Plews Shadley Racher & Braun LLP

Indiana Perspective

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SUMMARY OF 2009 ENVIRONMENTAL LEGISLATION

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The following is Plews Shadley Racher & Braun LLP's summary of the new 2009 Indiana laws relating to the environment or natural resources. Plews Shadley Racher & Braun LLP has been preparing this summary since 1994. Our version is different from other summaries 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 explain in detail the new law or how an existing law is changed by the various legislation. At the end of each summary is a citation to the House or Senate Enrolled Action and Sections where the language of this law can be found, along with its 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 Legislature and many of the bills stirred much debate in the final days of the session as the Legislature took on challenging tasks such as guiding the Indiana Department of Environmental Management on important policies such as how antidegradation should apply to water permits and how it should apply risk-based cleanup principles. 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 the legislation passed this year as well as issues that might arise in the future. 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 also available on our web site 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 38 attorneys, one of whom should be able to assist you with any legal issues you may have. Please contact us if we can be of service to you.

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LAWS AFFECTING THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

AIR ISSUES

Air Pollution Permit Exemptions

A non-code provision applicable to the air pollution control laws was inserted into the statute this year. This provision requires the Air Pollution Control Board of the Indiana Department of Environmental Management ("IDEM") to revise its permit exemption rule at 326 IAC 2-1.1-3 and prohibits the Air Board from adopting any rule addressing how IDEM makes a decision on when an emission unit, process, or operation is exempt from the requirement to obtain a registration, a permit modification, or permit revisions based on potential emissions. Specifically the Air Board may not adopt a rule that would base the exemption on "potential emissions," but must base it on actual emissions. This requirement does not apply to construction or operation which is subject to the Prevention of Significant Deterioration rule, the nonattainment New Source Review rule, a Title I modification under Part 70, or where the modification would trigger a part 70 permit, a FESOP, or a minor source operating permit.

SEA 346, PL 16-2009, SECTION 20, Ind. Code 13-17-3-4.5, effective July 1, 2009.

Lead-Based Paint Activities Program Transferred From IDEM to the State Department of Health

The Lead-Based Paint Activities program that has been implemented by the Indiana Department of Environmental Management's ("IDEM's") Office of Air Quality since 2000 has been transferred to the State Department of Health, effective July 1, 2009. It is now found at Ind. Code 16-41-39.8. The rules of IDEM will be considered rules of the State Department of Health. Two substantive changes were made to the lead-based paint activities law. First, what is defined as elevated blood lead level has been cut in half. It is now defined as at least 10 micrograms of lead per deciliter of whole blood. Second, an exemption has been added to the law that applies to retail establishments that sell paint or paint products. Under the Lead-Based Paint Activities law, a retailer must offer for sale a lead test kit capable of determining the presence of lead-based paint hazard and must provide customers the federal Environmental Protection Agency pamphlet "Protect Your Family from Lead in Your Home" and ensure at least one employee attends a training program on lead hazards. However, if the retailer is selling only paint used for craft or hobby, these requirements will not apply.

SEA 202, PL 57-2009, Ind. Code 16-41-39.8, Ind. Code 16-18-2-0.5, Ind. Code 16-18-2-54.7, Ind. Code 16-18-2-56.2, Ind. Code 16-18-2-66.7, Ind. Code 16-18-2-106.6, Ind. Code 16-18-2-114.5, Ind. Code 16-18-2-143, Ind. Code 16-18-2-198.5, Ind. Code 16-18-2-198.7, Ind. Code 16-18-2-315.8, Ind. Code 16-18-2-346.3, Ind. Code 16-41-39.4-6, Ind. Code 16-41-39.4-7, Ind. Code 13-11-2-87, Ind. Code 13-30-10-1.5, Ind. Code 13-11-2-0.5, Ind. Code 13-11-2-25.5, Ind. Code 13-11-2-36.5, Ind. Code 13-11-2 61.5, Ind.

Code 13-11-2-66.5, Ind. Code 13-11-2-66.7, Ind. Code 13-11-2-118.3, Ind. Code 13-11-2-188.5, Ind. Code 13-11-2-229.5, Ind. Code 13-7-14, effective July 1, 2009.

CONFINED FEEDING OPERATIONS ISSUES

Good Character Disclosures Now Required For CFO

The Legislature amended the Confined Feeding Control law this year, making significant changes to the permit application process for approval of a Confined Feeding Operation ("CFO"). CFO applicants for a new CFO or for expansion of an existing CFO and their responsible parties, must now disclose, under oath, subject to the penalties for perjury, the following information: (1) the name and business address of the applicant and of all responsible parties; (2) a description of prior experience with environmental management of CFO facilities; (3) a description of all pending administrative, civil, or criminal enforcement actions filed in the United States against the applicant or against a responsible party that allege an act or omission that constitutes a material violation of a state or federal environmental law which presents a substantial endangerment to human health or the environment; (4) a description of all pending administrative, civil, or criminal enforcement actions filed in a foreign country against the applicant or against a responsible party that allege an act or omission that constitutes a material violation of foreign environmental law that would have constituted a material violation of a state or federal environmental law, if the action or omission had occurred in the United States, which act or omission presented a substantial endangerment to human health or the environment; (5) a description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions in the United States resolved against the applicant or against a responsible party within the five years that immediately preceded the date of the application, which involved acts or omissions that constituted a material violation of a federal or state environmental law and presented substantial endangerment to human health or the environment; (6) a description of all finally adjudicated or settled administrative, civil or criminal enforcement action in a foreign country resolved against the application or a responsible party within the 5 years immediately preceding the date of the application that involved an act of omission that constituted a material violation of the foreign environmental law, which would have constituted a material violation of a state or federal environmental law if the action or omission had occurred in the United States and which presented substantial endangerment to human health or the environment; and (7) identification of all state, federal, or foreign environmental permits applied for by the applicant or by a responsible party that were denied or were previously held and were revoked. A responsible party, who must make theses disclosures in addition to the applicant, includes officers, directors, and senior management officials of the applicant. This law applies retroactively to all pending applications which had not been acted upon by May 12, 2009, the effective date of this new requirement.

The intent of requiring these disclosure statements is to allow the Commissioner of IDEM to consider the "good character" of the CFO applicant. IDEM may deny a permit application

if (1) the applicant or any responsible party intentionally misrepresents or conceals any material fact in the application or in a disclosure statement or (2) one enforcement action in the United States or a foreign country was resolved against the applicant or one of its responsible parties where that action concerned an act or omission that was a material violation that presented substantial endangerment to human health or the environment. Before denying the permit application, IDEM must consider mitigating information including (1) the nature and details of the acts; (2) the degree of culpability; (3) cooperation with the authorities' investigation; (4) disassociation from the person or entity convicted in a criminal enforcement action; and (5) the prior and subsequent self-policing or internal education programs established to prevent acts, omissions, or violations. The Commissioner must make separately stated findings of fact to support the action taken on the permit application. However, if the Commissioner denies the application, the Commissioner is not required to explain the extent to which the mitigation factors influenced the decision to deny. The Indiana Supreme Court has already ruled in a challenge to the good character requirements for Solid and Hazardous Waste permit applications that it is not lawful for the Commissioner to be relieved from the responsibility of explaining the decision to deny. For that reason we do not anticipate that this exception for findings when denying an application will be ultimately found to be legal.

SEA 221, PL 127-2009 SECTIONS 1, 3, 4, 6 and 8 Ind. Code 13-11-2-8, Ind. Code 13-11-2-71, Ind. Code 13-11-2-191, Ind. Code 13-18-10-1.4, and Ind. Code 13-18-10-2.1, effective July 1, 2009 and NON CODE SECTION 14, effective May 12, 2009.

Definition Of CFO Extended To Horses

This year the Legislature also changed the definition of a Confined Feeding Operation. Previously a CFO included any confined feeding of at least 300 cattle, at least 600 swine or sheep, or at least 30,000 fowl, in addition to animal feeding operations that elect to become subject to IDEM approval or an animal feeding operation that causes a violation of the water pollution control laws, rules, or provisions of the confined feeding law. This year added to the definition of a CFO is any animal feeding operation of at least 500 horses.

SEA 221, PL 127-2009 SECTION 2, Ind. Code 13-11-2-40, Effective July 1, 2009.

Approval of CFO Extended to Expansions Increasing Animal or Manure Containment Capacity

The Legislature amended the law for Confined Feeding Operation approvals to include not just new construction of a CFO, but also an expansion of an existing CFO that increases either animal capacity or manure containment capacity or both. The law requiring an affidavit of completed construction and the requirement to commence construction within two years and complete construction within four years has also been extended to permits for expansions of a CFO. Finally, the law providing the Water Pollution Control Board rulemaking authority and IDEM policy authority has also been extended to expansions of CFOs.

SEA 221, PL 127-2009 SECTION 5, 9 and 10, Ind. Code 13-18-10-1 and Ind. Code 13-18-10-2.2 and Ind. Code 13-18-10-4, effective July 1, 2009.

Concentrated Animal Feeding Operation Approval Separated from NPDES Approval

The CFO Law was changed to no longer provide that obtaining the NPDES permit alone satisfies the requirement to obtain approval from IDEM to construct or expand a CFO. Now even those CFOs obtaining an individual NPDES permit must still comply with the requirements in 327 IAC 16 for either new facilities or for those expanding animal capacity or manure containment capacity.

SEA 221, PL No. 127-2009 SECTION 5, Ind. Code 13-18-10-1, effective July 1, 2009.

Notice of Applications for CFO

Under prior law, CFO applicants had been required to give notice to the County Executive of the County in which a CFO was to be located, to persons who own land that adjoins the land on which the CFO was to be constructed if the land where the CFO was to be constructed was undeveloped or for which a valid existing approval had not been issued, and to persons who occupy land owned by another that adjoins the land where the CFO was to be constructed. The law has been modified to require notice be given even if the land was not undeveloped, and also when a CFO is expanded. In addition, the law has been changed to now require notice be given to each owner and each occupant of land of which any part of the boundary is one-half mile or less from a livestock or poultry production structure or a permanent manure storage facility.

SEA 221, PL 127-2009 SECTION 7, Ind. Code 13-18-10-2, effective July 1, 2009.

ENVIRONMENTAL RESTRICTIVE COVENANTS

The Legislature has amended the definition of "restrictive covenant" to require additional information that must be included in an Environmental Restrictive Covenant ("ERC") after June 30, 2009. The new definition makes clear that IDEM has access to the site, requires notice during property transfers, and identifies where IDEM's files regarding the property can be found.

HEA 1162, PL 78-2009, SECTION 8, Ind. Code 13-11-2-193.5, effective July 1, 2009.

After June 30, 2009, IDEM shall no longer have the authority to review and approve the entire ERC document. Rather IDEM's review of ERCs is now limited to reviewing the activities and land-use restrictions included in the ERC. IDEM still has the authority to enforce the terms of an ERC, even if it did not approve the entire ERC.

HEA 1162, PL 78-2009, SECTIONS 10 and 11, Ind. Code13-14-2-6, Ind. Code 13-14-2-8, effective July 1, 2009.

PERMIT ISSUES

IDEM Permits and Local Government Approvals

A new subsection was added to the IDEM's permit laws making clear what many of IDEM's rules already state — that issuance of an IDEM permit does not preempt local laws. Specifically, as of July 1, 2009, a person receiving an IDEM permit may not start construction, installation, operation, or modification of the facility, equipment, or a device permitted by IDEM, until the person has also obtained any approval required by a county, city, or town in which the

facility, equipment, or device will be located. This law goes further than what IDEM's rules provide to make clear these local approvals, which must be complied with, are only those which were already in effect at the time the application for a permit was submitted to IDEM. This law thus provides IDEM permittees a legal argument that local governmental entities may not attempt to block activities regulated by IDEM by enacting laws to prohibit such activities on a date that is after the date the permit application was submitted to IDEM.

HEA 1162; PL 78-2009 SECTION 12; Ind. Code 13-15-3-5; effective July 1, 2009.

REGIONAL DISTRICTS

A new section was added to the law regarding the powers and duties of regional water, sewer, or solid waste districts regarding the disbursement of money for lawful district purposes. The law allows a regional district board to adopt an ordinance for the disbursement of money, including payment in advance for certain permit fees, insurance premiums, utility payments, rental agreements, taxes, or any other expenses described by ordinance adopted by the board. A fully itemized invoice or bill and the certification of the fiscal officer must support each payment. Prior to this law the boards had the power to make contracts and incur obligations so this statute provides the explicit authority to pay the expenses attributable to those contracts and obligations.

HEA 1162, PL 78-2009, SECTION 20, Ind. Code 13-26-5-9, effective July 1, 2009.

UNDERGROUND STORAGE TANK ISSUES

UST Requirements for Alcohol Blended Fuel

A non-code provision was added to the Underground Storage Tank ("UST") laws related to tanks containing greater than 15 percent alcohol. In 2007, the Legislature addressed a problem that had arose when the Underwriters Laboratories, Inc. suspended authorization to use the UL Markings on components of fuel-dispensing devices for alcohol-blended fuels that contained greater than 15 percent alcohol (i.e., ethanol, methanol, or other alcohols). UST owners in Indiana became reluctant to install fuel-dispensing systems for E-85 because of fears they would not be in compliance with IDEM's UST requirements and jeopardize Excess Liability Trust Fund ("ELFT") eligibility. In 2007, the Legislature passed a law providing what was necessary for those tanks to be considered in compliance and giving the Solid Waste Management Board time to proceed in an orderly fashion to study and develop any additional secondary containment and safety requirements deemed necessary in the future for UST systems including those that sell alcohol-blended fuels greater than 15 percent alcohol. This year, the Legislature inserted into the law the specific date of the new solid waste rules, making May 11, 2007, the compliance date which UST systems must comply with the technical and safety requirements for storing and dispensing alcohol- blended fuels. The law now makes clear any system that predates the May 11, 2007, adoption of the additional rule requirements is considered to comply with the law for installation of a UST and that

any replacement tanks or ancillary equipment installed in existing underground storage tank systems storing or dispensing alcohol-blended fuels must meet the standards in the May 11, 2007, rules if installed after that date.

SEA 346, PL 16-2009, SECTION 21, Ind. Code 13-223-5-3, effective July 1, 2009.

CERCLA Exemptions included for "Owner" and "Operator" under UST Statute

The definition of "operator" under the UST Act and Petroleum Release Act was amended to include exemptions that apply under CERCLA. Previously these exemptions only applied to "hazardous substances, which did not include petroleum. Now, the exemptions that apply to certain contiguous landowners (from 42 U.S.C. 9607(q)) and bona fide prospective purchasers (from 42 U.S.C. 9607(r)) also applies to these landowners and purchasers under Indiana law for petroleum releases. Purchasers of petroleum-contaminated properties may now be able to work with IDEM to determine how they may develop these properties without becoming liable under state law.

HEA 1162, PL 78-2009, SECTIONS 4, 6, and 7, Ind. Code 13-11-2-148, Ind. Code 13-11-2-150, Ind. Code 13-112-151, July 1, 2009.

WASTE ISSUES

Electronic Waste Recycling

In 2007 IDEM's Solid Waste Management Board adopted a rule creating an electronic waste ("e-waste") program, which took effect on September 14, 2007. That e-waste program created a registration program for owners and operators of facilities storing or processing electronic waste, including all of the following activities: (1) collecting, (2) brokering, (3) storing, (4) recycling, (5) reselling, (6) dismantling, and (7) de-manufacturing. The rule also established standards for storage and for processing of e-waste and standards for cleanup and closure of storage and processing facilities. Finally, the rule mandated owners, operators, and all persons who must register to establish financial assurance to ensure cleanup and closure of e-waste facilities. The new rule replaced all hazardous waste standards and requirements under 329 IAC 3.1 for e-waste that is a hazardous waste, except the disposal or incineration requirements and export requirements. The rule also replaced all solid waste processing standards and permitting requirements under the processing rules.

This year, the Legislature, with the support of manufacturers of e-waste, passed a broader e-waste program applying to manufacturers of video display devices sold or offered for sale to Indiana households as of January 1, 2010, and a requirement that manufacturers ensure at least 60 percent of the total weight of the manufacturer's video display devices sold to Indiana households be recycled. This new law requires manufacturers, collectors, and recyclers be registered and allows IDEM to revoke the registration of a collector or recycler who violates either this new law or the 2007 rules.

HEA 1589, PL No. 178-2009, SECTION 27, Ind. Code 13-20.5, effective July 1, 2009.

Numerous new definitions were added to Ind. Code § 13-11- 2. This law applies only to "covered electronic devices," which are defined as computers, peripherals including keyboards and printers, fax machines,

DVD players, VCRs, and video display devices. "Video display devices" include televisions and computer monitors with cathode ray tubes or flat panels larger than four inches diagonally, but they do not include display devices used in motor vehicles or (a) industrial, (b) commercial or retail, (c) library checkout, (d) traffic control, (e) security, (f) border control, (g) medical, or (h) governmental or R&D settings. Video displays in appliances, such as refrigerators, and telephones with screens smaller than nine inches, are also excluded. Applicability also depends on the intended use of a device: an electronic device is only "covered" if it is sold – or, in the case of televisions and computer monitors, marketed – to a "covered entity," which is defined as a household, public school, or small business. A "manufacturer" is defined as a person that manufactures video display devices to be sold under the person's own brand or a brand the person licenses and who sells video display devices manufactured by others under the person's own brand or a brand the person licenses. To "sell" means to transfer for consideration of title or right to use by a lease or a sales contract, including transactions conducted through sales outlets, catalogs, or Internet or any other similar electronic means, either inside or outside Indiana, and includes the person that conducts the transaction and controls the delivery of a video display device to a consumer in Indiana.

