Plews Shadley Racher & Braun

Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

SUMMARY OF 2006 ENVIRONMENTAL LEGISLATION

Sue A. Shadley
Plews Shadley Racher & Braun
1346 N. Delaware Street
Indianapolis, IN 46202
Phone: (317) 637-0700
Fax: (317) 637-0710
Email: sshadley@psrb.com
www.psrb.com

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with

John Lloyd, Amy Romig, Jamie Dameron, Greg Gotwald *and* Thao Nguyen

The following is Plews Shadley Racher & Braun's summary of the new 2006 Indiana laws. This is the 11th year Plews Shadley Racher & Braun has prepared a summary of the enviromental, natural resource, administrative and other new laws or modifications to existing laws focused on the environment. We believe our summary is different than any other you may receive. It is organized by subject matter, not by the bill. Bills may impact many different subjects. Our summary attempts to explain the changes to the law in a way that is easier to follow. We explain in detail the new law or how existing law is changed from what previously existed. We try to provide sufficient explanations so that you will be aware if and how the new laws may impact you or your business. At the end of each summary is a citation to the House or Senate Enrolled Act and Sections where the language of this law can be found, along with its corresponding Public Law number and Indiana Code citations. You always need to review the actual language of the law to apply it to a specific factual situation. It is our hope, however, that this summary will alert you to changes that have occurred in Indiana law. All of the prior legislative summaries are also available on our webpage at www.psrb.com.

We would be pleased to answer any questions you may have after you have reviewed these summaries. In addition, we have 34 attorneys, one of whom should be able to assist you with any legal issues you may have. Please contact us if we can be of service to you.

LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LEGISLATION

SOLID WASTE ISSUES

MUNICIPAL WASTE COLLECTION AND TRANSPORTATION LAW CORRECTIONS

The municipal waste collection and transportation vehicle statute was revised effective March 22, 2006, to delete provisions of the law declared unconstitutional in 1992 in *Government Suppliers Consolidating Services, Inc. v. Bayh*, 975 F.2d 1267 (7th Cir. 1992), cert denied 113 S. Ct. 977, 506 U.S. 1053, 122 L.Ed.2d 131. Repealed this year were:

- **Ind. Code 13-11-2-134**
  the definition of a municipal waste collection and transportation vehicle;
- **Ind. Code 13-20-4-2**
  the requirement for the Indiana Department of Environmental Management (IDEM) to operate a municipal waste collection and transportation vehicle registration program;
- **Ind. Code 13-20-4-3**
  the law requiring persons engaged in the collection and transportation of municipal waste to have a vehicle registration and vehicle identification stickers;
- **Ind. Code 13-20-4-4**
  the law making municipal waste vehicle registrations valid for two years and requiring a renewal application 30 days prior to expiration;
- **Ind. Code 13-20-4-5**
  the law establishing standards for owners of municipal waste collection and transportation vehicles with multiple vehicles;
- **Ind. Code 13-20-4-6**
  the law requiring a person to carry a copy of the current registration at all times on each municipal waste collection and transportation vehicle and for identification sticker to be affixed at all times in a prominent location;
- **Ind. Code 13-20-4-9**
  the law disallowing operation of a vehicle without the registration and sticker;
- **Ind. Code 13-20-4-13**
  the law clarifying that this state law was not to preclude Indiana counties, municipalities, or solid waste management districts from regulating or licensing solid waste collection and transportation vehicles;
- **Ind. Code 13-20-4-14**
  the law establishing a $100 fee for the vehicle registration;
- **Ind. Code 13-20-4-15**
  the law establishing the municipal waste transportation fund;
- **Ind. Code 13-20-5-4**
  the law prohibiting a landfill from accepting a load of out-of-state waste unless an out-of-state officer with responsibility for

protection of public health or the environments has certified that the load is not regulated as a hazardous waste or infectious waste

- **Ind. Code 13-20-5-6**
  the law making an exception to the need for an out-of-state officer certification that waste is not hazardous or infectious due to local county or solid waste management district agreement
- **Ind. Code 13-20-5-7**
  the law making an exception to the need for an out-of-state officer certification that waste is not hazardous or infectious due to an IDEM commissioner issued exemption.

HEA 1117, Public Law No. 113-2006, SECTION 14, Ind. Code 13-11-2-134, Ind. Code 13-20-4-2, Ind. Code 13-20-4-3, Ind. Code 13-20-4-4, Ind. Code 13-20-4-5, Ind. Code 13-20-4-6, Ind. Code 13-20-4-9, Ind. Code 13-20-4-13, Ind. Code 13-20-4-14, Ind. Code 13-20-4-15, Ind. Code 13-20-5-4, Ind. Code 13-20-5-6 and Ind. Code 13-20-5-7, effective March 22, 2006.

In addition, the Municipal Waste Collection Transportation Vehicle Program was revised to make conforming changes resulting from the repeal of the laws found to be unconstitutional. Additional changes were made based upon IDEM's experience with this program over the past 15 years.

First, the requirement for the owner or operator of a facility receiving a shipment of municipal waste to submit a copy of a municipal waste manifest to IDEM within three months after receiving the waste for the first year has been changed. Now all owners and operators of facilities receiving a copy of a municipal waste manifest must retain the manifest for one year and make the manifests available to IDEM upon request.

HEA 1117, Public Law No. 113-2006, SECTION 3, Ind. Code 13-20-4-7, effective July 1, 2006.

Second, the law has been revised to read that a disposal facility or processing facility is only prohibited from accepting a shipment of municipal waste if it is not accompanied by the municipal waste manifest. It is no longer necessary for the disposal or processing facility to ensure that the transportation vehicle has an identification sticker attached. That requirement has not been applicable since the law first took effect, as a result of the court's decision finding the law to be unconstitutional.

HEA 1117, Public Law No. 113-2006, SECTION 4, Ind. Code 13-20-4-11, effective July 1, 2006.

Third, the law has been revised to require that the municipal waste hauler must tell the receiving, processing, or disposal facility, the origin of the waste by county and state, if the waste originated within the United Sates, or by the country, if the waste originated from outside the United States. Previously, this law had provided that the hauler had to present a written statement which was certified under oath or affirmation made subject to the penalty for perjury providing either the county in Indiana, or the state if a state other than Indiana was the place of origin for the shipment of municipal waste. That law had also required that the hauler of municipal waste where the majority of the waste was

from out-of-state had to provide the receiving facility a document from an officer of the state or local government with responsibility in the other state for protection of public health or the environment a certification that the load of waste is not subject to regulation as a hazardous waste or infectious waste. That second requirement had not been in effect, even before this change to the law, due to the court decision finding that section to be unconstitutional. Due to the more recent shipment of Canadian waste into the United States, the first requirement to identify the origin of the waste now clearly provides for identification of the country when the waste comes from outside the United States.

HEA 1117, Public Law No. 113-2006, SECTION 5, Ind. Code 13-20-5-2, effective July 1, 2006.

Fourth, the law has been changed to now provide that a receiving disposal or processing facility may not accept a load of municipal waste if the vehicle operator does not identify the origin of waste, as opposed to the previous law that had said the vehicle operator had to present the written verified statement.

HEA 1117, Public Law No. 113-2006, SECTION 6, Ind. Code 13-20-5-3, effective July 1, 2006.

Fifth, the law is being revised to clarify that instead of the written statement being used to determine the origin of the municipal waste for purposes of fee assessment, it is now the identification made by the vehicle operator.

HEA 1117, Public Law No. 113-2006, SECTION 7, Ind. Code 13-20-5-5, effective July 1, 2006.

Finally, as a result of this partial repeal of IDEM's laws related to municipal waste collection and transportation, the definition of a municipal waste collection and transportation vehicle was repealed. This required the definition of a municipal waste collection and transportation vehicle that is found in Indiana Code 9; the motor vehicle laws to be revised are to no longer reference that repealed law. The motor vehicle law's definition of a municipal waste collection and transportation vehicle is now defined to include any trucks, but not rail cars, which are used to transport municipal waste from a solid waste generator or solid waste processing facility to another solid waste processing facility in Indiana or solid waste disposal facility in Indiana.

FOUNTAIN COUNTY LANDFILL FEE

New authority for counties without zoning and for municipalities within counties without zoning was created, effective March 22, 2006. Such counties or municipalities now can impose up to a $2.50-per-ton disposal fee on a municipal waste landfill, a non-municipal solid waste landfill, or a construction and demolition site when such a facility proposes to locate or expand within the jurisdiction of such a county or municipality and a host agreement has not been agreed to by the facility owner and the county or municipality. This law was crafted with the proposed Fountain County Landfill in mind. Under this new law, a county without zoning or a municipality within such a county can enter into a host agreement with the disposal facility which the disposal facility owner agrees to provide funds for construction,

improvement, or maintenance of infrastructure to support or which is related to the disposal facility. Alternatively, the host agreement can provide the county or municipality other types of consideration that relate to the disposal facility. If an acceptable host agreement is not entered between the county or municipality and disposal facility owner, then the county or municipality may establish a disposal fee that does not exceed $2.50 per ton on any disposal facility whose permit is issued after March 1, 2006. IDEM is required to collect the fee and then remit that fee to the county or municipality. The county or municipality must create a dedicated fund and may only use those funds or the alternative host fee for the construction, improvement or maintenance of infrastructure that supports or is otherwise related to the disposal facility.

HEA 1117, Public Law No. 113-2006, SECTIONS 2, 8, 9, 11, and 12; Ind. Code 13-11-2-116, Ind. Code 13-20-21-6, Ind. Code 13-20-21-14, Ind. Code 13-20-24, Ind. Code 36-2-9-21, effective March 22, 2006.

FINAL DISPOSAL FEE ON OUT-OF-STATE WASTE

The 1990 law establishing the 50-cents-per-ton final disposal fee changed on July 1, 2006. The law will no longer mandate the Solid Waste Management Board to adopt rules to impose a differential disposal fee on out-of-state waste. The law will now make it discretionary whether to adopt a rule to establish the differential fee. Any such higher fee is to be imposed only if necessary to offset the costs attributed to the importation and presence of out-of-state waste.

HEA 1117, Public Law No. 113-2006 SECTION 10, Ind. Code 13-20-22-1, effective July 1, 2006.

INDIANAPOLIS INCINERATOR

The law applicable to the Indianapolis Incinerator has been amended to make clear that the current requirement that fees charged for incineration not be discriminatory (except as justified by the volume, weight, hazardousness, or difficulty of disposal) will not apply after December 2, 2008, to a person who contracts with the City of Indianapolis to operate the incinerator.

HEA 1117, Public Law No. 113-2006 SECTION 13, Ind. Code 36-9-31-23, effective July 1, 2006.

