Plews Shadley Racher & Braun LLP

Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

Indiana Perspective Environmental Law Newsletter
Special 15th Anniversary Legislative Edition

SUMMARY OF 2OO8

ENVIRONMENTAL LEGISLATION

Amy E. Romig and Sue A. Shadley
PLEWS SHADLEY RACHER & BRAUN LLP
E-mail: aromig@psrb.com & sshadley@psrb.com

1346 N. Delaware Street
Indianapolis, IN 46202
Phone: (317) 637-0700 ❖ Fax: (317) 637-0710
www.psrb.com

53732 Generations Drive
South Bend, IN 46635-1539
Phone: (574) 273-1010 ❖ Fax: (574) 271-2050

Plews Shadley Racher & Braun LLP

Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

SUMMARY OF 2008 ENVIRONMENTAL LEGISLATION

Amy E. Romig & Sue A. Shadley
with
Todd Janzen, Thao Nguyen, Angela Dorrell, Stephanie Eckerle, *and* Dan Cory

Plews Shadley Racher & Braun LLP is pleased to present a summary of the new 2008 Indiana laws relating to the environment or natural resources. Plews Shadley Racher & Braun LLP has been preparing this summary since 1994 making this the 15th anniversary edition. Our summary is different because it is organized by subject matter rather than by bill. This arrangement should allow you to see the changes in the law in a way that is easier to identify which laws may impact you and your business. In our summary, we strive to provide a detailed explanation of new laws or how existing laws have changed. A citation to the House or Senate Enrolled Action and the sections where the language of this law can be found are included at the end of each summary, along with a law's corresponding Public Law number and Indiana Code citations. While you always need to review the actual language of any law to apply it to a specific situation, we hope that this summary will alert you to changes in Indiana law.

This year was a busy year for the Indiana General Assembly, even though it was a short session. The legislature passed and the governor approved 25 bills related to the environment. Just as important, the legislature sought to pass bills related to Confined Feeding Operations ("CFOs") and Concentrated Animal Feeding Operations ("CAFOs"), the Environmental Legal Action ("ELA"), and immigration reforms. These issues were hotly contested in the legislature and although new laws related to these issues did not pass this year, we expect to see these issues arise in future legislative sessions. Plews Shadley Racher & Braun LLP has been actively following these issues for several years and is prepared to meet the needs of our clients in addressing such potential legislation. Given the importance of these issues on Indiana business and industry, if you have an interest in legislation regarding these issues, please contact us.

All of the prior legislative summaries are available on our website 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, any of whom should be able to assist you with the legal issues you may have. Please contact us if we can be of service to you.

❖

LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ENVIRONMENTAL CRIMES

The Indiana General Assembly completely revised Indiana's environmental crime statute in 2007 to address the concern that it was unconstitutionally vague because it made any knowing, intentional or reckless violation of (1) any environmental law, (2) any rule, (3) a determination, (4) a permit condition, or (5) an order issued by the commissioner of the Indiana Department of Environmental Management ("IDEM") a Class D Felony. That overly broad definition of a crime was replaced in 2007 with a more definite designation of what was a crime. In addition to crimes for tampering with monitoring equipment and monitoring results, false reporting, and knowing or intentional misstatements made in connection with an application for a permit, the 2007 law defined a crime involving air, water, solid and hazardous waste, underground storage tanks and wetlands based upon finding three elements: (1) a knowing, intentional or reckless violation of an environmental law or permit condition (2) that resulted in a discharge of a contaminate and (3) which resulted in substantial risk of serious bodily injury, serious bodily injury, death of a vertebrate animal, or damage to the environment that rendered the environment unfit for human or vertebrate animal life. A person had a defense to prosecution if he or she could not reasonably have been expected to know that the released contaminate was capable of causing the prohibited results. After the 2007 law took effect, the Environmental Protection Agency ("EPA") notified IDEM that it believed IDEM's criminal provisions were less stringent than federal law because of the requirement for damage and the defense related to the knowledge that harm could occur. The EPA threatened Indiana that it had to revise its law or risk losing its right to issue permits for the federally delegated air, water, and hazardous waste programs.

To satisfy the EPA, changes were made this year to have IDEM's criminal provisions for air, water, and hazardous waste closely match those of federal law (which ironically allowed the criminal sanctions to be less serious than the sanctions adopted in 2007.) No changes were made to the provisions for Underground Storage Tanks (Ind. Code 13-30-10-5), Wetlands (Ind. Code 13-30-10-6), and protection of water supplies, water treatment plants and water distribution systems (Ind. Code 35-43-1-5). They remain as adopted in 2007. Also left intact were the provisions added last year that allows a prosecutor to seek assistance from the Inspector General or the Attorney General. Ind. Code 33-39-2-6. As a result of the repeal of the sections for Air, Water, and Solid and Hazardous Waste and replacement with the federal provisions, the only continuing solid waste crimes are those that involve violations of used oil standards and the general record keeping, reporting and monitoring provisions as revised this year that apply to all permittees.

SEA 43, PL 114-2008, SECTIONS 25, 26, 33, 34 and 35, Ind. Code 13-30-10-1, Ind. Code 13-30-10-1.5, Ind. Code 13-30-10-2, Ind. Code 13-30-10-3, Ind. Code 13-30-10-4, Ind. Code 34-24-1-1, effective March 23, 2008.

Effective March 23, 2008, the air, water, hazardous waste, solid waste, and used oil criminal provisions were repealed and replaced with new provisions. The general provision related to misstatements in connection with permit applications and tampering with or falsifying monitoring records and devices has also been amended. Under the revised law all permittees are subject to criminal enforcement if they:

(1) Knowingly or intentionally destroy, alter, conceal, or falsely certify a record that is required to be maintained under the terms of a permit and may be used to determine the status of compliance;
(2) Knowingly or intentionally render inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit; and
(3) Knowingly or intentionally falsify testing or monitoring data required by a permit.

Under this new law, penalties apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described. Each

of these actions was previously an environmental crime and was considered a Class D felony. Now, however, a person committing such a crime will be found to have committed a Class B misdemeanor. The crime for knowingly or intentionally making a material misstatement in connection with an application for a permit has been removed from the general criminal provisions. The prohibition against some types of misstatements remains in the new provisions added for air, water, hazardous waste, and used oil.

SEA 43, PL 114-2008, SECTION 25, Ind. Code 13-30-10-1.

For Solid Waste, Hazardous Waste, and Used Oil a person commits an environmental crime if he or she knowingly:

(1) Transports hazardous waste to an unpermitted facility.
(2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.
(3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.
(4) Makes a false material statement or representation in any label, manifest, record, report or other document filed or maintained under the hazardous waste or used-oil standards.

Each of these violations is punishable as a Class B Misdemeanor, unless the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. If that kind of damage results the offense is punishable as a Class D Felony.

A person convicted of a Class B Misdemeanor is required to be fined at least $5,000 per day of violation, but not more than $25,000 per day. A Class B Misdemeanor provides for imprisonment of not more than 180 days. Ind. Code 35-50-3-3. A person convicted of a Class D Felony is required to pay a fine of at least $5,000, but not more than $50,000 for each day of violation. A person convicted of a Class D Felony who has a prior unrelated conviction for an environmental offense is required to pay a fine of at least $5,000 but not more than $100,000 per day of violation. A Class D Felony provides for imprisonment between six months and three years. Ind. Code 35-50-2-7(a).

For Air Pollution Control it is now an environmental crime to:

(1) Knowingly violate any applicable requirements of Ind. Code 13-17-4 [Air Pollution Emergencies], Ind. Code 13-17-5 [Motor Vehicle Emission Controls], Ind. Code 13-17-6 [Regulation of Asbestos and Asbestos Contractors], Ind. Code 13-17-7 [Clean Air Act Permit Program], IC 13-17-8 [Title V Operating Permit Program], Ind. Code 13-17-9 [Open Burning], IC 13-17-10 [Incineration of PCBs], Ind. Code 13-17-13 [Enforceable Operating Agreement Program], or Ind. Code 13-17-14 [Lead-Based Paint Activities].
(2) Knowingly violate any air pollution registration, construction, or operating permit condition issued by the department.
(3) Knowingly violate any fee or filing requirement in Ind. Code 13-17 [Air Pollution Control Law].
(4) Knowingly make any false material statement, representation, or certification in any form, notice, or report required by an air pollution registration, construction, or operating permit issued by the department.

Each of these is punishable as a Class C Misdemeanor, unless the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life or results in the death of another person. If that kind of damage results, the offense is punishable as a Class D Felony. If death results, the offense is punishable as a Class C felony.

A person convicted of a Class C Misdemeanor is required to be fined at least $5,000 per day of violation, but not more than $25,000 a day. A Class C Misdemeanor provides for imprisonment of not more than 60 days. Ind. Code 35-50-3-4. A person convicted of a Class C or D Felony is required to pay a fine of at least $5,000 but not more than $50,000 for each day of violation. A person convicted of a Class C or D Felony who has a prior unrelated conviction for an environmental offense is required to pay a fine of at least $5,000 but not more than $100,000 per day of violation. A Class C Felony

provides for imprisonment between 2 and 8 years. Ind. Code 35-50-2-6(a). A Class D Felony provides for imprisonment between 6 months and 3 years. Ind. Code 35-50-2-7(a).

For Water Pollution Control it is now an environmental crime to:

(1) Willfully or recklessly violate any applicable standards or limitations of Ind. Code 13-18-3-2.4 [Review of Feasibility of Implementing New Control Alternatives to Attain Water-Quality Standards], IC 13-18-4-5 [Unlawful Discharges], Ind. Code 13-18-8 [Compliance with Orders], Ind. Code 13-18-9 [Prohibitions on Certain Detergents], Ind. Code 13-18-10 [Confined Feeding], Ind. Code 13-18-12 [Wastewater Management], Ind. Code 13-18-14 [Transportation of Interstate Sewage], Ind. Code 13-18-15 [Connection to Sewers], or Ind. Code 13-18-16 [Construction Permit Requirements for Public Water Systems].
(2) Willfully or recklessly violate any National Pollutant Discharge Elimination System permit condition issued by the department under Ind. Code 13-18-19.
(3) Willfully or recklessly violate any National Pollutant Discharge Elimination System Permit filing requirement.
(4) Knowingly make any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a NPDES permit issued by the department.

Each of these is punishable as a Class C Misdemeanor, unless the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life or results in the death of another person, in which case the offense is punishable as a Class D Felony. If death results, the offense is punishable as a Class C felony.

A person convicted of a Class C Misdemeanor is required to be fined at least $5,000 per day of violation, but not more than $25,000 a day, except for the offense related to false material statements, representation or certifications. Those offenses are required to be punished with a fine of at least $5,000 per day of violation, but not more than $10,000 a day. A person convicted of a Class C or D Felony is required to pay a fine of at least $5,000 and not more than $50,000 for each day of violation. A person convicted of a Class C or D Felony who has a prior unrelated conviction for an environmental offense is required to pay a fine of at least $5,000 but not more than $100,000 per day of violation.

The penalties for each air, water, hazardous waste, solid waste, and used oil violation apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described. Before imposing a sentence upon conviction for any of these offenses for hazardous waste and used oil, air, and water, the court is required to consider as mitigation whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing the prohibited result. The court is also to consider in sentencing whether the discharge resulted in any of the following or a combination of the following:

(A) A substantial risk of serious bodily injury.
(B) Serious bodily injury to an individual.
(C) The death of a vertebrate animal.
(D) Damage to the environment that
  (i) renders the environment unfit for human or vertebrate animal life or
  (ii) causes damage to an endangered, an at-risk, or a threatened species.

For water pollution offenses, the court must also take into consideration as a mitigating factor whether the discharge was the result of a combined sewer overflow and whether the person had given notice of that fact to IDEM.

SEA 43, PL 114-2008, SECTIONS 25 and 26, Ind. Code 13-30-10-1 and 13-30-10-1.5, effective March 23, 2008.

ENVIRONMENTAL CRIMES TASK FORCE

As a result of the changes made to the environmental crimes law this year, during a short session of the legislature with less time to provide for discussion and consideration, the legislature reconstituted the Environmental Crimes Task Force ("ECTF") which had been created to advise and recommend

on the legislation that was passed in 2007. The ECTF is required to conduct at least one public hearing to receive comment from the public on the need for further amendments to the environmental crimes statute. If the ECTF determines that further amendments are appropriate, it is to prepare recommendations for amendment (that must be consistent with the minimum federal requirements for IDEM's delegated state programs) and must submit a final report to the Governor, the Executive Director of the Legislative Services Agency, and the Environmental Quality Service Council by November 1, 2008.