HEA 1589, PL No.178-2009, SECTIONS 3-25; Ind. Code 13-11-2-23.5, Ind. Code 13-11-2-31.1, Ind. Code 13-11-2-31.2, Ind. Code 13-11-2-38.1, Ind. Code 13-11-2-38.2, Ind. Code 13-11-2-47.5, Ind. Code 13-11-2-47.7, Ind. Code 13-11-2-61.3, Ind. Code 13-11-2-103.9, Ind. Code 13-11-2-116, Ind. Code 13-11-2-126, Ind. Code 13-11-2-133, Ind. Code 13-11-2-156.5, Ind. Code 13-11-2-172.1, Ind. Code 13-11-2-176.5, Ind. Code 13-11-2-179.9, Ind. Code 13-11-2-180, Ind. Code 13-11-2-180.1, Ind. Code 13-11-2-194, Ind. Code 13-11-2-195.7, Ind. Code 13-11-2-203.5, Ind. Code 13-11-2-230.1, and Ind. Code 13-11-2-245.5, effective July 1, 2009.

Manufacturers of video display devices sold or offered for sale to Indiana households as of January 1, 2010, must submit a registration to IDEM no later than April 1, 2010, and each successive April 1 on which the manufacturer continues as a manufacturer of video display devices sold or offered for sale to Indiana households. The manufacturer's registration must include the following:

(1) a list of the brands of video display devices offered for sale in Indiana by the manufacturer;

(2) the name, address, and contact information of a person responsible for ensuring compliance with this article;

(3) a certification that the manufacturer or its agent has complied and will continue to comply with the requirements of the Indiana e-waste law;

(4) an estimate, based on national sales data, of the total weight in pounds of the manufacturer's video display devices sold to household during the most recent 12 months preceding the date of registration for which that data is available;

(5) a demonstration of how the manufacturer plans to meet the recycling goal; and

(6) a statement that discloses whether any video display devices sold exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and

polybrominated diphenyl ethers or standards under the European Parliament and Council directive or has received an exemption published by the European Commission.

IDEM must review the registration and notify a manufacturer of any information required that has been omitted. A registration received from a manufacturer is effective for the program year, unless a second or subsequent notification is received concerning incomplete information. IDEM must maintain on an Internet web site the names of manufacturers and brands listed in the registration submitted. Starting on January 1, 2010, a manufacturer may not sell, offer for sale, or deliver to a retailer for sale a new video display device, unless the manufacturer has submitted the registration and has labeled the devices with the manufacturer's brand.

HEA 1589, PL No. 178-2009, SECTION 27, Ind. Code 13-20.5, effective July 1, 2009.

Collectors of covered electronic devices and recyclers must submit to IDEM the registration form that is required by the 2007 rule. A registration submitted by a collector or recycler is effective upon receipt by IDEM and valid for one year.

Manufacturers must include a $5,000 registration fee with the initial registration and a $2,500 fee with each subsequent registration. Registration fees are deposited in a new Electronic Waste Fund. The Electronic Waste Fund is established to implement the e-waste law and is administered by IDEM. Money in the fund at the end of a state fiscal year does not revert to the State General Fund. However, if the total amount of registration fees collected for a state fiscal year exceeds the amount IDEM determines necessary to administer the e-waste program for the next year, IDEM shall refund on a pro rata basis to all manufacturers that paid any fees the amount of fees collected that exceeds the amount necessary. IDEM does not have to refund an amount less than $100 nor make a refund to a manufacturer whose recycling rate from the most recent program year was less than 50 percent of the amount required to be recycled.

Manufacturers must recycle or arrange for the collection and recycling from covered entities of an amount of covered electronic devices equal to at least 60 percent of the total weight of the manufacturer's video display devices sold to household as reported in the manufacturer's registration for the program year. Manufacturers must report these weights to IDEM by June 1 of each year, beginning in 2011. Manufacturers must maintain for three years documentation showing that all covered electronic devices recycled, partially recycled, or sent to downstream recycling operation are recycled in compliance with the law. Manufacturers must provide IDEM with contact information for an individual who can be contacted regarding the manufacturer's activities under the e-waste law.

In addition to the registration fee, any manufacturer who fails to meet the mandated recycling goals by March 31, 2013, must pay a Variable Recycling Fee, which is determined by a fairly complicated method set forth in the law. Recycling credits in the amount of 25 percent of the amount by which a manufacturer exceed the recycling goal in preceding years may be used toward meeting the 60 percent requirement. IDEM is required to provide a statement

to each manufacturer liable for the Variable Recycling Fee by September 1 which states the amount due, the method used to calculate the fee, the due date of the fee, and the opportunity to petition the Indiana Recycling Market Development Board for relief from the Variable Recycling Fee. The Recycling Market Development Board is to consider if the manufacturer has made good faith progress toward achieving substantial compliance with the recycling goal. The decision to grant or not grant relief is not reviewable. Variable Recycling Fees are to be deposited in the Recycling Promotion and Assistance Fund, which is administered by the Indiana Recycling Market Development Board and used to promote and assist recycling throughout Indiana by focusing economic development efforts on businesses and projects involving recycling.

The new law prohibits any "covered entity" after 2010 from knowingly mixing any "covered electronic device" – including computers, DVD players, etc. – with municipal waste intended for disposal in a landfill or with any waste intended for disposal by burning or incineration. This provision underwent significant changes. Originally, it applied to any "person," which Indiana courts interpret to mean any individual or entity. By restricting the prohibition to "covered entities," the Legislature limited its effect to households, public schools, and small businesses. There is no prohibition against state agencies and large businesses, e.g., a business with more than 100 employees, or a business, no matter how small, with its principal place of business outside Indiana, from mixing electronic waste with municipal waste. In another important change from the original bill, this prohibition has no teeth: new language provides that a covered entity that violates the disposal prohibition is not subject to any criminal or civil penalty or sanction and that violation of the prohibition does not create a cause of action.

Lesser duties are imposed on recyclers, retailers, IDEM, and state agencies. Those who collect or recycle covered electronic devices must submit an annual registration to IDEM. A collector includes only public or private entities that receive covered electronic devices from covered entities and arrange for the delivery of the covered electronic devices to a recycler and specifically does not include the United States Postal Services or any other parcel service that accepts packages and delivers them to collectors or recyclers under a manufacturer's mail back program. Before April 1, 2011, and before each April 1 thereafter, a collector must submit to IDEM a report for the immediately preceding calendar year of the total weight in pounds of covered electronic devices collected in Indiana and a list of all recyclers to whom the collector delivered covered electronic devices.

A recycler must, before April 1, 2011, and before each April 1 thereafter, report to IDEM the total weight in pounds of covered electronic devices recycled by the recycler and taken by the recycler for final disposal during the immediately preceding calendar year. A recycler shall also certify in each report that it has complied with the e-waste law and rule.

Retailers that sell new video display devices must inform households about how and where to recycle video display devices and convenient locations where video display devices are collected for recycling.

IDEM manages the registration program. IDEM must adopt forms for use by manufacturers, collectors, and recyclers for all registration statements, certifications, and reports required and must establish procedures for receipt and maintenance of the registration statements and certification. IDEM is to make the statements and certifications easily available to manufacturers, retailers, and the public. Before June 1, 2010, and before June 1 of each year thereafter, IDEM must calculate estimated sales of video display devices sold to households by each manufacturer during the immediately preceding calendar year, based on national sales data. If the revenues in the electronic waste fund exceed the amount that IDEM determines necessary for efficient and effective administration of the e-waste law, IDEM must recommend to the Legislature in an electronic report that the registration fee or the proportion of video display devices required to be recycled be lowered in order to reduce revenues collected.

IDEM must, before August 1, 2013, and before August 1 of each year thereafter, submit a report concerning implementation of the e-waste law to the Legislature, the Governor, the EQSC and the Indiana Recycling Market Development Board. That report must:

(1) discuss the total weight of covered electronic devices recycled;

(2) discuss the various collection programs used by manufacturers to collect covered electronic devices, and information on persons other than registered manufacturers, collectors, and recyclers who are collecting electronic devices and the amount of electronic devices being disposed of in landfills in Indiana;

(3) include a description of enforcement actions for violations of the e-waste law during the state fiscal year; and

(4) may include other information received by the department regarding implementation.

If a national electronic waste program is implemented that is similar to Indiana's e-waste law, IDEM shall review, evaluate, and compare the national program to Indiana's program and to any regional agreement IDEM has entered into.

Cities, counties, and other governmental entities are prohibited from requiring the use of public facilities to recycle to the exclusion of other lawful recycling programs available.

The Indiana Department of Administration must ensure that state agency purchases of video display devices "comply with or are not subject to this article." This provision carried over from the original House Bill 1589, but its effect was greatly watered down by a change in the definition of "video display devices," which in the final rule excludes devices intended for use in a "governmental" setting. In other words, the department of administration must ensure only that state agencies buy televisions and computers for agency use, not home use. The rule also allows the department to void any contract to purchase video display devices from a person who violates the electronic waste recycling rule.

The Environmental Quality Service Council is required to consider the effectiveness of this new law in 2012 as well as appropriate guidelines for the Indiana Recycling Market Development Board for determining whether a manufacturer has made good faith

progress to achieve compliance with the new law.

HEA 1589, PL No. 178-2009 SECTION 26, Ind. Code 13-13-7-9, effective July 1, 2009.

Voluntary Remediation Program and Other Risk-Based Cleanups

The Legislature sent the message to IDEM that "risk means risk" presumably in answer to IDEM's non-written policy to prefer removal over risk-based remediation objectives. The Voluntary Remediation Program ("VRP") statute was amended to now give consideration to remedial measures, restrictive covenants, and environmental restrictive ordinances that

(A) manage risk; and

(B) control completed or potential exposure pathways.

The amendment clarifies that risk-based objectives extend to the characterization and of the nature and the extent of contamination. The Legislature also specifically directed that IDEM shall consider and give effect to restrictive covenants and environmental restrictive ordinances in evaluating risk-based remediation proposals. Each subsection of Ind. Code 13-25-5-8.5 will now apply to sites regardless of whether they were entered into the voluntary remediation program before July 1, 2009, or after June 30, 2009.

HEA 1162, PL 78-2009, SECTION 18, Ind. Code 13-25-5-8, effective July 1, 2009.

Some carve-outs and clarifications were added to Ind. Code 13-25-5-18 (covenant not to sue; immunity from actions; exceptions) to clarify that certificates of completion may include conditions that must be performed or maintained after the issuance of the certificate and that a covenant not to sue issued under this section may include conditions that must be performed or maintained after issuance of the covenant.

HEA 1162, PL 78-2009, Section 19, Ind. Code 13-25-5-18, effective July 1, 2009.

The definitions article of Title 13 of the Indiana Code has been amended to add a new term: "Environmental Restrictive Ordinance" ("ERO"). As discussed above, IDEM must consider EROs in risk-based remedial proposals. This term means any ordinance that

(1) is adopted by a municipal corporation (as defined by Ind. Code 36-1-2-10); and

(2) limits, regulates, or prohibits any of the following with respect to groundwater:

(a) withdrawal;

(b) human consumption; or

(c) any other use.

HEA 1162, PL 78-2009, SECTIONS 2 and 21, Ind. Code 13-11-2-71.2, Ind. Code 36-1-2-4.7, effective July 1, 2009.

The Legislature changed statutes regarding local government's ability to create EROs that can serve as institutional controls in the evaluation of risk-based remedial programs. Local governments must give IDEM notice 60 days before amending or repealing an ERO and 30 days after the amendment or repeal of an ERO. These same notice requirements are included in other statutes applying to local governments such as Ind. Code 36-2-4-8 (legislative procedures of county governments for ordinances), Ind. Code 36-3-4-14 (ordinance procedures for the legislative bodies of the unified government of Indianapolis and Marion County), Ind.

Code 36-4-6-14 (ordinance procedures for the legislative bodies for cities and towns generally), and Ind. Code 36-5-2-10 (ordinance procedures for town legislative bodies and executives). This notice will allow IDEM to evaluate how amendment or repeal of EROs might affect prior remediation proposals that have been approved by IDEM.

HEA 1162, P.L. 78-2009, SECTIONS 22-26; Ind. Code 36-1-6-11, Ind. Code 36-2-4-8, Ind. Code 36-3-4-14, Ind. Code 36-4-6-14, Ind. Code 36-5-2-10, effective July 1, 2009.

Indiana's preference for risk-based cleanup is not limited to the VRP program. The Legislature amended the remediation section of the environmental policy chapter to clarify that risk-based principles apply to all remediation programs: "The remediation and closure goals, objectives, and standards for all remediation projects conducted under Ind. Code 13-22 [RCRA], Ind. Code 13-23 [USTs], Ind. Code 13-24 [petroleum cleanups], and Ind. Code 13-25-4 [state cleanup] shall be consistent with the remediation objectives set forth in Ind. 13-25-5-8.5 regardless of whether the remediation project begins before July 1, 2009, or after June 30, 2009." It is clear that the Legislature intends that IDEM should apply risk-based objectives to any remediation, whether the site is in a cleanup program or whether it enters the programs in the future.

HEA 1162, PL 78-2009, SECTION 9, Ind. Code 13-12-3-2, effective July 1, 2009.

WATER ISSUES

IDEM Permit Action Time Frames

As of May 6, 2009, the timeframe in which IDEM must act on a major new National Pollutant Discharge Elimination System ("NPDES") permit application, a minor new individual NPDES permit application and a minor new NPDES general permit application may be extended an additional 90 days. This additional time in which to make a decision can be used by IDEM only if it can "show cause" for needing additional time due to completing the required antidegradation review.

HEA 1162, PL 78-2009 SECTION 13; Ind. Code 13-15-4-1; effective May 6, 2009.

Antidegradation and Total Maximum Daily Load ("TMDL") Provisions

The Legislature provided direction to IDEM regarding the establishment of TMDLs for impaired surface waters and provided guidance to IDEM in developing antidegradation rules for discharges that potentially lower the quality of waters that meet or exceed the water quality standards.

When establishing a list of impaired waters, IDEM is now specifically required to make every reasonable effort to identify the pollutants for which the water body is considered impaired and for which IDEM is considering the establishment of a TMDL. Interested parties may now also participate in IDEM's decision-making process regarding making a pollutant the subject of consideration for the establishment of a TMDL. Once IDEM has determined that a surface water does not meet water quality standards, or the surface water receives a thermal discharge and does not maintain a balanced population of indigenous fish and wildlife, IDEM must publish its determination and make it available for public comment for a minimum period of 90 days before the determination is presented to the commissioner of IDEM for final determination.

HEA 1162, PL 78-2009, SECTION 14, Ind. Code 13-18-2-3, effective May 6, 2009.

The Legislature added detail to Indiana's antidegradation provisions which protect surface waters that meet or exceed water quality standards. IDEM is now required to complete an antidegradation review of all NPDES general permit rules. The water pollution control board may modify the general permit rules based upon the antidegradation review. Once the review is complete, activities authorized by a general NPDES permit are not required to undergo an additional antidegradation review. This review of the general rules will maintain streamlined nature of the general permit process.

An antidegradation review will be required for new NPDES permits or modifications or renewals of NPDES permits that propose new or increased discharges that will result in a significant lowering of water quality. Permit applicants must demonstrate (1) an analysis of alternatives to the discharge; and (2) an analysis of the social or economic factors indicating the importance of the proposed discharge if the alternatives to discharge are not practical.

The new provisions of the antidegradation law include a comprehensive list of factors to be considered in the social and economic consideration of the analysis in the area in which the receiving waters are located. These factors include such considerations as the creation, expansion, or maintenance of employment; the unemployment rate; the number of households below the poverty level; the impact on the community tax base; the production of goods and services that protect, enhance, or improve the overall quality of life and related research and development; and the impact on economic competiveness. When considering the social and economic factors, IDEM is required to give substantial weight to any applicable determination by any other governmental entities regarding whether a proposed change is necessary to accommodate economic or social development.

HEA 1162, PL 78-2009, SECTION 15, Ind. Code 13-18-3-2, effective May 6, 2009.

As of the June 1, 2009, waters that are presently designated "Exceptional Use Waters" will become "Outstanding State Resource Waters." The definition of "exceptional use water" was repealed and all references to that term have been removed from Indiana's water laws.

HEA 1162, PL 78-2009, SECTIONS 1, 15, and 28; Ind. Code 13-11-2-50.5; Ind. Code 13-11-2-72.5, Ind. Code 13-18-3-2, effective May 6, 2009.

IDEM must complete the antidegradation review in the time it has to issue the NPDES permit under Ind. Code 13-15-4-1 except IDEM may seek a 90-day extension of the deadline.

HEA 1162, PL 78-2009, SECTIONS 13 and 16, Ind. Code 13-15-4-1, Ind. Code 13-18-3-2.1, effective May 6, 2008.

Outstanding State Resource Water Improvement Fund

IDEM's Commissioner is now required to provide an annual report to the Environmental Quality Service Council ("EQSC") regarding the balance in the Outstanding State Resource Water Improvement Fund and the plans for use and implementation of the fund.

HEA 1162, PL 78-2009, Ind. Code 13-18-3-14, effective May 6, 2008.

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LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES LEGISLATION

CONSERVANCY DISTRICTS

Campground Rates for Sewage Services

Two new provisions were added to the statute outlining the powers of the board of directors of conservancy districts to collect rates and charges of campground customers. Seasonal campground owners had complained that they were charged unfair rates in relation to their use of sewage services compared to other residential customers within the conservancy districts, especially during the winter season. Now, if a campground in a conservancy district is billed at a flat rate, it may elect to install a meter (at its own expense) to measure the actual amount of discharged sewage.

Beginning September 1, 2009, if a campground elects to install a meter to measure actual sewage, it may not be charged more than a residential customer would be charged for equivalent usage. Moreover, the rate charged during the offseason use (September 1st through May 31st) may not exceed the greater of actual use during that period, or the lowest monthly charge during the previous summer (June 1st through August 31st).