MERCURY SWITCH REMOVAL PROGRAM

In what was one of the more difficult environmental protection efforts to pass in 2006, the legislature found a compromise to establish a program to have switches removed from end-of-life vehicles before metal from those vehicles is recycled. This effort is aimed at reducing the release of mercury into the environment. Some automobiles contain mercury in switches that automatically operate convenience lights when opening trunks and hoods. In an effort to prevent the release of mercury into the environment, when automobiles reach the end of their life and are to be processed by automobile salvage recyclers, automobile scrap yards and hulk crushers, Indiana has established a program to get the mercury switches removed before the metal is recycled. An end-of-life vehicle includes a vehicle that is self-propelled on a

highway, excluding farm tractors and motorized bicycles, which are sold or otherwise conveyed to a motor vehicle recycler for the purpose of recycling. An automobile salvage recycler includes a business that acquires damaged, inoperative, discarded, abandoned, or salvaged motor vehicles or their remains. The salvage recycler dismantles and processes the vehicle or remains for the reclamation and sale of reusable components and parts, and transmits the recyclable material to a scrap processor or other appropriate facility. An automobile scrap yard includes businesses that process scrap metal, wreck automobiles, or operate a junkyard. Hulk crushers include a business that handles and flattens, compacts or otherwise demolishes a Motor Vehicle or its remains for economical delivery to a scrap metal processor or other appropriate facility. A scrap metal processor is a private, commercial, or governmental enterprise that has facilities for processing iron, steel, or non-ferrous scrap (not including a steel mill), whose principal product is scrap iron, scrap steel, or nonferrous scrap for sale for re-melting purposes. A vehicle disposal facility is a business that engages in the acquisition and dismantling or demolition of motor vehicles, motorcycles, semitrailers, or recreational vehicles or their remains for the benefit of reusable component and parts or recyclable materials. Included as a vehicle disposal facility are automotive salvage recyclers and hulk crushers, but not scrap metal processors.

Under a new chapter added to IDEM's laws found at Ind. Code 13-20-17.7, all automobile manufacturers that have installed mercury switches under the hoods or trunks of automobiles are required to either individually or collectively develop a plan to remove, collect, recover, and recycle or dispose of mercury switches from recycled vehicles. The plan must have been submitted to IDEM before October 1, 2006. The plan must include (1) an educational program concerning the purposes of the mercury switch collection program and how to participate, (2) the provision of containers for collecting and storing mercury switches, (3) procedures for the transportation of mercury switches to recycling, storage, or disposal facilities, (4) procedures for the recycling, storage, and disposal of mercury, and (5) procedures to track the progress of the program. No later than 30 days after receiving the plan, IDEM must issue a public notice allowing 30 days for the public to submit written comments on the plan. No later than 120 days after receiving the plan(s), IDEM must determine if the plan(s) comply with this new law. If the entire plan complies, IDEM will approve it. If no part of the plan complies, IDEM will reject the plan in its entirety. If only parts of the plan comply, IDEM will approve those parts that comply and reject the parts that do not. If the plan is approved in its entirety, the motor vehicle manufacturer(s) must begin to implement the plan no later than 30 days after it has been approved. If the entire plan is rejected, IDEM must explain the basis for the rejection and the automobile manufacturers must submit a new plan within 30 days of being advised it has been rejected. If the plan is partially approved, the

manufacturers shall immediately begin to implement those parts that were approved and no more than 30 days after being informed of the partial approval, submit a revision of the rejected parts. IDEM has no more than 30 days to make a determination on revised plans. If the automobile manufacturers fail with their revised plans to provide an approvable plan, then no later than 240 days after the plan was submitted, IDEM must complete on behalf of the manufacturer any parts of the plan not yet approved and the manufacturers must implement that plan. After approval, IDEM will review these plans every three years and work with manufacturers to agree on appropriate modifications to the plans.

Motor vehicle manufacturers are required to pay for the educational materials; the training; the cost for packaging for transporting switches to recycling, storage, or disposal facilities; the shipping of switches to recycling, storage, or disposal facilities; the cost of recycling, storage, or disposal of mercury switches; and for maintaining all appropriate systems and procedures to protect the environment from mercury contamination.

In order to encourage joint effort by the manufacturers and to prevent delays in developing an approved plan, beginning 30 days after the earliest date the commissioner approves a plan, a motor vehicle recycler is required, upon receipt, to remove all mercury switches from each end-of-life vehicle it receives. After the switch is removed, it must be collected, stored, transported, and otherwise handled in accordance with the plan approved by IDEM. A motor vehicle recycler or any other person that removes mercury switches shall maintain records that document the number of end-of-life vehicles the person processed for recycling, the number of end-of-life vehicles that had mercury switches, and the number of switches the person collected. The records are to be kept for three years.

A person may not represent that mercury switches have been removed from a motor vehicle being sold or otherwise conveyed for recycling if the person has not removed the switches from that vehicle. A motor vehicle recycler or other person that receives an intentionally-flattened, crushed, or baled end-of-life vehicle may not be considered to be in violation of the law if a mercury switch is found in the vehicle after the person acquires the vehicle. Otherwise, any violation of the requirements of this law is subject to the $25,000-per-day civil penalty and the criminal penalties of IDEM's laws, including the forfeiture of a vehicle used to transport hazardous waste in the commission of an environmental crime.

A person is entitled to payment from IDEM for each mercury switch the person removes from an end-of-life vehicle. The amount to be paid and procedure for filing a claim will be established by IDEM. The payment will be at least one dollar and not more than five dollars per switch, subject to the money being available under the determination made by IDEM on whether to use money from the state solid waste management fund and the amount of that fund to be used for this purpose. To encourage use of

that fund and make the most money possible available for this switch-removal program, the legislature revised the law for the state Solid Waste Management Fund providing an additional source of funds through the civil penalties imposed under this switch removal program, as well as any assets assigned and other contributions made by persons for this program and transfers, money from the Indiana recycling promotion and assistance fund, and money credited from the Environmental Management Special Fund.

This state mercury-removal law will expire on July 1, 2016, or the date a national mercury switch recovery program takes effect, whichever is earlier.

The Solid Waste Management Board is authorized to promulgate rules to implement this new law.

HEA 1110, Public Law No. 170-2006, Ind. Code 4-23-5.5-14; Ind. Code 13-11-2-16.3, 16.5, 66.9, 71, 104.5, 128.8, 130.1, 130.2, 130.3 136.5; 196.5, 245.2; Ind. Code 13-14-12-1; Ind. Code 13-20-17.7; Ind. Code 13-20-22-2, effective July 1, 2006.

WATER ISSUES

GROUND WATER TASK FORCE

As of March 22, 2006, the Interagency Groundwater Task Force was abolished. That Task Force had the responsibility for groundwater protection, making it a joint responsibility among IDEM, the Indiana Department of Natural Resources (IDNR), Indiana Department of Health (IDOH), the State Chemist, the State Fire Marshal and appointed representatives of business, environmentalists, labor, and local government. Due to concerns that the multi-agency role was confusing, rather than assisting in the development of good ground water protection policies, the legislature determined this year to abolish the Task Force. The provisions of the law for ground water protection remain, but now are clearly the lead responsibility of IDEM and its Water Pollution Control Board (WPCB). The IDNR, ISBH, Office of the State Chemist, and Office of the State Fire Marshal continue to have the requirement to adopt rules to apply the groundwater quality standards established by the WPCB to activities they regulate.

HEA 1117, Public Law No. 113-2006, SECTION 14, Ind. Code 13-11-2-230, Ind. Code 13-18-17-1, effective March 22, 2006.

COMBINED SEWER OVERFLOW WATER QUALITY DESIGNATIONS

Following up legislation from last year, which established a Combined Sewer Overflow (CSO) Wet Weather Limited-Use Subcategory as an alternative to recreational use designation for waters affected by CSO discharges, the legislature added a provision outlining the expedited rulemaking procedures governing the WPCB's adoption of water quality standards for CSO communities. Under last year's legislation, the CSO Wet Weather Limited-Use Subcategory is available only for a period not to exceed four days after a CSO occurs for which the recreational use designation cannot be met. *Ind. Code 13-18-3-2.5*. Under that legislation, the WPCB was directed to adopt rules establishing this limited use subcategory by October 1, 2006. This new legislation is aimed at expediting the WPCB's rulemaking to allow it to comply with the October deadline.

The WPCB may only establish the new water-quality standards for communities which have an approved Long Term Control Plan (LTCP) and have an approved-use attainability analysis that support the use of the CSO Wet Weather Limited Use Subcategory. The attainability analysis will define an area for which the CSO Wet Weather Limited-Use Subcategory will apply.

The WPCB is only required to publish a notice of adoption of a proposed rule to establish a CSO Wet Weather Limited-Use Subcategory for a CSO community which will include the suggested rule language, notice of a written comment period of 30 days, and notice of a public hearing before the WPCB.

At the public hearing before the WPCB, IDEM must provide the full text of the proposed rule, written comments submitted to the department, and the letter from IDEM approving the LTCP and use attainability analysis. The WPCB may approve, reject, or determine to reconsider the rule in a subsequent board meeting. Any water-quality standard established in a rule adopted under this section must be submitted to the Environmental Protection Agency (EPA) for approval.

SEA 234, Public Law No. 100-2006, SECTION 10, Ind. Code 13-14-9-14, effective July 1, 2006.

EXCEPTIONAL USE WATERS

Public Law 231-2003 directed that all waters of the state designated as outstanding state resource waters and exceptional use waters shall be maintained and protected. That 2003 law also stated that any rule adopted before the law was effective was void if it was inconsistent and directed the WPCB to amend its rules by July 1, 2004, to reflect the dictates of the new law. Additionally, for waters designated as exceptional use waters before October 1, 2002, the 2003 law required the WPCB to determine whether, effective July 1, 2006, to designate the waters as outstanding state water and to complete a rulemaking to make such a designation. That 2003 law was to expire on July 1, 2006.

This year the legislature extended the expiration date to July 1, 2008. The WPCB is given until that date (1) to amend its rules and (2) to designate waters as outstanding state waters.

SEA 234, Public Law No. 100-2006, SECTIONS 13-15, effective July 1, 2006.

CONSERVANCY DISTRICTS IN LAKE COUNTY

Effective May 20, 2006, the legislature repealed the special provisions for appointment of the Board of Directors of a Conservancy District in Lake County. Lake County is now governed by the same provisions as all other counties in the state of Indiana for appointment of the Board of Directors of a Conservancy District.

SEA 157, Public Law No. 95-2006, Section 10, Ind. Code 14-33-5-0.5 and Ind. Code 14-33-5.5, effective March 20, 2006.

STORM WATER MANAGEMENT DISTRICTS

New laws were passed this year to provide a mechanism for the cities that are not a part of UNIGOV in Marion County to withdraw from the Indianapolis/Marion County Storm Water Management District. The four eligible cities/towns

may withdraw by giving notice to all lot owners and Indianapolis' Department of Public Works, and then passing an appropriate ordinance. A withdrawing city or town remains liable for its pro rata share of the debt incurred by the Indianapolis/Marion County Storm Water Management District. After withdrawal, the city or town is entitled to receive a lump-sum payment equal to the amount of the property taxes allocated to the Storm Water Management District's flood debt service. The payment is to be retroactive to January 1 of the year of withdrawal. Any funds received by the withdrawing city or town must be placed in a dedicated account and may only be used for storm water management.

SEA 71, Public Law No. 52-2006 and HEA 1212, Public Law No. 175-2006, SECTION 1, Ind. Code 8-1.5-5-32; effective March 15, 2005 and HEA 1212, Public Law No. 175-2006, effective March 15, 2006.

