and non-code section, effective May 11, 2005.

A new Division of Soil Conservation has been established within the Department of Agriculture. That Division has the following duties:

1. Providing staff for the Soil Conservation Board;
2. Administering all programs relating

to land and soil conservation in Indiana;
3. Managing Indiana's watersheds;
4. Administering the Clean Water Indiana Program; and
5. Performing other functions assigned to it by the Lieutenant Governor and the Director of the Department of Agriculture.

HEA 1008, PL 83-2005, SECTION 11, Ind. Code 15-9-4, effective May 11, 2005.

The Department of Agriculture has responsibility for all of the following programs, with references to those programs being considered to be references to the Department of Agriculture, and all property, appropriations, leases, labor agreements and positions being transferred to the Department of Agriculture:

1. Any part of the Department of Commerce statues that administer an agriculture statute;
2. The programs of the Center for Value Added Research established under IC 4-4-3.4;
3. The programs of the Indiana Commission for Agriculture and Rural Development established by Ind. Code 4-4-22-6, before its repeal;
4. The programs of the State Fair Board, established by Ind. Code 5-1.5-4-1;
5. The programs of the Indiana Corn Marketing Council, established by Ind. Code 15-4-10-12;
6. The programs of the Indiana Organic Peer Review Panel, established by Ind. Code 15-4-12-9;
7. The programs of the Indiana Dairy Industry Development Board, established by Ind. Code 15-6-4-9;
8. The programs of the Indiana Land Resources Council, established by Ind. Code 15-7-9-4;
9. The programs of the Indiana Grain Buyers and Warehouse licensing agency, established by Ind. Code 26-3-7-1;
10. The programs of the Indiana Grain Indemnity Corporation, established by Ind. Code 26-4-3-1;
11. The programs included in Ind. Code 15, except for:
    a. A statute administered by the State Fair Commission;
    b. Ind. Code 15-2.1 – Animal Health;
    c. Statutes administered by the Indiana State Board of Animal Health or State Veterinarian;
    d. Any statute administered by the State Chemist;
    e. Ind. Code 15-6-1 – the Creamery License division at Purdue; and
    f. Any statute Administered by the Dean of Agriculture at Purdue University
12. The programs included in Ind. Code 26-3-7 – Indiana Grain Buyers and Warehouse Licensing Agency;
13. The programs included in Ind. Code 26-4 – Indiana Grain Indemnity;
14. The soil and water conservation functions of the Indiana Department of Natural Resources;
15. The functions of the Soil Conservation Board;
16. All functions of the Indiana Department of Natural Resources and Indiana Department of Environmental Management

relating to the Clean Water Indiana Program.

HEA 1008, PL 83-2005, SECTIONS 14 and 15, non-Code sections, effective May 11, 2006, expires July 1, 2006.

The Legislative Services agency is directed to prepare legislation for introduction in the 2006 regular session of the General Assembly to organize and correct statutes affected by the establishment of the Department of Agriculture.

HEA 1008, PL83-2005, SECTION 16, non-Code section, effective May 11, 2006, expiring July 1, 2006.

House Enrolled Act 1008, Public Law 83-2005, also establishes the Office of Rural Affairs, which assumes the powers and duties of the former Rural Development Agency. The Office of Rural Affairs is to be headed up by the Director, who reports to the Lieutenant Governor, in her role as the Secretary for Agriculture and Rural Development. The Office of Rural Affairs is responsible for administering the rural development fund, the rural development administration fund, and to provide administrative and staff support to the Indiana Rural Development Council and other local rural development projects.

HEA 1008, PL 83-2005, SECTIONS 1-9, and 13 Ind. Code 4-4-2.3, Ind. Code 4-4-9-1, Ind. Code 4-4-9.3-1, Ind. Code 4-4-9.3-3, Ind. Code 4-4-9.7, Ind. Code 4-4-16-1, Ind. Code 4-4-16-2, Ind. Code 4-4-16-3, Ind. Code 5-28-6-2, non code section, effective May 11, 2005.

AGRICULTURE SHIELDED FROM NUISANCE ACTIONS

In 1981, the Indiana legislature enacted the Right to Farm Act, Ind. Code 32-30-6-1, a statute that shields Indiana's agricultural operations from common-law nuisance actions. The Right to Farm Act applies to "agricultural operations," which are defined as "any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber." Under the statute, agricultural operations that have been in operation for at one year are immune from nuisance actions if:

1. There is no significant change in the hours of operation;
2. There is no significant change in the type of operation; and
3. The operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

This year the Legislature significantly strengthened the Right to Farm Act by changing the three statutory requirements. The revised version, which took effect on July 1, 2005, deletes the first requirement, the "hours" of operation. In addition, the law now provides specific examples of what is not a change in the type of operation:

1. The conversion from one type of agricultural operation to another type of agricultural operation.
2. A change in the ownership or size of the agricultural operation.
3. The (a) enrollment or (b) reduction or cessation of participation of the agricultural operation in a government program.
4. Adoption of new technology by the agricultural operation.

Because of the breadth of these descriptions of what is not a change in the "type" of operation, the practical effect is that the "type" of operation

requirement has been deleted as well. Now the conversion of a small farm into a large farm will not be a change in the "type" of operation, nor will the farm's obtaining a permit, or implementing new technology. There was no change to the "locality" requirement. Thus, the 2005 Right to Farm Act will shield virtually any "agricultural operation" from nuisance actions, so long as it has been in operation for more than one year and is in a rural locality.

SEA 267, PL 23-2005, SECTION 1; Ind. Code 32-30-6-9, effective July 1, 2005.

SUPPORT FOR UNDERUTILIZED SMALL BUSINESSES IN BIODIESEL AND ETHANOL PRODUCTION

The Legislature added to the laws for ethanol and biodiesel production a declaration that the opportunity for underutilized small business, especially women and minority business enterprises, is essential if social and economic parity is to be obtained and if the economy of Indiana is to be stimulated as contemplated by the 2003 laws establishing tax credits for biodiesel and ethanol production and sale. Recipients of these tax credits are encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

HEA 378, PL 191-2005, SECTION 1; Ind. Code 5-28-6-3, January 1, 2005 (Retroactive).

Biodiesel to Be Used In State Vehicles

Current law requires that State vehicles use ethanol and/or gasohol in state vehicles that have gasoline-powered engines. The vehicles subject to this law include automobiles, trucks, and tractors. In an attempt to increase the use of biofuels in Indiana, the law was revised this year to add a requirement for the State to use blended biodiesel in diesel-fueled state vehicles. As with the current law, the State is only required to use blended biodiesel "whenever possible."

HEA 1032,PL 6-2005; Ind. Code 5-22-5-8, effective July 1, 2005.

LAWS AFFECTING STATE AND LOCAL GOVERNMENT

CAMPGROUND SEWER CHARGES

Changes were made to the law again this year in an effort to ensure a fair billing system for campground sewage. The closing of several large campgrounds in Northern Indiana has been attributed to unfair sewage billing practices. Last year a law was passed allowing only one campground to elect to install a meter in lieu of an unreasonably high flat rate. That law was expanded this year to allow any campground billed at a flat rate to choose instead to install a meter for billing purposes. If a campground elects to be billed by use of a meter, the rates to metered campgrounds may not exceed the rate charged to residential customers for equivalent use, and the monthly service charge for non-summer months cannot exceed the actual usage charge for those months or the lowest monthly charge in the previous summer months. If the campground chooses to remain on a flat monthly charge, each campsite cannot exceed more than 1/3 of a resident equivalent unit, and the total monthly charge cannot exceed the resident equivalent units multiplied by the rate for a residential unit. As before, additional charges to campgrounds beyond those specified will only be allowed if the regional board actually incurs additional costs caused by unique factors that apply to providing service to the campground. This year the law was changed to provide that additional charges due to excessive biological oxygen demand (BOD) can only be the basis for an additional charge if the BOD exceeds federal pollution standards.