Even if a campground elects to remain under a flat billing rate, beginning after December 31, 2009, each campsite may not be considered more than one-third of a residential equivalent unit. The flat sewage rate charged to the campground will equal the resident equivalent units multiplied by the rate normally charged by the board for a residential unit.

The conservancy district boards may still impose additional sewage fees on campgrounds, however, if a board determines it incurs additional costs caused by unique factors applicable to providing sewage service to campgrounds. These unique factors include, but are not limited to, the installation of oversized pipes or unique equipment to service the campground.

HEA 1097, PL 168-2009, SECTIONS 1-2, Ind. Code 14-33-5-21; 14-33-5-21.1, effective July 1, 2009.

Dispute Process Regarding Campground Rates

In addition to the section protecting campground owners and operators from unfair rates, an additional dispute process was added to protect these owners and operators from unfair billing practices. If a campground owner or operator feels that it is not being billed at the same rates charged to residential customers for equivalent usage, that the number of resident equivalent units has been incorrectly determined, or that additional charges are unreasonable or discriminatory they now have a process to dispute the billing practice.

After the campground owner or operator has attempted to resolve a disputed billing matter with the board of a conservancy district through negotiation or other complaint procedure required by the board, it may file a written

request for review with the Indiana Utility Regulatory Commission ("IURC"). The owner must file this written request within seven days after receiving notice of the conservancy district board's proposed disposition of its complaint. The IURC appeals division shall provide an informal review of the dispute and issue a written decision. Either the campground owner or the conservancy district board may request that the IURC be formally docketed as a proceeding before the IURC within seven days after receiving the written decision of the appeals division. The IURC must keep a record of all requests for review including documents filed in any appeal. During the pendency of such appeals, the campground owner shall pay the basic monthly sewage charges from the previous year.

HEA 1097, PL 168-2009, SECTION 3, Ind. Code 14-33-5-21.2, effective July 1, 2009.

ENTOMOLOGY AND PLANT PATHOLOGY

Invasive Species

A new law taking effect on July 1, 2009, and expiring on July 1, 2015, creates an Invasive Species Council vested with the duty of recommending priorities for projects, funding, and rules and laws needed to address invasive species, addressing current issues such as the Emerald Ash Boor. The Invasive Species Council will be established within the Purdue University School of Agriculture. The Council will consist of 11 members:

(1) The Dean of the Purdue University College of Agriculture;

(2) The Director of the Indiana State Department of Agriculture;

(3) The Commissioner of the Indiana Department of Transportation;

(4) The State Veterinarian;

(5) An employee of the Division of Fish and Wildlife, designated by the Director of the Division of Fish and Wildlife to serve as the aquatic invasive species coordinator;

(6) An employee of the Division of Entomology and Plant Pathology, designated by the Director of the Division of Entomology and Plant Pathology to serve as the terrestrial invasive species coordinator;

(7) One individual representing research on invasive species;

(8) Two individuals who represent organizations that are primarily concerned with the hardwood tree industry, horticulture industry, agriculture industry, or aquaculture industry; and

(9) Two individuals who represent organizations or local government agencies primarily concerned with land trusts, biodiversity conservation, aquatic conservation, or local parks and recreation.

The first four members may appoint designees to serve in their place. The Governor will appoint the remaining five members. Council members are to be appointed by July 1, 2009.

The first meeting of the Council must convene not later than October 1, 2009. The Council will annually elect a member to serve as chairperson. Six members constitute a quorum. The Council shall hold at least one regular meeting each year. The Chairperson may call special meetings of the Council. A meeting of the Council for purposes of providing information on best practices and pertinent research findings must occur at least once

every two years. The Council may create advisory committees to provide information and recommendations to the Council.

The Council is not vested with any regulatory authority over invasive species or the authority to hear appeals or grievances. The Council has all the following duties:

(1) The Council must recommend a lead state agency to develop an invasive species inventory for each invasive species taxon and for developing and maintaining a data management system for invasive species in Indiana.

(2) The Council is responsible for communicating with other states, federal agencies, and state and regional organizations to enhance consistency and effectiveness in preventing the spread of invasive species, early detection of invasive species, and management of invasive species.

(3) The Council is to coordinate invasive species education and outreach programs.

(4) The Council is to assist governmental agencies in reviewing current invasive species policies and procedures and addressing deficiencies or inconsistencies concerning invasive species policies and procedures.

(5) The Council is to assist state agencies in reviewing their performance measures for accountability concerning invasive species actions.

(6) The Council may apply for grants.

(7) The Council may provide grants for education concerning or management of invasive species.

(8) The Council will receive reports from any government agency regarding actions taken on recommendations of the Council.

(9) Beginning July 1, 2011, the Council must issue a written report to the Natural Resources Study Committee with a summary of Council activities, the performance of the Council's duties, and the efforts of the state to identify and manage invasive species. The Council may include recommendations in its report to the Natural Resources Study Committee. This written report must be provided again in 2013 and 2015.

An Invasive Species Council Fund is established to pay for carrying out the purposes of this law. The Fund consists of money from grants, from appropriations of the Legislature, and from gifts and donations. The Fund is established as a separate fund in the Purdue University treasury. The Purdue University treasurer is to invest the money in the Fund not currently needed to meet obligations in the same manner as other public funds may be invested. Interest that accrues from these investments is to be deposited in the Fund. Money in the Fund at the end of a state fiscal year does not revert to the general fund. Members of the Council serve without compensation. Subject to availability of money in the Fund, members who are not state or county employees can be reimbursed for travel expenses as provided in Purdue University Travel Policies and Procedures.

HEA 1203; PL 23-2009, Ind. Code 15-16-10, effective July 1, 2009.

Declaration of Infested Area

The entomology and plant pathology law was modified this year to make the declaration of an infested area more precisely defined. Before the law was changed, a declaration was based upon the township in the county in which the area is located and was to include the entire township or a portion of the township. Now, when making the declaration, the Division of Entomology and Plant Pathology Director is to precisely designate the boundaries of an area where the pest or pathogen is located and then declare the specified area as infested.

SEA 424, PL No. 14-2009, SECTION 2, Ind. Code 14-24-4-2, effective July 1, 2009.

Definition of Pest of Pathogen

The entomology and plant pathology law was also amended this year to expand the definition of a pest or pathogen. Before this change, a pest or pathogen included an arthropod, a nematode, a microorganism, a fungus, a parasitic plant, a mollusk, a plant disease, or an exotic weed that may be injurious to nursery stock, agricultural crops, other vegetation, or bees. That definition now includes when any of those pests or pathogens may be injurious to the natural resources.

SEA 424, PL No. 17-2009, SECTION 1, Ind. Code 14-8-2-203, effective July 1, 2009.

Treatment for Pest Free Nursery Stock

The entomology and plant pathology law was amended this year to identify fumigation with methyl bromide of seedling beds before seeding as an official control treatment for pest free nursery stock. The Division of Entomology and Plant Pathology must inspect each nursery once a year. The Division is required to issue a certificate following an inspection that discloses that the nursery stock has been inspected and that to the best knowledge and belief of nurseryman, the nursery stock is free from pests and pathogens. The Division is required to communicate to nurserymen that methyl bromide soil fumigation is preferred to produce pest and disease free forest seedlings.

SEA 546, PL 18-2009 SECTION 11, Ind. Code 14-24-5-3, effective July 1, 2009.

FISH & WILDLIFE

Youth Fishing and Hunting Licenses

The Department of Natural Resources ("DNR") laws for Division of Fish & Wildlife were amended this year to change the age that qualifies a person as a youth not required to have a fishing license and allowing hunting during a declared free hunting day for youths. These changes took effect on July 1, 2009. Before July 1, 2009, the law required everyone to have a fishing license in the person's possession when fishing in waters containing state-owned fish, in water of the state or in boundary waters of the state. Every person must have a valid trout-salmon stamp in the person's possession to legally fish for or take trout or salmon. The law contained only eight exceptions to the requirement to have a fishing license, one of those being a person less than 17 years of age. Starting July 1, 2009, that age limit has been changed to 18, allowing persons less than 18 to fish without a fishing license, or trout-salmon stamp. Before July 1, 2009, the law allowed the Director of DNR to designate not more

than four days each year as free hunting days for youth hunters. Persons less than 16 years of age could participate in declared youth hunting days, a day when the youth hunter is not required to pay a fee or posses a hunting license. Starting July 1, 2009, the age has been changed from less than 16 to less than 18 years of age for participation in a youth hunting day without the need for paying a fee or possessing a hunting license.

SEA 545, PL No. 18-2009 SECTIONS 2 and 3; Ind. Coe 14-22-11-8 and Ind. Code 14-22-11-18, effective July 1, 2009.

Youth Consolidated Fish & Wildlife License

Before July 1, 2009, law allowed DNR to issue a youth yearly consolidated license to hunt and fish for $6.00. Starting July 1, 2009, this youth yearly consolidated license also will allow trapping for the one consolidated license fee of $6.00. This law already defined a youth as someone less than 18 years of age. With the changes made this year for fishing and hunting licenses, DNR's Fish & Wildlife laws now consistently define a youth as someone less than 18 years of age.

SEA 545, PL No. 18-2009, SECTION 4; Ind. Code 14-22-12-1, effective July 1, 2009.

Hunting, Trapping, and Fishing License Fees

New minimum fees were added to the law this year for nonresident youth licenses. The law already contained special lower fees for resident youths. Now special fees have been created for nonresident youths. Before the nonresident youth had to pay the fee for a nonresident. To be a youth, the person must be less than 18 years of age. The fees for these nonresident youths are:

	Now	Before
Yearly license to hunt	$17	$ 60.75
Yearly license to trap	$17	$117.75
License to take a turkey	$25	$114.75
License to take an extra turkey	$25	$114.75
License to take a deer with a shotgun, muzzle-loading gun, or rifle	$24	$120.75
License to take a deer with a muzzle-loading gun	$24	$120.75
License to take a deer with a bow and arrow	$24	$120.75
License to take an extra deer	$24	$ 10.00

The license fee for taking a turkey may be higher if the state of residence of the nonresident applicant requires an Indiana resident to purchase another license in addition to the nonresident license to take the turkey. If the nonresident is from one of those states, then the youth must also purchase a yearly youth hunting license and pay that $17.

In addition, a voluntary resident senior yearly license to fish was added to the law this year. That voluntary senior fish license is $3 and applies only if the person was born before April 1, 1943, and allows that senior to fish without paying for or obtaining any other yearly licenses, stamps, or permits to fish for a specific species or by a specific means.

SEA 546 PL No. 69-2009 SECTION 9, Ind. Code 14-22-12-1, effective July 1, 2009.

Commercial Fishing in the Ohio River

In a move of independence, DNR law for commercial fishing in the Ohio River changed on July 1, 2009, to no longer require that DNR's rules conform to the laws of the State of Kentucky.

Either allowing the exercise of more professional judgment by Indiana's fish experts at DNR or to allow a competitive advantage to Indiana commercial fishermen, Indiana will no longer have to have commercial fishing rules that conform with the laws of Kentucky regulating its commercial fishing in the Ohio River.

SEA 545, PL 18-2009, SECTION 5, Ind. Code 14-22-13-6, effective July 1, 2009.

Regulation of Migratory Birds

DNR migratory bird law was changed this year to no longer allow a person to take or possess during a closed season a migratory bird, or its nest or eggs, with a permit issued by the U.S. government. Before this change, if a permit had been issued by the Director of the DNR or by the authorized department of the U.S.. government, a person could take or possess during the closed season a migratory bird, or its nest or eggs, or could increase the number of migratory birds. Now the only way that can occur is if the Director of DNR issues the license or permit.

SEA 546, PL No. 69-2008, SECTION 7, Ind. Code 14-22-6-3, effective July 1, 2009.

Regulation of Game Birds

Current law prohibits a person from hunting or taking a game bird within Indiana without a game bird habitat restoration stamp issued by the DNR. The stamp must be in the possession of each person hunting or taking a game bird. Game birds used to include only pheasant, quail, grouse, and wild turkey. Starting July 1, 2009, game birds now also include mourning doves.

SEA 546, PL No. 69-2009, SECTION 8; Ind. Code 14-22-8-2.

Funds for Protection of Nongame and Endangered Species

DNR was provided with some flexibility related to the money which is dedicated for fish and game purposes. Although that money cannot be used to pay the costs of programs for nongame and endangered species conservation, money dedicated for fish and game purposes may now be transferred to the Nongame Fund. That Nongame Fund is used exclusively for the protection, conservation, management, and identification of nongame and endangered species of wildlife primarily through the acquisition of the natural habitat of the animals.

SEA 546, PL 69-2009 SECTION 10, Ind. Code 14-22-34-19, effective July 1, 2009.

LAKES AND RESERVOIRS

Motorboat Speed Limit Exemptions

A non-code provision making an exception to the 10-miles-per-hour speed limit in DNR's water craft laws was made a statutory provision this year. DNR's law contains a section allowing a majority of the abutting property owners on small lakes that contain more than 70 acres to petition the Natural Resources Commission for an exemption to that 10 mph limit. The exemption will only be granted if a majority of abutting property owners apply and the NCR finds that the exemption will not result in an unreasonable hazard to persons or unreasonable harm to fish, wildlife, or botanical resources. The law also allows a majority of abutting property owners to re-petition after two years or more to have the new speed limit provisions modified or rescinded. The non-code provision made law this year provides

that any exemption to the motorboat speed limit that was granted by the DNR in response to a petition from a majority of abutting property owners and was in effect on August 31, 1985, remains in effect. The DNR retains the authority to amend or rescind the speed limit exemption if a majority of abutting landowners petition for such change.

SEA 346, PL No. 16-2009 SECTION 22, Ind. Code 14-15-3-12.5, effective July 1, 2009.

Navigation Rules for Sailboats and Other Non-Motorized Boats

The DNR laws for watercraft operations were amended on July 1, 2009, to give priority to sails boats and other non-motorized boats under the traffic rules. When operating a boat in public water (which includes every lake, river, stream, canal, ditch, and body of water that is under the jurisdiction of the State of Indiana or owned or controlled by a public utility), when two boats are approaching each other "head to head," or nearly so, each boat shall bear to the right and pass the other boat on the boat's left side. The law did provide that when two boats are approaching each other obliquely or at right angles, the boat on the right has the right-of-way. Starting July 1, 2009, when two boats are approaching each other obliquely or at right angles, when one is under sail or is otherwise non-motorized, the sailboat or non-motorized boat will have the right-of-way. If the two boats are under sail or are non-motorized, the boat on the right has the right-of-way.

SEA 546, PL No. 69-2009, SECTION 3, Ind. Code 14-15-3-14, effective July 1, 2009.

Operation of Motorboat While Intoxicated

The DNR watercraft operation laws were also amended on July 1, 2009, to make enforcement and conviction for operating a motorboat while intoxicated easier to prove. Current law prohibits any person from operating a motorboat while intoxicated. A motorboat includes all watercraft propelled by internal combustion, steam, or electric motors or engines or other mechanical measures, including sailboats equipped with an engine while the engine is operating. Intoxicated includes being under the influence of alcohol, a controlled substance, prescription drugs, model glue, nitrous oxide and 15 other substances such as toluene, acetone, benzene, freon, and chloroform or any combination of alcohol, controlled substances, or drugs so that there is an impaired condition of thought and action and loss of normal control of an individual's faculties to such an extent as to endanger any person. Starting July 1, 2009, to be considered intoxicated it will no longer be necessary to prove that the impaired condition is to such an extent as to endanger any person. It will be sufficient to prove a person is intoxicated if the person is under the influence of a prohibited substance and the person is in an impaired condition of thought and action and the loss of normal control of an individual's faculties.

A person convicted of operating a motorboat while intoxicated is punished as a Class C misdemeanor for the first offense. In addition, that person may not operate a motor boat for one year. A person convicted of operation of a motorboat while intoxicated commits a Class D felony for subsequent offenses or where serious bodily injury to another person occurs. Those persons cannot operate a motor boat for two years. The penalty is a Class C Felony if the

offense results in the death of another person; that person may not operate a motorboat for two years.

SEA 546, PL 69-2009, SECTION 4, Ind. Code 14-15-8-3, effective July 1, 2009.

The provisions of DNR's law on admissibility of chemical testing for alcohol also changed on July 1, 2009. A prosecutor may submit as evidence of alcohol intoxication the analysis of a person's breath, blood, urine, or other bodily substance. Current law provides that it is prima facie evidence of intoxication if at the time of an alleged violation there was an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or two hundred ten (210) liters of the person's breath ("referred to as 0.08"). The law changed July 1, 2009, to provide that a test taken either at the time of the alleged violation or within three hours after the officer had probable cause to believe the person violated the law serves as a presumption that the person charged had an alcohol concentration equivalent to at least 0.08 at the time the person operated the motorboat. This presumption is rebuttable. Under the DNR law, a person who operates a motorboat in waters of the state impliedly consents to chemical testing as a condition of being allowed to operate a motorboat in Indiana. Refusal to submit to a chemical test is the basis for arrest. A court must order the person not to operate a motorboat for one year.

SEA 546, PL No. 69-2009, SECTION 5; Ind. Code 14-15-3-17, effective July 1, 2009.

Shoreline Permits

The DNR law for Lakes and Reservoirs which is related to lake preservation has been amended this year to give the Natural Resources Commission rulemaking authority to extend the statutorily set 2 year timeframe for a permit. The NRC may set permit terms for different types of permits allowing some to remain as two-year terms and setting different terms for the various other types of permits.

HEA 1381, PL 25-2009, SECTION 1, Ind. Code 14-26-2-17, effective July 1, 2009.