WATER AUTHORITY AUDITS

The legislature has formulated specific audit rules for water authorities reconstituted from nonprofit water utilities. For each fiscal or calendar year that ends after December 31, 2006, the water authority must have an audit of its financial records performed by an independent certified public accounting firm. The water authority must keep this audit report on file at the water authority. The water authority, however, is no longer subject to an audit or examination by the State Board of Accounts pursuant to Ind. Code 5-11-1-9. It is also not subject to the examination guidelines and reporting requirements of the State Board of Accounts.

HEA 1018, Public Law No. 166-2-6, Ind. Code 13-18-16-16, effective July 1, 2006.

OTHER IDEM PROGRAM ISSUES

PERFORMANCE TRACK PROGRAM

Legislation was passed this year establishing an Indiana environmental performance program. IDEM is authorized to adopt rules to implement the program. Although the legislation did not become effective until July 1, 2006, IDEM began working in the fall of 2005 to establish Indiana's Performance Track Program (PTP), basing it upon and coordinating it with the EPA's National PTP. The PTP is a voluntary program with the purpose of providing regulatory flexibility as a reward to entities who can demonstrate exemplary environmental performance and stewardship.

The new law encourages programs that promote:

1. pollution prevention
2. waste minimization
3. environmental management systems
4. advanced environmental compliance

IDEM's rules can establish eligibility requirements to participate in the PTP. IDEM may reward participants by establishing alternative compliance methods and schedules, streamlined permit-renewal process, and expedited permitting. IDEM is considering recognition incentives for participants as environmental leaders in Indiana, as well as providing networking opportunities for participants.

Although IDEM has not promulgated rules for the PTP, it has announced that it is considering the following for potential participation criteria:

1. satisfactory compliance record
2. establishment and continued performance of an Environmental Management System (EMS)
3. environmental improvement initiatives with measurable indicia of success

The determination of whether or not an entity may participate in the PTP is exempt from the Administrative Orders and Procedures Act (AOPA), which means that applicants to the program may not administratively challenge a decision by IDEM that they are not eligible for the program.

SEA 234, Public Law No. 100-2006, SECTIONS 1 and 12, Ind. Code 13-27-8, effective July 1, 2006.

RESPONSIBLE PROPERTY TRANSFER LAW NEW DISCLOSURE FORM

Amendments to Indiana's Responsible Property Transfer Law (RPTL) replace the 1997 Environmental Disclosure For Transfer of Real Property form with a revised version that became effective on July 1, 2006. The 1997 version was removed from the statute by repealing Ind. Code 13-25-3-7. A new section was then added which directs IDEM to prescribe a form that must elicit certain information to more strongly encourage inquiry into previous ownership and uses of the property and to specify delivery and filing requirements.

New Ind. Code 13-25-3-7.5 requires that the form include specifics as to property identification and characteristics, the nature of the transfer and the parties to the transaction, environmental regulatory issues during the transferor's ownership, and site information under other ownership or operation. The new section also requires that the transferor certify that all elements are completed and that the information on the form "is true and accurate to the best of the transferor's knowledge and belief."

The RPTL took effect on January 1, 1990, and requires certain property transferors of certain real property to disclose environmental defects to all parties in the transaction, including lenders. The statutory definitions and requirements must be reviewed to determine if the transfer is subject to the RPTL. Neither the law nor the associated disclosure requirements on the form are designed to satisfy the "all-appropriate inquiry" requirements of a landowner that are necessary for owner liability protections in CERCLA, 42 U.S.C. § 9601 et seq. or the Indiana Hazardous Substances Response Trust Fund law, Ind. Code 13-25-4.

The new form entitled, "Environmental Disclosure for Transfer of Real Property" (IC 13-25-3-7.5) is available for download at: http://www.in.gov/icpr/webfile/formsdiv/52653.doc. You can also request that a copy of the form be mailed or faxed to you by contacting IDEM's Office of Legal Counsel at (317) 232-8753.

SEA 146, Public Law No.15-2006, SECTIONS 1 through 6; Ind. Code 13-25-3-2, 13-25-3-7.5, 13-25-3-8, 13-15-3-12, 13-25-3-7 (repealed), effective July 1, 2006; non-code section directing IDEM to prescribe the form effective March 13, 2006.

LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES LEGISLATION

DEPARTMENT OF NATURAL RESOURCES ADVISORY COUNCILS

The Advisory Council function within the Department of Natural Resources (DNR) changed on July 1, resulting in a financial savings for the state. The DNR has had two 12-member advisory councils, one for Bureau of Lands and Cultural Resources and one for the Bureau of Water and Resource Regulation. Those advisory councils have typically met monthly. Reports from matters considered by the advisory councils are provided to the Natural Resources Commission. Based on the recommendation of the Natural Resources Study Committee, this year the legislature decided to combine the function of those two separate councils into one advisory council. This new advisory council will be required to meet once every two months (six meetings minimum per year). Previously the two advisory councils were required to meet at least quarterly (eight meetings minimum a year). The law has been revised to delete the $15 per diem that had been paid to each advisory council member for a day or part of a day the member was engaged in official functions. The member will continue to be reimbursed for travel expenses.

As a result of combining the advisory council functions, the membership of the Natural Resources Commission has been changed to add one more citizen member, continuing the Natural Resources Commission's membership at 12 persons even with the loss of one Advisory Council chair member.

The Governor must appoint the 12 persons to the Advisory Council by July 1. Eight of those members must be persons who formerly served on one of the two advisory councils.

SEA 157, Public Law No. 95-2006, SECTIONS 1-9 and 11, Ind. Code 14-9-6-1, Ind. Code 14-9-6-2, Ind. Code 14-9-6-5, Ind. Code 14-9-6-6, Ind. Code 14-9-6-7, Ind. Code 14-9-6-8, Ind. Code 14-10-1-1 and Ind. Code 14-21-1-5, effective July 1, 2006, except for SECTION 11 concerning appointment of the Advisory Council members, which took effect on March 20, 2006.

LAKES MANAGEMENT WORK GROUP

The 26-member Freshwater Lake Management Work Group that was created in 1997 and given the assignment of establishing solutions for problems affecting the fresh water lakes of Indiana and that was re-established in 2000 for the purpose of monitoring, reviewing, and coordinating implementation of the recommendations it made under that 1997 law has been re-established once again. By a non-code amendment to the law, a Lake Management Work Group was established this year. The duties from 1997 and the additional duties added in 2000 include:

1. facilitate collaborative efforts among commonly affected state, county and local governmental

entities in cooperation with lake residents and related organizations;

2. conduct public meetings to hear testimony and receive written comments concerning implementation of its recommendations;
3. develop proposed solutions to problems concerning implementation of the Work Group's recommendations;
4. review all funding currently being used for Indiana's waterways, including potential sources that could be used as a resource for the Indiana General Assembly to correct funding problems;
5. when directed, issue reports to the Natural Resources Study Committee;
6. issue an interim report on its findings by July 1, 2001;
7. issue a final report before July 1, 2002.

The Work Group must now also:

1. review, update, and coordinate the implementation of new and existing recommendations by communicating with the public, the General Assembly, and other governmental entities concerning lake resources;
2. review and coordinate the development and maintenance of an Internet web site that includes information on the management of lake and watershed resources; and
3. issue an interim report before July 1, 2007, and final report before July 1, 2008.

This Work Group addresses fresh water lakes in Indiana. Those lakes include lakes that have been used by the public with the permission or acquiescence of the riparian owner, but do not include Lake Michigan, privately-owned bodies of water used or created as a result of surface coal mining, or lakes in the cities of Gary, Hammond, or East Chicago.

The Work Group continues to consist of the same representative 26 members with the Governor-appointed 10 members being the same as who served under the 2000 law, until such time as the Governor appoints a successor. The 26 members include four legislators; three DNR employees, at least one of whom must be an officer in the Division of Law Enforcement; the commissioner of IDEM; a representative of the Indiana Lake Management Society or a similar organization of citizens concerned about lakes; one representative of the Natural Resources Conservation Service of the US Department of Agriculture; one representative of a soil and water conservation district; 10 members appointed by the Governor, with one from each of the ten Congressional Districts in Indiana, who either participate in lake-related recreational activities, are a resident of a lake area, own or operate a lake-related business, or are a person who is interested in the natural environmental of the lakes of Indiana; a representative of the US Army Corps of Engineers; a representative of an agricultural organization; a representative of an environmental organization; and two individuals appointed by the governor as members at large.

The Work Group previously was required to meet no less than two times a year. Now the Work Group is to meet no more than three times each year. The Work Group continues to be under the direction of the DNR. An affirmative vote by a majority of the membership is required to take action on any measure, including final reports. The required reports are to be made available to the Natural Resources Study Committee, the DNR, and to members of the House Agriculture, Natural Resources, and Rural Development Standing Committees, the Senate Natural Resources Standing Committee, and to the public.

In a cost-savings effort, non-state employee members will no longer receive the minimum salary per diem; they will only be reimbursed for travel expenses and other expenses actually incurred in connection with their duties.

SEA 94, Public Law No. 35-2006; non-code amendment, effective July 1, 2006, expires July 1, 2008.

DROUGHT PLANNING AND THE WATER SHORTAGE TASK FORCE

This year a new law establishing the Water Shortage Task Force details many tasks for coordinating and developing the state's water supply management policies during a drought. The law directs the Task Force to expand and revise the DNR's 1994 Water Shortage Plan and implement a water usage schedule for all users during times of drought. Indiana's drought history through 1988 and the dependence of many Indiana businesses on an adequate water supply prompted DNR's development of the legislatively mandated 1994 Plan, which included some policy recommendations but did not identify who will get water in the event of a drought.

The law requires that the Task Force establish procedures to monitor, assess, and inform the public about water shortages for all uses, especially shortages due to drought. Information collection and water conservation measures are also part of the task list. The recommendations, information, and reports on progress implementing the tasks are to be presented to the Water Resources Study Committee and to the Legislative Services Council.

The Task Force consists of 10 members appointed by the director of DNR, where only five may be from the same political party. This results from a change in law which started this year, relieving the governor of the task of having to make all Board, Task Force and Committee appointments, now placing that responsibility on Department Heads. The appointees must represent interests of key water withdrawal users including public water utilities; agriculture; steam generation utilities; industrial users; academic experts in aquatic habitat and hydrogeology; municipalities; and key stakeholders including environmentalists, consumer advocates, economic development advocates, and the public. The law also provides that the Task Force will be advised by representatives from DNR, IDEM, homeland security, and the Departments of Agriculture and Health and shall receive staff support from DNR.

SEA 369, Public Law No. 112-2006, SECTIONS 1 through 4; Ind. Code 14-8-2-279.5 and Ind. Code 14-25-14-1 through 6, effective March 20, 2006 and July 1, 2006.

SHOOTING PRESERVES AND DUCK SHOOTING

As a result of new legislation, shooting preserves may be established four miles closer to state-owned game refuges or state public hunting grounds. Changes to the existing law reduce the minimum shooting preserve distance from five miles to one mile from the state refuges and hunting grounds. The new law also gives the Natural Resources Commission authority to adopt rules prohibiting duck shooting on shooting preserves; this authority is in addition to the existing prohibition on duck shooting where wild ducks, geese, or other migratory game birds frequent the area where captive reared mallard ducks are held, released, and flighted for shooting.