HEA 1200, PL 189-2005, SECTION 5; Ind. Code 13-26-11-2, January 1, 2005 (Retroactive).

In addition to this effort to create a fair billing system for campgrounds, this year the Legislature created an appeals process allowing the owner or operator of a campground to appeal rates that it disputes comply with the new statutory scheme. Once the owner/operator makes a good faith effort to resolve the disputed rate matter by following the complaint procedure set out by the board, it may file a written request for review of the dispute by the Indiana Utility Regulatory Commission (IURC). The IURC's appeals division shall informally review the matter and shall issue a written decision.

HEA 1200, PL 189-2005, SECTION 6; Ind. Code 13-26-11-2.1, January 1, 2005 (Retroactive).

CONSERVANCY DISTRICT MERGERS

A new conservancy district chapter was added to the law this year, taking effect on May 7, 2005. This new law establishes procedures by which a smaller conservancy district may dissolve and its assets, operations, and obligations be assumed by a larger contiguous conservancy district that shares a common purpose. To initiate the dissolution proceedings, the lesser of 5% or 50 of the smaller district's property owners must file a petition with the county auditor. The larger district must then pass a resolution that it is willing to assume the operation, obligations, and assets of the smaller district and that members of the smaller district

will become equal members and pay the same taxes and charges as the larger district members. Once the larger district has forwarded its resolution to the county auditor, notice shall be given and the members of the smaller district shall be allowed to participate in an election regarding the dissolution of the district with the results decided by a majority.

HEA 1200, PL 189-2005, SECTION 7; Ind. Code 14-33-16.5, effective May 7, 2005.

GOVERNMENT LIABILTY FOR BROWNFIELD UNDER THE MINI-SUPERFUND, UST LAW AND PETROLEUM FACILTY LAWS LESSENED

The government's liability regarding Brownfield for USTs, for petroleum facilities and under Indiana's mini superfund law has been changed. The definition of who is the owner of a UST has been changed to provide that the owner remains the person who conveyed ownership or control of the UST or petroleum facility to the local, state, or federal government entity. This means the person or entity owning the UST or petroleum facility prior to it being conveyed to the governmental entity as a result of:

1. Bankruptcy;
2. Foreclosure;
3. Tax delinquency;
4. Abandonment;
5. Eminent domain;
6. Receivership;
7. Other circumstances where the government involuntarily acquired ownership; or
8. Any other means to conduct remedial actions on a Brownfield

remains the owner of that UST or petroleum facility for purpose of environmental liability. The law was also changed to provide that an owner of a UST and the owner and operator of a petroleum facility does not include a political subdivision or unit of federal or state government that acquires ownership or control of a UST or petroleum facility because of bankruptcy, foreclosure, tax deliquency, abandonment, the exercise of eminent domain, receivership or other circumstances in which the political subdivision or unit of government involuntarily acquired ownership or control because of its function as a sovereign.

However, if the government causes or contributes to the release or threatened release, this exclusion will not apply.

Finally, the government is no longer liable for any losses occurring from the investigation or remediation of contamination at Brownfield sites, or under the state mini superfund law, unless the government acts recklessly or caused or contributed to the initial contamination.

HEA 1033, PL 208-2005; SECTIONS 10–11, 13–14, Ind. Code 13-11-2-150–51 effective January 1, 2005.

TORT IMMUNITY FOR BROWNFIELD REMEDIATIONS

The law was also changed this year to add a 23rd area for government immunity for losses resulting from torts. Specifically the law was changed to provide that a government entity nor an employee acting within the scope of the employee's employment is liable for a loss resulting from an act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a Brownfield, unless the loss is a result of reckless conduct or the governmental entity was responsible

for the initial placement of hazardous substances, petroleum or other pollutants on the Brownfield.

HEA 1033, PL 208-2005, SECTION 4; Ind. Code 34-13-3-3, effective July 1, 2005.

LOCAL GOVERNMENT LIENS

Stormwater Liens

New provisions were added to the Storm Water Law providing Storm Water Management District Boards ("Board") the right to create liens against properties to collect unpaid user fees —the fees Boards impose to require property owners to pay for storm water management facilities. These liens are superior to all other liens except tax liens, and attach when notice of the lien is filed in the County Recorder's office. The Boards may either prepare lists containing the names of the owners' properties on which fees are delinquent with the amount of fees and penalties or may prepare individual recording instruments for each property. A copy of the list or the individual instruments is then recorded with the County Recorder. The law also provides additional service charges and certification and recording fees and release fees, which the property owner must pay in order to have the lien released. Certified mail notice is given to each property owner against whom a lien has been recorded. No later than ten days after notice of the liens has been given to the property owners, the Boards are to certify to the County Auditor a list of the liens that remain unpaid, which are to be collected as part of the semi-annual tax assessments. After the lien has been certified to the County Auditor, the Boards may not collect or accept delinquent fees, penalties, service charges, recording fees or certification fees from property owners whose property has been certified to the County Auditor. The lien will be released when the delinquent fees, penalties, service charges and recording fees have been fully paid. If delinquent fees and penalties are not paid, the County Treasurer shall collect those fees in the same way that delinquent property taxes are collected.

The Board can foreclose a lien and recover the amount of fees, penalties and reasonable attorney fees. The Court is required to order the sale of the property to be made, subject to valuation and appraisement laws.

This law protects bona fide purchasers who purchase property after the fees have been assessed but before the lien was recorded. In addition, these provisions of the law do not apply to a city that had adopted an ordinance establishing procedures for the collection of unpaid user fees through the enforcement of a lien before January 1, 2005.

These new procedures for the creation and foreclosure of storm water management district liens mirror those relating to regional water, sewage, and solid waste districts and municipal sewers provided for in Ind. Code 13-9-23.

SEA 466, PL 131-2005, SECTIONS 1, 2, and 3; Ind. Code 8-1.5-5-29, Ind. Code 8-1.5-5-30, and Ind. Code 8-1.5-5-31, effective July 1, 2005.

Regional Water, Sewage and Solid Waste District Liens

The legislature conformed the lien procedures for regional water, sewage, and solid waste districts and county onsite waste management districts with the lien procedures for municipal sewers by first adjusting the timing of notice sent to a seller of property (from not less than

fifteen days to not more than fifteen days) when the lien was not recorded before conveyance (and therefore not enforceable against the subsequent purchaser), and then deleting the Title 13 references to collection procedures for regional water, sewage, and solid waste districts. Instead, regional water, sewer, and solid waste districts and county onsite waste management districts are to follow the same lien procedures established in Ind. Code 36-9-23 for municipal sewage works. The new code changes add clarity, but the procedures remain substantially the same.

SEA 446, PL 131-2005, SECTIONS 4, 7, 8, and 9; Ind. Code 13-26-12, Ind. Code 13-26-13, Ind. Code 13-26-14-4, Ind. Code 36-11-11-2, Ind. Code 36-23-9, effective July 1, 2005.

Municipal Corporation Liens for Ordinance Corrective Action

Conforming changes were also made to the law that allows a municipal corporation to place a lien on property when it enters the property to take appropriate action to bring the property into compliance with municipal ordinances. If the local government has brought a parcel into compliance with local ordinances, it may issue a bill for the cost of such measures. The bill is considered delinquent if it is not paid before 30 days expire. The local government may then begin the procedure for filing a lien against property where bills are not been paid. The procedures for filing a lien have been changed to make them similar to those to be followed by storm water management districts, regional water, sewage, and solid waste districts, and municipal sewers including the addition of provisions to protect bona fide purchasers.