New Enforcement Authority for Orders Related to Shoreline Permits

DNR's law requires a permit be obtained before a person excavates, places fill, or places, modifies, or repairs a temporary or permanent structure that is located over, along, or lakeward of the shoreline or water line of a public freshwater lake. In addition a permit must be obtained from DNR before a person changes the water level, area, or depth of a public freshwater lake or the location of the shoreline or water line. The Natural Resources Commission has adopted rules establishing standards for issuing permits for configuration of piers, boat stations, platforms, and similar structures and has rulemaking authority to provide for a common use where necessary to accommodate the interest of landowners having property rights abutting a public freshwater lake and to accommodate people with a right to access the public freshwater lake. The Commission was required to establish a process under the Administrative Orders and Procedures Act for mediation of disputes among persons with competing interests. If good-faith mediation fails to achieve a settlement of that dispute among competing interests, DNR is authorized to make a determination of the dispute. The law

has been modified this year to give a party to the dispute the authority to seek enforcement by a civil action of the final determination resulting from mediation or as ordered by DNR in a court of law. This new remedy is supplemental to any other legal remedy the party may have.

HEA 1381, PL No. 25-2009, SECTION 2, Ind. Code 14-26-2-23, effective July 1, 2009.

LEVEES, DAMS, AND DRAINAGE

DNR Lease Authority for Hydroelectric Power on Williams Dam

A non-code provision has been added as a new chapter to the DNR's Levees Dams and Drainage law. Under this law, the Director of DNR is given authority to promote hydroelectric power. The Director may enter into a long-term lease of the Williams Dam on the East Fork of the White River in Lawrence County if the purpose of the lease is for the development of hydroelectric power and entering into the lease will enhance the recreation and fishing potential of the Williams Dam Fishing Area. The lease may be for up to 40 years. The lease may provide for renewal, but the option to renew can only be exercised by the Director of DNR, with the approval of the Governor. DNR is given the authority to place any other limitations or restrictions in the lease, which the Director of DNR determines is necessary.

SEA 346, PL No. 16-2009 SECTION 23, Ind. Code 14-27-7.7, effective July 1, 2009.

LOCAL RESOURCES DEVELOPMENT

Little Calumet River Basin

The Little Calumet River Basin Development Commission is an existing non-federal interest created by the Legislature to take advantage of federal funding available under the Federal Water Resources Planning Act for water resource projects done after December 31, 1970. To qualify as a non-federal interest the entity must be a legally constituted public body with full authority and capability to perform the terms of a written agreement with the Secretary of the Army and to pay damages, if necessary, in the event of a failure to perform. The Little Calumet River Basin was created to provide for creation, development maintenance, administration, and operation of parks, recreation, marinas, flood control, and other public works projects in the geographic area within and extending one mile from the bank of the west arm of the Little Calumet River and the Burns Waterway in Lake and Porter County, which includes the dredged channel in Porter County that connects the east and west arms of the Little Calumet River with Lake Michigan. This year, changes were made to the existing Little Calumet River Basin law to (1) change the membership of the Little Calumet River Basin Development Commission, (2) create record keeping and auditing of commission accounts, (3) require reporting, and (4) establish a new responsibility for the Commission.

Previously the Commission had 11 members, six appointed by the Governor and one each appointed by the Lake County, Porter County, the City of Gary, the City of Hammond, and DNR. Effective July 1, 2009, the Commission became a five-member Commission with all members appointed by the Governor. The Governor is to appoint one member from the DNR. The remaining four members must reside in a city, town, or township that borders the Little Calumet River and three of those four must have

a background in construction, project management, or flood control. All of those members are to be appointed and their terms take effect on July 1, 2009. The term for a member is four years, except for the first appointments: one member will have a one-year term, one member will have a two-year term, and one member will have a three-year term. None of the members may be an employee or elected official of a city, town, or county governmental unit. Three members constitute a quorum.

Under the changes made this year, a new section was added to make clear that the Commission is responsible for the safekeeping and deposit of money the Commission receives. The State Board of Accounts is to prescribe the methods and forms for the keeping of the accounts, records, and books of the Commission and the Fund. The State Board of Accounts will conduct an annual audit. In addition, a new section was added to require a report of the Commission's activities be submitted before November 1 of each year. That report is to be given to the Governor and the Legislative Council. The Governor may require more frequent reporting. Finally, the Commission has been given a new duty of providing or providing for the training and instruction of persons responsible for maintaining any levees or other improvements related to flood control under the Little Calumet River Basin.

HEA 1716, PL No. 181-2009, Ind. Code 14-13-2-7, Ind. Code 14-13-2-10, Ind. Code 4-13-2-17, Ind. Code 14-13-2-30, Ind. Code 14-13-2-31, effective July 1, 2009.

Wabash River Heritage Corridor

Indiana Code 14-13-6, the Wabash River Heritage Corridor Commission law, which was enacted in 1991, has been revised this year to add an additional "purpose" for use of the Wabash River Heritage Corridor Fund ("the Fund"). Under this law, a Wabash River Heritage Corridor was established. It includes the strip of land in Indiana that abuts the Wabash River, the Little River, and the portage between the Little River and the Maumee River. The Commission consists of (1) an individual appointed by the County Commissioners of each county within the corridor that chooses to support the activities, (2) the Director of the Indiana Department of Transportation, (3) the Director of the Division of Historic Preservation and Archeology of the Department of Natural Resources, (4) the Commissioner of the Department of Environmental Management, (5) the Director of the Office of Tourism Development, and (6) the President of the Indiana Economic Development Corporation. The Commission is to promote the conservation and development of natural, cultural, and recreational resources in the corridor by exchanging information, establishing common goals, and cooperating with people and government units along the corridor. The Commission does not have any power concerning either land use control or any control over the Wabash River. The law already included a section detailing the Fund, the uses for that Fund and the powers of the Commission in handling the Fund. This year, an additional purpose for the Fund was added and a new source of money for the Fund created. The original purpose remains -- to fulfill the

directives of the Wabash River Heritage Corridor Commission Master Plan for marketing and educational tools. Now, a second purpose for the Fund is to provide grants to aid the sustainable development of property under the Wabash River Heritage Corridor Commission Master Plan. In addition to appropriations made by the Legislature and earned interest, money will now be placed in the Fund from royalties or other compensation paid for minerals taken from beneath the navigable waters of the Wabash River.

HEA 1032; PL 118-2009; Ind. Code 14-13-6-19, Ind. Code 14-13-6-20, Ind. Code 14-13-6-23 and Ind. Code 14-38-1-13; effective July 1, 2009.

STATE MUSEUMS AND HISTORIC SITES

Governors' Portraits Collection

Responsibility for the Governors' portraits collection changed on July 1, 2009, from the Indiana Historical Bureau to the DNR's Division of Museums and Historical Sites. The Indiana Historical Bureau was established to compile and publish digests, reports, and bulletins of purely informational or statistical character on any question which is deemed to be of interest or value to the people of the state. The Division of Museums and Historical Sites will take over responsibility for the Governors' portrait collection, carrying forward the same duties that were formerly vested in the Indiana Historical Bureau. The collection is required to be permanently displayed in public areas of the State House. The Division must inspect each painting in the collection annually in the company of one or more experts in the field of art conservation. In addition, after inauguration of a new Governor, the Director of the Division of Museums and Historical Sites, with the concurrence of the Governor, is to select and commission an artist to paint the Governor's portrait. A dedicated Governors' Portraits Fund exists to pay for the preservation and exhibition of the state-owned portraits of former Governors of Indiana. That Fund consists of proceeds from the sale of items directed by law or by the Director of the Division of Museums and Historical Sites, from gifts of money or proceeds from the sale of gifts donated to the Fund, and from investment earnings. Money remaining on June 30, 2009, in the Fund is transferred on July 1, 2009, to the new dedicated Fund established and managed by DNR.

SEA 546, PL No. 69-2009, SECTIONS 6 and 13; Ind. Code 14-20-16, Ind. Code 4-23-7.2-8 and Ind. Code 4-23-7.2-8 and non-code section.

STATE PARKS

Controlled Hunts in State Parks

Starting July 1, 2009, it will no longer be necessary for the DNR Director to promulgate an emergency rule in order to establish a controlled hunt in a state park. The DNR Director is currently allowed to determine that a species of wild animal present in a state park poses an unusual hazard to the health or safety of one or more persons or will cause obvious and measurable damage to the ecological balance of a state park. If scientifically determined, the DNR Director may establish the time and manner for a controlled hunt to remove the wild animal or animals from the state park. Until July 1, 2009, when providing for a controlled hunt, the Director had to promulgate an emergency rule, which requires the provisions of the Director's order establishing the time and manner

to be written in the style of a rule, the rule to be submitted to the publisher of the Indiana Register for assignment of a document control number, and, once assigned, the rule being submitted to the publisher for acceptance of filing and publication in the Indiana Register, with the rule taking effect on the date it is accepted for filing. Starting July 1, 2009, the DNR Director can issue an order specifying the time and manner of the controlled hunt. That order will no longer be made available for the public to find in the *Indiana Register,* allowing the Director to hasten the process.

SEA 545, PL No. 18-2009 SECTION 1, Ind. Code 14-22-6-13, effective July 1 2009.

SURFACE COAL MINING AND RECLAMATION

Limitation to Archeological and Historic Site Protection in the Surface Coal Mining and Reclamation Law

A non-code provision was unnecessarily made part of the surface coal mining and reclamation law this year. The new legislative provision prevents DNR from enforcing the requirement for anyone seeking a permit application to search records of research institutions, the state historical preservation office, and perform field investigations or other activities necessary to evaluate important archeological and historic sites if a federal court holds that the federal Surface Mining Control and Reclamation Act does not authorize a requirement of record searches, filed investigations, or other studies in connection with a permit application. This non-code provision did not need to be added to the law, because the court did not find a lack of authority in the federal law for requiring such actions.

SEA 346, PL No. 16-2009, SECTIONS 24 and 25, Ind. Code 14-34-3-10 and Ind. Code 14-34-4-10, effective July 1, 2009.

New Option Making Coal Mining Possible for Land Jointly Owned

A new chapter has been added to the law for conveyance of property interests that are less than fee simple (complete ownership). This new option makes it possible to mine the coal from land where a person is a coal owner of less than 100 percent of an undivided interest in all the coal within the land containing coal that is sought to be developed. As property has been passed from parents to multiple siblings, and to their descendants, and people have moved out of state, it has become more and more difficult to negotiate for coal leases of some jointly held land. Under this new law, a proceeding may be brought in the circuit or superior court of the county where the coal land sought to be mined is entirely located or where a major part of the coal land is located. Either a joint owner of the coal or a lessee of that coal owner may petition to have a trust created for the purpose of leasing and developing the coal interest. Each person who has a legal interest in the coal land, other than the plaintiff, must be joined as defendants in the action. The person seeking to create the trust for the interest in coal must file a verified petition that sets forth the following:

- a request by the plaintiff that a trustee be appointed to execute a lease granting plaintiff the right to mine and remove coal from the subject coal land;
- the legal description of the land;
- the interest of the plaintiff in the coal within the coal land;

- the apparent interest of each defendant in the coal within the coal land;
- a statement that the plaintiff is willing to purchase a mineral lease covering the interest of each defendant and that the existence of these unleased mineral interests is detrimental to and impairs the enjoyment of the interest of the plaintiff.

The court will receive evidence and hear testimony concerning the matters in the verified petition and the prevailing terms of similar coal leases obtained in the vicinity of the coal land, including the length of the leases' term, bonus money, delay rentals, royalty rates and other forms of lease payments. If the court determines that the material allegations of the petition are true and that there has been compliance with the required notice provisions, the court shall enter an order determining the interest of each defendant in the coal land sought to be leased. The court shall appoint a trustee for the purpose of executing in favor of the plaintiff a coal lease covering the interest of each defendant. The court shall determine a reasonable fee to be paid to the trustee and the trustee's reasonable attorney's fees and costs of the proceeding. The plaintiff must pay the trustees costs. The trustee shall enter into negotiations with the plaintiff and execute a coal lease in favor of the plaintiff covering the interest of the defendants and file a report of the coal lease and give notice to all parties. The court must review the coal lease to determine if the sale is in accordance with the court's findings and judgment. If the court approves the sale of the coal lease, the court shall issue an order confirming the sale and issue an order terminating the trust.

If, before an order confirming the lease is issued, a party to the proceeding files a petition for partition of the coal land for either the coal estate or for the estate in the subject land also, the petition to declare a trust will be stayed. Any petition for partition filed during the pendency of a trust petition must be filed in the same court exercising jurisdiction over the trust petition. If a final order of partition or sale is issued, the trust petition shall be terminated. If the petition for partition is dismissed or terminated prior to a final order of partition or sale, the same defendant may not re-file a subsequent petition for partition applicable to the coal land until the trust petition is concluded. If a petition for partition is filed after an order confirming a lease has been issued, any land partitioned or sold shall be partitioned or sold subject to the coal lease.

Any payment that is owed to a defendant under a coal lease executed by the trustee must be paid by the plaintiff directly to the defendant. A sale of and execution of any coal leased under this new law is binding concerning the interest in the coal and the right to mine and remove the coal owned by all defendants to the action in the same manner as if the defendant had personally signed and delivered the lease. The coal lease is binding on heirs, legatees, personal representatives, successors, and assigns of the defendant. This new law is to be liberally construed so that any lease issued conveys marketable title.

This new law does not provide an exclusive basis by which a joint owner in coal or a lessee of the coal owner may enjoy their estate in the coal land. Nothing in this new law diminishes the rights of a joint owner of coal or a lessee of the coal owner under common law.

A joint owner is not prohibited from filing a petition for partition. Any entity with eminent domain powers may still acquire all or a portion of the coal land by exercise of eminent domain powers. This law does not affect appurtenant rights of a coal owner.

HEA 1487, PL 94-2009, Ind. Code 32-23-12; effective July 1, 2009.

WATER RIGHTS AND RESOURCES

Clean Water Indiana Fund

The 1999 law creating the Clean Water Indiana Program was revised this year in one minor respect. The law already provided that money in the Clean Water Indiana Fund ("the Fund") did not revert to the state general fund at the end of the state fiscal year. This year the Legislature clarified that money in the Fund at the end of a fiscal year cannot be diverted to any other fund, but must remain in the Fund and used for only those purposes. Those purposes include providing financial assistance to soil and water conservation districts, land occupiers, and conservation groups to implement conservation practices to reduce non-point sources of water pollution through education, technical assistance, training, and cost-sharing programs.

HEA 1204, PL No. 24-2009, Ind. Code 14-32-8-6; effective April 20, 2009.

Water Resources Task Force

Once again, the Legislature passed a law intended to assist the State of Indiana in planning for water usage. In 1995, the Legislature created the Water Resources Study Committee ("Committee"). This Committee continues to exist. It consists of 12 legislative members who are to make recommendations concerning all matters related to the surface and ground water resources of Indiana. The specifically identified issues this Legislative Committee was to study in 1995 included water usage, water quality and quantity, diffused surface water, runoff, and the common enemy doctrine. That Committee was also to oversee a work group of 11 members to produce a technical and administrative handbook for drainage projects.

In 2003, the Legislature passed a concurrent resolution requiring DNR to develop an expanded water shortage plan for Indiana. In 1994, DNR had prepared a water shortage plan, but it did not include any provision for who would have priority in the event of a drought. DNR was to involve all affected parties and develop a low flow/drought priority use schedule that would identify who had priority for use, how those priorities would be communicated, and how priority uses would be enforced, if that became necessary. DNR was to present a work plan to the Committee in 2003.

When no satisfactory plan was in place, in 2006 the Legislature passed another law. This law created a Water Shortage Task Force ("Shortage Task Force"). It has 10 members who are appointed by the Director of DNR representing the interest of key water withdrawal users. The members must include one from each of the following: (1) public water utilities, (2) agriculture, (3) steam-generation utilities, (4) industrial uses, (5) academic experts in aquatic habitat and hydrogeology, (6) municipalities, (7) environmentalists, (8) consumer advocates, (9) economic development advocates, and (10) the public. This Shortage Task Force is to implement the 1994 water shortage plan, and with the

involvement of affected parties, update and expand the 1994 water shortage plan to include a low flow and drought priority use schedule. In addition, the Shortage Task Force is to:

- establish procedures to monitor, assess, and inform the public about the status of surface and ground water shortages for all users in all watersheds, especially for shortages due to drought;
- recommend a state policy on desired baseline flow maintenance for in-stream uses;
- recommend a state policy for promoting water conservation;
- prepare and submit to the Water Resources Study Committee and the Legislative Council a biennial report on the status of current surface and ground water withdrawals in all Indiana watersheds, distinguishing between consumptive and non-consumptive withdrawals, and noting areas of current or likely water shortage challenges;
- collect information on past and current surface and ground water allocation conflicts in the state and how those conflicts have been resolved;
- encourage local government to pass ordinances to promote water conservation and establish priorities of waters usage during droughts;
- encourage local governments to publicize the need for local communities to be prepared for droughts; and
- prepare an annual report on the Shortage Task Force's progress.

In 2007, the Legislature passed a non-code provision requiring the Committee to study processes and methods currently used to determine water resource allocation and distribution in Indiana and to make recommendations for appropriate policies to govern future allocation and distribution planning.

This year, a 10-member Water Resources Task Force ("Resource Task Force") has been created. The Resource Task Force will exist along side the Water Shortage Task Force. The Resource Task Force is to study and make recommendations on

- available quantities and sources of water;
- future needs;
- resource management;
- ownership rights, particularly in ground water;
- drinking water delivery systems; and
- opportunities to work with neighboring states on shared drinking water resources.