Although this senate bill started and ended with these simple changes, a failed amendment attempt by Representative David Wolkins brought this bill into the debate surrounding the DNR's fenced deer-hunting ban. The fenced-hunting controversy started over a year ago when Director Kyle Hupfer announced that DNR's regulations of game breeders' licensing do not allow hunting of the animals under that license. Once enforced, approximately 10 to 12 private preserves would have to close their high-fence deer hunting businesses. Those that oppose such businesses describe them as "canned hunting" and point out that many other states have banned preserves that allow hunting animals confined by high fences.

Representative Wolkins tried to add language to this bill that would ban private bird-hunting preserves. This effort appeared to be retaliation directed at DNR and the preserve owners who did not oppose DNR's ban of certain private deer-hunting preserves. Those reacting to Wolkins' amendment explained that unlike fenced-in deer, birds in private preserves are able to fly over fences allowing the "fair chase" consistent with hunting ethics. The bill ultimately survived without the Wolkins' amendment and was passed as introduced.

SEA 77, Public Law No. 59-2006, SECTION 1; Ind. Code 14-22-31-3, effective July 1, 2006.

On March 21, 2006, the Natural Resources Commission gave final adoption to amendments to the fish and wildlife rules to address deer hunting within enclosures, as well as several other matters pertaining to exotic mammals. The amendments were approved by Attorney General Steve Carter on April 28, 2006, and signed by Governor Mitch Daniels on May 12, 2006. The amendments were effective on June 11, 2006.

ACTIVITIES ALONG SHORELINES

The legislature has expanded the regulation of activities along the shorelines of public lakes. The old law simply stated that a person may not change the level of the water or the shoreline of a public freshwater lake without a written permit issued by the Department of Natural Resources. The new law adds multiple provisions. Starting July 1, 2006, unless a permit is obtained from the DNR, the following three activities are prohibited:

1. excavation, filling, placing, modifying, or repairing a tem-

porary or permanent structure over, along, or lakeward of the shoreline or waterline of a public freshwater lake;

2. construction of a wall with a lowest point below the elevation of the shoreline or waterline and within 10 feet landward of the shoreline or waterline, as measured perpendicularly from the shoreline or waterline of a public freshwater lake;
3. changing the water level, area, or depth of a public freshwater lake or the location of the shoreline or waterline.

An application for a permit for any of the restricted activities listed above must be accompanied by the following:

1. a nonrefundable fee of 100 dollars;
2. a project plan that provides the DNR with sufficient information concerning the proposed excavation, fill, temporary, or permanent structure; and
3. written acknowledgment from the landowner that any additional water area created under the project plan is part of the lake and is dedicated to the general public use with the public rights described in Ind. Code 14-26-2-5.

The DNR may issue a permit after investigating the merits of the application. In determining the merits of the application, the DNR may consider any factor, including the cumulative effects of the proposed activity upon the following five factors:

1. the shoreline, waterline, or bed of the lake;
2. the fish, wildlife, or botanical resources;
3. the public rights described in Ind. Code 14-26-2-5;
4. the management of watercraft operations under Ind. Code 14-15; or
5. the interests of a landowner having property rights abutting the lake or rights to access the lake.

Once a permit is issued, the owner, a contractor, or other agent of the owner must comply with the terms of the permit. The Natural Resources Commission is directed to adopt rules to provide objective permitting standards for the new law, including standards for the configuration of piers, boat stations, platforms, and similar structures. The new standards may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the lake or rights to access the lake.

A permit issued under Ind. Code 14-26-2-6 or Ind. Code 14-26-2-9, before repeal by this new law, is valid and shall be considered a permit issued under the new law. Any such permit expires on the date the permit would have expired if Ind. Code 14-26-2-6 and Ind. Code 14-26-2-9 had not been repealed by the new law. This rollover exemption ends July 1, 2008.

SEA 253, Public Law No. 152-2006 SECTIONS 3, 4, and 5, Ind. Code 14-26-2-23, effective July 1, 2006.

OUT-OF-STATE BOAT REGISTRATION

Indiana has made it easier for out-of-state boat owners to use their boats on Indiana waters. Under the old laws,

an out-of-state motorboat that has been within Indiana for more than 60 consecutive days must be registered with the Bureau of Motor Vehicles. The new bill changes Indiana law to provide a carve-out. Starting July 1, 2006, an out-of-state boat owner may have a motorboat in Indiana for longer than 60 days without having to register it if the boat is legally registered in another state and the boat owner pays the following fees: the boat excise tax, the DNR's fee imposed by Indiana Code 6-6-11-12(a), the lake and river enhancement fee imposed by Ind. Code 6-6-11-12(b), and a new administration fee of $2 to be deposited in the license branch fund.

HEA 1331,Public Law No. 46-2006, Ind. Code 6-6-11-13, Ind. Code 9-29-15-9, Ind. Code 9-31-3-2, effective July 1, 2006.

FUNDING FOR ACQUIRING PUBLIC HUNTING AND FISHING PROPERTIES

Changes made this year to the hunting, fishing, and trapping license trust fund law authorize the director of the DNR to use up to $10 million dollars of the fund to acquire property for public hunting and fishing purposes. Before tapping the fund, the director must obtain approval of the Natural Resources Commission and the Budget Agency. The appropriation is retroactive and amounts withdrawn may be used toward 50 percent of the appraised value of the real property acquired.

HEA 1138, Public Law No. 132-2006, SECTIONS 1 and 5, Ind. Code 14-22-4-6, effective July 1, 2006, non-code provision effective July 1, 2005 (retroactive).

A new law allowing the director of DNR to designate four free hunting days per year for youth hunters was added to the license and permits chapter of the DNR law. During these days, a resident who is less than 16 years old may hunt without paying a fee and without a license. The youth must be accompanied by a person at least 18 years old who either holds a valid hunting license or is not required to do so. The law also requires that the accompanying adult stay close and monitor the youth's hunting activities. The accompanying adult may not carry a firearm or bow and arrow.

HEA 1138, Public Law No. 132-2006, SECTIONS 2 and 3, Ind. Code 14-22-11-6 and Ind. Code 14-22-11-18, effective July 1, 2006.

As of July 1, 2006, it is less expensive for hunting residents and non-residents to take extra deer in Indiana. Resident licenses for extra deer decreased to $5 each from $13.75. Non-resident licenses for extra deer decreased significantly to $10 each from $120.75. As part of DNR's efforts to manage the deer herd populations, the director supported the reductions in price to provide an incentive for hunters to purchase additional licenses and take extra deer.

HEA 1138, Public Law No. 132-2006, SECTION 4, Ind. Code 14-22-12-1(18) and (19), effective July 1, 2006.

CLASSIFIED FORESTS AND REDUCED PROPERTY TAXES

A new property tax classification was added to the existing law for classification of land as forest land. Now not only forest land and forest plantations can receive special tax status, but also wildlands. Wildlands are defined as land consisting of at least 10 acres of any shape but at least 50 feet in width,

which contains one of more of the following:

1. grasslands that are dominated by native grasses or intermixed with other native herbaceous vegetation;
2. wetlands that support a prevalence of native vegetation adopted for saturated conditions;
3. early forest successional stands that are dominated by native herbaceous and woody vegetation that will develop into native forest land;
4. other land that DNR determined is capable of supporting wildlife and conducive to wildlife management; and
5. a body of water.

Once land is classified as forest land, forest plantation, or wildland, it is assessed at one dollar per acre for general property taxation purposes.

SEA 354, Public Law No. 66-2006, SECTION 1, 3, and 6, Ind. Code 6-1.1-6-1, Ind. Code 6-1.1-6-2.5 and Ind. Code 6-1.1-6-5, effective July 1, 2006.

Wildlands can not be cultivated, except for crops cultivated solely for wildlife food or cover. The parcel of land cannot have a dwelling or other building situated on it and cannot be use for grazing domestic animals or confined non-domesticated animals.

SEA 354, Public Law No. 66-2006, SECTION 5, 8, and 9, Ind. Code 6-1.1-6-3.5, Ind. Code 6-1.1-6-6, and Ind. Code 6-1.1-6-7, effective July 1, 2006.

The law was further revised to clarify the definition of land that is a forest plantation. The legislature added to the general provision that a forest plantation must have a good stand of timber-producing trees as that concept is understood by a district forester or a professional forester, a requirement that such forest plantation must, at a minimum, have 400 timber producing trees per acre, which can be of any size so long as the trees are well-established.

SECTION 2, Ind. Code 6-1.1-6-2.

In addition, the native forest land definition was changed to require there be at least 1,000 timber-producing trees, instead of the prior law's requirement of only 400 trees.

SEA 354, Public Law No. 66-2006, SECTION 4, Ind. Code 6-1.1-6-3, effective July 1, 2006.

New penalties were added to what a land owner must pay if s/he elects to withdraw forest land, forest plantation, or wildlands from the classification. The land owner previously had to pay the total property taxes that, if it were not for the classification, would have been assessed during the period of classification or the 10-year period immediately preceding the date on which the land is withdrawn from classification (whichever is less), plus 10% simple interest on the taxes. Now, land originally classified after June 30, 2006, if withdrawn from the classification a penalty of $100 for each withdrawal plus $50 per acres must be paid, until such time as the Natural Resources Commission has by rule established the amount of penalty. 75% of that penalty will be deposited in a forest restoration fund and 25% will be deposited in the county's general fund.

SEA 354, Public Law No. 66-2006, SECTION 22, Ind. Code 6-1.1-6-24, effective July 1, 2006.

ENERGY LEGISLATION

ALTERNATIVE FUEL USE AND PRODUCTION

This year the legislature made changes to the law first enacted in 2005 that was intended to support underutilized small businesses in biodiesel and ethanol production. Specifically, the legislature has continued the tax deductions and credits for alternative fuels and has added E85 as a listed fuel. The amount of tax credits available has been increased retroactively to January 1, 2005, from 20 million dollars to 50 million dollars. The availability of a tax credit for the retail sale of blended biodiesel has been extended from 2006 to 2010. Fluidized bed combustion technology has been added as a type of qualified investment for the tax credits associated with coal gasification. The new law requires the Department of Agriculture to "work with automobile manufacturers to improve awareness and labeling of E85 base fuel and [to] work with the appropriate companies to include E85 base fuel stations in updates of global positioning navigation software."

The legislature has provided a type of tort immunity for E85 providers caused by misuse of E85 motor fuel. Specifically, a person or entity that sells, supplies, distributes, manufactures, or refines E85 is immune from civil liability for personal injury or property damage resulting from a person fueling any vehicle with E85 that is not a flexible fuel vehicle, i.e., one specifically equipped to operate when fueled entirely by E85. This immunity does not apply if the person or entity fails to display all E85 warning signs required by federal or state law or if the personal or property damage is a direct result of the gross negligence or willful or wanton misconduct of the person or entity that sells, supplies, distributes, manufactures, or refines E85.

SEA 353, Public Law No. 122-2006, SECTION 24, Ind. Code 34-30-24, effective March 21, 2006.