SEA 446, PL 131-2005, SECTION 5; Ind. Code 36-1-6-2, effective July 1, 2005.

RULEMAKING

RULES REQUIRING FISCAL REVIEW

The law requiring an agency to submit a rule with estimated economic impact greater than $500,000 to the Legislative Services Agency (LSA) for a fiscal-impact statement was changed this year. First, the statute clarifies that the $500,000 threshold is for the total estimated economic impact, defined as the annual impact on all regulated persons after the rule is fully implemented. This means where a rule will be phased in or costs are gradually implemented, the $500,000 impact is to be judged based on the time which is the first 12-month period after the rule is fully implemented. Second, in determining if there will be an annual total economic impact, IDEM and other state agencies must include the cost on regulated persons who already have complied with the standards voluntarily. Third, in determining the economic impact, state agencies must now consider any information submitted to it by regulated persons who will be affected by the rule. To assist the LSA in preparing its fiscal impact statement, the agency must submit to

LSA, along with the proposed rule, the data it used and the assumptions the agency made in determining the total estimated economic impact of the rule. This fiscal impact statement is a public document and LSA makes it available to interested parties upon request.

SEA 298, PL 226-2005, SECTION 1; Ind. Code 4-22-2-28, effective July 1, 2005.

Under prior law IDEM was required to provide this information to LSA at some point before the public hearing. The law was changed this year to specify a time frame for submittal of the information to LSA. That information must be provided to LSA no later than 50 days before the public hearing on the rule.

SEA 298, PL 226-2005, SECTION 1; Ind. Code 4-22-2-28, effective July 1, 2005.

These changes will apply to any rule published in the Indiana Register with the full text of the proposed rule after June 30, 2005.

SEA 298, PL 226-2005, SECTION 4; noncode provision, effective July 1, 2005.

NO MORE STRINGENT RULES

Although a law did not pass this year requiring that IDEM's rules be no more stringent than the federal rules, that requirement will still exist voluntarily. Senate Bill 298 originally included no more stringent than (NMST) language that would have prohibited IDEM from adopting any standard more stringent than the corresponding federal standard unless meeting requirements that justify such a rule, including a positive cost-benefit analysis and demonstrated health benefits. The NMST language was removed from Senate Bill 298 after Governor Daniels agreed that he would not sign any proposed rule more stringent than federal standards unless IDEM meets current requirements to justify stricter standards. Currently, IDEM's law (Ind. Code 13-14-9-4) requires that IDEM must:

1. Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that is not imposed under federal law; and
2. With respect to each element so identified:
    a. Identify the environmental circumstances or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;
    b. Provide examples where the federal law is inadequate to provide that protection; and
    c. Provide, based on the extent to which the proposed rule exceeds the requirements of federal law, the:
        i. Estimated fiscal impact; and
        ii. Expected benefits

SMALL BUSINESS REGULATION

The rulemaking statute was also revised this year to include elements of the regulatory flexibility model legislation drafted by the Office of Advocacy of the U.S. Small Business Administration and is similar to the federal Regulatory Flexibility Act (RFA)(5 U.S.C. §§601-612). The new legislation requires all state agencies, except the Indiana Department of Environmental Management (IDEM) and its Boards, to consider the impact of their policies on small busi-

nesses by adding additional procedures that an agency must follow before it promulgates rules that can impact small businesses. IDEM presumably was exempted from these new requirements because it already is required, by a rulemaking law, to work with the Legislative Services Agency in its preparation of a fiscal analysis of any rulemaking action with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars and IDEM already must identify each element of a proposed rule that imposes a restriction or requirement that is not imposed under federal law, with a full explanation of the circumstances that dictate the need for the requirement, examples where federal law is inadequate to provide the protection needed and the estimated fiscal impact and expected benefits provided by exceeding federal law. This new legislation, applying to all other state agencies, is expected to assist in Indiana's economic development efforts. In the new legislation, small business is defined as any person, firm, corporation, limited liability company, partnership, or association that:

1. is actively engaged in business in Indiana and maintains its principal place of business in Indiana;
2. is independently owned and operated;
3. employs one hundred (100) or fewer full-time employees; and
4. has gross annual receipts of five million dollars ($5,000,000) or less.

Before an agency can adopt a rule under Ind. Code 4-22-2 that will impose requirements or costs on small businesses, it must first prepare an economic impact statement for the rule. The economic impact statement must describe the annual impact of the rule after it is fully implemented, must estimate the number of small businesses subject to the proposed rule, and must estimate reporting, recordkeeping, and other administrative costs that small businesses will incur complying with the rule. Additionally, the statement must contain a regulatory flexibility analysis that evaluates alternative regulatory methods, including less stringent requirements, schedules or deadlines that could minimize the impact on small businesses. The statement must be published with the notice of the public hearing for the rule and must be submitted to the Indiana Economic Development Corporation (IEDC). The IEDC shall review the economic impact statement and shall submit written comments to the agency, which must be considered by the agency before final adoption of the rule. If a small business disputes that an agency has followed the applicable requirements, it may file an action in a state court within one year seeking a determination of the agency's compliance. If the agency failed to comply with the new procedures concerning small businesses, the court may enjoin it from enforcing the new rule on the small business or any similar small businesses.

HEA 1822, PL 188-2005, SECTIONS 1- 4, Ind. Code 4-22-2-24, 28, and 29, Ind. Code 4-22-2.1, effective July 1, 2005.

New requirements also apply to rules expiring after June 30, 2005, which impose requirements or costs on small businesses. These new requirements apply to IDEM and its Boards, as well as all other state agencies. Before an agency can readopt a rule affecting

small businesses, it must consider whether alternative methods exist to achieve the purpose of the rule that would be less costly or intrusive to small businesses. When the agency is reevaluating the rule, it must take into consideration complaints or comments received from the public concerning the rule or its implementation, the extent which the rule overlaps with other laws, rules, or regulations, and the length of time since the rule was last reviewed under the requirements concerning small businesses.

HEA 1822, PL 188-2005, SECTIONS 5, 6, and 7, Ind. Code 4-22-2.5-3, Ind. Code 4-22-2.5-3.1, and Ind. Code 4-22-2.5-4, effective July 1, 2005.

The rulemaking statute was revised to make it mandatory for the IEDC to review a proposed rule that imposes requirements on small business and leaves it to the IEDC's discretion to review rules that impose requirements or costs on businesses other than small business. After the IEDC completes its review it may suggest alternatives to reduce any regulatory burden that the proposed rule will have on small businesses or other businesses.

HEA 1822, PL 188-2005, SECTION 2, Ind. Code 4-22-2-28, effective July 1, 2005.

Finally, the rulemaking statute was also amended to provide that an agency can adopt a rule that includes provisions not appearing in the published version if the changes are based upon recommendations of the IEDC under the new law for protection of small businesses, as a logical outgrowth of comments received on the proposed rule.

HEA 1822, PL 188-2005, SECTION 3, Ind. Code 4-22-2-29, effective July 1, 2005.

ADMINISTRATIVE ORDERS AND PROCEDURES ACT

APPOINTMENT OF ALJS FOR PROFESSIONAL GEOLOGISTS AND SOIL SCIENTISTS LICENSURE AND REGISTRATION ISSUES

The licensure and registration laws for Professional Geologists and Soil Scientists have each been amended to allow the Director of the Division of Hearings for the Natural Resources Commission (NRC) to appoint an Administrative Law Judge (ALJ) to hear administrative reviews of actions relating to licensure and registration issues for the Board of Licensure for Professional Geologists and the Board of Registration for Soil Scientists. Prior to this amendment, the statutes only gave authority to the NRC itself to appoint the ALJ for such reviews.

SEA 619, PL 99-2005, SECTIONS 5 and 6; Ind. Code 25-17.6-9-1 and Ind. Code 25-31.5-9-1, effective July 1, 2005.