Members of the Resource Task Force are to be appointed by the Director of DNR by October 1, 2009, with the term to start on January 1, 2010. No more than five members may be of the same political party, with one representing each of the same interests as the Shortage Task Force: (1) public water supply utilities, (2) agriculture, (3) steam-generation utilities, (4) industrial users, (5) academic experts in aquatic habitat and hydrology, (6) municipalities, (7) environmentalists, (8) consumer advocates, (9) economic development advocates and (10) the public. The Director of DNR or his designee, serves as a non-voting member of the Task Force. Advisors from DNR, IDEM, the Department of Homeland Security, the State Department of Agriculture,

and the State Department of Health are to be appointed to the Resource Task Force. The Director of DNR may invite representatives of other state and federal agencies to advise the Resource Task Force. Members will be appointed for four-year terms and must attend at least 50 percent of the scheduled meetings. If a member fails to meet the attendance requirement, he or she must be replaced. Five of the first members will have two-year terms. Six of the 10 members' affirmative votes are required to take action. At the first meeting, the Resource Task Force is required to establish a list of activities it will undertake and the time frame in which it will carry out each activity. The Resource Task Force must provide an annual report of activities and recommendations to the Water Resources Study Committee and to the Legislative Council.

HEA 1224, PL 83-2009, SECTIONS 1-3; Ind. Code 14-25-16; effective July 1 2009.

Water Resources Study Committee

In addition to creation of the new Water Resources Task Force this year, the Legislature also directed the Water Resources Legislative Study Committee to evaluate the following issues during the 2009 interim:

- standardization of the regulation of installation of residential irrigation systems; and
- development of ground water preservation continuing education programs and uniform rules for individuals who drill water wells, install pumps, abandon water wells, and operate water wells, pumps, and abandon wells.

The Study Committee is to submit a report of its findings to the Legislative Council no later than December 31, 2009.

HEA 1224, PL No. 83-2009, SECTION 4, noncode section, effective July 1, 2009, expiring December 31, 2009.

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LAWS AFFECTING AGRICULTURE

CONFINED FEEDING OPERATIONS ISSUES

Confined feeding operations issues are discussed, beginning on Page 3, under Laws affecting the Indiana Department of Environmental Management.

SPENDING ON CORN MARKET DEVELOPMENT STATUTES

Indiana has a Corn Marketing Council ("Council"), which is a public body separate from the state that exercises powers that are an essential governmental function. The Council consists of 17 voting and eight ex officio non-voting members. The Council is responsible for market development, which includes developing new or larger domestic and foreign markets for corn, promoting the production and marketing of renewable fuels and new technologies that use corn, and accessing federal government money. It is also responsible for promotion, which includes communicating directly with corn producers, providing technical assistance and trade marketing activities. Finally, the Council is to study

ways to advance the marketability, production, product development, quality and functional or nutritional value of corn or corn products in order to identify and analyze barriers to domestic and foreign sales of corn or corn products. The Council is funded by a one-half-cent-per-bushel assessment collection on all corn sold in Indiana. A restriction was added to the law this year to restrict the amount of this assessment money and money earned from investment income that goes to administering the Indiana corn market development statute in a state fiscal year to no more than 10 percent of the total amount of assessments, grants, and gifts received by the Council in that year.

HEA 1398, PL 148-2009 SECTION 4. Ind. Code 15-15-12-29(d), effective July 1, 2009.

CORN CHECKOFF REFUND AND AUDIT REQUIREMENTS

The one-half cent assessment on each bushel of corn used to fund the Council must be collected by the "first purchaser" of the corn. These assessments are directed at entities that resell the corn. A buyer that buys corn for the buyer's own use as seed or feed is only responsible for collecting the assessments on corn purchases after the buyer exceeds a 100,000-bushel threshold. The first purchaser deducts the assessment from the sale price of the corn and then must remit the assessment to the Council every March, June, September, and December for the preceding three-month period. If assessments are remitted within 30 days of the end of the period, the first purchaser is entitled to keep three percent of the assessments as a handling fee. Corn producers may then secure a refund for the deducted assessment by filing a written application within 180 days of the deduction on forms published by the Council. Ind. Code 15-15-12-33 and Ind. Code 15-15-12-34 were adjusted to simplify some of the language regarding assessment refund forms, but did not change in substance.

HEA 1398, PL 148-2009 SECTIONS 7 and 8, Ind. Code 15-15-12-33 and 15-15-12-34, effective July 1, 2009.

One substantive change was made to the provision governing audits of assessments. Each entity that collects assessments must keep detailed records of all assessments and remittances for at least three years. The purchaser must supply these to the Council upon request. In addition, the Council may periodically audit a first purchaser's assessment records, at the Council's expense. Previously, only accountants specifically chosen by the Council could perform the assessment record audits under Ind. Code 15-15-12-35. However, the law now allows assessment record audits to be performed by an auditor "who is familiar with the storage, conditioning, shipping, and handling of agricultural commodities."

HEA 1398, PL 148-2009 SECTION 9, Ind. Code 15-15-12-35, effective July 1, 2009.

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LAWS AFFECTING ENERGY

ENERGY SAVINGS CONTRACTS

The law governing local public works projects has been expanded to now allow all political subdivisions or their agencies to participate in a utility efficiency program and to enter into a guaranteed savings contract or a design-build contract under Ind. Code 5-30. This is an alternative to the normal bidding requirements for public works contract under Ind. Code 36-1-12. The design-build contract option was not previously listed as an alternative to a public works contract. The alternative of a utility-efficiency program was previously only available to school districts. To account for the expansion of the utility-efficiency programs, the definition of "conservation measure" under Ind. Code 36-1-12.5-1 has been changed to cover all political subdivisions' facilities. Previously, it was limited to school facilities.

HEA 1033, PL No. 71-2009 SECTION 4, Ind. Code 36-1-12-1, effective July 1, 2009.

With respect to utility-efficiency programs, in addition to extending the availability of this option to all political subdivisions, the law now extends the period of time for considering savings from conservation measures to 20 years for all conservation projects. Political subdivisions can participate in a utility-efficiency program for projects related to a water or wastewater structure or system if the costs of the conservation measures are not likely to exceed the amount of increased billable revenues or the amount to be saved in energy and water consumption costs, wastewater usage costs, and other operating costs over the next 20 years. Previously, the savings over 15 years had to exceed the costs of the conservation measures. For all other projects (those not related to a water or wastewater structure or system), the cost savings are also considered over the next 20 years. Previously, these savings could only be considered over the next 10 years.

HEA 1033, PL No. 71-2009 SECTION 6, Ind. Code 36-1-12.5-5, effective July 1, 2009.

The maximum term for guaranteed energy cost savings contracts is also extended to 20 years. The Department of Administration ("DOA") may approve such contracts only if it reasonably expects the cost of the savings in energy or operational costs over 20 years to exceed the cost of the energy savings project. The previous version of the law only allowed the DOA to consider the energy or operational savings over the course of 10 years. An energy cost savings contract must include a guarantee from the qualified provider to the state that the energy or operational costs saved will meet or exceed the cost of the qualified energy project not later than 20 years after the date installation is completed.

HEA 1033, PL No. 71-2009 SECTION 1, Ind. Code 4-13.6-8-7, effective July 1, 2009.

The new law also extends the maximum period for installment payment contracts for the purchase of conservation measures by a political subdivision to 20 years (or the average life of the conservation measure installed from the date of final installation) under Ind.

Code 36-1-12.5-7. Under the previous version of the law, projects not related to the alteration of a water or wastewater structure or system had a maximum of 10 years and projects related to a water or wastewater structure or system had a maximum of 15 years.

HEA 1033, PL No. 71-2009 SECTION 7, Ind. Code 36-1-12.5-7, effective July 1, 2009.

GEOTHERMAL LOANS AND ENERGY EFFICIENCY

A new law has been added to establish the Geothermal Conversion Revolving Fund (the "Revolving Fund") for the purpose of making loans to school corporations that install geothermal heating and cooling systems in new facilities or install geothermal heating and cooling systems that replace conventional heating and cooling systems.

The Revolving Fund is administered by the Indiana Bond Bank ("Bond Bank"). The Bond Bank is required to establish a written procedure for providing loans from the Revolving Fund to school corporations. A loan from the revolving fund may not exceed the difference between the cost of installing a geothermal heating and cooling system and the cost of installing a conventional heating and cooling system.

The law also requires that a school corporation enter into a loan agreement with the Bond Bank before receiving a loan from the Revolving Fund. The Bond Bank must report annually to the House Budget Committee concerning the projects funded with loans from the Revolving Fund.

HEA 1669, PL 99-2009 SECTION 2, Ind. Code 20-20-37.4, effective July 1, 2009.

SUBSTITUTE NATURAL GAS CONTRACTS

In an effort to keep energy costs down for consumers and enhance Indiana's receipt of federal stimulus money, the Legislature passed a law permitting the Indiana Finance Authority ("IFA") to enter into contracts for the purchase and sale of substitute natural gas ("SNG") from coal gasification facilities to regulated energy utilities for delivery to retail end-use customers. The Legislature determined that the ability to participate in the purchase, sale, and delivery of SNG is "critical to obtain low-cost financing for the construction of new coal gasification facilities."

The law allows the IFA to enter into contracts for the purchase, transportation, and delivery of SNG; to establish and collect rates and charges for SNG; and to enter into contracts for private professional and technical assistance concerning SNG contracts. The Indiana Utility Regulatory Commission will allocate, on an annual basis, SNG purchased by the IFA to the retail end-use customers of a regulated energy utility based on previous usage. The IFA also has the right to sell SNG to third parties instead of retail end-use customers if the IFA determines that sales to third parties are necessary and appropriate to manage the delivery of SNG to retail end-use customers. The IFA must establish and administer a "Substitute Natural Gas Account" to provide funding for SNG related business and may adopt additional rules to effectively administer the SNG Contract program.

SEA 423, PL 2-2009 SECTIONS 1,2 and 3, Ind. Code 4-4-10.9-1.2 and Ind. Code 4-4-11.6, effective March 24, 2009.

ETHANOL INCENTIVES

A number of new incentives to expand use and production of ethanol in the state were made law this year.

Educational Institution E85 and Biodiesel Requirements

The state purchasing law has been amended to update the terminology used for non-gasoline fuels and to now require, to the extent possible, that public schools and all of the state universities purchase these alternate fuels. The state universities include Ball State, Indiana University, Indiana State University, Ivy Tech, Purdue University, the University of Southern Indiana, and Vincennes University. Previously, the law applied only to the state government and addressed the preferential use of gasohol and blended biodiesel. Gasohol was defined as gasoline that contains at least 10 percent ethanol or ethyl tertiary butyl ether additives derived from ethanol, with ethanol being defined as agriculturally derived ethyl alcohol. Blended biodiesel is defined as a blend of biodiesel with petroleum diesel so that the percentage of biodiesel in the blend is at least two percent (B2 or greater), but not to include biodiesel (B100). This year the Legislature deleted use of the term "gasohol" and added a definition of mid-level blend fuel and E85 fuel. Mid-level blend fuel is defined as a fuel blend with at least 20 percent but not more 73 percent ethanol. E85 fuel is defined as a fuel blend nominally consisting of 85 percent ethanol and 15 percent gasoline. Under the changes made this year, the state, public schools, and public universities shall whenever possible purchase mid-level blend fuel or E85 to fuel gasoline-fueled vehicles owned or operated and blended biodiesel fuel to fuel the diesel-fueled vehicles owned or operated. The only exceptions are for vehicles leased for 30 days or less, electric vehicles, vehicles using only propane, compressed or liquefied natural gas, or methanol as its fuel source, where the manufacturer has not approved a gasoline-fueled vehicle for mid-level blend fuel or E85 or a diesel-fueled vehicle for blended biodiesel fuel or where use is prohibited by the Federal Clean Air Act.

HEA 1398, PL 148-2009 SECTIONS 1, 3 and 10, Ind. Code 5-22-5-8, Ind. Code 15-11-11-6.5 and Ind. Code 21-31-9-3, effective May 12, 2009.

Changes to the E85 Sales Tax Deduction

Each retail merchant that dispenses gasoline or special fuel from a metered pump must report separately for gasoline and for special fuels: (1) the total number of gallons sold from a metered pump; (2) the total amount of money received from those sales; and (3) the total portion of the amount that represents state and federal taxes. In addition, the report must include the number of gallons of E85 fuel that were sold in the reporting period. Concurrent with filing the report, the merchant must pay a state sales tax of 6.85 percent on its gross receipts from metered pump fuel sales. This number includes state revenue taxes, but excludes any state or federal gas or special fuel taxes. The retail merchant is entitled to a sales tax deduction of $0.18 for each gallon of E85 fuel that is sold.

Administration of the E85 sales tax deduction has been changed. The Corn Marketing Council previously funded and administered the E85

sales tax deduction as part of the Council's general Indiana corn market development account. The law was amended this year to establish a separate Retail Merchant E85 Deduction Reimbursement Fund ("E85 Reimbursement Fund"). The E85 deduction program is still funded by the Council. On July 1 every year, beginning in 2010, the Council must make annual transfers to the E85 Reimbursement Fund in amounts calculated to restore a balance of $500,000. The amount transferred may not exceed $500,000. If the E85 Reimbursement Fund is terminated, any remaining balance in the fund must be transferred to the Corn Marketing Council.

HEA 1398, PL 148-2009, SECTIONS 2 and 6, Ind. Code 6-2.5-7-5, Ind. Code 15-15-12-32.5, and Ind. Code 15-15-12-30.5(g), effective July 1, 2009.

Responsibility for administering the E85 Reimbursement Fund has been transferred from the Department of Revenue and the Corn Marketing Council to the State Budget Agency. In order to obtain an E85 sales tax deduction from the E85 Reimbursement Fund, merchants must submit reports to the Department of Revenue between January 1 and March 31 each year (the "qualified reporting period"). On May 1 of each year, the Budget Agency will determine the sum of all retail merchant deductions allowed in the immediately preceding qualified reporting period. The previous version of the law had a sunset provision under which the E85 deduction program would automatically terminate when the total amount of deductions had exceeded $1,000,000. This provision has been removed. Now, by August 1 of each year, the Budget Agency is required to estimate whether the amount of deductions from the immediately preceding reporting period and those expected for the following year will exceed the amount of money available in the E85 Reimbursement Fund for the deductions. If so, the Budget Agency ***must*** publish in the Indiana Register a notice that the deduction program is suspended with respect to the qualified reporting periods the following calendar year and that no deductions will be granted for retail transactions occurring in the following calendar year. In addition, the Budget Agency may suspend the deduction program at any time during the reporting period if it determines that the amount of money in the E85 Reimbursement Fund and the amount of money that will be transferred to the fund on July 1 will be insufficient to reimburse the deductions expected through the rest of the period. If the Budget Agency does suspend the program, it must provide notice immediately.

HEA 1398, PL 148-2009 SECTION 5, Ind. Code 6-2.5-7-5 and Ind. Code 15-15-12-30.5, effective July 1, 2009.

E85 Fueling Station Grant Program

Currently the Department of Agriculture is responsible for administering the E85 Fueling Station Grant Program. Under that program, grants of up to $20,000 can be awarded to a person or to a city, town, county, or township that installs a new renewable fuel-compatible fuel station, converts an existing fueling station that is not a renewable fuel-compatible fueling station into a fueling station that is a renewable fuel-compatible fueling station, or refits any part of a fueling station that is not renewable fuel-compatible as a renewable fuel-compatible fueling

station in Indiana for the dispensing of E85 base fuel into the fuel tanks of motor vehicles. Only one grant per location may be awarded. The grant cannot exceed $20,000 and the total amount granted through the program each year cannot exceed $1,000,000. The law was changed this year to add school corporations and colleges and universities to the list of entities that are eligible to apply for these grants under the E85 fueling station grant program.

HB 1193, PL No. 4-2009, Ind. Code 15-11-11-6.5 version a, effective July 1, 2009.

ALTERNATIVE ENERGY INCENTIVES

Grants for Alternative Fueling Stations

A new law allows the Indiana Office of Energy Development ("IOED") to award grants to certain businesses and local government units that make qualified investments after June 30, 2009, to install and place into service in Indiana fueling stations that dispense alternative fuel (defined as liquefied petroleum gas, a compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product). A "qualified investment" refers to an ordinary and usual expense that is incurred to purchase any part of an alternative fuel compatible fueling station for the purpose of installing a new alternative fuel compatible station or to replace an existing station that is not alternative fuel compatible with an alternative fuel compatible fueling station.

The IOED is required to publish additional information regarding these grants, including guidelines to determine standards for awarding grants, standards for determining whether a fueling station complies with applicable governmental or other nationally recognized standards that apply to the storage and handling of alternative fuel, and the necessary forms for submitting applications for grants.

No more than one grant may be awarded for a single location. The amount of a grant awarded for a location may be up to the amount of the grant recipient's qualified investment for the location or $20,000, whichever is less. The IOED has discretion to afford a lower amount based on the circumstances. The grants are not subject to state income taxes. Nor can the grant reduce the basis for determining gain and losses when the recipient disposes of the property. The total amount of grants awarded for all state fiscal years may not exceed $1,000,000.

The Legislature has established the Alternative-Fuel Fueling Station Grant Fund for purposes of managing and awarding grant funds. The Grant Fund will be administered by the IOED and will consist of money appropriated to the Grant Fund by the Legislature, received from state or federal grants or programs for alternative fuels projects, as well as donations, gifts, and money from other sources, including transfers from other funds or accounts.

HEA 1554, PL No. 151-2009 SECTION 1, Ind. Code 4-4-32.2, effective in part May 12, 2009, in part July 1, 2009.

Alternative-Fuel Vehicle Grant for Local Units

New law establishes the Local Unit Alternative-Fuel Vehicle Grant Fund to award grants to certain local government units that make qualified purchases after June 30, 2009, of either one or more alternative-fuel vehicles, defined as any vehicle that runs "on

alternative fuel alone or on alternative fuel alternatively with another fuel source" or one or more alternative-fuel conversion kits, defined as "any equipment used to convert a motor vehicle that is not an alternative-fuel vehicle into an alternative-fuel vehicle, in conformance with any applicable governmental or other nationally recognized safety or design standards."