LIEUTENANT GOVERNOR NEW RESPONSIBILITIES

The legislature passed a number of new measures regarding energy, agriculture, and rural development laws with Senate Enrolled Act 87. The legislature added a new chapter to the Indiana Code adding to the duties of the Lieutenant Governor. The Lieutenant Governor will now carry out the duties relating to energy policy that were the responsibility of the Department of Commerce before its abolishment in 2005. The Lieutenant Governor may adopt rules under Ind. Code 4-22-2 to carry out the duties, purposes, and functions relating to the following:

1. energy policy under Ind. Code 4-4-2.4-1;
2. the administration of the Center for Coal Technology research under Ind. Code 4-4-30-5.5; and
3. the Indiana Recycling and Energy Development Board under Ind. Code 4-23-5.5-6.5.

SEA 87, Public Law No. 144-2006 SECTIONS 1, 9, and 11, Ind. Code 4-4-2.4, Ind. Code 4-4-30-5.5, effective July 1, 2006

MISCELLANEOUS ENVIRONMENTAL LEGISLATION

DRAINAGE BOARDS

Indiana Code 36-9-27-86 was modified this year to make clear the manner in which the county auditor and treasurer issue assessments for regulated drains. The statute still requires the treasurer to deliver a copy of the cost assessment for any drain construction or reconstruction project no later than 30 days after the auditor receives the certification for the final costs and for the treasurer to mail those assessments to affected property owners within 15 days. Newly added provisions, however, eliminate property tax exemptions from applying to the drainage assessments. The revised statute also requires the county treasurer to send the state land office a list of all state or state-agency-owned property with unpaid assessments. A non-code definition for "notice of assessments" was added to include the specific assessments for which the exemptions do not apply.

SEA 71, Public Law No. 52-2006, SECTIONS 2 and 3, Ind. Code 36-9-27-86, effective January 1, 2006.

MARION COUNTY HEALTH AND HOSPITAL

A law making many changes affecting the Marion County Health & Hospital Corporation passed this year. Two provisions related to the environment that are important to Marion County businesses concern a change to allow employees and contractors (not just officers of the Marion County Health & Hospital Corporation) to enter property that is in violation of an ordinance in order to take action to bring the property into compliance and a new grant of enforcement authority to order action to address public health hazards. Existing law allowed the Marion County Health & Hospital Corporation to issue an order requiring action relative to any unsafe premises to require removal of trash debris or fire hazardous materials in and about the unsafe premises. Now that authority has been broadened to allow enforcement to order action to address any public health hazard at the premises.

HEA 1395, Public Law No. 88-2006; SECTIONS 7 and 8, Ind. Code 36-1-6-2; Ind. Code 36-7-9-5; Ind. Code 33-36-3-4, effective July 1, 2006.

PIPELINE SAFETY

Pipeline safety laws were amended this year to expand the definition of pipeline transportation to include hazardous liquid and carbon dioxide fluid and to increase monetary penalties for safety violations. Prior to these changes, the pipeline laws only applied to gas pipelines. Specifically included in pipeline operations and transportation are gas, petroleum, petroleum products, anhydrous ammonia, and a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state.

In addition to significantly expanding the application of the pipeline safety laws, the amendments also increase the maximum civil penalties that may be imposed for violations of pipeline

safety laws and regulations. Violators are now subject to a $25,000 civil penalty per day per each violation, where the maximum civil penalty may not exceed $1,000,000 for any related series of violations. This is an increase from the former $10,000 per day per violation and the former $500,000 cap.

The dollar amount of accident damages triggering the Indiana Utility Regulatory Commission (IURC) Pipeline Safety Division's requirement to review an accident was increased from $3,000 to $50,000. The reviewable accidents were expanded to include hazardous liquid and carbon dioxide fluid that meet the threshold damages amount and the other existing factors in the law.

A new law was added to allow the IURC or the Division of Pipeline Safety to determine if reports filed pursuant to the pipeline safety laws are confidential under Ind. Code 4-14-3-4(a) or if any information in the reports should be prevented from disclosure for the purposes of protecting public safety. If the IURC determines that disclosure of a report or a part of report has a reasonable likelihood of exposing a vulnerability to terrorist attack, the portion exposing the vulnerability shall be excepted from disclosure under other laws protecting disclosure of utility-systems information.

SEA 22, Public Law Number118-2006, SECTIONS 1-7, Ind. Code 8-1-22.5-1, Ind. Code 8-1-22.5-2, Ind. Code 8-1-22.5-4, Ind. Code 8-1-22.5-5, Ind. Code 8-1-22.5-6.1, Ind. Code 8-1-22.5-7, effective July 1, 2006.

PUBLIC SANITATION

Legislation was passed this year to allow public sanitation districts to be created in areas broader than a municipality where the district will include a city of 100,000 and at least one other town. In that instance, the district is treated as an executive department of each municipality in the district. The district can sue, be sued, and enter into contracts. The district can enter into contracts in a participating municipality's name if that municipality approves the contract. The new statute also provides a mechanism for establishing fees for the district. Fees can be established either by the district board and the legislative body of each municipality in the district or by the district board and the IURC, taking into account current rate setting procedures and the financial viability requirements of the statute.

HEA 1212, Public Law No. 175-2006, SECTIONS 21 through 25, Ind. Code 36-9-25-3, Ind. Code 36-9-25-10, Ind. Code 36-9-25-11, Ind. Code 36-9-25-11.3 and Ind. Code 36-9-25-13, effective March 24, 2006.

PUBLIC WATER AND WASTEWATER INCREASED EFFICIENCY AND GUARANTEED SAVINGS CONTRACTS

As a follow-up to past legislation which encourages local units of government to increase energy efficiency and thus save tax dollars, the legislature has now included water and wastewater projects under guaranteed savings contracts and utility efficiency programs. Specifically, schools and other local governments are given the opportunity to use guaranteed energy saving contracts to procure and pay for projects and services that will increase efficiency and reduce costs. The new legislation also allows municipal water or wastewater utilities

operated by political subdivisions to implement projects that will increase billable revenue, such as installing automated, electronic, or remotely-controlled systems that may reduce direct personnel costs.

HEA 1076, Public Law No. 168-2006, SECTIONS 3, and 5 IND. CODE §§ 36-1-12.5-0.6, 36-1-12.5-1, effective July 1, 2006.

Guaranteed savings contracts are defined as: "contract[s] entered into … in which a qualified provider enters into an agreement with the government body to evaluate and recommend to the governing body conservation measures, and provide for the implementation of least one conservation measure." *Ind. Code § 36-1-12.5-2*. The requirements of a qualified provider have been modified for those contracts awarded after June 30, 2006. A qualified provider must demonstrate that it is familiar with the design, implementation, and installation of conservation measures and the provider must also employ a professional engineer if it is providing engineering services with respect to conservation measures.

HEA 1076, Public Law Number 168-2006, SECTION 8, IND. CODE §36-1-12.5-3, effective July 1, 2006.

Before a government entity can enter into an agreement with a public utility to participate in an efficiency program or into a guaranteed savings contract, it must demonstrate that the amount to be spent on conservation measures under the contract or recommended by the qualified provider will not exceed the amount to be saved in consumption or operation costs over 10 years. If the conservation measures are part of a project altering water or wastewater structure or system, the conservation measure is given an additional five years to realize the cost savings so that the costs should not exceed the increased billable revenues or cost savings that will be generated over 15 years. Payments either to a public utility or qualified provider under the contracts may be made in installments, but the terms of the contract should not exceed 10 years or the lifetime of the conservation measures, unless the conservation measures are part of a project related to alteration of the systems, in which case payment terms should not exceed 15 years.

HEA 1076, Public Law Number 168-2006, SECTION 11, Ind. Code §36-1-12.5-5, effective July 1, 2006.

As with the prior program, before the public entity can undertake conservation measures under an efficiency program or a guaranteed savings contract, the utility or provider must issue a report that estimates the cost of the work and the estimated reduction in energy or water consumption, wastewater costs, or operating costs. The report now must also include an estimate of the amounts by which billable revenues will be increased. The financing of the guaranteed savings contracts may now be provided by the vendor under the contract or a third party.

HEA 1076, Public Law Number168-2006, SECTION 14, Ind. Code §36-1-12.5-6, effective July 1, 2006.

Reports under the guaranteed savings contracts and energy efficiency programs must now be submitted to the Lieutenant Governor rather than

the Department of Commerce. Once a government entity enters into a guaranteed savings contract, a copy of the contract must be provided to the Lieutenant Governor within 60 days of execution along with the energy or water consumption costs, wastewater usage costs, and/or billable revenues that existed before the contract was executed. The entity must also prepare an annual report detailing the previous year's savings under the contract or conservation measure.

HEA 1076, Public Law Number168-2006, SECTION 18, Ind. Code §36-1-12.5-10, effective July 1, 2006.

ZONING

A new code section, Ind. Code 36-7-4-1109, was added to the zoning statutes to require a local governmental agency to consider development or construction plans under the standards in place when the complete application was filed. This when-filed standard applies for up to three years after the application date in the event the standards for approval change before approval of the development or construction plans. The when-filed standard is limited to requiring development or construction to be completed within seven years of its commencement. The new section does not apply to building codes or where application of the old standard would cause imminent peril to life or property. The new statute comports with common law decisions requiring a development application to be considered under the rules and regulations in place at the time the application was filed. The law was passed after recent Supreme Court cases, which appeared to divert from this long standing common law principal.

SEA 35, Public Law No. 49-2006; Ind. Code 36-7-4-1109, effective March 15, 2006.

LAWS AFFECTING AGRICULTURE

INDIANA TOURISM COUNCIL

The requirement that a member of the Indiana Tourism Council represent a rural community and be interested in agritourism has been removed from the law. 17 members of the Tourism Council now constitute a quorum instead of the previous 18.

SEA 87, Public Law No. 144-2006; SECTIONS 12-13, Ind. Code 5-29-4-2 and Ind. Code 5-29-4-2, effective March 24, 2006.

OFFICE OF COMMUNITY AND RURAL AFFAIRS

The Office of Rural Affairs has been changed to the Office of Community and Rural Affairs (the Office). The following new provisions were adopted by the legislature this year. First, the Office may adopt rules under Ind. Code 4-22-2 to carry out the duties, purposes, and functions ascribed to it by the legislature. Second, the director

of the Office shall establish a board to advise the Office with the implementation of the duties of the Office. Third, the Rural Development Administration Fund and the Rural Development Council Fund are repealed. In their place, the Rural Economic Development Fund (the Fund) is established for the purpose of enhancing and developing rural communities. The Fund shall be administered by the Office. The balance of funds, appropriations to, and obligations of the Rural Development Administration Fund under Ind. Code 4-4-9.3-2 and the Rural Development Council Fund under Ind. Code 4-4-9.5-4 are transferred to the newly created Fund.