SEA 43, PL 114-2008 SECTION 34, non-code provision, effective March 23, 2008

ELECTRONIC SUBMISSION OF DATA

A new chapter was added to the Environmental Title of the Indiana Code to allow electronic submission of documents including those required under state or federal law for reporting, applications, or any other time when a party would submit a paper document to IDEM. The new chapter establishes standards for the electronic submission of information. For example, the submission must comply with the Electronic Digital Signature Act (Ind. Code 5-24) and any rules promulgated thereunder, the requirements of cross-media electronic reporting under 40 CFR 3, and any further procedures required by IDEM. These requirements include electronic signature standards so that electronic signatures are unique and verifiable.

The new chapter does not allow IDEM to require that parties submit reports, applications and other documents electronically. However, if a party chooses to electronically submit documents in place of paper copies and the electronic submission fails to comply with the Electronic Digital Signature Act or the requirements of cross-media electronic reporting, the party will be subject to the same penalties as if they had not submitted the document. Likewise, a person using an assigned electronic signature is liable under the environmental criminal provisions.

SEA 43, P.L. 114-2008, SECTIONS 3, 8, Ind. Code 5-24-1-4, Ind. Code 13-14-13-1et seq., effective July 1, 2008.

ENVIRONMENTAL RESTRICTIVE COVENANTS

Prior to the enactment of SEA 45, "Restrictive Covenant" was defined subject to the purposes of Ind. Code 13-14-2-6, which allows the commissioner to "enforce a restrictive covenant approved by the commissioner and created in connection with any remediation, closure, cleanup, or corrective action under this title in accordance with the terms of the covenant." This "for the purposes of Ind. Code 13-14-2-6" would seem to limit IDEM's enforcement ability to enforce restrictive covenants created pursuant to Ind. Code 13-22-3-3 (concerning hazardous waste landfills) since these restrictive covenants were not created for remediation, but before allowing the operation of a landfill. The language "for the purposes of Ind. Code 13-14-2-6" has now been removed from the definition of "Restrictive Covenant" to clarify that the Commissioner may enforce any environmental restrictive covenant.

SEA 46, P.L. 18-2008, SECTION 1, Ind. Code 13-11-2-193.5, effective July 1, 2008.

Under the Marketable Title Act, before the change this year, a restrictive covenant may be extinguished by the passage of time, unless the limitation is re-recorded every 50 years. Ind. Code 32-20-3-2. However, restrictive covenants recorded under Ind. Code 13-22-3-3 for land to be used for the operation of a landfill or for the disposal of hazardous waste are an exception. These restrictive covenants did not expire under the Marketable Title Act after fifty years. Given the potential expiration of Environmental Restrictive Covenants ("ERCs"), IDEM routinely has required that all ERCs be re-recorded every fifty years. IDEM, however, does not have the resources to track ERCs or to ensure that parties will re-record them. Because of these concerns, the Commissioner of IDEM testified before the Senate Committee on Energy and Environmental Affairs about the need to change the Marketable Title Act. SEA 46 modifies the marketable record title for real property to eliminate the need to renew an ERC every 50 years. Now, marketable title is subject to all interests of IDEM from the recording of ERCs (not just those relating to the operation of landfills or the disposal of hazardous waste), with the result that ERCs are no longer extinguished after

fifty years. This change applies even if the ERCs were recorded before July 1, 2008, although it only applies to determinations of marketable title made after June 30, 2008.

SEA 46, P.L. 18-2008, SECTIONS 2-3, Ind. Code 32-20-3-2.

IDEM LAB DIVISION

SEA 43 eliminates the requirement for IDEM to have its own laboratory division.

SEA 43, P.L. 114-2008, SECTIONS 5-6, Ind. Code 13-13-3-2, Ind. Code 13-12-4-1, effective July 1, 2008.

MERCURY SWITCH REMOVAL PROGRAM

In 2006 the General Assembly passed the Mercury Switch Removal Program that was to encourage the removal of mercury switches in end-of life vehicles. This program is aimed at reducing the release of mercury into the environment. Some automobiles contain mercury in switches such as those that automatically operate convenience lights when opening trunks and hoods. In an effort to prevent the release of mercury into the environment, Indiana has established a program to encourage the removal of the mercury switches by offering a monetary reward or "bounty" for these switches when automobiles reach the end of their life and are to be processed by automobile salvage recyclers, automobile scrap yards, and hulk crushers.

The statue governing the program was amended this year to include the stated purposes of the program to remove at least 80 per cent of all mercury switches from end-of-life vehicles processed in Indiana and to meet the mercury national emission standards for hazardous air pollutants for recycled steel facilities. Compliance with the area source rule applicable to Electric Arc Furnace Steelmaking Facilities (40 CFR 63, Subpart YYYYY) can be demonstrated in part by participating in or by securing scrap from vendors participating in an EPA-approved mercury-switch-removal program. Indiana's change to its program is an effort to allow the Indiana program to be considered an EPA-approved program so that its industries can demonstrate compliance with the area source rule.

SEA 43, P.L. 114-2008, SECTION 19, Ind. Code 13-20-17.7-0.5, effective July 1, 2008.

The mercury-switch-removal program has been expanded. Rather than just applying to mercury switches, it now includes "ABS sensors" which refers to the anti-lock braking system G-force sensor in many vehicles and any other vehicle components containing more than 10 milligrams of mercury. The program also clarifies that a motor vehicle recycler is not required to remove mercury switches if the switch cannot be removed without dismantling the vehicle.

SEA 43, P.L. 11-2008, SECTIONS 4, 20-21, Ind. Code 13-11-2-0.7, Ind. Code 13-20-17.7-5, Ind. Code 13-20-17.7-6, effective July 1, 2008.

SOLID WASTE ISSUES

Solid Waste Management District Powers

One of the issues that the Solid Waste Management District law addressed when it was enacted in 1990 was to foster the formation of Joint Districts as opposed to all counties electing to form single county Solid Waste Management Districts. To do this, the 1990 law provided a Joint District the power to pay from its District Fund a fee to the county or counties in the Joint District that contained a final disposal facility. It was anticipated that Solid Waste Management Districts would elect to raise money by assessing a fee on each ton of waste disposed of in a final disposal facility, so long as a final disposal facility existed in the District. To encourage a county that had a final disposal facility to join with other counties that did not have a final disposal facility, the law was written to give a Joint District the power to pay a fee from its District Fund to the county which has a final disposal facility, presuming that the county with the disposal facility would have higher costs to implement the district plan. Otherwise the law would have contained a disincentive for a county that had a final disposal facility to join with other counties that do not have a final disposal facility, since those counties could form a single county district and keep all of the fees collected from final disposal for themselves.

This year, the law was changed based on a proposal from the legislator from Hendricks County. Effective March 24, 2008, the powers of some single county Solid Waste Management Districts are being expanded. To have this new power, a single county District has to meet the following conditions:

(1) the county must have previously been part of a Joint District, but has withdrawn to establish its own solid waste management district;
(2) the withdrawn county contains a final disposal facility; and
(3) the action to withdraw from the Joint district occurred on or before January 1, 2008.

Those single county Districts that have withdrawn from Joint Districts (which includes Hendricks County) are now allowed to pay district funds to the county. Perhaps this change was thought necessary because that county had been receiving district funds previously as part of the Joint District and the arrangement for the county to continue to use district funds was necessary. It is important to understand that all District funds (whether spent by a District or by a county) are limited by law to being used for paying the costs associated with the development and implementation of the Solid Waste District Plan, the cost of facilities for solid waste management, paying the cost to operate and maintain facilities, and paying principal and interest on waste management district revenue bonds. Ind. Code 13-21-13-2(c), Ind. Code 13-21-14 -7. Ind. Code 13-21-3-12(3) and (24).

Thus, even though money will go to a county, the county may not use the money for general county uses, but only for implementing the new single-county Solid Waste Management District Plan.

SEA 43, SECTION 22, Ind. Code 13-21-3-12, effective March 24, 2008.

Changes to Good Character Requirements for Solid and Hazardous Waste Management Permits

Indiana's Good Character Law applies to applications for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility. It requires that each applicant for these waste permits and each person who is a responsible party with respect to the applicant must make a good character disclosure which contains specific information listed in Ind. Code 13-19-4-2 and Ind. Code 13-19-4-3. The requirement to include the applicant's Social Security Number has now been eliminated for privacy purposes since applications are available in IDEM's public files.

Additionally, the Good Character law previously listed specific information that had to be included in the disclosures. The amendment to that law now allows IDEM to require "any other related information to support the application requested by [IDEM]" concerning the applicant or the responsible party. The changes to the good character statute do not give guidance as to what "this any other related information" may be.

SEA 43, P.L. 114-2008, SECTIONS 15 and 16, Ind. Code 13-19-4-2, Ind. Code13-19-4-3, effective July 1, 2008.

New Landfill Application Requirements

The General Assembly passed two new sections in the chapter dealing with solid waste permits in order to place additional restrictions on specific proposed landfills that have been facing public opposition.

The first section only applies to those facilities:

(1) in counties that do not zone;
(2) are not exempt under the requirement of Ind. Code 13-20-1-1 from demonstrating that there is a local or regional need for the facility; and
(3) seek a permit for construction or operation of a solid waste landfill.

The new law requires that if a person has an application for an original construction permit pending on April 1, 2008, the person must submit a new application that meets all requirements in applicable environmental laws in place when the new permit is sought. The applicant will not have to pay a new permit application fee. Besides just submitting a new permit application, the new law provides that the county in which the facility is proposed to be located must also adopt an ordinance approving the landfill's location before IDEM may issue the construction permit. The effect of this law will be to give local officials in counties that do not zone a chance to veto a proposed landfill. The purpose of this law is presumably an effort to thwart the NJK Landfill in Fountain County.

SEA 43, P.L. 114-2008, SECTION 17, Ind. Code 13-20-2-10, effective March 24, 2008.

The second new section regarding solid-waste permits applies even more narrowly than the first section. It only applies to those facilities:

(1) in counties that do zone;
(2) for which the zoning required for the construction of the facility was approved before April 1, 1985;
(3) for which IDEM issued a construction permit before April 2008; and
(4) which did not accept waste before April 1, 2008.

This new law requires the facility to which this special legislation applies to have the zoning authority review and approve the appropriateness and legality of the zoning under current zoning laws (even though the applicant had to show appropriate zoning when it originally submitted its original application). This new provision was proposed by Senator Timothy Lanane (District #25, which includes Anderson) and inserted into SEA 43 during the final conference committee report immediately before passage of the bill. The purpose of this legislation is presumably yet another effort to hinder the continued development of the Mallard Lake Landfill located near Anderson in Madison County, which has been successfully challenging resistance from local groups, local legislators, and IDEM since it first sought a construction permit in 1982.

SEA 43, P.L. 114-2008, SECTION 18, Ind. Code 13-20-2-11, effective March 24, 2008.

WATER ISSUES

Water and Wastewater Operators

Current environmental law requires that IDEM implement certification programs for operators of wastewater treatment plants and water distribution systems. Ind. Code 13-18-11-2. IDEM issues certificates to these operators indicating the class of works, plants, or systems that the operators are qualified to operate. Ind. Code 13-18-11-4. Prior to this year's amendment of Ind. Code 13-18-11-4, operators were required to prominently display these certificates in their office. SEA 43 eliminates this display requirement.

SEA 43, P.L. 114-2008, SECTION 9, Ind. Code 13-18-11-4, effective July 1, 2008.

Wastewater Management

Prior to the enactment this year of SEA 43, entities providing wastewater management services were required to obtain wastewater management permits and the vehicles they used were required to have a vehicle license issued by IDEM. To simplify the regulation of wastewater management and eliminate tracking of two numbers (a permit and a license), SEA 43 amends the Wastewater Management Law to allow the issuance of a wastewater management permit that incorporates both the issuance of a wastewater management vehicle identification number and approval of a land application site. Instead of a license, the applicable laws were changed to reflect that IDEM will issue an identification number for wastewater management vehicles.

SEA 43, P.L. 114-2008, SECTIONS10-14, Ind. Code 13-18-12-2, Ind. Code 13-18-12-4, Ind. Code 13-18-12-5, Ind. Code 13-18-12-6.5, Ind. Code 13-18-12-7, effective July 1, 2008.