JURISDICTION OF THE OFFICE OF ENVIRONMENTAL ADJUDICATION

The Administrative Orders and Procedures Act (AOPA) was amended this year clarifying the role of the Office of Environmental Adjudication (OEA) for review of actions of the Indiana Department of

Environmental Management (IDEM). During the past year OEA had begun a process to amend its rules. Attorneys for IDEM had taken the position that OEA's jurisdiction was limited – that OEA could not adopt a rule similar to one which exists at the Department of Natural Resources (DNR), which provides for a quasi-declaratory judgment ruling. Effective July 1, 2005, the Legislature amended the law to specify that OEA is no longer limited to reviewing decisions of the Commissioner of IDEM, but has the jurisdiction to review any agency action of IDEM and the four IDEM boards. An agency action is defined to include the whole or part of an action which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, the failure to determine legal rights,duties, privileges, immunities or other legal interests of one or more specific persons and the performance of or failure to perform any other duty, function or activity.

SEA 619, PL 99-2005, SECTIONS 1 and 2; Ind. Code 4-21.5-7-3 and Ind. Code 4-21.5-7-5, effective July 1, 2005.

In a very confusing move, the law was also revised, effective July 1, 2005, to provide that OEA is established to review, under the procedure of AOPA:

1. A claim that a rulemaking action of the Air Pollution Control Board, Water Pollution Control Board, Solid Waste Management Board, and the Financial Assurance Board ("Boards") did not conform to the requirements of the rulemaking statute or that the rule is invalid on procedural grounds;
2. A defense raised to an action of IDEM that is based upon the argument that the Board's rule is procedurally defective; and
3. Actions of a Board to comply with the additional rulemaking procedural requirements of the environmental law to provide first, second and third comment periods, to identify where a requirement of a rule is not required by federal law and the associated costs and materials relied upon for development of that standard, and the adoption of a rule that is either identical to that proposed, a logical outgrowth of the proposed rule, or the Board's refusal to adopt the rule.

Note: the law was not revised to provide OEA with jurisdiction to review substantive challenges to a rule, only procedural challenges.

By providing that OEA is to adjudicate rulemaking, what is understood to be administrative law has been confused. Administrative law has two separate branches. One is rulemaking for actions that affect the public at large. The other is adjudication, where the rights of individuals are determined. It is not clear now how the procedures of the AOPA will be applied to rulemaking activities of the Boards. One of the procedures required under the AOPA is for notice to be given to each affected person of appeal rights. Will IDEM have to give individual notice to every citizen of the State so they know that have these appeal rights? It also is unclear who must be the parties to the OEA rulemaking review proceeding. A party is defined under the AOPA as a person to whom the agency action is specifically directed. Since rulemakings are of general applicability and affect every entity that must comply as well as

every citizen of Indiana who benefits from the regulation to protect public health and the environment, must every citizen of the state be a party to have all interests represented in the adjudication? The only thing clear from this change to the law is that the law now contains an administrative remedy to be exhausted before an affected person may seek court review, when challenging whether an IDEM Board followed proper procedures in adopting a rule or when defending against an action of IDEM on the basis that a rule is procedurally invalid.

SEA 619, PL 99-2005, SECTIONS 1 and 2; Ind. Code 4-21.5-7-3, and 7, effective July 1, 2005.

OEA EMPLOYEES CLARIFIED TO BE MERIT EMPLOYEES

As a result of the State Department of Administration taking the position that the Office of Environmental Adjudication (OEA) employees were not merit employees, OEA experienced concerns and problems locating persons willing to accept a position. The law was revised this year to make clear that both the Director of the OEA and all of the Environmental Law Judges are to be removed through the standards for removal for cause for a state merit employee.

SEA 619 PL 99-2005, SECTION 3; Ind. Code 4-21.5-7-5, effective July 1, 2005.

REMOVAL OF DNR OR OEA JUDGES

The law was also changed this year making the removal of Administrative Law Judges (ALJ) for the Department of Natural Resources, Natural Resources Commission (NRC) consistent with the removal process for Environmental Law Judges (ELJ) in the Office of Environmental Adjudication. Both ELJs and ALJs may now be removed for cause under the AOPA, for cause under the State Merit Employee Law, or for cause under applicable provisions of the Code of Judicial Conduct.

SEA 619, PL 99-2005, SECTIONS 3 and 4; Ind. Code 14-10-2-2 and Ind. Code 4-21.5-7-6, effective July 1, 2005.

SPECIAL JUDGES WITHIN OEA AND AT DNR

The Director of the Office of Environmental Adjudication (OEA) and the Director of the Division of Hearings for the Natural Resources Commission may, starting on July 1, 2005, appoint special judges in their respective offices to act as the assigned Administrative Law Judge or Environmental Law Judge (ELJ) for a case. A special ELJ for OEA must meet the same minimum qualifications as the Director and regular ELJs, which requires Judges be an attorney admitted to the bar of Indiana, have at least 5 years of experience practicing administrative or environment law in Indiana, and be independent of IDEM.

SEA 619, PL 99-2005, SECTIONS 3 and 4; Ind. Code 4-21.5-7-6 and Ind. Code 14-10-2-2, effective July 1, 2005.

OTHER LAWS OF INTEREST

DAYLIGHT SAVINGS TIME OBSERVANCE

After much controversy and many prior failed efforts to pass such legislation, on May 13, 2005, Indiana Governor Mitch Daniels signed the bill requiring Indiana to observe Daylight Savings Time, to begin in 2006. Indiana's 92 counties are currently divided into three groups. Seventy-seven counties are in the Eastern Time Zone and do not observe Daylight Savings Time. The following ten counties in western Indiana are in the Central Time zone and do observe Daylight Savings Time: Gibson, Jasper, Lake, LaPorte, Newton, Porter, Posey, Spencer, Vanderburgh, and Warrick Counties. Finally, five counties in Eastern Indiana are in the Eastern Time zone and do observe Daylight Savings Time. These are Clark, Dearborn, Floyd, Harrison, and Ohio Counties. This new law requires all counties in Indiana to observe Daylight Savings Time beginning in 2006.

The law serves as a petition to the United States Department of Transportation (DOT) to initiate proceedings under the Uniform Time Act of 1966 to hold hearings on the issue of the location of the boundary between the Eastern and the Central Time Zone in Indiana. It advises the Department of Transportation that any Indiana county currently located in the Central Time Zone should remain in the Central Time Zone while the counties, which are in the Eastern Time Zone and currently observe Daylight Savings Time, should remain in the Eastern Time zone. The other counties will be designated as Central or Eastern after compliance with the Federal law. The Governor was required to send a copy of this new Indiana law to the Secretary of DOT by May 23, 2005, to notify the DOT of Indiana's petition.

SEA 127, PL 243-2005, Ind. Code 1-1-8.1-1, Ind. Code 1-1-8.1-2, and Ind. Code 1-1-3.1-3, effective May 13, 2005.

DEPARTMENT OF HOMELAND SECURITY

Citing the need for better coordination and more economical uses of Indiana's taxpayer resources, Indiana Governor Mitch Daniels signed a bill to revamp the existing public safety structure into the Indiana Department of Homeland Security (IDHS). The new law abolished the Public Safety Training Board, the Public Safety Institute, the State Emergency Management Agency, and the Fire and Building Services Department. Each of these formerly independent entities will be reconstituted as four divisions under the IDHS:

1. Division of Planning and Assessment, responsible for federal grants;
2. The Division of Preparedness and Training, which includes the Public Safety Training Institute;
3. The Division of Emergency Response and Recovery, which incorporates the existing State Emergency Management Agency; and
4. The Division of Fire and Building Safety, which includes the newly combined role of State Fire Marshal and the State Building Commissioner.

