February 22, 2008

ENGROSSED
SENATE BILL No. 200

DIGEST OF SB 200 (Updated February 20, 2008 12:17 pm - DI 69)

Citations Affected: IC 4-21.5; IC 5-24; IC 13-11; IC 13-13; IC 13-14; IC 13-18; IC 13-19; IC 13-20; IC 13-23; IC 13-30; IC 16-18; IC 16-41; noncode.

Synopsis: Department of environmental management matters. Provides that a person must be qualified as a mediator under Indiana Supreme Court Rules to serve as a mediator in an administrative proceeding unless the parties and the administrative law judge agree to a mediator who is not qualified as such. Eliminates the requirement for the department of environmental management (IDEM) to include a laboratory division. Eliminates the requirement for certain water and wastewater operators to display certificates. Provides that a wastewater management vehicle must have an identification number issued by IDEM instead of a license. Provides that IDEM may issue a wastewater management permit that incorporates issuance of a wastewater management vehicle identification number and approval of a land application site. Eliminates the requirement for an applicant for certain waste permits to include the applicant's Social Security number in the

(Continued next page)

Effective: July 1, 2008; January 1, 2009.

Gard, Riegsecker
(HOUSE SPONSORS — DVORAK, WOLKINS)

January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.
January 16, 2008, amended, reported favorably — Do Pass.
January 24, 2008, read second time, amended, ordered engrossed.
January 25, 2008, engrossed.
January 29, 2008, read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Environmental Affairs.
February 21, 2008, reported — Do Pass.

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Digest Continued

application disclosure statement. Allows IDEM to require additional information in the application. With respect to the mercury switch removal program: (1) states the purposes of the program; (2) requires IDEM to pay recyclers for removed anti-lock braking system G-force sensors and other components containing more than 10 milligrams of mercury; and (3) provides that the mercury switch removal requirement does not apply if the removal would require dismantling of the vehicle. Transfers administration of the lead-based paint activities program from IDEM to the state department of health and amends the definition of elevated blood lead level for purposes of the program. Deletes the deadline of January 1, 2009, for adoption of lead-based paint activities rules by the state department of health (SDOH). Provides that lead-based paint activities rules adopted before January 1, 2009, by the air pollution control board are considered rules of the SDOH, and requires the SDOH to adopt rules to replace the rules of the control board. Allows IDEM to use money in the underground petroleum storage tank excess liability trust fund for the inspection of underground storage tanks, and limits the combined amount of payments from the fund in a year for tank inspection and administration of claims against the fund to 10% of the fund income in the immediately preceding year. Establishes standards for electronic submission of information to IDEM.

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February 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 200

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-21.5-3.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. **(a) Except as provided in subsection (b),** a person who applies to be a mediator under this chapter must ~~have:~~

~~(1) completed at least forty (40) hours of mediation training in courses certified as appropriate for mediation training by the Indiana commission for continuing legal education;~~

~~(2) received a minimum of five (5) hours of mediation training during the two (2) year period before application; and~~

~~(3) received a minimum of five (5) hours of mediation training during the two (2) year period before reapplication if reapplication is required by the agency involved.~~

be qualified as a mediator under Rule 2.5 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

(b) Subject to approval of the administrative law judge, the parties may agree on any person to serve as a mediator.

SECTION 2. IC 5-24-1-4 IS ADDED TO THE INDIANA CODE

AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 4. IC 13-14-13 and IC 13-30-10-1 apply to the use of an electronic submission for any of the following:**

(1) Satisfaction of a state or federal requirement for reporting to the department of environmental management.

(2) Satisfaction of the requirements for an application to the department of environmental management.

(3) Submission to the department of environmental management of any other substitute for a paper document.

SECTION 3. IC 13-11-2-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.7 "ABS sensor", for purposes of IC 13-20-17.7, refers to an anti-lock braking system G-force sensor.**

SECTION 4. IC 13-11-2-87 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers to the environmental management special fund.

(b) "Fund", for purposes of IC 13-15-10, refers to the waste facility operator trust fund.

(c) "Fund", for purposes of IC 13-15-11, refers to the environmental management permit operation fund.

(d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust fund.

(e) "Fund", for purposes of IC 13-17-8, refers to the Title V operating permit program trust fund.

~~(f) "Fund", for purposes of IC 13-17-14, refers to the lead trust fund.~~

~~(g)~~ **(f)** "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

~~(h)~~ **(g)** "Fund", for purposes of IC 13-18-13, refers to the wastewater revolving loan fund established by IC 13-18-13-2.

~~(i)~~ **(h)** "Fund", for purposes of IC 13-18-21, refers to the drinking water revolving loan fund established by IC 13-18-21-2. The term does not include the supplemental fund established by IC 13-18-21-22.