Storm Water Management Fees

The laws applicable to municipal utilities and county departments of storm water management have been changed to address the conflict where municipalities and storm water management boards with overlapping jurisdiction each try to collect money from customers within their boundaries. Before SEA 43, a municipality was allowed to exercise its powers in areas within 10 miles outside of its corporate boundaries. Now those powers are limited where a county provides storm water management services to the same areas. In these cases, neither the municipality nor the county storm water management board may impose fees or otherwise exercise powers to provide storm water management services until the municipality and board have negotiated a memorandum of understanding that clarifies which body will provide services to the area. The law allows either the municipality or the county storm water management board to provide services and collect fees; they may not both provide services and collect fees. Until they can decide who will provide the services, neither entity is allowed to collect fees.

SEA 43, P.L. 114-2008, SECTIONS 3, 28-32, Ind. Code 8-1.5-5-7, Ind. Code 36-9-23-5, Ind. Code 36-9-23-25, Ind. Code 36-9-23-26, Ind. Code 36-9-23-36, Ind. Code 36-9-23-37, effective March 24, 2008.

Ban on Certain Detergents

Indiana Code 13-18-9 restricts the use of certain detergents containing alkyl benzine sulfonate and phosphorus, Ind. Code 13-18-9-1, but contains a list of exemptions. This year's HEA 1120 seeks to tighten the restrictions by eliminating the exemption of certain detergents regulated by Ind. Code 13-18-9-1 for use in household dishwashing machine equipment. HEA 1120 does not become effective until July 1, 2010, which is the date by which the national manufacturers of household dishwashing detergents have committed to removing phosphorus from their products, anyway. The exemption remains in effect until June 30, 2010, after which the restrictions apply to household dishwashing equipment. Commercial dishwashing machine equipment, however, still remain exempt from the restrictions on the use of detergents containing alkyl benzine sulfonate and phosphorus. The need for this exemption was justified due to the short timeframe commercial dishwashing machines operate.

HEA 1120, P.L. 25-2008, SECTION 1, Ind. Code 13-18-9-1, effective July 1, 2010.

UNDERGROUND STORAGE TANK ISSUES

Use of Fund for Tank Inspections

Due to increased regulations in recent years, IDEM maintains that the need for additional UST inspections performed by IDEM has also increased, and cannot be met without hiring additional personnel to complete the inspections. SEA 43 will now allow IDEM to use money in the underground petroleum storage tank excess liability trust fund ("ELTF") for the inspection of underground storage tanks, despite the fact that such inspections are not an enumerated purpose for use of ELTF funds under ELTF's enabling act. The regulated community opposed IDEM's proposed bill language out of fear that IDEM would have unlimited access to funds earmarked for use by the petroleum industry. As a compromise to the industry opposition for such use of the fund, SEA 43 caps the amount that IDEM may remove from the ELTF for tank inspection and for administration of claims to the ELTF. IDEM may not seek more than 10 percent of the fund income from the immediately preceding year for its costs relating to tank inspection and administration of claims.

SEA 43, P.L. 114-2008; SECTION 23, Ind. Code 13-23-7-1, effective July 1, 2008.

❖

LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES

GREAT LAKES COMPACT

The Great Lakes area contains at least 90 percent of all surface freshwater in North America and one-fifth of surface freshwater in the world. This area is also the location of important industries, with approximately 70 percent of domestic steel production taking place in states surrounding the Great Lakes. The region also supports shipping, commercial fishing, and active recreation industries. The Wisconsin Department of Natural Resources estimated that in 2006 one third of all boats registered in the United States are in the Great Lakes states and that boating alone supports more than 250,000 jobs in the region.

In order to protect the Great Lakes Basin, the U.S. Congress passed the Water Resources Development Act of 1986 (33 U.S.C. 2201, et seq.) ("WRDA"), which in part governed water diversions from the Basin. Many critics however, complain that the language of the WRDA is vague with respect to diversions, providing no standards for determining when a diversion of water from the area should be allowed. The WRDA also allows any single Great Lakes state governor to veto a diversion of water into another state. The WRDA is inconsistently applied by the various states. Moreover, the WRDA provides no appeal rights, and the United States Congress can change the WRDA at any time.

In order to address the shortcomings of the WRDA, governors of states and premiers of the Canadian provinces bordering the Great Lakes Basin committed to developing a framework to protect the Basin. Industry, environmental groups, and many other stakeholders were invited to participate in the development of an agreement which required nearly seven years of negotiation. The resulting agreement is the "Great Lakes-St. Lawrence River Basin Water Resources Compact" ("Compact"). The Compact is meant to protect the watershed of the five Great Lakes and includes the St. Lawrence River, upstream of Trois-Riviéres, Québec (hereafter the "Basin"). The Basin includes territory within the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and the provinces of Ontario and Québec.

SEA 45, P.L. 4-2008, SECTION 3, Ind. Code 14-25-15-1, effective July 1, 2008.

All of the states and provinces who have agreed to the Compact are required to have the Compact approved by their legislatures. Indiana Governor Mitch Daniels signed SEA 45 on February 20, 2008, making Indiana the first state to approve the Compact and to adopt implementing language explaining how the compact will be applied in our state. The Compact impacts all or parts of 13 Indiana counties located in the Basin.

SEA 45 incorporates all nine articles of the Compact that generally prohibits diversions of water outside of the Basin, but does provide some exceptions. It primarily prevents remote states or areas from outside of the Basin from removing water from the Basin's natural drainage areas. It also requires the states and provinces to regulate large scale water users. There are certain controversial provisions which opponents claim provide loopholes to the Compact's purpose of preventing diversions. For example, water that is used to produce a product that is then transferred out of the Basin is not considered a "diversion." Therefore, water incorporated into other products such as paint or beer is free to leave the Basin without regulation. Likewise, water that leaves the Basin in containers smaller than 5.7 gallons (such as bottles of water) are not considered bulk water transfers or diversions. Each party to the Compact is allowed to determine how it may treat withdrawals in any container smaller than 5.7 gallons. Indiana has chosen to consider such withdrawals as "products" not subject to the Compact provisions regarding diversions.

SEA 45, P.L. 4-2008, SECTION 5, Ind. Code 14-25-15-1; Ind. Code 14-25-15-3, effective July 1, 2008.

Prior to the Compact, Indiana's laws specified that water could not be diverted from the Basin to an area outside the Basin unless approved under the WRDA. The Legislature has clarified that such diversions are now to be conducted in accordance with the Compact. The Legislature has also directed that the Natural Resource Commission ("NRC") shall adopt rules necessary to implement the requirements of the Compact within Indiana.

SEA 45, P.L. 4-2008, SECTION 3, Ind. Code 14-25-1-11, effective July 1, 2008.

Even before the Compact, "significant water withdrawal facilities," defined as having the capability to withdraw more than 100,000 gallons of groundwater or surface water or ground and surface water combined in one day, were required to register with the NRC and report the annual water withdrawals to the NRC. Ind. Code 14-25-7-15. The definition of "significant water withdrawal facility" excluded:

(1) water withdrawal facilities that function as part of the operation or construction of a landfill; or
(2) water withdrawal facilities located in or on an off-stream impoundment that is principally supplied by a significant water withdrawal facility.

While these exceptions still apply throughout most of the state, these types of withdrawal facilities located within the Basin must now register with the NRC within five years so that a compatible base of water use information may be developed under the Compact.

SEA 45, P.L. 4-2008, SECTION 4, Ind. Code 14-25-7-15, effective July 1, 2008.

Indiana has appointed the Governor as the administrator of the Compact for the state. As the State's administrator, the Governor is to receive agreements under the Compact, and consult with and advise the other states and political subdivisions within Indiana in the formation of agreements

under the Compact. The Governor may also make recommendations in order to further the purposes of the Compact to the General Assembly, legislatures of other states, agencies in other states, or political subdivisions within Indiana. The Governor may also take such actions as are necessary for the organization and operation of the Great Lakes-St. Lawrence River Basin Water Resources Council created by the Compact. The Governor is required to consult with and obtain authorization from the General Assembly before voting to change the standard of review and decision contained in or adopted under the Compact by which all parties are to exercise their authority under the Compact.

SEA 45, P.L. 4-2008, SECTION 5, Ind. Code 14-25-15-2, Ind. Code 14-25-15-4, effective July 1, 2008.

The NRC is to adopt rules to implement voluntary water conservation and efficiency programs. The NRC may adopt mandatory water conservation and efficiency programs only if the General Assembly adopts an act authorizing such rules. The NRC is also to adopt rules for the implementation of the water management and regulation portions of the Compact, including the prohibition of any new or increased water diversions from the Basin, except approved proposals for exceptions.

Permits will be required from the Department of Natural Resources ("DNR") for daily withdrawals (calculated on average over 90 days) exceeding 5,000,000 gallons from Lake Michigan, 100,000 gallons from any salmonid stream, or 1,000,000 gallons from any other surface water or groundwater source. Salmonid streams are specifically listed in Ind. Code 14-25-15-7(b). The NRC may adopt rules allowing such permits to be "general permits." Within ten years of the effective date of the Compact, the General Assembly is directed to study and make recommendations about the threshold-withdrawal amounts requiring a permit. The NRC has already started to adopt a rule to allow the Division of Water of the DNR to serve as the point of contact and to coordinate all administrative, professional, and technical functions required by the DNR related to the Compact.

SEA 45, P.L. 4-2008, SECTION 5, Ind. Code 14-25-15-5 through 7, and 9, effective July 1, 2008.

The management and regulation of new or increased withdrawals and consumptive uses are subject to a uniform decision making standard under the Compact. Proposals for new or increased withdrawals and consumptive uses may only be approved if the proposals meet certain criteria, including a requirement that the withdrawal or use "will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water-dependent natural resources" of the Basin as a whole or the Lake Michigan and Lake Erie watershed considered as a whole. The decision-making process of whether the proposed use is reasonable will include consideration of the impacts on the quantity or quality of waters in more localized areas.

SEA 45, P.L. 4-2008, SECTION 5, Ind. Code 14-25-15-10, effective July 1, 2008.

In order to determine which water uses are considered new or increased diversions, consumptive uses, or withdrawals, each state is to develop a baseline volume determined by compiling a list of existing approvals or a list of the capacity of existing systems, as of the effective date of the Compact. The General Assembly has determined that the existing approval amount for Indiana will be the total withdrawal capacity registered for significant water-withdrawal facilities under Ind. Code 14-25-7-15. The DNR will determine the existing withdrawal capabilities, along with consumptive uses attributable to water withdrawn for the construction and operation of a landfill, and facilities that divert water outside of the Basin. As part of its investigation, the DNR shall inform facility owners about the determined baseline and allow them at least 30 days to provide documentation supporting a modification to the determined baseline. After its investigation, the DNR shall provide notice of its determinations of baseline amount to those facilities pursuant to the Indiana Administrative Orders and Procedures Act ("AOPA") and the owner of the facility may seek administrative review of the determination.

SEA 45, P.L. 4-2008, SECTION 5, Ind. Code 14-25-15-12, effective July 1, 2008.

FLOODWAY CONSTRUCTION

The law regulating construction in a floodway, specifically the portion related to abodes constructed in the floodway, was revised this year. Abodes constructed in the floodway that are substantially damaged, whether by floodwater, or otherwise, may be reconstructed. Under prior law, only those abodes or residences located in the floodway that were substantially damaged by floodwater were allowed to be reconstructed. A new provision was added to the law, effective March 13, 2008, to allow reconstruction of an abode to occur without obtaining a permit from DNR so long as a demonstration is provided to DNR through plans and specifications showing that the reconstruction does not extend beyond the original foundation of the abode or residence and the lowest floor elevation, as reconstructed, including the basement, will be at least two feet above the 100 year flood elevation. If the reconstruction will not have the lowest floor elevation at least two feet above the 100 year flood elevation, then the reconstruction can only occur as previously provided in the law, which requires filing a verified written application for a permit, a non-refundable $50 fee and securing a permit from DNR.

SEA 104, PL 53-2008, SECTIONS 1 and 2, Ind. Code 14-28-1-24 and Ind. Code 14-28-1-25, effective March 13, 2008.

In addition, the floodway law was revised to remove the State Board of Finance from its prior role in administration of the Flood Control Revolving Fund. Instead, commencing March 13, 2008, the NRC solely makes decisions related to Flood Control Revolving Fund.

SEA 104, PL 53-2008, SECTIONS 3-8, Ind. Code 14-28-5-6, Ind. Code 14-28-5-7, Ind. Code 14-28-5-8, Ind. Code 14-28-5-9, Ind. Code 14-28-5-10, Ind. Code 14-28-5-11, and Ind. Code 14-28-5-14, effective March 13, 2008.