The four divisions will answer to an Executive Director, who will serve at the Governor's pleasure and be entitled to receive compensation in an amount set by the Governor. The Executive Director, in turn, will appoint a deputy to head each division.

SEA 56, PL 22-2005; Ind. Code 10-19-2-1, effective April 15, 2005.

The Executive Director is to serve as the central coordinator for counterterrorism issues and as Indiana's point of contact for the Office of Domestic Preparedness in the United States Department of Justice and the United States Department of Homeland Security. The Executive Director is charged with the following directives:

1. Serve as the chief executive and administrative officer of IDHS;
2. Serve as Director of the Counterterrorism and Security Council ("Council");
3. Administer the application for, and disbursement of, federal and state homeland security money for all Indiana state and local governments;
4. Develop a single strategic plan for preparing and responding to homeland security emergencies (in consultation with the Council);
5. Serve as the state coordinating officer under federal law for all matters relating to emergency and disaster mitigation, preparedness, response, and recovery;
6. Use and allocate the services, facilities, equipment, personnel, and resources of any state agency, on the Governor's behalf, as is reasonably necessary in the preparation for, response to, or recovery from an emergency or disaster situation that threatens or has occurred in Indiana; and
7. Develop a plan to protect key state assets and public infrastructure from a disaster or terrorist attack.

SEA 56, PL 22-2005, SECTION 17; Ind. Code 10-19-2-1, effective April 15, 2005.

Governor Daniels announced on March 11, 2005, that J. Eric Dietz, Ph.D., the associate director of the e-Enterprise Center at Purdue University's Discovery Park, would serve as the first Executive Director. The Governor alluded to his desire to draw more involvement from Indiana's academic institutions into his new administration as one of the reason for Dietz's appointment.

The new law also brings the previously independent Counterterrorism and Security Council ("Council") within the umbrella of the IDHS, with the Lieutenant Governor acting as the chair and reporting to the Governor. The Council has six duties:

1. Develop a strategy in concert with the IDHS to enhance the state's capacity to prevent and respond to terrorism;
2. Develop a counterterrorism plan in conjunction with relevant state agencies, including a comprehensive needs assessment;
3. Review each year and update when necessary the plan;
4. Develop in concert with the IDHS a counterterrorism curriculum for use in basic police training and for advanced in-service training of veteran law enforcement officers;
5. Development affiliates of the Council to coordinate local efforts and serve as the point of

contact for the council and the United States Department of Homeland Security; and
6. Develop a plan for sharing intelligence information across multiple federal, state, and local law enforcement and homeland.

The Council may receive confidential law enforcement information from the State Police, the FBI or other federal, state or local law enforcement agencies. The Council is to report periodically to the Governor its findings and recommendations. The affirmative vote of a majority of the voting members of the Council is required for the Council to take action on any measure, including final reports.

The Council consists of the following members:

1. The Lieutenant Governor, who serves as the Chair;
2. The Executive Director of IDHS;
3. The Superintendent of the State Police Department;
4. The Adjutant General;
5. The State Health Commissioner;
6. The Commissioner of the Indiana Department of Environmental Management;
7. The Assistant Commissioner of Agriculture;
8. The Chairman of the Indiana Utility Regulatory Commission;
9. The Commissioner of the Indiana Department of Transportation;
10. The Executive Director of the Indiana Criminal Justice Institute;
11. The Commissioner of the Bureau of Motor Vehicles;
12. A local law enforcement officer or member of the law enforcement training academy, to be appointed by the Governor;
13. The Speaker of the House of Representatives or designee;
14. The President Pro Tempore of the Senate or designee; and
15. The Chief Justice of the Indiana Supreme Court.

In addition, Representatives of the US Department of Justice may serve as members of the Council, as the Council and the Department of Justice may determine.

The Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chief Justice and any representatives of the US Department of Justice serve as non-voting members.

SEA 56, PL 22-2005, SECTION 17; Ind. Code 10-19-8, effective April 15, 2005.

All state agencies are required to cooperate to the fullest extent possible with the Council and the Executive Director of IDHS in order to implement this new law.

SEA 56- PL 22-2005, SECTION 17; Ind. Code 10-19-8-10, effective April 15, 2005.

The definition of what constitutes a disaster has been amended to add 18 additional instances of natural phenomenon or human act. Before this change, disaster included only: fire, flood, earthquake, wind, storm, wave action, oil spill, other water contamination requiring emergency action to avert danger or damage, air contamination, drought, explosion, riot and hostile military or paramilitary action. Added to the definition of what is a disaster are all the following:

1. ice storm,
2. tornado,
3. technological emergency,
4. utility failure,

5. critical shortages of essential fuels or energy,
6. major transportation accident,
7. hazardous material or chemical incident;
8. radiological incident,
9. nuclear incident,
10. biological incident,
11. epidemic,
12. public health emergency,
13. animal disease event requiring emergency action,
14. blight, infestation,
15. act of terrorism, and
16. any other public calamity requiring emergency action.

SEA 56, PL 22-2005,SECTION 7; Ind. Code 10-14-3-1, effective April 15, 2005.

The Executive Director of the IDHS or his/her designee is designated as the final decision maker under the Administrative Orders and Procedures Act for administrative appeals involving IDHS actions.

SEA 56, PL 22-2005, SECTION 17; Ind. Code 10-19-3-5, effective April 15, 2005.

STATE & LOCAL EMERGENCY MANAGEMENT AGENCY PERSONNEL ADDED TO THOSE ENTITLED TO SPECIAL HONOR

The law providing for the surviving spouse, surviving children or surviving parents to be presented with a state flag when a member of the military or public safety officer dies in the line of duty was amended this year to add a member of the state or local emergency management agency to the list of persons who are considered to be a member of the military or public safety officer entitled to this special honor.

SEA 56, PL 22-2205, SECTION 6; Ind. Code 10-14-2-5, effective April 15, 2005.

PROFESSIONAL LICENSING AGENCY

The law for the Professional Licensing Agency ("Licensing Agency") was amended effective July 1, 2005. This is the law that applies to registered architects and landscape architects, professional engineers, registered land surveyors and a number of other professions and trades, which hears appeals of license denials and provides administrative functions and duties for the various Boards. A number of significant and not-so-significant changes were made to the law this year. First, the prohibition against any increase in the aggregate number of persons employed by the Licensing Agency, other than the Director, has been deleted from the law. The law however retains the philosophy that centralization of staff, functions and services, which are contemplated by this law, is to be done in order to enhance the Licensing Agency's ability to make maximum use of data processing as a means of a more efficient operation, while providing more services and carrying out functions of a superior quality, while reducing the number of staff needed to provide the services to carry out the professional licensing functions. Second, the requirement for the Licensing Agency to furnish upon written request a list of the names and addresses of persons holding a license or permit has been removed from the law. Third, the allowance for the Licensing Agency to be provided policymaking authority when acting on appeals of denials of license renewals has been deleted from the law. This means that the Licensing Agency has no policy-making function; policy making rests solely with the Board of Registration for

Architects and Landscape Architects, the Board of Registration for Professional Engineers, the Board of Registration for Land Surveyors, and the other Boards included under this law.