The expenses of administering the Fund shall be paid from money in the Fund. The state treasurer shall invest the money in the Fund not currently needed to meet the obligations of the Fund under Ind. Code 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisers, and legal counsel to assist in the management of the Fund and may pay the state expenses incurred under those contracts. Money in the Fund at the end of a state fiscal year does not revert to the state general fund. Expenditures from the Fund are subject to appropriation by the general assembly and approval by the Office. Money in the Fund may be used for the following purposes:

1. to create, assess, and assist a pilot project to enhance the economic and community development in a rural area;
2. to establish a local revolving loan fund for an industrial, commercial, agricultural, or a tourist venture;
3. to provide a loan for an economic development project in a rural area;
4. to provide technical assistance to a rural organization;
5. to assist in the development and creation of a rural cooperative;
6. to address rural workforce development challenges;
7. to assist in addressing telecommunication needs in a rural area;
8. to provide funding for rural economic development projects concerning the following issues:
    a. infrastructure, including water, wastewater, and storm water infrastructure needs;
    b. housing;
    c. health care;
    d. local planning;
    e. land use;
    f. other rural economic development issues, as determined by the Office; and
9. to provide funding for the establishment of new regional rural-development groups and the operation of existing regional rural-development groups.

SEA 87, Public Law No.144-2006, SECTIONS 2-8 and 16-17, Ind. Code 4-4-9.7, effective March 24, 2006.

PESTICIDE APPLICATION

Starting July 1, 2006, a number of amendments updating the pesticide application and use laws took effect. Although most of the changes cover fee increases, a few direct fees to new

areas or expand the powers of the state chemist. The amendments are as follows:

1. the annual fee to register a pesticide increases from $75 to $170;
2. $10 of the annual pesticide registration fee will now be transferred to the Purdue University pesticide programs to provide education about the safe and effective use of pesticides;
3. the late fee for annual pesticide registration increases from $75 to $170;
4. the annual fee for a pesticide business license increases from $30 to $45;
5. the annual fee for a public applicator license increases from $30 to $45;
6. the annual fee for a pesticide consultant increases from $30 to $45. The amendments also change the meaning of a pesticide consultant to include only a person engaged in the retail sale of pesticides. It would seem from the inclusion of this language that a person cannot be a pesticide consultant if that person does not retail pesticide, even if the person offers technical advice to another person concerning the use of pesticide in business;
7. the fee for certification as a private applicator increases from $10 to $20;
8. the annual fee for registration as a pesticide dealer increases from $30 to $45 dollars;
9. all fees collected pursuant to Ind. Code15-3 currently distributed to Purdue University agriculture programs will now be used for expenses of the state chemist in carrying out the pesticide law and the pesticide use and application laws;
10. money collected for civil penalties will now be used by the office of Purdue University pesticide programs instead of the agricultural extension service;
11. the state chemist may now request the issuance of subpoenas for any authorized investigation, not just for hearings as previously codified; and
12. the amendments add another category of activities for which the state chemist may enter upon public or private property at reasonable times, specifically, to inspect and obtain copies of pesticide sale, distribution, purchase, use, storage, and disposal records.

HEA 1065, Public Law Number 40-2006, SECTIONS 1-16, Ind. Code § 15-3.5 and Ind. Code 15-3-3.6, effective July 1, 2006

SOIL CONSERVATION

New legislation was passed this year to add general language to Indiana law providing that it is the policy of the General Assembly to protect water quality and to discourage and discontinue water quality impairment. With this law, procedures are established to require the use of water quality protection practices, including nutrient and pesticide management on all lands. More substantively, the Soil Conserva-

tion Board (SCB) was placed within the Department of Agriculture and the SCB was reduced from nine members to seven by eliminating three ex officio members and adding one additional land occupier member. The advisory board must include members from the Department of Agriculture, the Department of Natural Resources, the Department of Environmental Management, the Purdue University Cooperative Extension Service, the Indiana Association of Soil and Water Conservation Districts, the Farm Service Agency, and the Natural Resources Conservation Service of the United States Department of Agriculture. The SCB is now required to conduct an inventory of conservation needs, inform the General Assembly, and hold meetings throughout the state. The Department of Agriculture, in addition to implementing a geographic information systems (GIS) program for the state, must also prepare an annual report regarding the division of soil and conservation's expenditures and accomplishments with a proposed business plan. This report will include the amount of money each local district received from any political subdivision.

The Division of Soil Conservation is also explicitly required to provide training to local district supervisors and staff and provide professional assistance to local districts for conservation-needs assessment and program development.

HEA 1212, Public Law No. 175-2006, SECTIONS 2, 3, 4, 5, 8, 9, 16, 17, 18, and 19; Ind. Code 14-32-1-1, Ind. Code 14-32-1-2, Ind. Code 14-32-2-1, Ind. Code 14-32-2-2, Ind. Code 14-32-2-7, Ind. Code 14-32-2-12, Ind. Code 14-32-8.5, Ind. Code 14-32-7-12, Ind. Code 14-32-8-5, effective July 1, 2006.

TOBACCO FARMERS AND RURAL COMMUNITY IMPACT FUND

The Director of the Department of Agriculture (the Department) is now the head of the Tobacco Farmers and Rural Community Impact Fund (the Fund). The Department may now adopt rules under Ind. Code 4-22-2 to carry out the duties, purposes, and functions of the Department. The advisory board to the Fund no longer has to include a person representing the Indiana Rural Development Counsel, as it has been abolished.

SEA 87, Public Law No. 144-2006, SECTIONS 10 and 17, Ind. Code 4-12-9-4, Ind. Code 15-9-2-4.5, effective March 24, 2006.

LAWS AFFECTING RULEMAKING

RULEMAKINGS AFFECTING SMALL BUSINESSES

Currently, when an environmental board or the Underground Storage Tank Financial Assurance Board undertakes a rulemaking, IDEM must include the following information in the first-notice public rulemaking published in the *Indiana Register*:

1. a statement of the resources available to regulated entities through the technical and compliance assistance program established under Ind. Code 13-28-3;
2. the name, address, telephone number, and electronic mail address of the ombudsman designated under Ind. Code 13-28-3-2; and
3. if applicable, a statement of:
   a. the resources available to small businesses through the Small Business Stationary Source Technical Assistance Program established under Ind. Code 13-28-5; and
   b. the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under Ind. Code 13-28-5-2(3).

Section Ind. Code 4-22-2-28.1(f) has been revised to require that the notice also include the name, address, telephone number, and electronic mail address of the staff person that has been appointed to serve as the agency's small business coordinator for the particular rulemaking.

SEA 234, Public Law No. 100-2006, SECTION 2, SEA 379, Public Law No. 123-2006, SECTIONS 7-8, Ind. Code 4-22-2-28.1, effective July 1, 2006.

In limited circumstances, the Commissioner of IDEM may determine that no public comment periods are necessary or that only a second (and not a first) public comment period is necessary. In these cases, the information required above was not required in the Commissioner's findings under Ind. Code 13-14-9-8 or in the notice of public comment period under Ind. Code 13-14-9-7. Now the Commissioner must include the above-listed information in the written findings pursuant to Ind. Code 13-14-9-8 or in the notice of public comment period under Ind. Code 13-14-9-7, even if the Commissioner has found that no first public comment period is necessary. This change ensures that small businesses are informed of the technical assistance available to them with respect to all new rulemakings.

SEA 234, Public Law No.100-2006, SECTION 2, Ind. Code 4-22-2-28.1, effective July 1, 2006.

"NO MORE STRINGENT THAN" RULEMAKING PROCEDURES

Since 2003, the Indiana Legislature has struggled with the delicate balance of requiring accountability in environmental rulemakings that impose more stringent requirements

than the correlating federal requirements, while also protecting Indiana's environment and resources. In 2006, the Legislature continued to make minor adjustments to the "no more stringent than" language in the rulemaking procedures. In addition to identifying when a rulemaking imposes more stringent standards than federal requirements, IDEM must now also identify when it is imposing a requirement in a subject area in which there is no federal regulation or requirement. Specifically, the notice of first public comment period must list all alternatives being considered by IDEM at the time of the notice and now must also state whether each alternative creates:

1. a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or
2. a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements.

Ind. Code 13-14-9-3(2)(B)

This notice must identify the extent which each listed alternative differs from federal law and must identify any known potential fiscal impact for any regulations or requirements more stringent than those under federal law or in areas where federal law does not impose requirements. The notice of second public comment period must likewise identify similar information, as well as the expected benefits and materials relied upon by IDEM in developing the rule. Ind. Code 13-14-9-4.

SEA 234, Public Law No.100-2006, SECTIONS 8-9, Ind. Code 13-14-9-3, 13-14-9-4, effective July 1, 2006.

Just as with Public Law Number 226-2005 passed in the 2005 legislative session, this new law does not require that IDEM's rules be no more stringent than the federal rules. IDEM must identify and justify when rules are applying more stringent standards. However, in 2005, Governor Daniels agreed that he would not sign any proposed rule more stringent than federal standards unless IDEM meets current requirements to justify more strict standards. The legislature did however direct the Environmental Quality Service Counsel (EQSC) to study and make recommendations concerning the enactment of legislation that would prohibit IDEM from adopting rules no more stringent than federal requirements. The EQSC is to provide its findings and recommendations on this matter in its final 2006 report to the General Assembly.

SEA 234, Public Law No.100-2006, SECTION 16, non-code provision, effective March 20, 2006.

PUBLICATION OF ADMINISTRATIVE RULES

In 2005, the General Assembly enacted HEA 1135 (Public Law No. 215-2005, SECTION 13), which amended Ind. Code 4-22-8-2, directing that the Indiana Administrative Code (IAC) and the *Indiana Register* were only to be published in electronic format after June 30, 2006:

1. The publisher shall publish a serial publication with the name *Indiana Register* at least six times each year.
2. Notwithstanding any law, after June 30, 2006, the publisher shall

publish the *Indiana Register* in electronic form only. However, the publisher shall distribute a printed copy of the *Indiana Register* to each federal depository library in Indiana.

3. The publisher may meet the requirement to publish the *Indiana Register* electronically by permanently publishing a copy of the *Indiana Register* on the Internet.

Ind. Code 4-22-8-2 has been changed again, now providing that the *Indiana Register* shall be published in an electronic form only but deleting the requirement that a printed copy be distributed or maintained.

SEA 379, Public Law No. 123-2006, SECTION 21, Ind. Code 4-22-8-2, effective July 1, 2006.

Prior to the publication change, the Secretary of State was charged with keeping and preserving paper copies of administrative rules and agencies had the obligation to submit proposed rules to the Secretary of State. As of July 1, 2006, the statutes dealing with preservation of administrative rules and submission of proposed and final rules has been transferred from the Secretary of State to the publisher of the *Indiana Register*. The statutes dealing with the promulgation, publication, and filing of rules have been amended to reflect that the publisher of the *Indiana Register*, rather than the Secretary of State, now has preservation and publication duties. The statutes have also been amended to reflect that the format for the IAC is now solely electronic so that filing time should be recorded electronically, rather than by file stamp, and that the publisher may determine the format for electronic submission of rules.

SEA 379, Public Law No. 123-2006, SECTIONS 1-6, 8-35, Ind. Code 4-5-1-2, Ind. Code 4-22-2, Ind. Coded 4-22-2.5-4, Ind. Code 4-22-7, Ind. Code 4-22-8-2, Ind. Code 4-22-8-7 through 8, Ind. Code 4-22-9-3 through 4, Ind. Code 12-10.5-1-9, Ind. Code 12-10.5-2-3, Ind. Code 13-14-9.5-4, Ind. Code 14-10-2-5, Ind. Code 22-13-2-8, effective July 1, 2006.