PUBLIC FRESHWATER LAKES

The DNR is charged with enforcing the laws related to lake preservation that protects public freshwater lakes. Generally, the statute governing lake preservation prohibits activities affecting public freshwater lakes such as lowering of the level of these lakes, filling these lakes, and placing structures or constructing walls in these lakes without first obtaining a permit from the DNR.

"Public freshwater lake" has been defined as a "lake that has been used by the public with the acquiescence of a riparian owner." Ind. Code 14-26-2-3(a). The definition excluded, among other lakes, Lake Michigan and privately-owned bodies of water created or used for surface coal mining. Ind. Code 14-26-2-3(b).

In order to clarify the authority of the DNR under the lake preservation statute, the General Assembly added the definition of "Lake" as:

> a reasonably permanent body of water that:
> (1) existed on March 12, 1947;
> (2) is substantially at rest in a depression in the surface of the earth that is naturally created;
> (3) is of natural origin or part of a watercourse, including a watercourse that has been dammed; and
> (4) covers an area of at least five acres within the shoreline and water line, including bays and coves.

SEA 41, SECTIONS 2, 4, Ind. Code 14-8-2-137, Ind. Code 14-26-2-1.5, effective July 1, 2008.

The General Assembly also defined "acquiescence" for the purposes of determining when a lake is a public freshwater lake. "Acquiescence" means "consent without conditions, tacit or passive compliance, or acceptance." When determining whether a riparian owner has acquiesced to public use of a lake, the General Assembly has listed factors to be considered:

(1) Evidence that the general public has used the lake for recreational purposes.
(2) Evidence that the riparian owner did not object to the operation by another person of a privately owned boat rental business, campground, or commercial enterprise that allowed nonriparian owners to gain access throughout the lake.
(3) A record of regulation of previous construction activities on the lake by the department [of natural resources] or the department of conservation (before its repeal).

If a lake has been adjudicated a private lake after March 12, 1947, and the DNR or department of conservation was a party to that adjudication, the riparian owner will not have been determined to have acquiesced to the public use of the lake.

SEA 41, SECTIONS 1, 3, 9, Ind. Code 14-8-2-1.5, Ind. Code 14-26-2-1.5, Ind. Code14-26-2-14.5, effective July 1, 2008.

The owner or owners of a lake may also petition the DNR to declare a lake a public freshwater lake. If this petition is granted in writing by the DNR, the lake becomes subject to the lake preservation statute. Moreover, the NRC is now required to adopt a non-rule policy statement that lists the public freshwater lakes in Indiana and their locations. This list is to be made with the recommendations of the DNR and an advisory committee established to serve the DNR's bureau of water and resource regulation. A person may obtain administrative review from the NRC for the listing or non-listing of a public freshwater lake under AOPA.

SEA 41, SECTIONS 11, 12, Ind. Code 14-26-2-24, Ind. Code 14-26-2-25, effective July 1, 2008.

The Lake Management Work Group, an advisory committee established by P.L. 35-2006 to address problems and issues associated with public freshwater lakes and lake preservation, was due to expire on July 1, 2008. SEA 88 has extended the term of the work group through July 1, 2010. The non-code provision also changes the number of meetings the work group is allowed to hold from three per year to four per year. SEA 88 otherwise does not change the work group, which is still comprised of 26 members appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor.

SEA 88, SECTION 1, Non-Code Provision, effective June 30, 2008.

HISTORIC PRESERVATION AND ARCHEOLOGY

Many changes were made to the Historic Preservation and Archeology law this legislative session. This effort to change the law was not initiated by the DNR, but by persons interested in seeing more than the pioneer period protected through our Historic Preservation and Archeology laws. The DNR did not oppose the changes but worked cooperatively toward this bill's passage. All of these changes took effect on July 1, 2008.

Definition of Artifact

The definition of what is an artifact for purposes of DNR's Historic Preservation and Archeology law has been changed in two significant ways, effective July 1, 2008. First an artifact will now specifically include a feature that cannot be moved which is evidence of past human behavior or activity which is found on or in the ground (including structural remains) which was formed before December 31, 1870. Second it will include objects which were made, modified, or used before December 31, 1870. Previously an artifact was only an object made or shaped by human workmanship before the date when Indiana became a State, December 11, 1816. Now younger objects, not just those from the pioneer period, will be provided historic protection. In addition, not only objects made but objects which have been modified or which were in use before December 31, 1870, are included within the definition of an artifact – subject to DNR regulation and protection.

HEA 1129, PL 26-2008, SECTION 2, Ind. Code 14-21-1-2, effective July 1, 2008.

Definition of Burial Ground

The definition of what is a burial ground for purposes of DNR's Historic Preservation and Archeology law has been clarified, effective July 1, 2008. The law previously included not just the ground in which human remains are buried but also land associated with or incidental to the burial of human remains. Now the law specifically provides that the surrounding area is that which is either marked by a permanent visible boundary, including a fence or wall or if there is not a permanent visible boundary, then it includes the land determined by the DNR based upon records or surveys of the land where human remains, mounds, or burial objects are reported to occur. The law was further clarified to include only historic cemeteries or land on which human remains were buried before January 1, 1940. The chapter in which this definition appears already provided that it was not to apply to human remains of individuals who die after December 31, 1939. This clarification changes the applicability of the statute written into the definition of a burial ground to provide that a burial ground only includes cemeteries or land on which human remains were actually buried before January 1, 1940.

HEA 1129, PL 26-2008, SECTION 3, Ind. Code 14-21-1-3, effective July 1, 2008.

Definition of Development Plan

Under the DNR's Historic Preservation and Archeology law persons who disturb ground within 100 feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing a structure must first have a Development Plan approved by DNR. A Development Plan was previously defined only to include a plan for the erection, alteration, or repair of a structure. The definition of a Development Plan was amended this year to provide in the alternative that the Development Plan could also include a plan for the excavation or the covering of any ground related to construction.

HEA 1129, PL 26-2008, SECTON 4, Ind. Code 14-21-1-8, effective July 1, 2008.

Persons Not Required to Obtain DNR Plan Approval

The Historic Preservation and Archeology law previously did not require four categories of people to obtain an approved plan from DNR before disturbing ground to discover artifacts or burial objects. Those categories include: (1) surface coal mining regulated under Ind. Code 14-34; (2) cemeteries and human remains subject to Ind. Code 23-14 (the Cemeteries Association Act); (3) disturbing of the earth for an agricultural purpose; and (4) collecting any object (other than human remains) that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped. Added to this list of exempt categories, effective July 1, 2008, are qualified professional archeologists, who conduct Phase 1a Archeological Surveys, according to guidelines adopted by DNR.

HEA 1129, PL 26-2008, SECTION 5, Ind. Code 14-21-1-24, effective July 1, 2008.

Timeframe Established for DNR to Act on Archeological Plans; Default Approval of Archeological and Development Plans

Effective July 1, 2008, the DNR will have 60 days to approve, deny or request additional information concerning a proposed Archeological Plan. A law already existed establishing 60 days as the time for DNR to act on Development Plans. Under this new law, DNR's failure to take one of those three actions within 60 days results in automatic approval of the Archeological or Development Plan, unless there is a state or federal law prohibiting such automatic approval. If the DNR does request additional information, then DNR must act within 30 days of receipt of the revised plan.

HEA 1129, PL 26-2008, SECTION 6, Ind. Code 14-21-1-25, effective July 1, 2008.

Development Plan Requirements

Existing law required a Development Plan be approved by the DNR prior to disturbing ground within 100 feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing any structure. That law was amended and now requires a Development Plan be approved prior to disturbing ground within 100 feet of a burial ground not just for erecting, altering, or repairing a structure, but also for excavating or covering over the ground. It no longer applies to land within 100 feet of a cemetery. In addition, the Development Plan is only required if the disturbance will impact the burial ground. If the burial ground is within an Archeological site, then an Archeological Plan is required to be part of the Development Plan.

HEA 1129, PL 26-2008, SECTION 8, Ind. Code 14-21-1-26.5, effective July 1, 2008.

Protection for Burial Grounds

Effective July 1, 2008, if a person disturbs buried human remains or a burial ground, notice must be given to DNR within two business days of the time of the disturbance. In addition the person shall treat or rebury the human remains in a manner and place according to rules of the NRC. Current law only required this for disturbance of buried human remains. It has been extended this year to also apply to burial grounds.

HEA 1129, PL 26-2008, SECTION 9, Ind. Code 14-21-1-27, effective July 1, 2008.

Accidental Discovery of Artifacts or Burial Objects

The law for accidental discovery of artifacts or burial objects was changed effective July 1, 2008. The law previously required a person who discovers an artifact or burial object while disturbing the ground

for a purpose other than the discovery of artifacts or burial objects to immediately cease disturbing the ground and notify DNR within two business days of the time of disturbance. The DNR was then allowed to either authorize the person to continue ground-disturbing activity, with or without conditions, or require that continued ground disturbance be conducted only in accordance with an approved DNR plan. To have this control over the outcome, the DNR was required to act within 30 days from the date it receives notice. Otherwise the DNR could not regulate the outcome. The law has been changed in four significant ways: (1) it now applies not only when a person discovers an artifact or burial object, but also when a person uncovers or moves an artifact or burial object; (2) a person must immediately cease disturbing the ground and the areas within 100 feet of the artifact or burial object; (3) DNR is provided only 10 business days (as opposed to 30 calendar days) in which to act after receiving notice of the accidental discovery, uncovering, or moving; and (4) a person who fails to cease disturbing the ground and areas within 100 feet or fails to notify the DNR within two days of the time of disturbance, can now be charged with a Class A infraction.

HEA 1129, PL 26-2008, SECTION 11, Ind. Code 14-21-1-29, effective July 1, 2008.

Funding to Assist Homeowners Where Artifacts, a Burial Object, or Human Remains are Found

The legislature has established a new DNR program which took effect on July 1, 2008, which will assist private homeowners who have accidentally discovered an artifact, a burial object or human remains. If a private homeowner needs assistance to comply with an approved DNR plan to excavate or secure the site from further disturbance, money in a new Archeology Preservation Trust Fund ("Trust Fund") can be used to provide that assistance. The Trust Fund will be funded by gifts and grants, approved by the Historic Preservation and Archeology Division ("HPAD") Director and by money ordered by a court to be paid as restitution by individuals sentenced for a felony or misdemeanor or infraction under the Historic Preservation and Archeology laws. All expenses of administering the Trust Fund will be paid from money in the Trust Fund, which does not revert to the State General Fund at the end of a state fiscal year. HPAD may conduct the program alone or by entering into an agreement with any entity HPAD selects.

HEA 1129, PL 26-2008, SECTION 14, Ind. Code 14-21-1-34, effective July 1, 2008.

New Confidential Protection for Location of Historic and Archeological Sites

A new law was added to the Historic Preservation and Archeology law to provide for confidential treatment of records and the location of historic and Archeological sites. Under this new law, the DNR may keep reports and information concerning the location of historic and Archeological sites confidential if the Director of the Division of Historic Preservation determines that disclosure would do one of three things: (1) likely risk harm to the historic or Archeological site, (2) cause a significant invasion of privacy; or (3) impede the use of a traditional religious site by its practitioners. If reports and information are determined to be confidential, the Director of DNR in consultation with the Director of the Division of Historic Preservation shall determine who may have access to the confidential reports and information.

HEA 1129, PL 26-2008, SECTION 12, Ind. Code 14-21-1-32, effective July 1, 2008.

Right of Entry to Determine Violations of Historic Preservation and Archeology Laws

A new law took effect on July 1, 2008, allowing an employee of the Division of Historic Preservation or a person authorized by the DNR to accompany a Conservation Officer on public or private property to determine if there is a violation of the laws for Historic Preservation and Archeology.

HEA 1129, PL 26-2008, SECTION 13, Ind. Code 14-21-1-34.

Criminal Penalties for Failure to Obtain Development Plan

The Historic Preservation and Archeology law requiring an approved plan before disturbing ground has been expanded to cover not just disturbance done to discover artifacts or burial objects. The law no longer applies to disturbances meant to discover artifacts and burial objects, but now also applies to

a disturbance done to uncover or move artifacts or burial objects. The law has also been expanded to regulate disturbances done to discover, uncover, or move human remains, not just artifacts and burial grounds. Reckless, knowing or intentional violation of this requirement to obtain an approved plan remains a Class A misdemeanor if it does not involve the disturbance of human remains. A person violating the requirement to obtain an approved plan and disturbs human remains commits a Class D Felony.

HEA 1120, PL 26-2008, SECTION 7, Ind. Code 14-21-1-26, effective July 1, 2008.