Procedures for Renewal of Licenses

The procedures for renewal of licenses have been significantly changed. The Licensing Agency now must inform the holder of a license or certificate ("license") of the requirement to renew the license and pay the renewal fee at least 60 days in advance. Prior law required the Licensing Agency provide the appropriate renewal form with the 60-day notice of expiration. In addition, the law has been amended to state that if the Licensing Agency fails to send the 60-day notice of expiration, the holder of the license is not subject to a sanction for failure to renew the license, so long as the holder does renew the license no more than 45 days after the holder receives the notice from the Licensing Agency. In addition the Licensing Agency may now require an applicant for a renewal to submit evidence showing that the applicant meets the minimum requirements for the license and that he or she is not in violation of the law regulating the applicant's profession or rules adopted by the Board regulating the applicant's profession. The Licensing Agency may delay the renewal of a license in order to investigate information received that the applicant for renewal may have committed an act for which the applicant may be disciplined. The Licensing Agency may not, however, delay renewing a license for more than 90 days after the renewal date. If delaying the renewal, before the expiration of the 90-day period, the appropriate Board must either:

1. Deny the renewal, following a personal appearance by the applicant before the Board;
2. Renew the license upon satisfaction of all requirements for renewal;
3. Renew the license and file a complaint under Ind. Code 25-1-7, the law requiring the Office of the Attorney General to investigate complaints concerning licenses;
4. Request the Attorney General to conduct an investigation, if there has been a personal appearance before the Board and the Board has good cause to believe that the applicant engaged in activity described in 25-1-11-5. Indiana Code 25-1-11-5 makes the following activities unprofessional subject to discipline;
    a. Engaging in or knowingly cooperating in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;
    b. Engaging in fraud or material deception in the course of professional services or activities;
    c. Advertising services or goods in a false or misleading manner;
    d. Having been convicted of a crime that has a direct bearing on the practitioner's ability to continue to practice competently;
    e. Having knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;

f. Having continued to practice although the practitioner has become unfit to practice due to professional incompetence, failure to keep abreast of current professional theory or practice, physical or mental disability; or addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;
g. Having engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;
h. Having allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business that renders services beyond the scope of that individual's or business' training, experience, or competence;
i. Having had disciplinary action taken against the practitioner or the practitioner's license to practice in another state or jurisdiction on grounds similar to those under this law;
j. Having assisted another person in committing an act that would constitute a ground for disciplinary sanction under this law; or
k. Having allowed a license issued by a board to be used by another person; or displayed to the public when the license has expired, is inactive, or has been revoked.

5. Upon agreement with the applicant and Board, following a personal appearance by the applicant before the Board, renew the license and place the applicant on probation status under IC 25-1-11-12. Under that law, a person on probation may be required to report regularly to the Board upon the matters that are the basis of probation; may have his or her practice limited to prescribed areas; may be required to continue professional education approved by the Board until a satisfactory degree of skill has been attained; or be required to perform or refrain from performing any acts, including community restitution or service without compensation, that the Board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.

If an applicant does not appear before the Board, the Board may only deny the license, renew the license or renew the license and file a complaint under IC 25-1-7.

The license of the applicant for renewal remains valid during the 90-day period unless the license is denied, following a personal appearance by the applicant before the Board, before the end of the 90-day period. If the 90-day period expires without action by the Board, the license is automatically considered to be renewed at the end of the 90-day period.

If the Licensing Board makes a request under paragraph 4 for the Attorney General to make an investigation, the Licensing Board may delay the renewal for more than 90 days, until the Licensing Board makes a final determination.

However, the applicant's license remains valid until the final determination of the Board is rendered unless the renewal is denied or summarily suspended under Ind. Code 25-1-11-13.

An application for a license is considered abandoned if the applicant does not complete the requirements for obtaining the license for more than one year after the date on which the application was filed. The Board may, for good cause shown, extend the validity of the application for additional 30-day periods. An application submitted after the abandonment of an application is considered a new application.

SEA 139, PL 194-2005, SECTION 1 through 3; Ind. Code 25-1-6-1, Ind. Code 25-1-6-3 and Ind. Code 25-1-6-4, effective July 1, 2005.

Professional Licensing Board New Legal Authority

Two new sections were added to the Professional Licensing Standards law, providing the Board of Registration for Architects and Landscape Architects, the State Board of Registration of Land Surveyors and the State Board of Registration for Professional Engineers with new authority. First, standards have been added to the law for when these Boards may refuse to issue a license or issue a probationary license. Specifically, these Boards may refuse a license or issue a probationary license if either an applicant has been disciplined by a licensing entity of another state or jurisdiction or has committed an act that would have subjected the applicant to the disciplinary process if the applicant had been licensed in Indiana when the act occurred and the violation for which the applicant was or could have been disciplined has a bearing on the applicant's ability to competently perform or practice the profession in Indiana. If the Board chooses to issue a probationary license, the Board may require a licensee to do any of the following:

1. Report regularly to the Board upon the matters that are the basis of the discipline;
2. Limit practice to the areas prescribed by the Board;
3. Continue or renew professional educational requirements;
4. Engage in community restitution or service without compensation for the number of hours specified by the Board; and
5. Perform or refrain from performing an act that the Board considers appropriate to the public interest or to the rehabilitation or treatment of the applicant.

Whenever the Board finds after a public hearing that the deficiency that required disciplinary action has been remedied, the Board must remove any limitations placed on a probationary license.

Second, these Boards may now require any applicant for a license to appear before the Board, prior to agreeing to issue a license.

SEA 139, PL 194-2005, SECTIONS 9 and 10; Ind. Code 25-1-11-19 and Ind. Code 25-1-11-20, effective July 1, 2005.

CHANGES TO LAW FOR REGISTERED ARCHITECT, LANDSCAPE ARCHITECT, LAND SURVEYOR & PROFESSIONAL ENGINEER

New Investigative Funds Established

The Legislature created three new Investigative Funds: one for the purpose of providing funds to administer and

enforce the provision of the Registered Architect and Registered Landscape Architect law, one for the purpose of providing funds to administer and enforce the provisions of the Registered Land Surveyor law, and one for the purpose of providing funds to administer and enforce the provisions of the Registered Engineers law. These funds are to be used for investigating and taking enforcement action against violators of the law. All three funds are to be administered by the Attorney General and the Licensing Agency. The respective Boards have been given the authority to adopt rules for the administration of the Investigative Fund. The Attorney General and the Indiana Professional Licensing Agency have been given the right to use the Investigative Fund to hire investigators and other employees to enforce the law and to investigate and prosecute violations of the law. Money in the fund is to be continually appropriated for use by the Attorney General and Licensing Agency. Money in the funds does not revert to the State General Fund at the end of a state fiscal year, unless the total amount in the fund exceeds $500,000. At that point, any amount over $500,000 does revert to the State general Fund.

In addition, applicable fees will now be established by rules of these Boards, rather than being set by law.

SEA 319, PL 94-2005, SECTIONS 6, 11-18, 61 – 66, 77, 78, 80, 83 and 84, Ind. Code 25-1-8-7, Ind. Code 25-4-1-3, Ind. Code 25-4-1-4, Ind. Code 25-4-1-6, Ind. Code 25-4-1-14, Ind. Code 25-4-1-16, Ind. Code 25-4-1-32, Ind. Code 25-4-2-3, Ind. Code 25-4-2-8, Ind. Code 25-21.5-2-14, Ind. Code 25-21.5-3-4, Ind. Code 25-21.5-7-5, Ind. Code 25-21.5-8-6, Ind. Code 25-21.5-8-7, Ind. Code 25-21.5-11-4, Ind. Code 25-31-1-7, Ind. Code 25-31-1-9, Ind. Code 25-31-1-15, Ind. Code 25-31-1-17, Ind. Code 25-31-1-28, Ind. Code 25-31-1-35, effective July 1, 2005.

CHANGES TO LAW FOR REGISTERED PROFESSIONAL ENGINEERS AND ENGINEERING INTERNS

Two changes were made to the registered professional engineers law this year. First, the law has been changed to now require a demonstration of acquiring additional knowledge and obtaining Board approval to take a subsequent examination by applicants who have failed three or more examinations. Previously, after failing only two times, this special Board approval was required. Second, a designee of the Board may sign a professional engineer's certificate of registration, as opposed to the prior law's requirement that each member of the Board sign every certificate. Third, the date a certificate expires, triggering the need for a renewal, has been changed from the last day of July in each even numbered year to a date specified by the Licensing Agency. Finally, the law has established a type of reciprocity. The law now provides that an applicant for a registered professional engineer certificate meets the law's educational requirements (generally either 4 or 8 years of experience) if the applicant has at least 3 years of engineering work experience after graduating from an approved engineering curriculum and has been registered or licensed as a professional engineer in another state for at least 10 years.