The Vehicle Grant Fund will also be administered by the IOED. The IOED is required to publish additional information regarding these grants, including guidelines to determine standards for awarding grants, standards for determining whether an alternative-fuel vehicle or conversion kit complies with applicable governmental or other nationally recognized standards, and the necessary forms for submitting applications for grants.

The grants awarded to a unit is the sum of $2,000 multiplied by the number of alternative-fuel vehicles purchased; plus for each alternative-fuel conversion kit purchased, an amount equal to the lesser of $2,000 or the actual cost of the conversion kit (including installation costs). Not more than one grant may be awarded to any one unit. The IOED may limit the number of alternative-fuel vehicles or alternative-fuel conversion kits for which a unit may receive a grant. The total amount of grants awarded for all units may not exceed $1,000,000. Specific guidelines related to the program will be published by the IOED.

Indiana Code 4-4-32.3-10 establishes the Local Unit Alternative Fuel Vehicle Grant Fund for purposes of managing and awarding grant funds. The Grant Fund will be administered by the IOED and will consist of money appropriated to the fund by the Legislature, received from state or federal grants or programs for alternative fuels projects, as well as donations, gifts, and money from other sources, including transfers from other funds or accounts.

HEA 1554, PL No. 151-2009 SECTION 2, Ind. Code 4-4-32.3, effective July 1, 2009.

Use of Clean Energy in State Vehicles

A new law provides that if a state entity (which excludes a state educational institution) purchases or leases a vehicle after December 31, 2009, it must purchase or lease a clean-energy vehicle, unless the Department of Administration determines that the purchase or lease of a clean-energy vehicle is inappropriate because of the purposes for which the vehicle will be used, or would cost at least 10 percent more than the purchase or lease of a vehicle that is not a clean-energy vehicle and is designed and equipped comparably to the clean-energy vehicle.

The law defines "Clean-Energy Vehicle" as a vehicle that operates on one or more of the following energy sources: (1) a rechargeable energy storage system; (2) hydrogen; (3) compressed air; (4) compressed or liquid natural gas; (5) solar energy; (6) liquefied petroleum gas; or (7) any other alternative fuel, which includes ethanol fuels, ethanol blends, coal-derived liquid fuels, non-alcohol fuels derived from biological material, P-Series fuels, and biodiesel or ultra-low sulfur diesel fuel. Also included are vehicles that operate on any of the above sources blended with gasoline or diesel fuel.

The law specifies that these requirements do not apply to the purchase or lease of vehicles by or for the State Police Department or to the short-term or temporary lease of vehicles.

Additionally, it requires the Department of Administration to adopt rules or guidelines to provide a preference for the purchase or lease by state entities of clean energy vehicles manufactured wholly or partially in Indiana or containing parts manufactured in Indiana.

Before August 1, 2010, and before August 1 of each year thereafter, each state entity must submit to the Department of Administration information regarding the use of clean-energy vehicles and alternative fuels by the state entity. This report must include all of the following: (1) the amount of alternative fuels purchased by the state entity; (2) the amount of conventional fuels purchased by the state entity; (3) the average price per gallon paid by the state entity for each type of fuel purchased by the state entity; (4) the total number of vehicles purchased or leased by the state agency that were clean-energy vehicles and the total number of vehicles purchased or leased by the state agency that were not clean-energy vehicles; and (5) any other information required by the Indiana Department of Administration. The Department of Administration must then submit a report to the Indiana Legislature and to the Governor before September 1, 2010, and before September 1 of each year thereafter that lists the information for each state entity and for all state agencies in the aggregate.

HEA 1554, PL No. 151-2009 SECTION 3, Ind. Code 5-22-5-8.5, effective July 1, 2009.

Renewable Energy Resources Definition

The definition of what is a "renewable energy resource" as used in the utility generation and clean coal technology laws has been changed in two ways. First, energy from waste-to-energy facilities is no longer limited to waste-to-energy facilities that produce steam ***not*** used for the production of electricity. All energy from waste-to-energy facilities is included as a renewable energy resource except energy from the incineration, burning, or heating of tires or general household, institutional, commercial, industrial, lunchroom, office or landscape waste. Second, energy storage systems have been added as a ninth specifically identified type of renewable energy resource.

HEA 1554, PL No. 151-2009 SECTION 4, Ind. Code 8-1-8.8-10, effective May 12, 2009.

Renewable Energy Using Biomass and Algae

This year, two changes were made by the Legislature to incorporate the consideration of renewable energy by the use of biomass and algae production systems.

First, the State Utility Forecasting Group, which was established to forecast the state's electricity needs, is required to annually conduct a study on the use, availability, and economics of using renewable energy resources in Indiana. The report must include suggestions on how to encourage the development and use of renewable energy resources and technologies that are appropriate for use in Indiana. As a result of legislation this year, the State Utility Forecasting Group is required to consider potential renewable energy generation opportunities from biomass and algae production systems in making its annual report on renewable energy technology to the Regulatory Flexibility Committee.

Second, a new duty has been assigned to the Department of Agriculture. Currently, the Department of Agriculture

is responsible for administering economic development efforts for agriculture by promoting value-added agricultural resources, marketing Indiana agriculture to businesses internationally, assisting Indiana agricultural businesses with developing partnerships with the Indiana Economic Development Corporation, soliciting private funding for selective economic development and trade initiatives, and providing for the orderly economic development and growth of Indiana's agricultural economy. As a result of legislation this year, the Department of Agriculture is now also responsible for facilitating the use of biomass and algae production systems to generate renewable energy in its administration of economic development efforts for agriculture.

HEA 1033, PL 71-2033 SECTIONS 2 and 3, Ind. Code 8-1-8.8-14 and Ind. Code 15-11-2-3, effective July 1, 2009.

New Office of Alternative Energy Incentives

This year the Indiana Legislature made a finding that alternative energy projects will result in measurable reductions or the avoidance of regulated air pollutants and carbon emissions that are produced by traditional electric-generating facilities using coal. Based upon that finding the Legislature determined that Rural Electric Membership Corporation ("REMC") power suppliers should plan and implement alternative energy projects on behalf of and at the request of REMC members. To encourage alternative energy projects, the Legislature created a new Office of Alternative Energy Incentives ("OAEI") that will approve plans and provide financial incentives for development of alternative energy projects.

As a compromise, Indiana includes clean coal projects as a type of alternative energy project. Not everyone agrees that clean coal should be considered an alternative energy project. However, in Indiana where we have an abundant supply of coal and enjoy low energy costs, the Legislature included clean coal as part of the alternative energy projects to be encouraged. Also included in these alternative energy projects are projects that develop or make use of:

(1) Renewable energy resources. Included as renewal energy resources are: (a) energy from wind, (b) solar energy, (c) photovoltaic cells and panels, (d) dedicated crops grown for energy production, (e) organic waste biomass, including organic matter that is available on a renewable basis from agricultural crops, agricultural wastes and residues, wood, wood wastes, animal wastes, and aquatic plants, (f) hydropower from existing dams, (g) fuel cells, (h) energy from waste-to-energy facilities, and (i) energy storage systems.

(2) Integrated gasification combined cycle technology to produce synthesis gas used to generate electricity or as a substitute for natural gas.

(3) Methane recovered from landfills for production of electricity.

(4) Demand side management, energy efficiency or conservation programs.

(5) Coal bed methane.

In addition to developing or making use of one of those six alternative energy sources, the alternative energy project must result in a reduction of regulated air pollutants and carbon emissions

or result in the avoidance of the use of electricity produced by traditional facilities using coal and the alternative energy project must be implemented under a plan approved by OAEI.

OAEI is part of the IOED. OAEI is to be headed by the director of the IOED or a designee of the IOED who is qualified by knowledge or experience in the electric utility industry. The Director of IOED may establish an advisory board to advise OAEI in its administration of this new law. OAEI will administer an Alternative Energy Incentive Fund ("AEI Fund"), which is established to provide funds for use in development of alternative energy projects. The AEI Fund consists of money appropriated by the Legislature; money from state or federal grants or programs for alternative energy projects; and donations, gifts, and money received from any other source, including transfer from other funds or accounts. The AEI Fund will be available to Local District Corporations formed under the REMC Act. These Local District REMCs are formed for the purpose of making electric energy available to inhabitants of rural areas of the state at low cost. A General District REMC can also be formed under the REMC Act. A General District REMC is formed for the purpose of furnishing services to Local District REMCs. A General District REMC may be formed to do business in all, or a stated number of, Indiana counties. But, this alternative energy incentive program is only available for the Local District REMCs.

OAEI is authorized to adopt rules to implement the incentive program. Such rules, if adopted, must include: (1) the requirements for plans for alternative energy projects; (2) standards by which OAEI will evaluate plans; (3) standards or methodologies for determining the percentage of total sales from the provision of retail energy service that is attributable to alternative energy projects; (4) standards and procedures to ensure that projects are not the basis of multiple recoveries; (5) procedures for resolving disputes that arise between a Local District REMC and OAEI; and (6) any other necessary standards, methodologies, or requirements.

OAEI will create an account within the AEI Fund for each Local District REMC. Access to the funds is limited, depending on the percentage of the overall retail sales that can be attributed to alternative energy sources. If alternative energy projects account for less than five percent of total retail energy sales in the previous calendar year, the Local District REMC can only have access to 40 percent of the total funds in its account. If alternative energy projects account for five to 10 percent of total sales, it can have access to 70 percent of the total funds in its account. A Local District REMC can have access to 100 percent of the funds in its account if alternative energy projects make up more than 10 percent of its total sales; at least 50 percent of the sales attributed to alternative energy projects were made to Indiana customers; and at least 50 percent of energy savings projects that are electricity producing or generating facilities are located in Indiana.

The funds from the account must be used for alternative energy projects that are approved by the OAEI and the Local District REMC Board. If the money will be used to develop or invest in an alternative energy project that involves the construction or expansion of an energy production or generating facility,

the facility must be located in Indiana. Account funds can also be used to reimburse money invested within the 36-month period immediately preceding the application date or for contributions of matching funds to state or federal programs for alternative energy projects. Two or more Local District REMCs that are members of the same cooperatively owned power supplier may develop alternative energy projects jointly and combine the money drawn from their respective accounts.

Not later than August 1 of each year, beginning in 2009, a Local District REMC may apply to the OAEI to have access to a certain percentage of the total funds that were in its account as of July 1 of the same year. The Local District REMC must submit a written application certifying the percentage of total retail sales attributable to alternative energy projects, along with any necessary documentation. OAEI will publish an application form, which will require description of each alternative energy project in which the applicant plans to invest money drawn from the account, the amount of each planned investment and any other REMC or other persons that have invested or will invest money in each project.

Any money that may become available in connection with Federal economic stimulus programs may not become part of the AEI Fund or an account within the incentive fund without the consent of the Local District REMC. The Legislature specifically provided that nothing in this new law is to constrain a Local District REMC's access to and immediate use of Federal stimulus money for alterative energy projects for the same uses and in accordance with the same processes, as any other energy utility may have access to or use federal economic stimulus money.

HEA 1554, PL No. 151-2009 SECTION 5, Ind. Code 8-1-13.1, effective July 1, 2009.

UNDERGROUND PLANT PROTECTION

New Exemption from Law to Prevent Damage to Underground Facilities

In 1990, the Legislature passed a law to establish ways to identify underground facilities to ensure their protection. An underground facility is defined to include a line or system used for producing, storing, conveying, transmitting, or distributing communication, information, electricity, gas, petroleum, petroleum products, hazardous liquids, carbon dioxide fluids, water, steam, or sewerage. The provision of this program do not apply to five specific activities: excavation using only non-powered hand tools; excavation using only animals; tilling of soil for agricultural purposes, such as plowing, planting and combining; permitted surface coal mining and reclamation operations; and railroad right-of-way maintenance or operations. This year, the Legislature added one more exemption and clarified the first one. Effective July 1, 2009, underground probing to determine the extent of gas migration is also exempt. Excavation using only non-powered hand tools has been clarified to include only excavation performed with a hand tool, on property owned or controlled by the person performing the excavation, and only if to a depth of not greater than 12 inches.

SEA 487, PL No. 62-2009, SECTION 2, Ind. Code 8-1-26-1, effective July 1, 2009.

Creation of New Program for Locating Underground Facilities

The Legislature has also (1) changed the way to identify underground facilities, (2) added carbon dioxide fluids to the types of substances flowing in underground facilities and pipeline facilities subject to this law's provision for protection, (3) created a new advisory committee to recommend to the Indiana Utility Regulatory Commission the amount of civil penalties for violations of the law, and (4) made other changes to the law which are all designed to identify and protect from damage underground facilities. Under prior law, operators of underground facilities themselves or through voluntary associations recorded the location of underground facilities with the county recorder's office. As of July 1, 2009, all operators are required to be a member of the Indiana Underground Plant Protection Service ("Plant Protection Service") and operators must provide the Plant Protection Service the name of each township and county in which the operator has underground facilities and the name, title, address, and telephone number of the operator's representative designated to receive notice. The Plant Protection Service must annually update its base map data, including street addresses and make reasonable efforts to reduce incorrect locate requests issued to its members.

SEA 487, PL No. 62-2009, SECTIONS 5, 12 and 14, Ind. Code 8-1-26-3, Ind. Code 8-1-26-15 and Ind. Code 8-1-26-17, effective July 1, 2009.

Persons who excavate real property or demolish a structure that is served or was previously served by an underground facility must give notice of the intent to begin that excavation/demolition work to the Plant Protection Service. The Plant Protection Service can be accessed by dialing 811, the Federal Communications Commission nationwide toll-free number to be used by state One Call Systems. Notice of the proposed excavation/demolition must be received by the Plant Protection Service at least two full working days, but not more than 20 calendar days, before commencing work. When giving notice, the person must provide the name, address, and telephone number of the person serving the notice and the person who will do the excavation or demolition, the starting date, anticipated duration and type of excavation or demolition to be conducted, the location of the excavation or demolition, whether explosives will be used, the approximate depth of excavation, and whether the person will perform white lining at the site. The person must identify the location by a street address, a legal description, or a highway location using highway mile markers or cross streets. If unable to provide the physical location of the proposed excavation or demolition by one of those manners, the person must white line the site of the excavation or demolition. White lining is defined as "the act of marking the route or boundary of a proposed excavation or demolition with white paint, flags or stakes, or a combination of white paint, flags and stakes." If the excavation is within an incorporated area, a separate notice must be given for each 1,500 linear feet of proposed excavation or demolition. If in an unincorporated area, a separate notice must be given for each 2,500 linear feet of proposed excavation or demolition.

SEA 487, PL No. 62-2009, SECTIONS 13 and 11, Ind. Code 8-1-26-16 and Ind. Code 8-1-26-11.5, effective July 1, 2009.

Upon receiving the notice, the Plant Protection Service is required to immediately notify each member with an underground facility located in the proposed area of excavation or demolition. The law was clarified this year to define what is meant by immediate. If a notice is received between the hours of 7 a.m. and 6 p.m. on a work day, the notice is to be given to members at the time of receipt. If the notice is received after 6 p.m. on a work day and before 7 a.m. on the following work day, notice is to be given to members at 7 a.m. on the following day. The Plant Protection Service must keep a record of each notice received for seven years. Under prior law, the retention period was only three years.

SEA 487, PL No. 62-2009, SECTIONS 13 and 14, Ind. Code 8-1-26-16 and Ind. Code 8-1-26-17, effective July 1, 2009.

Each underground facility operator notified shall within two full working days of being notified supply to the person responsible for the excavation or demolition the approximate location and description of underground facilities that may be damaged and the location and description of the markers that indicate the approximate location of the underground facilities, along with any other information that would assist that person in locating and avoiding damage to underground facilities. The law was changed this year to provide that operators notified who do not have underground facilities in the location are only required to make "a reasonable attempt" to provide notice within two working days to the person responsible for the excavation or demolition of that fact. Under prior law, it was a mandatory obligation to notify the person that they did not have any underground facilities in the location.

SEA 487, PL No. 62-2009, SECTION 15, Ind. Code 8-1-26-18, effective July 1, 2009.

The term excavate has been revised. Prior law defined it as an operation for the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, including auguring, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching and tunneling. Added to that definition this year is movement, placement, or removal of earth, rock, or other materials in or on the ground by tools, as well as mechanized equipment. Also added to the list of activities which constitute excavation are boring, driving, and jacking.

SEA 487, PL no. 62-2009, SECTION 6, Ind. Code 8-1-26-6, effective July 1, 2009.

A new exemption has been added to the law for who is an operator required to become a member of the Plant Protection Service. A person who has an underground facility on real property that the person owns and occupies and who operates the facility for the person's benefit is not subject to this law.

SEA 487, PL No. 62-2009, SECTION 8, Ind. Code 8-1-26-20, effective July 1, 2009.

A new duty has been added to the law for persons responsible for excavation or demolition operations. In addition to the current law's requirement to give advance notice, plan to avoid damage or to minimize interference with underground facilities in and near the construction area, and maintain clearance between the marked underground facility and the cutting edge or point of mechanized equipment, a responsible person must now notify the Plant Protection Service if there

is evidence of an unmarked pipeline facility in the area of the excavation or demolition or if the markings indicating the location of an underground facility have become illegible.

SEA 487, PL No. 62-2009, SECTION 17, Ind. Code 8-1-26-20(a), effective July 1, 2009.

The law has also been amended to require that the Plant Protection Service be notified -- in addition to notice already required to be given to the operator of the underground facility -- immediately when damage is discovered.

SEA 487, PL No. 62-2009, Ind. Code 8-1-26-21, effective July 1, 2009.