LAWS AFFECTING PUBLIC RECORDS

On March 13, 2006, the public records law was changed to clarify that electronic mail account address lists are subject to the same provisions for disclosure as other types of lists of names and addresses created by a public agency. Specifically, a public agency is not required to create or provide copies of lists of names and address unless the agency is require by a specific law to publish and disseminate such lists. However, if a public agency has created such a list the agency must allow the public to inspect and make notes from the lists. Under this new law, the provision allowing inspection and note taking does not apply to electronic mail account lists.

SEA 205, Public Law No. 22-2006 SECTION 1, Ind. Code 5-14-3-3(f), effective March 13, 2006.

The current public record law's disallowance by commercial entities for commercial purposes of use of lists of names and addresses of (1) employees of a public agency, (2) persons attending conferences or meetings of a state institution of higher education or involved in programs or activities conducted or supervised by the state institution of higher education, or (3) students enrolled in a public school whose governing body has adopted a policy against disclosure has been expanded this year. Now, the public records law makes clear that such lists may not be disclosed by a public agency to an individual or entity for political purpose, or used by an individual or entity for political purposes. The law defines political purpose as influencing the election of a candidate for federal, state, legislative, local, or school board office or the outcome of a public question or attempting to solicit a contribution to influence the election of a candidate for federal, state, legislative, local or school board office of the outcome of a public question. These lists include both electronic mail account addresses and regular names and addresses.

SEA 205, Public Law No. 22-2006 SECTION 1, Ind. Code 5-14-3-3(f), effective March 13, 2006.

ENVIRONMENTAL QUALITY SERVICE COUNCIL LEGISLATION

EQSC TO RESEARCH AND REPORT ON ENERGY MATTERS

The EQSC has been directed this year to research and report on several energy matters:

1. the most effective ways of implementing the Renewable Fuels Standards of the Federal Energy Policy Act of 2005 in Indiana;
2. the feasibility of requiring motor vehicles sold in Indiana to meet the flexible fuels standards of 85% ethanol fuel (E85) for gasoline-powered vehicles and 20% biodiesel fuel (B20) for diesel-powered vehicles;
3. the regulation of outdoor wood-burning furnaces;
4. the use of methane gas from landfills and anaerobic digestion as fuel sources.

HEA 1285, Public Law No. 133-2006, SECTION 1, non-code provision, effective March 22, 2006.

EQSC TO STUDY AND MAKE A RECOMMENDATION ON "NO MORE STRINGENT THAN"

The legislature also has directed the EQSC to study and make recommendations concerning the enactment of legislation that would prohibit IDEM from adopting rules no more stringent

than federal requirements. The EQSC is to provide its findings and recommendations on this matter in its final 2006 report to the General Assembly.

SEA 234, Public Law No.100-2006, SECTION 16, non-code provision, effective March 20, 2006.

LAWS AFFECTING ETHICS AND BUSINESS WITH THE GOVERNMENT

REGISTRATION AND REPORTING OF EXECUTIVE BRANCH LOBBYISTS

Effective January 1, 2006, rules promulgated by the Indiana Department of Administration (IDOA) required that all executive branch lobbyists file an initial Executive Branch Lobbyist Registration Statement with their office. 25 IAC 6. The General Assembly has ratified these new rules with its passage of House Enrolled Act 1397, which requires executive branch lobbyists to file registration statements and annual reports under oath. The new law also authorizes the IDOA to promulgate rules regulating the registration of executive branch lobbyists and repealed Ind. Code §4-13-1-4.2, which had been the previous statute.

HEA 1397, Public Law No. 89-2006, SECTIONS 15-16, Ind. Code §4-2-8, effective March 17, 2006.

An executive branch lobbyist is defined as any individual who is employed and receives payment, or who contracts for financial consideration, exceeding $1,000 in any registration year for the purpose of engaging in executive branch lobbying activity.

The definition of 25 IAC 6-1-1(8) has many exceptions including:

1. an attorney or other individual who represents a client in any proceeding conducted under Ind. Code 4-21.5, in a comparable proceeding conducted by an agency exempted by Ind. Code 4-21.5-2-4, or in a proceeding described in Ind. Code 4-21.5-2-6; or
2. a person whose communication with an agency is for the sole purpose of gathering information relating to a bid, procurement, or public work that is produced in a public record done under and in full compliance with:
   a. Ind. Code 5-16 (state public works);
   b. Ind. Code 5-22 (public procurement); or
   c. Ind. Code 8-23 (Indiana Department of Transportation highway contracts).

The definition of 25 IAC 6-1-1(8) is limited to individuals. Companies or other organizations are excluded from this registration requirement. The individuals that work for companies or organizations and qualify as an executive branch lobbyist, however, are subject

to the new statute and regulations. A company or organization may have many employees that may need to register under the new regulations.

Executive branch lobbying activity is defined as action or communication made to delay, oppose, promote, or otherwise influence the outcome of an executive branch action. The term does not include any of the following:

1. the application or negotiation of an award for any state or federal grant;
2. the resolution of any outstanding tax matter, including:
   a. audits;
   b. administrative appeals;
   c. claims for refund; or
   d. collection activity with the Department of State Revenue or the Department of Local Government Finance;
3. communication regarding the award of incentives related to an economic development project negotiated by the Indiana Economic Development Corporation;
4. paid advertising communications that are disseminated to the public by any of the following:
   a. radio;
   b. television;
   c. a newspaper or periodical of general circulation;
5. any communications, including testimony submitted during public hearing or submitted in writing at a meeting conducted pursuant to Ind. Code 5-14-1.5;
6. a response to a request for a proposal, a bid, a request for quote, or other solicitation made by an agency in conformance with applicable public works or procurement statutes or rules promulgated thereunder;
7. other public or private testimony or communications solicited by an agency. The agency soliciting testimony or communications must keep written documentation for a period of four years detailing with particularity the public purpose for extending each such invitation;
8. as provided by Ind. Code 4-2-6-11.5, any action or communication made as a member of a board, commission, committee, council, taskforce, workgroup, or other advisory body of the executive department that is authorized only to make nonbinding recommendations.

As noted above, there are several exceptions to executive branch lobbying activity, but most notable is the exemption for communications which are solicited by an agency, such as the many public comment periods required in connection with rulemaking. *25 IAC 6-1-1(7) (G)*.

A person defined as an executive branch lobbyist that engages in executive branch lobbying activity must file an initial registration statement within 15 business days of making contact with an agency. 25 IAC 6-2-1. In this initial registration statement, the lobbyist must include his/her name and the name of his/her employer or the real party in interest on whose behalf the lobbyist is acting. The registration

statement must also include information about the subject matter of the activity and the agency to which the activity relates. 25 IAC 6-2-1. Rather than a blanket registration for each year, the 25 IAC 6-2-1 requires a lobbyist to file a registration statement for each executive branch lobbying activity that occurs throughout the year.

Beginning in 2007, executive branch lobbyists must also file by January 15 a signed annual report identifying the information in each registration statement filed in the past year, in addition to the total amount of payments that the lobbyist had received for each engagement during the past year. *25 IAC 6-2-2*.

The fee for filing each registration statement is $50 and the annual report filing fee is $50 until changed by rule by the IDOA.

HEA 1397, Public Law No. 89-2006, SECTION 17, non-code provision, effective March 17, 2006.

The General Assembly did cap the possible fines for noncompliance with the executive branch lobbying rules. First, if the IDOA finds that a lobbyist filed a materially-incorrect statement or report, the IDOA may not refer the matter to the Inspector General until it has requested that a corrected statement or report be filed and the lobbyist fails to do so. At that point, the IDOA may revoke the registration of the lobbyist, and, after June 30, 2007, may assess a civil penalty of $500. If the IDOA finds that a lobbyist failed to file a registration or report, it may impose the same potential penalties.

HEA 1397, Public Law No. 89-2006, SECTION 15, Ind. Code 4-2-8-5(b), Ind. Code 4-2-8-6(a), effective March 17, 2006.

STATE ETHICS

This year, the General Assembly added the definition of advisory body and changed the definition of business relationship in the State Ethics Statute. Advisory body is now defined as an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.

The definition of business relationship was expanded to include relationships that lobbyists have with agencies so that it is now defined as including the following:

1. dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:
    a. a pecuniary interest in a contract or purchase with the agency; or
    b. a license or permit requiring the exercise of judgment or discretion by the agency;
2. the relationship a lobbyist has with an agency;
3. the relationship an unregistered lobbyist has with an agency.

HEA 1397, Public Law No. 89-2006, SECTION 1, Ind. Code 4-2-6-1(a) (1) and (5), effective March 17, 2006.

The authority of the State Ethics Commission (SEC) to recommend legislation to the general assembly is now extended to legislation affecting those persons who have business relationships with agencies. Prior to this amendment, the SEC could only recommend legislation

concerning state officers, employees, and special state appointees. If the SEC holds a hearing on a complaint and investigation regarding violations of the ethics statutes or rules, the evidentiary standard applicable to the SEC's findings has been changed to a preponderance of the evidence rather than the old standard of competent and substantial evidence.

HEA 1397, Public Law No. 89-2006, SECTION 3, Ind. Code 4-2-6-4, effective March 17, 2006.

The SEC members may now attend SEC meetings remotely as long as the member is participating by a means of communications allowing those at the meeting and the remote member to communicate simultaneously and at least three other members of the SEC are physically present at the meeting. A member who is attending remotely, however, may not cast the deciding vote on any official action of the SEC.

HEA 1397, Public Law No. 89-2006, SECTION 4, Ind. Code 4-2-6-4.3, effective March 17, 2006.

Prior to this year's legislation, certain officials such as the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, State Superintendent of Public Instruction, and any candidate for these offices were required to file annual financial disclosure statements with the SEC. Now, those parties must file the disclosure with the Inspector General. Any agency employee with final purchasing authority now must also file a financial statement. The financial statements shall include such information as gifts received by the party, location of real property owned by the party, as well as other information required by Ind. Code §14-2-6-8(c).

HEA 1397, Public Law No. 89-2006, SECTION 9, Ind. Code §14-2-6-8(c), effective March 17, 2006.

Currently, state employees are not allowed to accept employment or receive compensation as a lobbyist, or accept employment from employers with whom the state employee negotiated contracts or made licensing decisions about within one year of terminating their employment with the state. *Ind. Code § 4-2-6-11(b)*. The law was amended this year to exclude members of advisory bodies from the one year prohibition. The law was also changed to add special state appointees to the list of state employees who are protected from retaliation if they file a complaint or provide information or testimony to the Inspector General or SEC.

HEA 1397, Public Law No. 89-2006, SECTIONS 10, 13, Ind. Code § 4-2-6-11(b), Ind. Code § 4-2-6-13(c), effective March 17, 2006.

Finally, the law was changed to authorize the SEC to assess new penalties if a person is found in violation of the state ethics statutes or rules. In addition to its prior authority to impose penalties, which include the imposition of civil penalties, cancellation of contracts, and reprimand and suspension, the SEC may now revoke a license or permit issued by any agency, revoke the registration of a lobbyist, or bar a person from future lobbying activity.

HEA 1397, Public Law No. 89-2006, SECTION 12, Ind. Code § 4-2-6-11.5, effective March 17, 2006.