SEA 139, PL 94-2005, SECTION 79 – 82; Ind. Code 25-31-1-14, Ind. Code 25-31-1-15, Ind. Code 25-31-1-17. Ind. Code 25-31-1-21, effective July 1, 2005.

TAX LAW CHANGES

BIODIESEL AND ETHANOL TAX CREDITS

Indiana Economic Development Commission to Certify Eligibility for Tax Credit

To promote agriculture and the use of biofuels and ethanol in Indiana, the tax credits first made available in 2003 have been amended this year to make more money available, along with a change in certain procedures. As of March 1, 2005, persons who begin construction of or expansion of a facility that produces biodiesel, blended biodiesel, or ethanol became eligible for higher tax credits, when that tax credit is certified by the Indiana Economic Development Corporation (IEDC). Previously, ethanol tax credits were certified by the Indiana Recycling and Energy Development Board. Biodiesel and blended biodiesel tax credits did not require any certification but were available by claiming the tax credit on the taxpayer's state tax return, subject only to providing proof to the Department of Revenue as needed to calculate the credit provided by the law. Now the IEDC must certify eligibility for biodiesel, blended biodiesel and ethanol tax credits before the credit can be claimed on the state tax form. The IEDC will issue to each qualifying applicant a certification that certifies the person as eligible, identifies the facilities covered by the certification and allocates to the person the lesser of the maximum allowable credit for which the person is eligible or a credit equal to the level of production demonstrated as economically viable under the business plan submitted to the IEDC. To qualify for certification the person must demonstrate through a business plan and other information that the level of production proposed is feasible and economically viable. The IEDC will consider the project's capitalization, credit rating, technical expertise, and other relevant financial information. The IEDC must record the time of filing of each application for a tax credit. Credits are to be awarded based on the date of submittal of the application and credits are to be for the maximum allowable credit until the maximum allowable credit for that type of credit is fully allocated.

The IEDC may terminate a certification or reduce an allocation of a credit only if it determines, after a hearing, that the person granted the certification or allocation has failed to substantially comply with the business plan or failed to provide the information needed by the IEDC to determine whether the person has substantially complied with the business plan. If an allocation of a credit is terminated or reduced, the unused credit becomes available for allocation to other qualifying applicants in the chronological order in which the applications for the same type of credit are filed, until the maximum allowable credit for that type of credit has been fully allocated.

Maximum Amount of Biodiesel Tax Credits Increased

The maximum amount of biodiesel and blended biodiesel credits a taxpayer may receive has been greatly increased to three million dollars per taxpayer for all taxable

years. Previously, the law only provided one million for all entities in all taxable years. With approval from the IEDC, this three-million limit may be increased to five million dollars. For ethanol, the maximum credit for a taxpayer for all taxable years is now three million dollars, reduced from five million dollars per taxpayer, with a total of ten million for all taxpayers. The total maximum credits for biodiesel, blended biodiesel and ethanol for all taxpayers over all taxable years has been increased to twenty million dollars, with each type of credit receiving a minimum of four million dollars in credits.

In addition, starting with tax year 2005, the amount of state tax credit allowed will no longer be reduced by credits or subsidies the taxpayer is entitled to receive from the Federal Government for production of biodiesel, blended biodiesel or ethanol.

Other Changes to Biodiesel & Tax Credits

The biodiesel and blended biodiesel credits are not assignable or transferable. They may be carried over for six years.

In addition, the legislature altered the retail blended biodiesel credit provision. Now, the credit is measured solely on the amount distributed. Previously, taxpayers only received credit for fuel sold through metered pumps.

Finally, credits for blended biodiesel sold at retail will only be available for tax years 2005 and 2006.

SEA 378, PL 191-2005, SECTIONS 1–14, 16–18 Ind. Code §§ 5-28-6-3, 6-3.1-27-2.5, 6-3.1-27-3.2, 6-3.1-27-3.5, 6-3.1-27-5, 6-3.1-27-8, 6-3.1-27-9, 6-3.1-27-9.5, 6-3.1-27-10, 6-3.1-27-12, 6-3.1-27-13, 6-3.1-28-1, 6-3.1-28-7, 6-3.1-28-10, 6-3.1-28-11, effective January 1, 2005 (Retroactive).

BROWNFIELD

New Tax Incentives

In an effort to spark Brownfield redevelopment, the Legislature added new tax incentives. Newly added Ind. Code 6-1.5-45.5 sets forth the procedure for a Brownfield owner to apply for a waiver or reduction in "delinquent tax liability," defined as delinquent property taxes, delinquent special assessments, interest, penalties, and costs.

The application for a waiver or reduction in delinquent tax liability, which must be submitted on a form approved by the State Board of Accounts and Local Department of Finance, must contain the following:

1. The amount and timing of the delinquent tax liability;
2. A statement of how and when the Brownfield was acquired;
3. An explanation why title has not been transferred to the county;
4. A statement of how and when remediation will be done;
5. A statement of the Brownfield's expected use;
6. A statement of whether the owner contributed to the contamination;
7. A statement of whether the delinquent tax liability can reasonably be collected from another party;
8. The amount of tax relief requested; and
9. A filing fee.

The county auditor must review the application for completeness. Once determined complete, the County Property Tax Assessment Board of Appeals ("Board") shall conduct a public hearing. The Board may recommend to

the Local Department of Finance that the delinquent tax liability be reduced only if the Brownfield was acquired through:

1. Sale or abandonment in bankruptcy proceeding,
2. Foreclosure or sheriff's sale,
3. Receivership, or
4. Purchase by a political subdivision;
5. The proposed use is in the best interest of the community;
6. The reduction in tax is in the public interest and will facilitate development of the Brownfield;
7. The applicant did not contribute to the contamination, nor have an ownership interest in a entity that did;
8. IDEM determines the property is a Brownfield;
9. The applicant owns the Brownfield, but did not own it while the delinquent tax liability sought to be reduced accrued; and
10. The delinquent tax liability cannot reasonably be collected by the owner.

The fiscal body of the town, city, or county must review the application and at a regularly scheduled meeting determine whether to deny or recommend approving a portion of or the full amount of tax reduction sought to the local department of finance. The local Department of Finance is the entity to determine whether to approve or deny the application.

The law provides for the right to appeal the determination, first to the local Department of Finance Control and then to the Indiana Board of Tax Review.

HEA 1033, PL 208-2005, SECTIONS 1–2; Ind. Code 6-1.1-45.5, effective July 1, 2005.

The amount and timing of the brownfields tax benefits were also amended. Effective July 1, 2005, the maximum tax credit per Brownfield site has been doubled to $200,000. The actual credit amount is now the lesser of $200,000 or 100% of the first $100,000 plus 50% of the remaining qualified investment amounts for the year. Additionally, the total annual maximum amount of Brownfield redevelopment tax credits was increased by one million dollars to two million dollars. Finally, these credits no longer end in 2005 but have been extended through 2007.

HEA 1033, PL 208-2005, SECTIONS 5–9, Ind. Code 6-3.1-23-4–6, 6-3.1-23-12–13, 6-3.1-23-15–16, effective January 1, 2005.