New penalties have been added to the law. Penalties collected will be placed in a new underground plant protection account. The underground plant protection account is to be used for public awareness programs concerning underground plant protection, training and educational programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection, incentive programs for contractors, excavators, locators, operators, and other persons involved in underground plant protection to reduce the number of violations of the law for protection. Money in this account is administered by the Plant Protection Service. Money in the account at the end of a state fiscal year does not revert to the State General Fund. The Treasurer of the State is to invest money in the account not currently needed to meet obligations in the same manner as other public money. Interest that accrues from these investments is to be deposited in the account.

SEA 487 PL 62-2009, SECTION 20, Ind. Code 8-1-26-24, effective July 1, 2009.

The new civil penalties created include all of the following:

(1) An underground facility operator who is required to supply information to a person excavating or demolishing who either fails to provide the information or provides incorrect information and damage occurs to the underground facility will be subject to a maximum penalty of $1,000. This penalty does not apply if failure to provide information is due to factors beyond the control of the operator.

SEA 487, PL no. 62-2009, SECTION 16, Ind. Code 8-1-26-18(f) and (g), effective July 1, 2009.

(2) A person (other than the person for whom the marking was done as part of an excavation) who knowingly moves, removes, damages, or otherwise alters a facility locate marking may be subject to a maximum civil penalty of $10,000.

SEA 487, PL No. 62-2009, SECTION 16, Ind. Code 8-1-26-18(h), effective July 1, 2009.

(3) A person who knowingly provides false notice of an emergency excavation or demolition to the Plant Protection Service may be subject to a maximum civil penalty of $1,000.

SEA 487, PL No. 62-2009, SECTION 17, Ind. Code 8-1-26-19(c), effective July 1, 2009.

(4) A person required to maintain membership in the Plant Protection Service who fails after December 31, 2009, to become a member, may be subject to a maximum civil penalty of $100 for each day they fail to become a member.

SEA 487, PL No. 62-2009, SECTION 12, Ind. Code 9-1-26-15, effective July 1, 2009.

(5) A person who causes damage to a pipeline facility located in an area of excavation or demolition who was required to provide advance notice of the excavation activity and failed to give that notice may be subject to maximum civil penalty of $10,000.

SEA 487, PL No. 62-2009, SECTION 13, Ind. Code 8-1-26-16(g), effective July 1, 2009.

(6) A person who causes damage to a pipeline facility located in a area of excavation or demolition who was required to perform white lining to identify the location and failed to perform the white lining before an underground facility operator arrived at the site may be subject to a maximum civil penalty of $10,000.

SEA 487, PL No. 62-2009, SECTION 13, Ind. Code 8-1-26-16(h), effective July 1, 2009.

(7) A person who notices evidence of an unmarked pipeline facility in an area of excavation or demolition or who notices markings that have become illegible who fails to notify the Plant Protection Service and causes damages to a pipeline facility in the area of the excavation or demolition may be subject to a maximum civil penalty of $10,000.

SEA 487, PL No. 62-2009, SECTION 17, Ind. Code 8-1-26-20, effective July 1, 2009.

An advisory committee, known as the Underground Plant Protection Advisory Committee ("Advisory Committee") was established this year. The Advisory Committee consists of seven members appointed by the Governor. One member each must represent the Plant Protection Service, an investor-owned gas utilities, an operator of pipeline facilities or pipelines, a municipal gas utility, a provider of facility location marking services, and two members must represent commercial excavators. The Indiana Utility Regulatory Commission ("IURC") and the Plant Protection Plant Protection Service shall provide staff support and meeting space to the Advisory Committee. Four members' affirmative votes are required to take action. The Pipeline Safety Division of the IURC is given the responsibility for investigating alleged violations of this law. If a violation is found, findings are to be forwarded to the Advisory Committee. The Advisory Committee acts in an advisory capacity to the IURC concerning implementation and enforcement. The Advisory Committee makes recommendations on the appropriate penalty, which can be either a warning letter, participation in education or training programs developed and implemented by the Plant Protection Service, or development of a plan to avoid future violations or a civil penalty. Before making its recommendation, the Advisory Committee must give notice to the person found to be in violation and provide an opportunity to appear before the Advisory Committee with respect to the violation. In considering the recommendation to be made, the Advisory Committee may consider the following:

(1) whether the person is a first time or repeat violator;

(2) whether the person is a homeowner or tenant performing excavation or demolition on its own residential property outside easements or rights of way or is a business entity; and

(3) the severity of the violation.

If the violation is a first-time violation and did not result in physical harm to a

person, the Advisory Committee cannot include in its recommendation a civil penalty or development of a plan to avoid future violations.

The IURC must give notice and opportunity for a public hearing on the recommended penalty. Following the public hearing, the IURC shall uphold or reverse the finding of a violation, approve or disapprove each recommendation of the Advisory Committee, collect any civil penalties, and deposit the penalties in the Underground Plant Protection Account.

An operator of a pipeline facility that violates this law may be subject to a civil penalty under both this law and under the Gas Pipeline Safety Law. The Gas Pipeline Safety Law is one that applies to pipelines transporting gas, hazardous liquids, or carbon dioxide fluid.

SEA 487, PL No. 62-2009, SECTION 19 and 21, Ind. Code 8-1-26-23 and Ind. Code 8-1-26-25, effective July 1, 2009.

The Plant Protection Service is required to adopt rules to carry out its responsibilities under this law.

SEA 487, PL no. 62-2009, SECTION 22, Ind. Code 8-1-26-26.

IURC Best Practices to Locate Underground Facilities

In an effort to improve the protection of underground facilities, this year the Legislature has required the Indiana Utility Regulatory Commission ("IURC"), starting July 1, 2010, to annually report to the Regulatory Flexibility Committee of the Legislature best practices to locate underground facilities. The IURC is to address both the viability and economic feasibility of different technologies that can be used to vertically locate underground facilities.

SEA 487, PL No. 62-2009, SECTION 1, Ind. Code 8-1-2.6-4, effective July 1, 2009.

LAWS AFFECTING PROPERTY AND TAXATION

ESCROW TRANSACTIONS IN REAL ESTATE TRANSACTIONS

The Indiana Legislature enacted a new law governing escrow funds and transactions within real estate transactions. Beginning July 1, 2009, closing agents and parties to a real estate transaction must follow the new rules proscribed by the Legislature. Under this law, a real estate transaction is defined as any escrow transaction, settlement, or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. This, however, does not include a real estate transaction involving secured loan financing if the only parties to the loan transaction are the lender and the borrower and the lender is responsible for disbursing the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

Under the new law, funds in connection with an escrow transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement. An escrow transaction is defined as a transaction in which a person deposits

with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition occurs, which are in connection with the purchase, sale, or financing of an interest in real estate.

In order for the closing agent to make disbursements of funds, the closing agent must abide by certain rules. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds are (1) received from any single party to the real estate transaction; and (2) total at least $10,000, and (3) are wired funds that are unconditionally held by and irrevocably credited to the escrow account of the closing agent. Moreover, these funds must be considered "good funds" in order to allow the closing agent to make the disbursement. Good funds include, but are not limited to, funds that are (1) United States currency; (2) certified or cashier's checks that are drawn on an existing account at a bank, savings and loan association, credit union, or saving banks; (3) wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent; (4) a personal check not to exceed $500 per closing; or (5) a check issued by the state, the United States, or a political subdivision of a state or the United States. The new law governing escrow transactions in real estate transactions also includes conditions about when a closing agent can make advances for incidental fees in real estate transactions and payoff statements in advance of closing for mortgage liens.

HEA 1374, PL 92-2009, SECTION 1, Ind. Code 27-7-3.7 ***et seq.****, effective July 1, 2009.*

MUNICIPAL ENFORCEMENT ACTIONS ON REAL PROPERTY

Employees or contractors of a municipal corporation are permitted to enter onto real property if a violation of an ordinance exists on that property in order to bring the property into compliance with the ordinance. Prior to the municipality taking action to bring the property into compliance, however, the property owner must be given an opportunity lasting at least 10 days to correct the violation. Beginning on July 1, 2009, municipalities do not need to give notice to the property owner if the municipality is enforcing a continuous enforcement order. This amendment also expanded the penalties that a municipality may impose if a person violates an ordinance regulating or prohibiting a use of a property or engages in an activity requiring a license or permit. The municipality may now as a penalty issue a continuous enforcement order, order the suspension or revocation of a license, or order a structure demolished. These penalties are in addition to the other penalties that a municipality has previously been allowed to impose, which includes issuing an injunction, ordering an inspection, ordering a property vacated, or imposing fees. A continuous enforcement order is an order that is issued for compliance or abatement and that remains in full force and effect on a property without further requirements to seek additional compliance and abatement authority or orders for the same or similar violations. It also authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement, can be enforced, including assessment of fees and

costs, without the need for additional notice or hearing, and authorizes the enforcement authority to assess and collect ongoing costs for continuous enforcement order activities from any party that is subject to the enforcement authority's order. Additionally, to the extent an enforcement order is affirmed or modified, it should be issued as a continuous enforcement order.

HEA 1358, PL 88-2009, SECTIONS 5-7, 9Ind. Code 36-1-6-2, Ind. Code 36-1-6-3, Ind. Code 36-7-9-2, Ind. Code 36-7-9-7, effective July 1, 2009.

A municipality may issue an order requiring action to address an unsafe building. The recourses available to a municipality in the past have included vacation of the unsafe building, sealing off the unsafe building, extermination of vermin in the building, removal of trash or debris, removal of part or all of the unsafe building, and other actions to bring the unsafe building into compliance with applicable ordinances. After July 1, 2009, a municipality may also now order the demolition and removal of part of an unsafe building or the demolition and removal of the entire unsafe building under certain circumstances. If a property owner has not complied with the order issued by the municipality, the municipality or a community organization may bring an action regarding the unsafe premises, and the court may award attorneys' fees for those actions filed by community organizations. Now, in addition to attorneys' fees, if a second civil action is initiated and a second judgment entered against the same property owner (even for different properties), the owner may be required by the court to pay treble damages based on the costs of the action.

HEA 1358, PL 88-2009, SECTIONS 8, 10 Ind. Code 36-7-9-5, Ind. Code. 36-7-9-17, effective July 1, 2009.

PROCEEDS OF FORECLOSURE SALE

The proceeds of a foreclosure sale must be applied to certain costs and expenses pursuant to Ind. Code § 32-30-10-14. Historically, the first three items that the proceeds of a foreclosure sale were applied to were as follows: (1) the costs and expenses of the sale itself; (2) property taxes due and owing on the property sold in the foreclosure sale; and (3) any amount of redemption where a certificate of sale is outstanding. Starting July 1, 2009, the proceeds of a foreclosure sale will no longer be applied to the property taxes or the amount of redemption where a certificate of sale is outstanding. Instead, the first three items that the proceeds of a foreclosure sale are applied to are as follows: (1) the costs and expenses of the sale itself; (2) the payment of the principal due, interest, and costs; and, (3) the residue secured by the mortgage.

HEA1358, PL 88-2009, SECTION 3, Ind. Code 8-1.5-3-12, effective July 1, 2009.

PROHIBITION ON TYPES OF PURCHASERS OF REAL PROPERTY AT TAX SALES

In the past, Indiana has prohibited certain categories of people from bidding at a tax sale for real property. This prohibition applies to, among others, people that owe delinquent taxes, penalties, or interest on real property in the county in which the property at the tax sale is being sold or certain people that own unsafe buildings or premises. Under the new statutory provision added July 1, 2009, this prohibition extends to a person that owns structures which are vacant or abandoned and the subject

of certain enforcement orders, such as enforcement orders because of a nuisance, indecent nuisance, or drug nuisance. In order to apprise people of this law and prevent prohibited purchasers from purchasing real property at a tax sale, Indiana requires any person bidding at a tax sale for real property to sign a statement that states: "Indiana law prohibits a person who owes delinquent taxes, special assessments, penalties, interest, or costs directly attributable to a prior tax sale, from purchasing tracts or items of real property at a tax sale. I hereby affirm under the penalties for perjury that I do not owe delinquent taxes, special assessments, penalties, interest, costs directly attributable to a prior tax sale, amounts from a final adjudication in favor of a political subdivision in this county, any civil penalties imposed for the violation of a building code or ordinance of this county, or any civil penalties imposed by a health department in this county. Further, I hereby acknowledge that any successful bid I make in violation of this statement is subject to forfeiture. In the event of forfeiture, the amount of my bid shall be applied to the delinquent taxes, special assessments, penalties, interest, costs, judgments, or civil penalties I owe, and a certificate will be issued to the county executive." If a prohibited person purchases property at tax sale, the sale of the property is subject to forfeiture.

HB 1358, PL 88-2009, SECTION 1, Ind. Code 6-1.1-24-5.3, effective July 1, 2009.

PROPERTY AFFECTED BY FLOODING

Rental Property in Flood Plain

Beginning June 30, 2009, rental agreements governing residential, agricultural, or commercial property must contain a statement that the property is located in a floodplain if applicable. The statement must be included in the rental agreement if the lowest floor of the structure that is the subject of the rental agreement, including the basement, is below the 100–year-frequency flood elevation as determined by (1) the Department of Natural Resources; (2) the Federal Emergency Management Agency's Flood Insurance Rate Maps; or, (3) FEMA-approved local flood plain maps. This statement must be clearly disclosed in rental agreements either entered into or renewed after June 30, 2009.

HEA 1473, SECTION 1, Ind. Code 32-31-1-21, effective July 1, 2009.

Tax Assessment of Land Affected by Flooding

The Indiana Legislature enacted a new law that allows the reassessment of flooded land. This section is retroactive, dating back to January 1, 2008. A landowner of real property that (1) is permanently flooded or to which access over land is permanently flooded and (2) is not being used for agricultural purposes may petition the county assessor for a reassessment of that parcel of land. If the county assessor reassesses the taxes, the petitioner is entitled to a refund of property taxes based on the difference in the amount of property taxes paid and the amount of property taxes determined based on the ordered reassessment. County auditors and treasurers are required to publish notice of the availability of the reassessment.

HEA 1365, PL 90-2009, SECTIONS 1-4, Ind. Code 6-1.1-4-11.5, Ind. Code 6-1.1-17-0.5, effective date January 1, 2008 (retroactive).

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MISCELLANEOUS LAWS OF INTEREST

COUNTY SURVEYOR TRAINING

A new section has been added to the County Surveyor law. Any individual elected to the office of County Surveyor after June 30, 2009, is required to complete 24 hours of training related to land surveying within two years after beginning the County Surveyor's term. The training courses are to be developed by the Association of Indiana Counties and must be approved by the State Board of Accounts. Training courses offered by the Association are listed at www.indianacounties.org. If the individual serves more than one term, the 24-hour training requirement must be fulfilled during each term.

This law does not apply to (1) actively registered land surveyors, (2) graduates of an accredited land surveying curriculum, and (3) land-surveyors-in-training. The law is intended to increase the competence of County Surveyors, whose duties include identifying and maintaining regulated drains. According to Rep Reske, he was asked to sponsor this bill by the Association of County Surveyors.

HEA 1243, PL171-2009 SECTION 2, Ind. Code 36-2-12-2.5, effective July 1, 2009.

ECONOMIC DEVELOPMENT CORPORATION – OFFICE OF SMALL BUSINESS ADVANCEMENT

To help focus on growing small business in Indiana, the Legislature required the Indiana Economic Development Corporation to establish a small business division ("Division"). The term "small business" is defined as a business entity with less than 150 employees (the majority of whom work in Indiana) on at least 50 percent of the working days during the proceeding calendar year. The Division is tasked with assisting small businesses to receive state and federal tax incentives. The Division is also required to maintain a network of resources to inform small businesses of programs to help them realize reduced costs or from which to obtain financial assistance. The Division is to provide services through a toll-free phone number and an Internet web page. The Indiana Economic Development Corporation is to include information regarding the Division's efforts to support small businesses it its annual report to the governor and the Legislature.

HEA 1697, PL 56-2009, SECTIONS 1-4, Ind. Code 5-28-2-6, Ind. Code 5-28-5-6.5, Ind. Code 5-28-17-1, 5-28-17-3.

EMINENT DOMAIN OF PUBLIC UTILITY

The Legislature changed the procedure by which a municipality can exercise eminent domain to acquire the property of a public utility. Prior to the passage of HEA 1278, municipalities had the option of proceeding under Ind. Code 32-24-2-6 to "administratively" condemn a property where the Board of Works could pass a resolution to acquire the property. Now, municipalities may only condemn the property of a public utility by proceeding under Ind. Code 32-24-1 by proceeding judicially if the property owner refuses the written acquisition offer.

Prior to these amendments, a municipality that adopted an ordinance for condemnation established that public necessity for the condemnation existed. Ind. Code 8-1.5-2-15. There was, however, some question as to whether the utility could appeal under Ind. Code 8-1.5.2.11. With the repeal of Ind. Code 8-1.5-2-11, it is now clear that the public utility cannot appeal a municipality's decision to condemn on the basis of the determination of "public convenience and necessity." With the repeal of Ind. Code 8-1.5-2-16, the condemnation no longer requires voter approval of the acquisition.

Municipalities may not impose additional rates or charges to pay for the condemnation. However, municipalities can recover costs associated with the condemnation if it can demonstrate that its rates are reasonable.

HEA 1278, PL 172-2009, Ind. Code 8-1-2-92; Ind. Code 8-1-2-93, Ind. Code 8-1.5-2-7; Ind. Code 8-1.5-2-8, Ind. Code 8-1.5-2-11, Ind. Code 8-1.5-2-16, Ind. Code 8-1.5-3-8, Ind. Code 32-24-2-6, effective July 1, 2009.

ENVIRONMENTAL QUALITY SERVICE COUNCIL

The Legislature gave the Environmental Quality Service Council ("EQSC") several tasks in a new law that expires January 1, 2010. The EQSC, shall do the following:

(1) Conduct a study and develop recommendations concerning the advisability of establishing an institutional control registry and an environmental trust fund:

(a) as set forth in SB 460-2009 or

(b) in a different manner.