Criminal Conduct in Connection with Disturbing Human Remains or Grave Markers

The criteria for what constitutes a crime when disturbing human remains or grave markers has been modified to track standard criminal law regarding intent. Effective July 1, 2008, it is a crime to recklessly, knowingly, or intentionally disturb human remains or grave markers while moving, uncovering, or removing artifacts or burial objects without a DNR-approved plan or in violation of an approved plan. Under the previous law, it was only a crime if a person with the intent to disturb ground for the purpose of discovery or removing artifacts, burial objects, grave markers, or human remains disturbs buried human remains or grave markers without a development plan approved by DNR or in violation of the terms of such plan.

HEA 1129, PL 26-2008, SECTION 10, Ind. Code 14-21-1-28, effective July 1, 2008.

Criminal Sanction to Pay Restitution

A new section was added to the Historic Preservation and Archeology laws allowing a court to order an individual for whom a sentence is imposed for a felony or misdemeanor or where a judgment has been entered for an infraction also to be ordered to pay restitution to a victim and to make restitution to the Archeology Preservation Trust Fund for costs the Division of Historic Preservation and Archeology ("DHPA") incurs because of the offense that was committed. In ordering restitution, the court must consider 3 things: (1) the schedule of costs submitted to the court by the DHPA, (2) the cost to the property owner to restore or repair the damaged area of an Archeological site or burial ground and place the property in the property's original condition as nearly as practicable, and (3) the amount of restitution that the individual is or will be able to pay.

HEA 1129, PL 26-2008, SECTION 15, Ind. Code 14-21-1-35, effective July 1, 2008.

New Criminal Penalty for Possession of Looted Property

A new section was added to the Historic Preservation and Archeology law making it a crime to be in possession of looted property by knowingly or intentionally receiving, retaining, or disposing of an artifact, a burial object, or human remains in violation of the Historic Preservation and Archeology law. The crime of possession of looted property is a Class D felony. However if the fair-market cost to carry out a scientific Archeological investigation of the area that was damaged to obtain the artifact, burial object or human remains is at least $100,000, then the crime is a Class C Felony.

HEA 1129, PL 26-2008, SECTION 16, Ind. Code 14-21-1-36, effective July 1, 2008.

DNR Approved Plan Projects Exempt from Cemetery Association Act

The legislature chose this year to exempt from the Cemetery Association Disinterment, Disentombment and Disinurnment Law the removal of human remains under a plan approved by the Division of Historic Preservation and Archeology. Already exempt from that law was the disinterment, disentombment, or disinurnment of remains upon the written order of the coroner of the county in which the cemetery is located.

HEA 1129, PL 26-2008, SECTION 18, Ind. Code 23-14-57-4, effective July 1, 2008.

INDIANA STATE MUSEUM MANAGEMENT

The law relating to the Indiana State Museum Foundation has been changed to now authorize a public-private partnership governance structure for the museum and historic site properties. The new law authorizes the DNR to delegate management authority to the Indiana State Museum Foundation,

Inc. (or another similar non-profit organization) for the Indiana State Museum, the state museum development fund, or historic sites property held and managed by the DNR.

HEA 1121, P.L. 66-2008, SECTIONS 1, 5, 8, Ind. Code 14-8-2-103, Ind. Code 14-20-1-2.5, Ind. Code 14-20-1-26(a), effective July 1, 2008.

Previously, the division director was not allowed to serve as the head of the section of museums or section of historic sites; each section was required to have a different head of the section. These restrictions have now been removed. The make-up of the board of trustees of the division of museums and historic sites has also been altered by eliminating a member of the Indiana State Museum Volunteers as a required member of the board.

HEA 1121, P.L. P.L. 66-2008, SECTIONS 6, 7; Ind. Code 14-20-1-6, Ind. Code 14-20-1-8, effective July 1, 2008.

NO MORE REVERSION OF DNR FUNDS TO THE STATE

Ind. Code 14-9-5-4 has been amended to remove the provision whereby DNR division funds in excess of $50,000 reverted to the state at the end of each state fiscal year. That law now states that division funds simply do not revert to the state. Although this section is not limited to the division of museums and historic sites, when considered alongside the legislation passed this year affecting the governance structure of that division, it seems likely that this section is directed at the state museum division. Nevertheless, it applies to all divisions of the DNR and eliminates any reversion of division funds to the state.

HEA 1121, P.L. 66-2008, SECTION 2, Ind. Code 14-9-5-4, effective July 1, 2008.

APPRENTICE HUNTING LICENSES

This new law allows the DNR to issue apprentice hunting licenses to non-licensed hunters who have not previously completed the hunting instruction course required under Ind. Code 14-22-35. Currently, Ind. Code 14-22-11-5 provides that all hunters who were born after Dec. 31, 1986, must, in addition to other requirements for obtaining a hunting license, complete a hunter- education course offered by the DNR before receiving a license. However, HEA 1046 exempts these individuals from this requirement if they have an apprentice license.

The apprentice license, which will be available to residents and non-residents, will allow its holder to hunt, provided that he or she is accompanied by a person who is at least 18 years old and either holds a valid hunting license or is not required to hold a license under Ind. Code 14-22-11 (such as residents of the armed forces who are hunting while on leave). In order to comply with the new law, the accompanying party must be "in close enough proximity to monitor the apprentice hunter's activities and communicate with the hunter at all times" and may not accompany more than two holders of an apprentice hunting license at a time. The fee for the apprentice license is to be determined by the NRC and an individual may not purchase more than three apprentice hunting licenses of any type during his or her lifetime.

HEA 1046, P.L. 14-2008, SECTIONS 1-2, Ind. Code 14-22-11-5, 14-22-12-1.7, effective July 1, 2008.

OTHER HUNTING AND LICENSING ISSUES

Hunting License Changes

"Rifle" has been added to the list of firearms described in the deer hunting licenses authorized in Ind. Code 14-22-12-1(12) (resident license) and Ind. Code14-22-12-1(15) (non-resident license). These sections previously included only shotgun, muzzle-loading gun, or handgun as the firearms allowed in the deer license.

Previously the license for the taking of an extra turkey included the requirement that a "fall wild turkey season be established" by the DNR before it would issue licenses for the taking of an extra turkey in Ind. Code 14-22-12-1(22) (resident license) and Ind. Code 14-22-12-1(23) (non-resident license). Now both resident and non-resident licenses to take extra turkeys are not dependent upon the establishment of a wild turkey season.

Finally, non-residents may now receive a duplicate of a lost license (for a fee) from the DNR. Previously, only Indiana residents were able to receive duplicates of a lost license.

HEA 1121, P.L. 2008, SECTIONS 10-11, Ind. Code 14-22-8-2, Ind. Code 14-22-12-5, effective July 1, 2008.

Hungarian Partridge

The Hungarian partridge has been removed from the definition of "game bird" under Ind. Code. 14-22-8-2, leaving only the pheasant, quail, grouse, and wild turkey.

HEA 1121, P.L 66-2008, SECTION 9, Ind. Code14-22-8-2, effective July 1, 2008.

Sportsmen's Benevolence Account

HEA 1121 forms the new Sportsmen's Benevolence Account, which will be used to fund activities encouraging citizen participation in feeding the state's hungry through donations of wild game that have been lawfully hunted. The account will be funded with gifts, donations, and proceeds from the marketing of goods related to the purpose of the account. The account is established within the DNR Division of Law Enforcement fund and the new law provides that the Division of Law Enforcement will conduct a publicity campaign relating to feeding the state's hungry through wild-game donations and will also coordinate with non-profit organizations or other organizations whose goal is to eliminate hunger in Indiana.

HEA 1121, P.L. 66-2008, SECTION 3, Ind. Code 14-9-5-4, effective July 1, 2008.

❖

ENERGY LEGISLATION

E85 FUELING STATION GRANTS

Balancing the state's initiative to promote alternative fuels against the backdrop of tight fiscal times, Senators Hershmann and Mishler authored SEA 360 to limit the availability of E85 fueling station grants to fueling stations, but provides that local units of government are eligible to receive E85 fueling station grants for qualified investment in E85 fueling stations.

SEA 360 caps the number of E85 fueling grants to only one per fueling station location. The potential grant amount was increased from $5,000 to $20,000. However, the grant cannot exceed the amount of the qualified investment. It also clarifies that the amount of the grant may be less than the amount of the qualified investment. The new law also provides that local units of government are eligible to receive E85 fueling-station grants for qualified investment in E85 fueling stations, and corrects state agency references.

SEA 360, P.L. 91-2008, SECTIONS 2, 3, 6, 8, Ind. Code 15-11-11-6.5, Ind. Code 15-11-11-7, effective in part on March 19, 2008; July 1, 2008

COAL GASIFICATION AND SUBSTITUTE NATURAL GAS

In 2005 the Legislature added a new tax credit for Coal Gasification. One of many criteria to be eligible for that tax credit was that the integrated coal-gasification power plant or fluidized bed-combustion unit had to use 100 percent Indiana coal. That tax-credit criteria was amended this year, retroactive to January 1, 2008. Now it is permissible to use coal from outside of Indiana if two conditions are met. First the applicant must be able to certify to the Indiana Economic Development Commission that partial use of coal not from Indiana is necessary to provide lower rates for Indiana retail-utility customers. Second the applicant must assign the tax credit to a utility that has entered into a contract approved by the Indiana Utility Regulatory Commission that provides for the utility to purchase electricity or substitute natural gas from a taxpayer.

SEA 223, PL 5202008, SECTION 1, Ind. Code 6-3.1-29-19, effective January 1, 2008.

Changes were also made to a companion law passed in 2007. In 2007, the legislature passed a law to allow a utility to recover through a rate adjustment the costs the utility incurs from entering into a supply contract for substitute natural gas ("SNG"). Under that 2007 law, SNG was defined to include pipeline quality gas produced by an Indiana facility that uses a gasification process to convert coal from the Illinois Basin into a gas capable of being used to supply gas-utility services to consumers or as a fuel used to produce electric-power supply for consumers in Indiana. A consumer-choice program was also established in 2007 which allowed residential and

commercial gas consumers located in the service area of a gas utility to purchase their gas supply from a provider other than the gas utility in the service area and receive transportation service from the gas utility in the service area for delivery of SNG. This year the legislature changed the definition of SNG so that it is no longer limited to just Indiana facilities that produce SNG and it no longer requires that the coal used for gasification come from the Illinois Basin geologic formation. The legislature also changed the consumer-choice program to extend it to customers located in the service area of an electric utility, not just those served by gas. Finally, the legislature corrected a possible problem with the law to provide that if a consumer-choice program is implemented, expanded, or renewed during the term of a contact that has the effect of reducing the utility's sales volume, as a condition to authorizing that program, there must be proportionate sharing of the SNG purchase obligation to the customers to comply with the original contract.

SEA 223, PL 52-2008, SECTION 2, Ind. Code 8-1-2-42.1, effective January 1, 2008.

MISCELLANEOUS ENVIRONMENTAL LEGISLATION

INDOOR AIR QUALITY

Indoor Air Quality Inspection and Evaluation Program

The indoor air quality inspection and evaluation program (the "Program") to assist schools in developing plans to improve indoor air quality was expanded to include state agencies. As with schools, the state department of health (the "Health Department") will now also inspect a state agency if the Health Department receives a complaint about the quality of air in the state agency's offices. The Health Department will report the results of the inspection to the person who complained about the air quality: the school's principal, the state agency head, or the Indiana state board of education, if the school is a public school or an accredited nonpublic school; the Indiana department of administration, if the inspected entity is a state agency; and the appropriate local or county board of health. The Health Department will assist the school or state agency in developing a reasonable plan to improve air quality conditions found in the inspection. The air quality panel, established by the Health Department to carry out this chapter, will now also include a representative of the Indiana department of administration, appointed by the commissioner of the Indiana Department of Administration. The Health Department will prepare and make available to the public an annual report describing the panel's action.

HEA 1185, P.L. 79-2008, SECTIONS 10-11, Ind. Code 16-41-37.5-2, 16-41-37.5-3, effective July 1, 2008.

Colleges Exempt

Colleges and universities do not meet the definition of "school" under this statute and are specifically excluded from the indoor air quality program. "State agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, including the administrative, department of state government. The term "state agency" does not include the judicial or legislative departments of state government, nor does that term include a state educational institution.

HEA 1185, P.L. 79-2008, SECTIONS 7-9, Ind. Code 16-41-37.5-2, effective July 1, 2008.

Price Preference

A new statutory provision was added July 1, 2008, that gives a 10 percent price preference for Indiana businesses that submit an offer to conduct an indoor air quality inspection and evaluation for schools and state agencies.