EMINENT DOMAIN LEGISLATION

In response to the United States Supreme Court's decision in *Kelo v. City of New London, Conn., 125 S. Ct. 2655 (2005)*, the Indiana legislature has passed a number of measures to control the reach of the eminent domain power of state and local governmental entities. Governor Mitch Daniels signed this bill into law on March 24, 2006. The majority in *Kelo* held that the "public use" restriction in the Fifth Amendment's Takings Clause did not literally mean that land taken must be put into use for the public. Rather, the Court interpreted "public use" to mean "public purpose." Under this definition, the Court reasoned that a local government may take a blighted area by eminent domain to promote economic development, even if that economic development is ultimately effected by private entities. The following is a summary of the additions and revisions made to Indiana's eminent domain laws this year.

NEW REQUIREMENTS FOR CONDEMNORS IN ALL TAKINGS

The old law required that the condemnor must make an effort to purchase the land or interest in the land before condemning the property. The legislature has expanded the effort to purchase requirement. As part of the effort to purchase, the condemnor must now do all of the following in addition to the old requirements:

1. establish a proposed purchase price for the property;
2. provide the owner of the property with an appraisal or other evidence used to establish the proposed purchase price; and
3. conduct good faith negotiations with the owner of the property.

HEA 1010, Public Law No. 163-2006 SECTION 5, Ind. Code §32-24-1-3, effective March 24, 2006.

A condemnor, except for the Indiana Department of Transportation (INDOT), public utilities, and pipeline companies, must proceed to acquire property by eminent domain not more than two years after the condemnor's written acquisition offer to the owner is rejected. If the condemnor fails to begin condemnation proceedings within the two-year time period, the parcel may not be acquired through the power of eminent domain for the same project or a substantially similar project for at least three years after the expiration date of the two-year period.

When INDOT, a public utility, or pipeline company is the condemnor, each entity has six years from the date of the owner's rejection of an acquisition offer to initiate condemnation proceedings. If it fails to do so, INDOT is prohibited from condemning the parcel of property for the same or substantially similar project for a period of three years from the expiration of the six-year period. INDOT's expanded timing provisions also applies to any other condemnor when that condemnor seeks to construct, reconstruct, improve, maintain, or repair a feeder

road on a INDOT project no later than five years after its conclusion. Public utilities or pipeline companies must wait two years after the expiration of the six-year period if they wish to condemn the parcel for the same or substantially similar project.

A successful condemnor must now pay the assessed damages to the owner as well as any applicable attorney's fees within one year after the appraiser's report is filed, an appeal is completed, or judgment is rendered by the court as the case may be. A condemnor has six years from the date established by the previous sentence to take possession of the property and adapt it for the purpose for which it was acquired. Failure to do so forfeits the condemnor's rights to the property fully and completely.

HEA 1010, Public Law No. 163-2006, SECTIONS 7, 8, 9, and 13 Ind. Code §§32-24-1-5.5, 32-24-1-5.8, 32-24-1-5.9, 32-24-1-15, effective March 24, 2006.

SIGNS

A condemnor may not require that a lawfully-erected sign be removed or altered as a condition of issuing a permit, a license, a variance, or any other order concerning land use or development unless the owner of the sign is compensated in accordance with Ind. Code 32-24 or has waived the right to receipt of damages in writing.

HEA 1010, Public Law No. 163-2006, SECTION 1, Ind. Code §22-13-2-1.5, effective March 24, 2006.

CEMETERIES

Privately-owned cemeteries no longer have the authority to condemn land. Only the legislative body of a city or town or the executive of the township has the power of eminent domain to condemn land for cemetery purposes.

HEA 1010, Public Law No. 163-2006, SECTIONS 3 and 4, Ind. Code §§23-14-75-1, 23-14-75-2, effective March 24, 2006.

PUBLIC LIBRARIES

A library board may only exercise eminent domain if the legislative body within the library district adopts a resolution authorizing the library board to condemn land. The resolution must specifically describe the parcel of land, the purpose for which the land is to be acquired, and why the exercise of eminent domain is necessary.

HEA 1010, Public Law No. 163-2006, SECTION 18, Ind. Code §32-24-7, effective March 24, 2006.

EXTENSION OF MISCELLANEOUS DEADLINES

Owners now have 30 days to respond to an acquisition offer by a condemnor instead of 25.

A defendant to a condemnation suit now has 30 days after the date of notice of the suit to file an objection. The court may extend this period for up to 30 days upon written motion of the defendant. Previously, the defendant had to file an objection at or before the time of the defendant's appearance.

A condemnor shall, and an owner may, file and serve a settlement offer on the other party 45 days before a trial involving the issue of damages. Under the old law, settlement offers had to be filed and served 10 days before the start of trial.

HEA 1010, Public Law No. 163-2006, SECTIONS 6, 10, and 11, Ind. Code §§32-24-1-5, 32-24-1-8, and 32-24-1-12, effective March 24, 2006.

LITIGATION COSTS

If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, the lesser of:

1. $25,000, or
2. the fair market value of the defendant's property or easement.

HEA 1010, Public Law No. 163-2006, SECTION 12, Ind. Code § 32-24-1-12, effective March 24, 2006.

PROCEDURES FOR TRANSFERRING OWNERSHIP BETWEEN PRIVATE PERSONS

The Indiana legislature added a new chapter to the Indiana eminent domain statute concerning the procedure for transferring ownership of real property between private persons. Public use is defined in this new chapter as:

1. possession, occupation, and enjoyment of a parcel of real estate by the general public or a public agency for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, certified technology parks, intermodal facilities, and parks;
2. leasing of a highway, bridge, airport, port, certified technology park, intermodal facility, or park by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or
3. use of a parcel of real property to create or operate a public utility, an energy utility (as defined in Ind. Code 8-1-2.5-2), or a pipeline company.

In direct contrast to the Supreme Court's holding in *Kelo, supra*, the legislature states that "public use" does NOT include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

The new chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property from a private person, with the intent to ultimately transfer ownership or control to another private person, for a use that is not public. The law does not apply 30 years after the acquisition of real property. "Private person" is defined as a person other than a public agency. "Public agency" means the following:

1. a state agency (as defined in Ind. Code 4-13-1-1);
2. a unit (as defined in Ind. Code 36-1-2-23);
3. a body corporate and politic created by state statute;
4. a school corporation (as defined in Ind. Code 20-26-2-4); or
5. another governmental unit or district with eminent domain powers.

Public agency does not include state educational institutions, as defined by

Ind. Code 20-12-0.5-1, such as state universities and occupational schools.

WHAT PROPERTIES MAY BE ACQUIRED

Property may be acquired by eminent domain under the new chapter only if all the following conditions are met:

1. At least one of the following conditions exists on the parcel of real property:
   a. the parcel contains a structure that, because of physical condition, use, or occupancy, constitutes a public nuisance;
   b. the parcel contains a structure that is unfit for human habitation or use because the structure is dilapidated, unsanitary, unsafe, vermin-infested, or does not contain the facilities or equipment required by applicable building codes or housing codes;
   c. the parcel contains a structure that is not fit for its intended use because the utilities, sewerage, plumbing, heating, or other similar services or facilities have been disconnected, destroyed, removed, or rendered ineffective;
   d. the parcel is located in a substantially-developed neighborhood, is vacant and unimproved, and because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris, or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner within a reasonable time after the owner receives notice of the accumulation or infestation;
   e. the parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements;
   f. the parcel poses a threat to public health or safety because the parcel contains environmental contamination; or
   g. the parcel has been abandoned.
2. The acquisition of the parcel through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a governmental entity.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property. If a court determines that an eminent domain proceeding brought under this chapter is unauthorized because the condemnor did not meet the conditions described in this section, the court shall order the condemnor to reimburse the owner for the owner's reasonable attorney's fees that the court finds were necessary to defend the action.

MEDIATION

If the owner files a request for mediation at the time s/he files an objection or exception to an eminent domain proceeding, the mediation occurs as follows:

1. the court shall appoint a mediator not later than 10 days after the request for mediation is filed;
2. the condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain;
3. the mediation must be concluded not later than 90 days after the appointment of the mediator; and
4. the condemnor shall pay the costs of the mediator.

PAYMENT FOR ACQUIRED REAL PROPERTY

A condemnor that acquires a parcel of real property through the exercise of eminent domain under the new chapter shall compensate the owner of the parcel as follows:

1. For agricultural land:
   a. either payment equal to 125 percent of the fair market value of the parcel as determined under Ind. Code 32-24-1, or, upon request of the owner or agreement by both parties, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;
   b. payment of other damages determined under Ind. Code 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
   c. payment of the owner's relocation costs, if any.
2. For a parcel occupied as the owner's residence:
   a. payment to the owner equal to 150 percent of the fair market value of the parcels as determined under Ind. Code 32-24-1;
   b. payment of any other damages as determined under Ind. Code 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
   c. payment of the owner's relocation costs, if any.
3. For any other type of parcel:
   a. payment to the owner equal to 100 percent of the fair market value of the parcel as determined under Ind. Code 32-24-1;
   b. payment of the owner's relocation costs, if any.

SETTLEMENT OFFERS

Within 45 days before a trial involving the issue of compensation, the condemnor shall, and an owner may, file and serve on the other party an offer of settlement. Within five days after the date the offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter-offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. This offer or counter-

offer supersedes any other offer previously made under this chapter by the other party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins. If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses. This provision mandating settlement offers does not limit or restrict the right of an owner to payment of any amounts authorized by law in addition to damages for the property taken from the owner.

COSTS OF PROCEEDINGS

If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the owner by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the condemnor, the court shall require the condemnor to pay the owner's litigation expenses, including reasonable attorney's fees, in an amount that does not exceed 25 percent of the cost of the acquisition. All other costs of the condemnation proceedings shall be paid by the condemnor.

EXCEPTION FOR SPECIAL PROJECT AREAS

Even though the new chapter states that economic development is not an acceptable basis to exercise eminent domain, the legislature does provide an exception. A parcel of real property may be condemned for economic development if all of the following applies:

1. it is located in an area designated by the condemnor and the legislative body of the condemnor for economic development;
2. the parcel is located in only one county;
3. the parcel is at least 10 acres in size;
4. the condemnor or its agents have acquired clear title to at least 90 percent of the parcels in the project area in which the target parcel is located;
5. the parcel is not occupied by the owner of the parcel as a residence; and
6. the legislative body for the condemnor adopts a resolution by a two-thirds vote that authorizes the condemnor to exercise eminent domain over the parcel of real property.

A condemnor that acquires a parcel of real property under this exception shall compensate the owner of the parcel as follows:

1. payment to the owner equal to 125 percent of the fair market value of the parcel as determined under Ind. Code 32-24-1;
2. payment of any other damages as determined under Ind. Code 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain;
3. payment of the owner's relocation costs, if any.

The condemnor may not acquire a parcel of real property through the

exercise of eminent domain under this exception if the owner of the parcel demonstrates by clear and convincing evidence that:

1. the location of the parcel is essential to the viability of the owner's commercial activity; and
2. the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.

HEA 1010, Public Law No. 163-2006, SECTION 17, Ind. Code §32-24-4.5, effective March 24, 2006.

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Plews Shadley Racher & Braun
1346 N. Delaware Street
Indianapolis, IN 46202