(2) Conduct a study and develop recommendations concerning the feasibility of incorporating notice of

(a) restrictive covenants and

(b) environmental restrictive ordinances; into the "One Call" system managed by the Indiana Underground Plant Protection Service under Ind. Code 8-1-26.

(B) The EQSC shall include its findings and recommendations developed under subsection (1) in the council's 2009 final report to the Legislative Council.

HEA 1162, PL 78-2009, Section 27, non-code provision, effective May 6, 2009.

HISTORIC PRESERVATION COMMISSION

The method of appointment of the members of the Historic Preservation Commission was altered effective July 1, 2009. Previously, the executive of the city appointed the Historic Preservation Commission. Now the city's executive and legislative body will appoint the Historic Preservation Commission as follows: The executive shall appoint five members of the commission, two of whom shall be from names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county; one who is a member of the metropolitan development commission; and one member from a list of names submitted by the local chapter of the American Institute of Architects. The Legislature shall appoint four members, as follows: one member who is a resident of a historic area; one member from a lists of names submitted by the Historic Landmarks Foundation of Indiana and the historical society of the consolidated city's county; and one member from

a list of names submitted by the local chapter of the American Institute of Architects. In addition, a new section was added to the Historic Preservation of Marion County statute allowing a member of the Historic Preservation Commission appointed prior to July 1, 2009, to serve as a member of the commission until the end of his/her term or until removed by the executive for cause.

HEA 1358, PL 88-2009, SECTIONS 11 and 12, Ind. Code 36-7-11.1-3, 26-7-11.1-3.1, effective July 1, 2009.

INDOOR AIR QUALITY IN SCHOOLS AND STATE AGENCIES

Spurred on by a *USA Today* investigation alleging high levels of pollutants in certain Indiana schools, two bills were introduced to address air quality in schools and state agencies in Indiana. Introduced by Representative John Barnes, a social studies teacher at Warren Central, HEA 1097 originally required the Board of Education to devise a system to track indoor pollution levels at schools. Concurrently, SEA 440 was introduced requiring the Indiana State Department of Health ("DOH") to stiffen rules concerning indoor air quality in schools and state agencies. Since the Board of Education is not equipped to monitor pollutants, HEA 1097 was amended to reflect the requirements of SEA 440.

Currently, when a complaint is filed with the DOH regarding indoor air quality in a school or state agency, the DOH must inspect and evaluate the complaint. The DOH must then report only to the person who filed the complaint, the school principal or agency head, the school superintendent, the Indiana State Board of Education or the Indiana Department of Administration (depending on whether the complaint is about a school or an agency), and the local board of health. As a result of legislation this year, the DOH is mandated to establish a parent and employee notification program so that parents and employees are notified regarding the findings of any indoor air quality complaints. Now that the results of an investigation will be distributed under a notification program, the name of the person who filed the initial complaint may only be released if that person has authorized disclosure in writing.

Where the prior law required that the DOH only report its findings, the amended law requires the DOH to prepare a formal report describing the findings of its investigation and identifying any conditions contributing to poor indoor air quality including, but not limited, to mold, humidity, and dust. The report must also include guidance on steps the school or agency can take to improve the identified issues and requests that the school or agency respond within 60 days.

The laws also require the DOH to develop regulations regarding the best practices to assure healthful indoor quality in schools. The DOH may use manuals prepared by a federal health or environmental agency or prepared by another state. The laws require the DOH to distribute a manual outlining these best practices to the Legislative Council and the department of education by July 1, 2010. The laws also impose additional meeting requirements on the air quality panel previously established in 2005 so that the panel must now meet at least twice per year and shall post minutes of each meeting on the DOH website within 45 days of the meeting.

HEA 1097, SECTIONS 4-6, PL 168-2009; SEA 440 SECTIONS 1-3, PL 132-2009, Ind. Code 16-41-37.5-2, Ind. Code 16-41-37.5-2.5, Ind. Code 16-41-37.5-3, effective July 1, 2009.

As a final protective measure for school air quality, the laws also require the that if the DOH amends the regulations regarding the health and safety regulations regarding school siting contained in 410 IAC 6-5.1, the DOH shall consider the effects of outdoor air quality.

HEA 1097, SECTION 7, PL 168-2009; SEA 440 SECTION 4, PL 132-2009, Ind. Code 16-41-37.5-5, effective July 1, 2009.

LEGISLATIVE RULES OF CONSTRUCTION

Amendments were made to laws this year to specify the effect of expiration or repeal of a law.

First, where a special act is passed to incorporate a corporation, current law provides that repeal of that law has no effect on the subsequent reorganization of the corporation under a general statute. The law has been changed this year to provide that expiration of the special act also has no effect on the subsequent reorganization of the corporation under a general statute.

SEA 346, PL No. 16-2009, SECTION 1, Ind. Code 1-1-5-3, effective July 1, 2009.

Second, existing law provides that repeal of a legalizing or validating statute or part of a statute does not affect the legalization or validation of that statute. This year, the law was amended to say that expiration of that legalizing or validating statue also has no affect on the legalization or validation of the statute.

SEA 346, PL no. 16-2009, SECTION 2, Ind. Code 1-1-5-4, effective July 1, 2009.

Third, existing law provides that repeal of a statute or part of a statue that authorizes a government entity to transfer, convey, or accept property, or powers, duties, and liabilities or rules does not affect the validity of any such action occurring before the repeal. Now the law provides that expiration of such a statute also does not affect the validity.

SEA 346, PL No. 16-2009, SECTION 3, Ind. Code 1-1-5-5, effective July 1, 2009.

Fourth, existing law provides that repeal of a law that nullified an action does not approve or ratify the action upon repeal unless that is expressly provided when the statute is repealed. Now, the law provides that expiration of a law nullifying an action also does not approve or ratify the action just because the law has expired. Similarly, with repeal, the rule is not revived unless the statute expressly provides for revival.

SEA 346, PL No. 16-2009, SECTIONS 4 and 5, Ind. Code 1-1-5-7 and Ind. Code 1-1-5-8, effective July 1, 2009.

Fifth, existing law provides that repeal of a statute or part of a statue that contains the effective date for the statute has no effect on the effective date of the statute. Now, expiration of such a statute also has no effect on the effective date of the statute.

SEA 346, PL No. 16-2009, SECTION 6, Ind. Code 1-1-5-9, effective July 1, 2009.

Finally, a new section was added to the law providing that expiration of a statute has the same effect as repeal of the statute would have had, effective the date the statute expires.

SEA 346, PL no. 16-2009, SECTION 7, Ind. Code 1-1-5-10, effective July 1, 2009.

In addition, the Legislature reaffirmed the judicial rule of statutory construction that the motive of individual sponsors

of legislation cannot be imputed to the Legislature unless there is a basis for it in its statutory expression. Specifically the Legislature added a new section to the law stating that it is not the intent of the Legislature to change the judicial rule of statutory construction by the adoption of the laws related to Internet coverage of sessions of the Legislature and other legislative activities. Specifically, in 2001, the Legislature passed a law providing that a person may use all or a part of audio or video coverage for a commercial purpose if the Legislative Council gives its permission. In addition, the Legislature provided that audio or video coverage is part of the legislative history of an act enacted or resolution adopted by the Legislature when it is declared to be part of the legislative history of a bill or resolution in a bill contemporaneously enacted by the Legislature and is certified for accuracy and completeness by the principal clerk or principal secretary of the chamber in which the coverage originated. And the Legislature provided that audio or video coverage constitutes an expression of legislative intent, when the content of audio or video coverage is incorporated by a bill contemporaneously enacted by the Legislature and the content of the incorporated audio or video coverage is certified for accuracy and completeness by the principal clerk or principal secretary of the chamber in which the coverage originated. At that time, the Legislature specifically provided that, by adopting the one section for contracting to provide video or audio coverage over the Internet, it was not the intent of the Legislature to have the content of the audio or video coverage used as evidence of legislative intent, purpose, or meaning of an act enacted or resolution adopted by the Legislature. This year, the Legislature has further clarified that the other three sections related to when persons may use the audio of video coverage, and when the audio or video is declared to be part of the legislative history, also are not intended to change the judicial rule of statutory construction by the adoption of the laws related to Internet coverage of sessions of the Legislature and other legislative activities.

SEA 349, PL 16-2009, SECTION 8, Ind. Code 2-5-1.1.17, effective July 1, 2009.

LEGISLATIVE STUDY COMMITTEES

Codification of Existing Legislative Study Committees

A new article has been added to the title for the Legislature to codify legislative study committees which had previously been created by non-code provisions. General provisions were added to the code to provide the following for each statutory legislative study committee, unless otherwise provided in the chapter creating the study committee:

- The Legislative Services Agency is to provide staff to support the study committee;
- each member of a study committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members;
- the affirmative votes of a majority of the voting members appointed are required for the study committee to take action on any measure, including the final report;
- the study committee is to operate under the policies and rules of the Legislative Council;

- funds necessary for a study committee to carry out its functions are to be paid from appropriations to the Legislative Council and Legislative Services Agency;
- a committee shall submit interim and final reports to the Legislative Council in an electronic format under Ind. Code 5-14-5; and
- a committee expires January 1 of the second year after the chapter creating the committee takes effect.

SEA 346, PL 16-2009, SECTION 9, Ind. Code 2-5.5, effective July 1, 2009.

The following Study Committees were codified: The Sentencing Policy Study Committee. Ind. Code 2-5.5-2. A Lakes Management Work Group Ind. Code 2-5.5-3. The Interim Study Committee on Alcoholic Beverage Issues. Ind. Code 2-5.5-4. The Mortgage Lending and Fraud Prevention Task Force. Ind. Code 4-23-30.

The Lakes Management Work Group already existed and will now continue until July 1, 2010. It is a 26-member group directed to study problems and issues associated with public fresh water lakes: Four members are legislators: two from the House of Representatives appointed by the Speaker of the House of Representatives and two from the Senate appointed by the President Pro Tempore of the Senate. The Commissioner of IDEM or his designee is a member. The Governor is to appoint three representatives from the DNR, at least one of whom must be an officer in the division of law enforcement. Also, one member from the Indiana Lake Management Society or a similar organization of citizens concerned about lakes; one member from the Natural Resources Conservation Service of the U.S. Department of Agriculture; one member from a soil and water conservation district; 10 members (one from each Congressional district in Indiana), each of whom must be a person who participates in lake-related recreational activities, is a resident of a lake area, and either is the owner or operator of a lake-related business or is interested in the natural environment of Indiana lakes; one member from the U.S. Army Corps of Engineers; one member who is from an agricultural organization; one representative of an environmental organization; and two individuals at large. The Work Group is to meet no more often than four times a year. The Work Group is to do the following:

- Monitor, review, and coordinate the implementation of the Work Group's recommendations issued in 1997 and 2000;
- facilitate collaborative efforts among state, county, and local government entities in cooperation with lake residents and related organizations;
- conduct public meetings to hear testimony and receive written comments concerning lake resource concerns and the implementation of the Work Group's recommendations;
- review, update, and coordinate the implementation of new and existing recommendations by communicating with the public, the Legislature and other governmental entities concerning lake resources;
- review and coordinate the development and maintenance of an Internet web site that includes information on the management of lake and watershed resources;
- issue reports to the Natural

Resources Study Committee when directed to do so;

- review all funding that is used for Indiana's waterways, including potential funding sources that could be used by the Legislature to correct funding problems; and
- issue a final report before July 1, 2010.

SEA 346, PL No. 16-2009, SECTION 9, Ind. Code 2-5.5-3, effective July 1, 2009.

Study Committee on Water Rights, Drainage, and Utilities

In a non-code provision, the Legislature urged the Legislative Council to assign an interim or statutory study committee to study water rights, drainage, and utilities. If a committee is assigned, it is directed to look at water and drainage issues as they relate to urban and rural areas, the development of land, and the operation of utilities. The committee, if assigned, is also tasked with looking at the role of condemnation with respect to water rights, drainage, and utilities, and to examine the appropriate role of drainage boards. Finally, the committee is tasked with examining whether the common enemy doctrine of water diversion is still appropriate. This non-code provision was effective immediately upon passage, and expires January 1, 2010.

HEA 1278, PL 172-2009, effective May 15, 2009.

LIMITATIONS ON ASBESTOS CLAIMS FOR CERTAIN SUCCESSOR CORPORATIONS

The Legislature enacted a new law limiting certain corporation's liability for asbestos-related claims. Beginning July 1, 2009, an "asbestos-related claim" brought against an "innocent successor corporation" is limited to a certain statutorily prescribed monetary amount based on this new law. An innocent successor corporation is defined as a corporation that assumes or incurs successor asbestos-related liability and became a successor corporation due to a merger or consolidation with another corporation before January 1, 1972. Any corporation that the innocent successor corporation subsequently merges into or consolidates with is also considered an innocent successor corporation. An innocent successor corporation, however, does not include a corporation that, after a merger or consolidation continues in the business of (1) mining asbestos; (2) selling or distributing asbestos fibers; or (3) manufacturing, distributing, removing, or installing asbestos-containing products that are the same as those products previously manufactured, distributed, removed, or installed by the transferor corporation.

An asbestos claim means any claim for damages, losses, indemnification, contribution, or other relief, including a claim relating to the health effects of exposure to asbestos. The claim can be made by the person exposed to the asbestos or a representative for that person, such as a spouse or child. In addition, the claim must be for damage or loss caused by the installation, presence, or removal of asbestos. An asbestos-related claim is any liability that is related to an asbestos claim that was assumed or incurred by a corporation as a result of a merger or consolidation with another corporation, the plan of merger or consolidation, or the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

Any asbestos-related claim that is limited by this new law must either be filed after July 1, 2009, or before July 1, 2009, if the trial has not commenced as of July 1, 2009. If the asbestos related claim is filed after the foregoing time period against an innocent successor corporation, the liability of the innocent successor corporation will be limited to the fair market value of the total gross assets of the transferor corporation, determined as of the time of the merger or consolidation through which the innocent successor corporation assumed or incurred successor asbestos-related liability. This limitation is not applicable, however, to (1) worker's compensation benefits paid on behalf of an employer to an employee; (2) a claim against a corporation that is not a successor asbestos-related liability; (3) any obligation under the National Labor Relations Act; or (4) a collective bargaining agreement. The new law also does not limit or affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or related agreement.

SEA 0469, SECTIONS 1-12, Ind. Code 34-6-2-11.5, effective July 1, 2009.

LOANS TO MUNICIPALITIES FOR ELIGIBLE EFFICIENCY PROJECTS

Under Indiana law, a municipality has previously been allowed to borrow money from a utility owned by that municipality for purposes associated with those activities for which a tax was being levied. Now the reasons for which a municipality may borrow money have been expanded to include borrowing money for an eligible efficiency project within that municipality. An eligible efficiency project is defined as a project necessary or useful to carrying out an interlocal cooperation agreement entered into by two or more political subdivisions or governmental entities under Ind. Code § 36-1-7 or a project necessary or useful to the consolidation of local government services. A loan made for an eligible efficiency project by a utility to a municipality must be repaid by the municipality within six years of the date of the loan.

HEA 1358, PL 88-2009, SECTION 2, Ind. Code 8-1.5-3-12, effective July 1, 2009.

PUBLICATION OF NOTICES

The law that state and local governments must follow when publishing newspaper notices has been amended in a number of ways this year. First, newspapers will not be allowed to charge government for publishing notices more than the lowest classified advertising rate charged to advertisers or for comparable use of the same amount of space for other purposes and the newspaper must provide multiple-insertion discounts which it extends to the newspaper's other advertisers. Second, newspapers will be allowed to increase the basic charges by not more than 2.75 percent a year over the previous year, starting January 1, 2010.

HEA 1230, PL No. 141-2009, SECTION 1, Ind. Code 5-3-1-1, effective July 1, 2009.

Third, all public-notices advertisements must now be set in solid type that is at least 7 point type.

Fourth, if a newspaper maintains an Internet web site, a notice that is published in the newspaper must also be posted on the newspaper's web site on the same day the notice appears in the newspaper. No fee may be charged for posting a notice on the newspaper Internet web site.

HEA 1230, PL 141-2009, SECTION 2, Ind. Code 5-3-1-1.5, effective July 1, 2009.

Fifth, for all events that government entities must publish in accordance with Ind. Code 5-3, which includes notices of public hearings, meetings, and adoption of ordinances, if the newspaper refuses to post the advertisement on the newspaper's Internet web site, the government entity may post printed notice in three prominent places in the political subdivision instead of publication of the notice in the newspaper and on the Internet web site.

HEA 1230, PL 141-2009, SECTION 3, Ind. Code 5-3-1-2, effective July 1, 2009.

SEWAGE WORKS IMPROVEMENT

The boards of sanitation commissions or the boards of public works may now provide financial assistance to property owners to install sewage works, including regulating devices, improvements, overhead plumbing, or backflow-prevention devices. The purpose of these works must be to regulate or prevent discharge into private dwellings, to prevent stream or water pollution, to reduce inflow or infiltration into the sewage works, or to protect public health. In order to provide assistance, a board must adopt regulations concerning the financial assistance including a requirement that the property owner pays at least 20 percent of the total costs of the project. In order to provide the financial assistance, a board must also find that the assistance will accomplish one of the purposes of the statute, such as protecting public health; that the costs associated with the financial assistance will be less than the burden imposed if the assistance is not provided; and that the financial assistance is necessary to avoid or reduce financial burdens. Finally, the boards are allowed to establish a user fee in order to recover the costs of providing financial assistance for the installation of the sewage works. An emergency was declared for this act in order to allow sanitation commissions to take advantage of this law immediately.

HEA 1097, PL 168-2009, SECTIONS 8-12, Ind. Code 36-9-1-2, Ind. Code 36-9-1-8, Ind. Code 36-9-25-11, Ind. Code 36-9-25-42, effective May 13, 2009.