The Public Purchasing Statute, Ind. Code 5-22-15-1, now also includes an offer to conduct a Program. "Adjusted offer" now includes the offer price of a vendor for conducting a Program. "Price preference

percentage" is amended to include the percentage preference provided by this chapter for an offer to conduct a Program. An offeror who wants to claim a preference provided under the Public Purchasing Statute to conduct a Program must indicate in the offer that the indoor air quality inspection and evaluation program is subject to a price preference. If an offeror offers to conduct a Program, the purchasing agent shall compute an adjusted offer according to the following formula:

Step One: Take the percentage of the price preference (10 percent) and multiply it by the amount of the offer.
Step Two: Subtract the product of Step One from the amount of the offer.

Mathematically, the formula is as follows:

Offer x .10 = X
Offer – X = Adjusted Offer.

HEA 1185, P.L. 79-2008, SECTIONS 1-6, Ind. Code 5-22-15-1, Ind. Code 5-22-15-3, Ind. Code 5-22-15-5, Ind. Code 5-22-15-8, Ind. Code 5-22-15-20.7, effective July 1, 2008.

Qualifications to Conduct a Program

An individual conducting an indoor quality test under this new chapter must be:

(1) a professional engineer
(2) an industrial hygienist; or
(3) a supervisor or technician certified by a national organization that
  (A) writes and adheres to standards for
    (i) testing, adjusting, and balancing of heating, ventilation, and air conditioning equipment or exhaust systems; and
    (ii) indoor air quality testing procedures and requirements; and
  (B) certifies supervisors and technicians to perform
    (i) testing, adjusting, and balancing of heating, ventilation, and air conditioning equipment or exhaust systems; and
    (ii) indoor air quality testing procedures and requirements.

The report of a test conducted under this chapter must be certified by the person conducting the test. If the person uses a professional seal on documents, the certification must include the person's seal.

HEA 1185, P.L. 79-2008, SECTION 12, Ind. Code 16-41-37.5-4, effective July 1, 2008.

LEAD POISONING PREVENTION

Responding to concerns over lead poisoning in children, the General Assembly passed an emergency act this year addressing prevention. The legislation was primarily drafted and supported by the non-profit advocacy organization Improving Kids Environment ("IKE").

SEA 143, P.L. 102-2008, SECTION 17, non-code provision, effective March 21, 2008.

Childhood Lead Poisoning Prevention Fund

The General Assembly established the childhood lead poisoning prevention fund (the "Fund") to provide childhood lead poisoning outreach and prevention activities. The Fund will be administered by the Health Department. The Fund consists of civil penalties from failure to report lead results, gifts, and appropriations from the General Assembly. The expenses of administering the fund shall be paid with Fund monies. The treasurer of the state shall invest the money in the Fund not currently needed to meet the obligations of the Fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the Fund, and any money left in the Fund at the end of a state fiscal year does not revert to the state general fund.

SEA 143, P.L. 102-2008, SECTION 12, Ind. Code 16-41-39.4-3.1, effective March 21, 2008.

Fines for Failure to Report Lead Results

A person who exams the blood of an individual for lead, pursuant to the directions of the Health Department, must provide complete information regarding the individual including biographical, contact, and test-result information. The failure to provide complete information within 10 days after notification by the Health Department may result in a civil penalty against the examiner of $1,500 for each incomplete report that is submitted after receipt of notification. Such fines will be deposited in the Fund. This section does not apply to a person who acts in good faith to provide a complete report but who is unable to collect all the required information.

It also does not apply to incorrect information on a completed report.

SEA 143, P.L. 102-2008, SECTION 11, Ind. Code 16-41-39.4-3, effective March 21, 2008.

Lead Safe Housing Advisory Council

The Lead Safe Housing Advisory Council (the "Advisory Council") was established to advise the Health Department on housing related lead poisoning prevention activities. The Advisory Council consists of the following members:

(1) The state health commissioner, or the state health commissioner's designee, who shall serve as the chairperson of the advisory council.
(2) The director of the Indiana housing and community development authority or the director's designee.
(3) The local health officer of each of three local health departments, appointed by the state health commissioner to represent a diverse geographic and population mix, or the local health officer's designee.
(4) The following individuals, appointed by the governor:
  (A) A representative of Realtors® in Indiana.
  (B) A representative of home builders or remodelers in Indiana.
  (C) A pediatrician or other physician with knowledge of lead poisoning.
  (D) A representative of the private lead-based paint abatement industry who is licensed to perform or supervise lead-based paint activities.
  (E) A representative of a community based organization located in a community with a significant concentration of high risk lead-contaminated properties, as determined by a high prevalence in the community of:
    (i) low income families having children with lead poisoning; and
    (ii) housing units that were built before 1978.
  (F) A parent of a child with lead poisoning.
  (G) A representative from a child or health advocacy organization.
  (H) A residential tenant.
  (I) A representative of the paint and coatings industry.
  (J) A representative of public housing administrators.
  (K) A representative of residential rental property owners.
  (L) A representative of licensed lead-based paint activities training providers.
  (M) A representative of community action program agencies.
  (N) A representative of the banking industry.
  (O) An individual who is licensed as a lead-based paint activities.
  (P) A child care provider.

The Advisory Council will meet at least quarterly, with the first meeting occurring not later than July 1, 2008. The Advisory Council will submit to the Governor, the Attorney General and, in an electronic format, the Legislative Council a preliminary report before November 1, 2008. The final report shall be submitted before November 1, 2009.

The Council reports shall contain recommendations concerning the following:

(1) Development of a primary prevention program to address housing related lead poisoning.
(2) Development of a sufficient number of licensed lead inspectors, risk assessors, clearance examiners, individuals who are trained in lead-safe work practices, abatement workers, and contractors.
(3) Ensuring lead-safe work practices in remodeling, rehabilitation, and weatherization work.
(4) Funding mechanisms to assist child care and residential property owners with the cost of lead abatement, remediation, and mitigation, including interim controls.
(5) A procedure for distribution of funds from the Indiana lead trust fund established by Ind. Code 13-17-14-6 to pay the cost of implementation of 40 CFR 745 for lead-based paint activities in target housing and child-occupied facilities.
(6) A program to ensure that the resale of recycled building products does not pose a significant risk of lead poisoning to children.
(7) Necessary statutory or administrative rule changes to improve the effectiveness of

state and local lead abatement, remediation, including interim controls, and other lead poisoning prevention and control activities.

(8) The content of a basic lead training course for child care workers concerning lead hazards that:
   (A) includes lead-based paint rules awareness; and
   (B) includes information concerning how the course should be made available to child care workers.

(9) For the preliminary report, recommendations for legislation to be introduced in the 2009 session of the General Assembly.

The Health Department shall staff and provide administrative and logistical support to the Advisory Council, including conference telephone capability for Advisory Council meetings. Each member of the Advisory Council who is a state employee is entitled to reimbursement for travel and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency. A majority of the members appointed to the Advisory Council is required for the Advisory Council to take action on any measure, including final reports. This section expires July 1, 2011.

SEA 143, P.L. 102-2008, SECTION 13, Ind. Code 16-41-39.4-6, effective March 21, 2008

Paint Retailers

Required Information

A retailer that sells paint or paint products must now do all of the following:

(1) Offer for sale a lead test kit capable of determining the presence of a lead-based paint hazard.

(2) Provide to customers the federal Environmental Protection Agency pamphlet "Protect Your Family from Lead in Your Home" or a similar source of information approved by the state department.

(3) Ensure that at least one employee who provides advice to customers concerning paint and paint products:
   (A) attends a training program concerning lead hazards, and
   (B) provides training to other employees who provide advice to customers concerning paint and paint products.

This new section prohibits a person that sells, offers for sale, or distributes a consumer product from removing, erasing, or obscuring a manufacturer or wholesaler's statement, placed on the product, which specifies that it contains or may contain lead.

Prohibited Items

A person shall not sell or offer for sale at wholesale or retail or distribute a consumer product, surface coating material, a food product, or food packaging that:

(1) is a banned hazardous substance under the federal Hazardous Substances Act (15 U.S.C. 1261(q)(1); or

(2) has been determined by the state department to:
   (A) have a lead content that is greater than the lesser of the lead-content specifications for lead paint in 16 CFR 1303.2 or state law; and
   (B) pose a danger of childhood lead poisoning because the product, material, or packaging is reasonably expected to be accessible to, chewed by, or ingested by a child who is less than seven years of age.

If the Health Department, based on:

(1) test results performed by a certified laboratory at the state department's request,

(2) information received from a federal agency, or

(3) other reliable information

has reason to believe that a person has violated this section, the Health Department may, with or without a prior hearing, issue to the person a cease and desist order if the commissioner determines a cease and desist order is in the public interest. In addition to all other remedies, the commissioner may bring an action in the name and on behalf of the state against the person to enjoin the person from violating this section.

Inspection of Retailer

The state Health Department or a local health department may at any time during regular business hours inspect any premises where consumer products are sold, offered for sale, or distributed to establish compliance with this section. It may seize an item that is

sold, offered for sale, or distributed in violation of this section. The Health Department shall, by May 1, 2009, adopt rules under Ind. Code 4-22-2 to implement this section. The rules adopted under this subsection must be consistent with federal law. They may also require the labeling of an item or signage to reflect that the item contains lead. The rules also may establish exceptions under which items may be sold, offered for sale, or distributed upon the Health Department's determination that the risk posed to children by the items is minimal.

SEA 143, P.L. 102-2008, SECTION 14, Ind. Code 16-41-39.4-7, effective March 21, 2008

Lead Safe Work Practices

The General Assembly has directed the Health Department to adopt rules under Ind. Code 4-22-2, by July 1, 2009, to establish a lead safe work practices training program for contractors, renovators, and remodelers who either perform work on housing units that were built before 1978 or disturb lead-based paint in housing units. These rules must be consistent with the federal Department of Housing and Urban Development Lead Safe Housing Rule requirements for lead safe work practices training (24 CFR 53.1330(a)(4)) and provide for training courses taught in both English and Spanish.

SEA 143, P.L. 102-2008, SECTION 15, Ind. Code 16-41-39.4-6, effective March 21, 2008

Interim Study Committee

The Legislative Council shall direct a study committee, to examine issues concerning childhood lead poisoning prevention, including testing of child care facilities that were built before 1978 and children in child care facilities. The study committee shall look at proposed requirements for the division of family resources, child care providers and the children they serve. This section expires December 31, 2008.

SEA 143, P.L. 102-2008, SECTION 16, Ind. Code 16-41-39.4-6, effective March 21, 2008.

New Definitions

Several new definitions were added to Title 16 which deals with the Health Department:

"Advisory council"
means the lead-safe housing advisory council.

"Clearance examination"
means an activity conducted by a clearance examiner who is licensed under IC 13-17-14 to establish proper completion of interim controls.

"Consumer product"
means an item or a component of an item that is produced or distributed for sale to a consumer for use, consumption, or enjoyment.

"Fund"
refers to the childhood lead-poisoning prevention fund.

"Lead-based paint activities"
means the inspection, risk assessment, and abatement of lead-based paint in target housing and child-occupied facilities. The term includes project design and supervision.

"Low income"
means having not more than 80 percent of the median-income level of households in a particular county as determined annually by the federal Department of Housing and Urban Development.

"Primary prevention"
means the removal or remediation, including the use of interim controls, of lead hazards before lead poisoning of an individual occurs.

"Tenant"
means an individual who occupies a rental unit for residential purposes with the landlord's consent and for consideration that is agreed upon by both parties.

SEA 143, P.L. 102-2008, SECTIONS 1-3, 5-8, and 10, Ind. Code 16-18-2-9.3, Ind. Code 16-18-2-56.2, Ind. Code 16-18-2-69.2, Ind. Code 16-18-2-143, Ind. Code 16-18-2-198.7, Ind. Code 16-18-2-214.7, Ind. Code 16-18-2-292.7, Ind. Code 16-18-2-349.5, effective March 21, 2008.

"Environmental investigation"
means an identification and evaluation of lead hazards from nonstructural sources in a child's environment. The term includes the presentation of results of the identification and evaluation, including recommendations for reducing or eliminating exposure. It also includes the education of a child's family concerning lead hazards and temporary and permanent measures to protect the child from further exposure.

"Remediation"
means actions that constitute an abatement (as defined in Ind. Code 13-11-2-.5) or interim control (as defined in 24 CFR 35.110) of a lead hazard.

SEA 143, P.L. 102-2008, SECTIONS 16, Ind. Code 16-18-2-116.2, Ind. Code 16-18-2-315.8, effective July 1, 2008.