Indiana Department of Finance Authority to Decide Eligibility

The law was changed this year to give the responsibility for determining eligibility for the Brownfield Tax Credit to the Indiana Department of Finance Authority. Under prior law, that decision was made by each county's commissioners. In addition, the standard for eligibility has been changed. Previously, the county commissioners held a public hearing and eligibility for the tax credit was to be granted only if the commissioners found the estimated value of the remediation and proposed redevelopment was reasonable for the project and the plan was in the best interest of the community. Now with this change to the law, eligibility will be granted if the taxpayer:

1. Makes a qualified investment in the taxable year; and
2. Submits the following to the Indiana Department of Finance Authority:
3. A description of the proposed redevelopment;

4. The source and amounts of money to be used for remediation and redevelopment;
5. An estimate of the value of the remediation and proposed redevelopment;
6. A description documenting any good faith attempts to recover the costs of the environmental damages from liability parties;
7. A letter supporting the proposed project from the County Commissioners; and
8. Documentation that the taxpayer never had an ownership interest in an entity that caused or contributed to the release or threatened release of a substance, a contaminant, petroleum, or a petroleum product that is the subject of the remediation.

HEA 1033, PL 2008-2005, SECTION 4; Ind. Code 6-3,1-23-5, effective July 1, 2005.

COAL GASIFICATION TAX CREDITS

The Legislature also created a new tax credit for integrated coal gasification power plants, which will be available starting January 1, 2006.

The legislature included the same declaration in the law as it declared for biodiesel and blended biodiesel production. Specifically, the General Assembly declared that the opportunity for underutilized small business, especially women and minority business enterprises, to participate in the coal gasification industry is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by establishing tax credits for coal gasification. In addition, recipients of the coal gasification tax credits are encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

SEA 378, PL 191-2005, SECTION 15; Ind. Code 6-3.1-29-1, effective January 2006.

An integrated coal gasification power plant is defined for purposes of this law as a facility that is a newly constructed energy generation plant, located in Indiana, which converts coal into synthesis gas that can be used as a fuel to generate energy and which is then used as fuel to generate electricity primarily for retail sale in Indiana.

SEA 378, PL 191-2005, SECTION 15; Ind. Code 6-3.1-29-6, effective January 1, 2006.

To qualify for this credit, taxpayers must apply to the Indiana Economic Development Corporation (IEDC) and enter into an agreement concerning operation obligations. This agreement must include:

1. A description of the project;
2. The first taxable year credit will apply;
3. The maximum amount of credit available each taxable year;
4. A requirement that operations will remain for at least ten years;
5. A taxpayer agreement to pay employees on average 125% of the average county wage (not including highly compensated employees);
6. A taxpayer agreement to remain at the same location for ten years with a payroll at least its initial amount;
7. A taxpayer agreement to use Indiana coal; and
8. A determination from the Indiana Utility Regulatory Commission

(IURC) that public convenience or necessity requires or will require the power plant.

Credits are given for the year the power plant is put into service and are applied first to adjusted gross income, then to insurance premium taxes, and finally to the utility receipts tax. The amount of the credit is equal to ten percent of the first five hundred million qualified dollars, plus five percent of the qualified dollars invested above the initial five hundred million. These credits are given in annual installments over a ten-year period in amounts determined by statutory procedures.

SEA 378, PL 191-2005, SECTION 15; Ind. Code § 6-3.1-29, effective January 1, 2006.

TAX AMNESTY

The Governor and the Legislature have created Indiana's first Tax Amnesty Program. Delinquent taxpayers are allowed to pay listed taxes that were due prior to July 1, 2004, without having to pay any of the penalties, fees, or interest that have accrued. Once paid, all liens will be released and civil and criminal actions will be ended.

"Listed Taxes" are those defined by Ind. Code §6-8.1-1-1 and include among others:

1. Underground storage tank fees;
2. Alternative fuel permit fees;
3. Hazardous waste disposal fees;
4. Oil inspection fees;
5. Petroleum severance taxes;
6. Solid Waste Management fees;
7. Fees and penalties assessed for overweight vehicles;
8. Penalties assessed for oversize vehicles;
9. Commercial vehicle excise tax;
10. Special fuels tax;
11. Gasoline tax; and
12. Emergency and hazardous chemical inventory form fee.

Property taxes and unemployment taxes, however, are not included in the amnesty program. Taxpayers eligible to benefit from the plan must complete an amnesty packet (yet to be developed by the Indiana Department of Revenue) and the liability must be paid between September 15, 2005, and November 15, 2005, unless approved alternate plans are made.

If a taxpayer fails to take advantage of the Tax Amnesty plan or comply with its terms, the taxpayer will not only have to pay all of the original penalties, cost, and fees, but its original assessed penalties for all listed taxes due prior to July 1, 2004, will be doubled, subject to some limited exceptions.

HEA 1004, PL 236-2005; Ind. Code §6-8.1, effective May 12, 2005.

CHANGES TO TAX DEDUCTIONS AND PROCEDURES

The Legislature made changes which alter the manner in which deductions are claimed and appealed, provided for new deductions and credits, and clarified the definition of research and development for taxation purposes.

Appeals from the decision of a county auditor regarding deductions are now initiated by requesting, in writing, a conference with the county auditor within forty-five (45) days of notice of a determination.

SEA 1, PL 193-2005; Ind. Code 6-1.1-12.1-5, effective January 1, 2005 (Retroactive).

Deductions are to be a scheduled item filed with a taxpayer's personal property return with the township assessor.

Assessors must deny or alter the scheduled deductions by March 1 of the succeeding year or the deductions are applied as claimed.

SEA 1, PL 193-2005; Ind. Code 6-1.1-12.1-5.4, effective January 1, 2006.

A new chapter has been inserted defining the Investment Deduction available to owners of Indiana real property. For new developments, redevelopments or rehabilitations first assessed after March 1, 2005, a deduction of up to 75% of the increase in assessed value is available to property owners who file for the deduction.

SEA 1, PL 193-2005, Ind. Code 6-1.1-12.4, effective January 1, 2006.

The Legislature narrowed the definition of "research and development" activities available for deduction claims. Statutory language now declares that certain surveys, studies and promotions are not to be considered "research and development" for tax purposes but that lab equipment, computers, computer software, telecommunications equipment, or testing equipment specifically may be.

SEA 1, PL 193-2005 Ind. Code 6-2.5-5-40, effective July 1, 2005.

A new chapter creates the Headquarters Relocation Tax credit. For companies with annual revenues in excess of five hundred million dollars ($500,000,000) and headquartered elsewhere, Indiana is making available a credit against state tax liabilities equal to 50% of the relocation costs.

SEA 1, PL 193-2005, Ind. Code 6-3.1-30, effective January 1, 2007.

VALUATION AND ASSESSMENT

The Legislature clarified the special integrated steel mill equipment property tax valuation while making certain changes to the real property reassessment deadlines and added to the information required by Sales Disclosure Forms.

For the special tax valuation of integrated steel mill equipment, the Legislature made clear that the blast furnace processing iron ore and other raw materials must be located in Indiana.

SEA 327, PL 228-2005; Ind. Code 6-1.1-3-23, effective January 1, 2004 (Retroactive).

The general reassessment of all real property has been moved from 2007 to 2009 with subsequent reassessments to be performed every five years thereafter.

SEA 327, PL 228-2005; Ind. Code 6-1.1-4-4, effective May 12, 2005.

Annual adjustments to assessments are authorized, but assessment officials must express mathematically the factors which affect value of properties and must be rooted in mass appraisal techniques within statistical measures of accuracy.

SEA 1, PL 193-2005; Ind. Code 6-1.1-4-5, effective May 11, 2005.

The telephone number and name of the person who prepares a Sales Disclosure form will be required as the assessing officials are now charged with verifying the accuracy of the information submitted.

SEA 1, PL 193-2005, Ind. Code 6-1.1-5.5-5, effective July 1, 2005.

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