❖

LAWS AFFECTING AGRICULTURE

RECODIFICATION OF TITLE 15

The General Assembly recodified Title 15 of the Indiana Code which deals with Agriculture and Animals. The code revision commission introduced SEA 190 in order to reorganize Title 15 in a style that is "clear, concise, and easy to interpret and apply." The recodification language itself states that "the substantive operation and effect of the prior law continues uninterrupted as if the recodification act of the 2008 regular session of the General Assembly had not been enacted," and that the revisions do not modify substantive provisions of Title 15, including penalties, proceedings, permits, and licenses.

SEA 190, P.L. 2-2008, SECTIONS 1-11, Ind. Code 15-10-1-1 through Ind. Code 15-20-3-4.

WINE SALES

SEA 107 affects the growing winery business in Indiana. The new law increases the limit on annual wine sales from farm wineries from 500,000 to 1,000,000 gallons of wine per year. The benefits of having a farm winery permit are extensive – farm wineries may not only manufacture and bottle wine, but are also allowed to sell the wine to wholesale buyers and to consumers at their premises or at farmers' markets. Ind. Code 7.1-3-12-5. In contrast, vintners' permits allow the manufacture and bottling of wine in addition to the sale of wine to wholesale buyers, but vinters' permit holders are not entitled to sell wine directly to consumers or to permittees who sell wine at retail. Ind. Code 7.1-3-12-2. The increase of wine sales allowed by farm wineries should increase the number of Indiana wineries that can take advantage of the additional benefits of a farm winery permit.

The limit on annual wine sales for direct wine sellers has also increased from 500,000 to 1,000,000 gallons of wine per year. However, the direct wine sellers' permit which previously required that an applicant for the permit not have distributed wine through a wine wholesaler in Indiana within 120 days preceding the application now has the additional requirement that the applicant not have distributed wine through a wine wholesaler during the term of the direct wine seller's permit. However, if the applicant has operated a farm winery, they are still entitled to apply for a direct wine seller's permit as before.

SEA 107, P.L. 54-2008, SECTIONS 2-3, Ind. Code 7.1-3-12-4, Ind. Code 7.1-3-26-7, effective July 1, 2008.

In addition, instructors teaching a course on wine appreciation at accredited colleges and universities may now purchase and dispense wine for such educational purposes without first obtaining an alcoholic beverage permit.

SEA 107, P.L. 54-2008, SECTION 1, Ind. Code 7.1-3-1-23.5, effective July 1, 2008.

INDIANA STATE DEPARTMENT OF AGRICULTURE

A number of changes to the Indiana Department of Agriculture were made this year. For starters, the department has been renamed the "Indiana State Department of Agriculture" ("ISDA"). As part of the passed bill, the ISDA has been charged with specific economic development tasks, including promotion of "value-added" agricultural resources, marketing Indiana agriculture internationally, and assisting agricultural businesses with developing partnerships with Indiana economic development corporations. The ISDA is also to encourage diversified farming and specialty crops with alternative and niche markets. With respect to international business, the ISDA director now has the duty to (1) create a report and plan for international trade, (2) participate in foreign trade missions, and (3) provide education to agricultural business on import and expert opportunities. The new law also adds that the ISDA director shall assist agricultural operations with the permit process in Indiana and act as a liaison between agricultural operations and state agencies.

SEA 314, P.L. 120-2008, SECTIONS 4, 27-28, 30-33, Ind. Code 15-11-2-1, Ind. Code 15-11-2-3, Ind. Code 15-11-2-6, Ind. Code 15-11-6-1, Ind. Code 15-11-7-1.3, Ind. Code 15-11-7-1.6, Ind. Code 15-11-7-2, effective July 1, 2008.

In order to enhance the economic development capabilities of the ISDA. The new law also added the ISDA to the list of agencies that may have "executive sessions" which includes interviews and discussions between the ISDA and industrial or commercial prospects for Indiana development. These executive sessions can exclude the public. Likewise, documents related to these negotiations are protected from public disclosure. Since the ISDA may keep communications with industrial and commercial prospects confidential, it now has the power to help develop future business in Indiana from entities that would prefer confidentiality.

SEA 314, P.L. 120-2008, SECTIONS 1-2, Ind. Code 5-14-3-4, Ind. Code 5-14-1.5-6.1, effective July 1, 2008

The new law also affects agricultural relations with Indiana's State Chemist relating to pesticides. Persons aggrieved by a decision of the State Chemist may obtain administrative review before the Indiana pesticide review board and judicial review under AOPA. The State Chemist is also granted broader authority to warn, cite, or impose civil penalties against a person who intentionally alters a duly issued license, permit, registration, or certification, or against a person who intentionally impedes or prevents the State Chemist or the State Chemist's agent from performing a statutory duty.

SEA 314, P.L. 120-2008, SECTIONS 59, 70, Ind. Code 15-16-2-49.5, Ind. Code 15-16-4-64.5, effective July 1, 2008.

The new law also grants the Board of Animal Health the authority to grade and certify meat and meat products. Likewise, a person who knowingly or intentionally forges a grade or certification commits a Class D felony. In order to promote voluntary certification programs, the ISDA is allowed to keep records submitted by livestock producers confidential under those voluntary programs.

SEA 314, P.L. 120-2008, SECTIONS 29 and 85, Ind. Code 15-11-2-7 and Ind. Code 15-17-5.5-1 et seq., effective July 1, 2008.

CONCENTRATED ANIMAL FEEDING OPERATIONS — POSSIBLE FUTURE LEGISLATION

Senate Bill 44 was introduced to add a "good character" disclosure requirement to Indiana's Concentrated Animal Feeding Operation ("CAFO") regulations, based upon the original good character law that applies to solid and hazardous waste permit applications. Senate Bill 44 did not pass this year but will likely reappear next year. If passed, the bill would have required CAFO operators to disclose upon application for a CAFO permit:

(1) all pending and fully adjudicated or resolved administrative, civil, or criminal enforcement actions against the CAFO operator;
(2) acts or omissions that constitute a material violation of environmental laws or environmental regulations; and
(3) any environmental permits previously revoked.

After submitting this information to IDEM, the bill would have given the IDEM Commissioner significant discretion to deny a CAFO operator's permit based upon the disclosure. The Commissioner could consider (1) the nature and details of the past acts of the operator, (2) the degree culpability of the operator, and (3) the operator's past cooperation with IDEM or other state or federal agencies. If the Commissioner determines that a CAFO operator's permit should be denied based upon the "good character" disclosure, he would need to identify a specific item from the disclosure, but not explain the basis for denial in detail. This law allowing a denial without an explanation was found unconstitutional in the solid and hazardous waste good character law, and would likely be found unconstitutional here, too.

Senate Bill 44 died in committee and did not become law. The similar "good character" disclosure requirement that has existed since 1990 for IDEM's regulation of commercial solid and hazardous waste operators provides a precedent for adding this requirement to IDEM's CAFO regulations. Anyone interested in the application and operation requirements for CAFOs should carefully watch next year's legislation.

❖

LAWS AFFECTING RULEMAKING AND ADMINISTRATIVE LITIGATION

NOTICE OF SUNSETTING RULES

Rules adopted by any of the environmental boards or the underground storage tank financial assurance board that do not incorporate a federal regulation or are not required for IDEM to receive delegation, primacy, or approval for a state implementation or operation of a program under federal law automatically expire on January 1 of the seventh year after the rules take effect. Ind. Code 13-14-9.5-1 and Ind. Code 13-14-9.5-2. These rules that are subject to automatic expiration often expire without any notice to the regulatory community or public. SEA 43 now requires that IDEM or the rulemaking board publish a notice identifying these expiring rules and listing those that will be adopted and those that will not be readopted. Additionally, if a person submits a written request stating a basis for readoption of a particular rule, IDEM or the board must consider readoption of that rule. Given that this amendment will provide more certainty to regulated entities regarding the applicability of rules, the Environmental Law Section of the Indiana State Bar Association testified in support of its passage.

SEA 43, P.L. 114-2008, SECTION 7, Ind. Code 13-14-9.5-4, Effective March 24, 2008.

CONSOLIDATION OF CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES HEARINGS

Prior to enactment of SEA 134, final actions of IDEM were only reviewable by the Office of Environmental Adjudication ("OEA") pursuant to Ind. Code 4-21.5-73. Final actions of the DNR were reviewable by the Division of Hearings established by the NRC, with the NRC acting as the ultimate authority of the DNR. Ind. Code 14-10-2-2 and 14-10-2-3.

Certain parties or projects might have had aspects subject to decisions by both IDEM and the DNR, and as such might be appealing those decisions both to the OEA and the Division of Hearings. This administrative review of the same project by different agencies could occur when certain projects might impact water quality (IDEM's jurisdiction) and involve construction in a floodway (DNR's jurisdiction). Rather than forcing the party to pursue two separate administrative reviews that could involve the same evidence and issues, the law has been changed to allow concurrent jurisdiction by the OEA and the Division of Hearings. A party subject to a hearing for administrative review of both an IDEM and DNR action may move to have either the Environmental Law Judge ("ELJ") in the OEA or the Administrative Law Judge ("ALJ") of the division of hearings consolidate the multiple proceedings.

Under this law, the ELJ or ALJ shall grant consolidation if the proceedings include common questions of law or fact, there is at least one party (besides IDEM and the DNR) who is a party to each proceeding, there are issues of water quality or quantity, and consolidation would support administrative efficiency. A final hearing in the consolidated proceeding will be conducted by a panel that includes at least one ELJ and one ALJ. Any party may petition for judicial review of a final determination of the panel.

SEA 134, P.L. 84-2008, SECTIONS 2, 3, Ind. Code 4-21.5-7-5.5, Ind. Code 14-10-2-2.5, effective July 1, 2008.

AOPA was amended to clarify that an Administrative Law Judge ("ALJ") may also be the ultimate authority over IDEM in a consolidated proceeding and the NRC statute was amended to clarify that an Environmental Law Judge ("ELJ") from the OEA may be an ultimate authority over the DNR in consolidated proceedings.

SEA 134, P.L. 84-2008, SECTIONS 1, 4, 5, Ind. Code 4-21.5-7-5, Ind. Code 14-10-2-3, Ind. Code 1-34-2-2, effective July 1, 2008.

This new law was not controversial, and the Environmental Law Section of the Indiana State Bar Association testified in support of its passage. ELJs and ALJs have started to meet with interested members of the environmental bar to establish rules that will govern consolidated proceedings.

SHARED NEUTRALS PROGRAM

In 2000 five agencies signed a memorandum of understanding establishing the Interagency Shared Neutrals Program. These agencies included IDEM, the OEA, the NRC, and DNR, and the State Emergency Management Agency. They each agreed to participate in the Shared Neutrals Program that encourages state agencies to engage in mediation to resolve disputes. Appeals to both the OEA and the DNR's division of hearings have been resolved successfully through the Shared Neutrals Program.

In the program, agency staff is trained in conflict-resolution techniques and are assigned to mediate disputes in other agencies. These mediators provide their services free of charge eliminating cost as a potential reason that agencies might be reluctant to engage in mediation. Under AOPA, mediators were required to complete certain training prior to serving as a mediator. Mediators in the shared neutrals program were concerned that even if a mediator was qualified under the requirements in AOPA, the mediator may not be qualified under Indiana Supreme Court Rules. They were concerned that AOPA's requirements were not or may not remain consistent with the Indiana Supreme Court Rules for Alternative Dispute Resolution. At the urging of the Shared Neutrals Program's Mediators, the General Assembly has amended AOPA to reflect that mediators in the Shared Neutrals Program shall be qualified as a mediator under the Rule 2.5 of the Supreme Court's Rules for Alternative Dispute Resolution. A section is also added to AOPA to allow parties to a conflict to agree on any person as a mediator (not just those in the Shared Neutrals Program or that are qualified as a mediator under the Supreme Court Rules), subject to approval of the administrative or environmental law judge.

SEA 43, P.L. 114-2008, SECTION 1, Ind. Code 4-21-5.3-5-8, effective July 1, 2008.

❖

ENVIRONMENTAL QUALITY SERVICE COUNSEL LEGISLATION

ENERGY EFFICIENT BUILDINGS

The Legislature, by an emergency act, has again assigned study topics to the Environmental Quality Service Council ("EQSC"). The EQSC is directed to make findings and recommendations regarding whether state law should require, or encourage through incentives, construction and renovation of public buildings and structures with the goal of achieving particular energy and environmental design ratings. If the EQSC finds that such laws are prudent, it shall make recommendations for the following:

(A) which energy and environmental design ratings systems should be used;
(B) which public buildings and structures should be covered;
(C) whether a price preferences should apply for purchases of equipment that is compliant with particular energy ratings;
(D) if a price preference should apply:
  (i) the appropriate percentage of the price preference; and
  (ii) whether current law adequately takes into account a price preference in the determination of the successful bid for the sale of equipment;
(E) whether the energy and environmental design ratings to be used should take into account the use of certified or noncertified wood from Indiana;
(F) if the findings under clause (E) are in the affirmative, which organization's wood certification standards should be used;
(G) estimates of the extent of realistic projected energy savings;
(H) estimates of the period over which additional construction costs are offset by energy costs savings; and
(I) any other issues the EQSC considers appropriate.

The EQSC is to include its findings and recommendations for this new section in its 2008 final report to the Legislative Council. This section automatically expires on January 1, 2009.

HB 1280, P.L. 142-2008, SECTIONS 1-2, non-code provision, effective March 24, 2008.

❖

OTHER LAWS OF INTEREST

PORTS OF INDIANA

Effective July 1, 2008, the Indiana Port Commission was renamed the Ports of Indiana. The purpose of the Ports of Indiana remains to promote the agricultural, industrial, and commercial development of the state by construction and operation of a modern port system with terminal facilities to accommodate water, rail, truck, air-borne, and other forms of transportation. The Ports of Indiana has the power to construct, maintain, and operate at such locations as shall be approved by the governor for projects throughout Indiana for all forms of transportation, not being limited to ports, with power to be exercised throughout Indiana to enhance, foster, aid, provide, or promote economic development.

HEA 1341, PL 98-2008, SECTIONS 9,11, and 51, Ind. Code 8-10-1-1, Ind. Code 8-10-1-3 and non-code provision, effective July 1, 2008.

The Ports of Indiana is governed by a Commission that consists of seven members appointed by the Governor, who serve for four-year terms. Members are eligible for reappointment. The law was changed this year to provide that persons appointed to fill a vacancy on the Commission are to serve only until the unexpired term, but now continue to serve until a successor is duly appointed and qualified, which allows the actual term to extend beyond the four-year term.

The Commission is responsible for implementing the powers and duties of the Ports of Indiana and may adopt bylaws for regulating the affairs of the Commission and the conduct of the business of the Ports of Indiana. Under the law passed this year, the Commission is authorized to delegate its powers and duties to staff, which includes a Chief Executive. The Chief Executive may delegate his or her authority to appropriate staff.

The law was also changed to make the immunity from liability, which is applicable to state government, also available to the Ports of Indiana. Under prior law that immunity did not exist.

HEA 1341, PL 98-2008, SECTION 11, Ind. Code 8-10-1-3, effective July 1, 2008.

The Open Door Law and Public Records Law were amended this year to provide protection for Ports of Indiana negotiations. The Open Door Law was amended to allow interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects and the Ports of Indiana to be conducted in executive session. The Public Records Law was amended to give the Ports of Indiana discretion to hold records relating to negotiations between the Ports of Indiana and industrial, research, or commercial prospects confidential, not to be disclosed under the Public Records Law. Only those records created while negotiations are in progress are eligible for this confidentiality protection. The terms of a final offer of public financial resources communicated by the Ports of Indiana to an industrial, research, or commercial prospect are required to be available for public inspection and copying, after the negotiations have terminated.

HEA 1341, PL 98-2008 SECTIONS 3-5, Ind. Code 5-14-1.5-6.1, and Ind. Code 5-14-3-4(b)(5) and Ind. Code 5-14-3-4.9, effective July 1, 2008.

The Ports of Indiana has been given a new power to maintain port security. Under existing law, the DNR is allowed to establish and maintain public shoreline fishing areas for Indiana citizens at all ports in operation on July 1, 1975. In areas established for public fishing which have been leased to others for agricultural, industrial, or commercial purposes, the Commission is allowed to limit or halt public fishing. The law was changed this year to also allow the Ports of Indiana Commission to halt or limit public fishing in those areas that have been leased for agricultural, industrial, or commercial purposes if that action is required to maintain port security.

HEA 1341, PL 98-2008, SECTION 14, Ind. Code 8-10-1-7.5, effective July 1, 2008.

Current law makes it a Class D Felony if a Port Commission member fails to advertise for and accept public bids when it enters into a separate contact, which has an aggregate value of more than $25,000 with a different entity during the six-month period

after it has contracted with an entity for a port project. That law was also changed this year to make it a Class D felony for an employee of the Ports of Indiana to fail to advertise and accept public bids under those circumstances.

HEA 1341, PL 98-2008 SECTION 37, Ind. Code 8-10-1-29, effective July 1, 2008.

LOCAL EMERGENCY PLANNING AND RIGHT TO KNOW FUND

Each county's Local Emergency Planning Committee receives a minimum of $2,500 in addition to an allocated portion of fees paid by each facility subject to SARA Title III reporting. The law currently requires the funds received be deposited in a separate fund that is established for seven specific purposes. Those purposes are:

(1) preparing and updating a comprehensive emergency response plan for the county or emergency planning district;
(2) establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under Title III of SARA;
(3) training for emergency response planning, information management, and hazardous materials incident response;
(4) equipping a hazardous-materials response team that provides a district-wide emergency planning response;
(5) purchasing communications equipment for a local emergency planning committee's administrative use;
(6) paying an optional stipend to local emergency planning committee members who attend regularly scheduled meetings; and
(7) paying for Title III risk-communication, chemical-accident-related, and accident-prevention projects.

The law was amended this year to allow one more use for the local emergency planning committee funds. Effective March 13, 2008, the funds may also be used for maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team which had been purchased.

SEA 241, PL 57-2008, SECTION 1, Ind. Code 6-6-10-7, effective March 13, 2008.

STATE DISASTER RELIEF FUND

Indiana has a State Disaster Relief Fund ("SDR Fund") which is funded by money appropriated by the General Assembly. The Governor is responsible for declaring a disaster emergency by Executive Order or by Proclamation. Ind. Code 10-14-3-12. The Department of Homeland Security may use money in the SDR Fund to make grants in territories for which a disaster emergency has been declared by the Governor. Changes were made this year, effective March 13, 2008, to both the SDR Fund and to the provisions related to making grants. The SDR Fund now consists not only of money appropriated by the General Assembly but also money raised from the public safety user fee imposed on retail sales of fireworks in Indiana. Two million dollars of the fireworks user fee is deposited in the Regional Public Safety Training Fund and any amount over two million collected will be put in the SDR Fund. However, no longer is interest earned from the investment of money in the SDR Fund paid into the SDR Fund.

The law has been made more specific as to the type of financial assistance that can be provided. Previously, the law simply allowed grants of money to be paid to assist in paying for the costs of damage to public facilities or individual properties. Now the law provides that the SDR Fund can be used as financial assistance to pay for the costs of repairing, replacing, or restoring public facilities damaged or destroyed by a disaster. The SDR Fund also can be used to pay the costs to repair, replace, or restore individual property that is residential real property or personal property that has been damaged or destroyed by a disaster.

A new use for the SDR Fund was added to the law this year. The SDR Fund may now pay for the response costs incurred by an eligible entity during a disaster and to pay response costs incurred by both the state and local units of governments. Finally the law was also changed to provide that the Department of Homeland Security can provide financial assistance to an individual whose primary residence is located in a territory for which either the Governor or the United States Small Business Administration has declared a disaster. Homeland Security can only provide financial assistance in

response to a disaster from the unobligated balance in the fund on the date of the disaster.

SEA 241, PL 57-2008, SECTIONS 2, 3 and 4, Ind. Code 10-14-4-6, Ind. Code 14-4-4-6 and Ind. Code 10-14-4-13, effective March 13, 2008.

REGIONAL PUBLIC SAFETY TRAINING FUND

Indiana has a Public Safety Training Fund which is used to provide regional and advanced training for public safety service providers. The law was changed effective May 13, 2008, to provide that it is the money in that Fund that has not been encumbered, as opposed to the current law which provided for money that had not been appropriated, which will be transferred to the fire training infrastructure fund.

SEA 241, PL 57-2008, SECTION 5, Ind. Code 10-15-3-12, effective March 13, 2008.

SHORELINE DEVELOPMENT COMMISSION

The Shoreline Development Commission was established in 2001 to identify shoreline properties for development or redevelopment and to develop a comprehensive plan of development or redevelopment for the strip of land in Indiana abutting Lake Michigan and the tributaries of Lake Michigan. The Commission's duties include ensuring that all construction on the Lake Michigan shoreline is environmentally sound. Representative Earl Harris of East Chicago introduced SEA 88 to add two members to the Commission. One new member is to be a representative of the public utility owning real property in the counties contiguous to Lake Michigan with assessed value greater than properties owned by any other public utility in these counties. The public utility described by these requirements is the Northern Indiana Public Service Company ("NIPSCO"). The second new member is the port director of the Port of Indiana-Burns Harbor. The legislation was intended to allow the Commission to speed up redevelopment plans, including the development effort in a 600-acre area near Bluffton Harbor in Gary that includes a former NIPSCO plant.

HEA 1227, SECTIONS 1-2, Ind. Code 36-7-13.5-3, effective July 1, 2008.

ELECTRONIC STATEWIDE MECHANIC'S LIEN REGISTRY

The General Assembly, in an effort to modernize the filing of mechanic's liens, is requiring a study committee to review the creation of a statewide online registry for mechanic's liens. The Indiana State Budget Agency and the Indiana Office of Technology are required to submit the following information to the Indiana Legislature by November 1, 2008:

(1) The use of the registry by state agencies.
(2) The overall cost of maintaining the registry.
(3) The efficiency of the registry.
(4) The competitiveness of a market for a registry.
(5) The ability to locate individuals that can repair and replace the registry.
(6) The cost savings that could be realized if the registry was ever replaced by other systems.

An Indiana Builder's Association task force developed and supported the legislation.

SEA 257, P.L. 88-2008, SECTIONS 1-2, non-code provision, effective March 19, 2008.

NEW REQUIREMENTS FOR RECORDER OFFICES

County recorders' offices are now required (rather than allowed as before) to record a document that is a copy of the original document if the document complies with the statutory recording requirements, is marked "Copy," and is a clear and unobstructed copy. A recorded document that is marked "Copy" will now have the same effect as if the original document were recorded. Missing original documents have become a problem with foreclosures and often a person will only have a copy of the original document, as opposed to the original document itself. This bill will now allow a person with only a copy of an original document to file the copy at the county recorder's office. The new law also provides that recorded mortgages now provide constructive notice of the contents of the instrument as of the date of the filing, regardless of when the mortgage was recorded.

HEA 1111, P.L. 129-2008, SECTIONS1-2, Ind. Code 36-2-11-16, Ind. Code 32-21-4-1, effective July 1, 2008.

TRANSFER OF TAX DELINQUENT PROPERTIES

Counties and political subdivisions that hold a tax deed for real property may now transfer the property to an abutting landowner for little or no cost. In order to do this, the county or political subdivision must provide 14 days' notice to all abutting landowners prior to beginning any negotiations for the transfer or sale of the property. The notice must include a legal description; a street address, if possible; a statement that the transferring agent can transfer the property to abutting landowners for little or no cost; and the limitations on who can purchase the property. If only one abutting landowner offers to purchase the property, the transfer agent can transfer or sell the property to that abutting landowner without appraisal or further notice. If more than one abutting landowner offers to purchase the property, the property will be sold to the abutting landowner with the highest offer. This bill may cause some counties or political subdivisions to lose revenue from the eventual tax sales of the property, but it will also allow counties to save money since there is no mandatory appraisal or auction service. Furthermore, this new law will help get unmarketable properties back on the tax rolls by transferring ownership to responsible property owners.

HEA 1145, P.L. 27-2008, SECTIONS 1-3, Ind. Code 36-1-11-3, Ind. Code 36-1-11-4, Ind. Code 36-1-11-5.9, effective July 1, 2008.

❖

SUMMARY INDEX

❖ Laws Affecting the Indiana Department of Environmental Management

❖ Laws Affecting the Department of Natural Resources

❖

SUMMARY INDEX — Continued

❖

SUMMARY INDEX — Continued

❖ Other Laws of Interest

❖ Frequent Abbreviations

IDEM	**Indiana Department of Environmental Management**
NRC	**Natural Resources Commission**
DNR	**Department of Natural Resources**
AOPA	**Administrative Orders and Procedures Act**

PLEWS SHADLEY RACHER & BRAUN LLP
1346 N. Delaware Street
Indianapolis, IN 46202