~~(j)~~ **(i)** "Fund", for purposes of IC 13-19-5, refers to the environmental remediation revolving loan fund established by IC 13-19-5-2.

~~(k)~~ **(j)** "Fund", for purposes of IC 13-20-4, refers to the municipal waste transportation fund.

~~(l)~~ **(k)** "Fund", for purposes of IC 13-20-13, refers to the waste tire management fund.

~~(m)~~ **(l)** "Fund", for purposes of IC 13-20-22, refers to the state solid waste management fund.

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~~(m)~~ **(m)** "Fund", for purposes of IC 13-21-7, refers to the waste management district bond fund.

~~(o)~~ **(n)** "Fund", for purposes of IC 13-21-13-2, refers to a district solid waste management fund.

~~(p)~~ **(o)** "Fund", for purposes of IC 13-23-6, refers to the underground petroleum storage tank trust fund.

~~(q)~~ **(p)** "Fund", for purposes of IC 13-23-7, refers to the underground petroleum storage tank excess liability trust fund.

~~(r)~~ **(q)** "Fund", for purposes of IC 13-25-4, refers to the hazardous substances response trust fund.

~~(s)~~ **(r)** "Fund", for purposes of IC 13-25-5, refers to the voluntary remediation fund.

~~(t)~~ **(s)** "Fund", for purposes of IC 13-28-2, refers to the voluntary compliance fund.

SECTION 5. IC 13-13-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. The department must include the following divisions:

(1) An air pollution control division.

(2) A water pollution control division.

(3) A solid waste management division.

~~(4) A laboratory division.~~

~~(5)~~ **(4)** An administrative services division.

~~(6)~~ **(5)** A division of pollution prevention.

SECTION 6. IC 13-13-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. The:

(1) position of commissioner;

(2) highest position in each of the offices, except for the offices identified in:

(A) IC 13-13-3-1(1); and

(B) IC 13-13-3-1(3); and

(3) highest position in each of the divisions; ~~except for the division identified in IC 13-13-3-2(4);~~

are subject to IC 4-15-1.8.

SECTION 7. IC 13-14-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 13. Electronic Applications and Reports

Sec. 1. This chapter applies to the use of an electronic submission for any of the following:

(1) Satisfaction of a state or federal requirement for reporting to the department.

(2) Satisfaction of the requirements for an application to the

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department.

(3) Submission to the department of any other substitute for a paper document.

Sec. 2. The department may accept the electronic submission of information only if the submission meets the following:

(1) Standards established under IC 5-24 and corresponding rules.

(2) Requirements of cross-media electronic reporting under 40 CFR 3.

(3) Procedures established by the department to accept electronic information.

Sec. 3. The department may not require a person to make electronic submissions under this chapter.

Sec. 4. (a) The department may adopt procedures that are consistent with federal law for compliance with this chapter to allow an applicant to submit an electronic document bearing the valid electronic signature of a signatory if that signatory would otherwise be required to sign the paper document for which the electronic document substitutes.

(b) The procedures adopted under subsection (a) may provide for electronic signature standards that are:

(1) acceptable to the state board of accounts under IC 5-24; and

(2) consistent with 40 CFR 3.

Sec. 5. Information submitted in an acceptable electronic document under a procedure adopted under section 4 of this chapter must have a signature uniquely assigned. The receiving system for the document must be able to attribute the signature to a specific individual. If an electronic document is submitted under an assigned signature, the signatory may not repudiate responsibility for the signature.

Sec. 6. A person is subject to applicable state or federal civil, criminal, or other penalties and remedies for failure to comply with a reporting requirement if the person submits an electronic document that:

(1) is in place of a paper document under this chapter; and

(2) fails to comply with the following:

(A) Standards established under IC 5-24 and supporting rules.

(B) Requirements of cross-media electronic reporting under 40 CFR 3.

(C) Procedures established by the department to accept

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electronic information.

Sec. 7. A person submitting information using an assigned signature is liable under IC 13-30-10 for the information provided and subject to penalties under that chapter, regardless of whether the information submitted is in electronic form or other form.

SECTION 8. IC 13-18-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. ~~(a)~~ The commissioner shall issue certificates attesting to the competency of operators. A certificate must indicate the classification of works, plant, or system that the operator is qualified to supervise.

~~(b) Each operator shall prominently display the operator's certificate in the office of the operator.~~

SECTION 9. IC 13-18-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) A person may not transport, treat, store, or dispose of wastewater in violation of this chapter.

(b) A person may not engage in:

(1) the cleaning of sewage disposal systems; or

(2) the transportation, treatment, storage, or disposal of wastewater;

without a wastewater management permit unless the person is exempted under section 7 of this chapter.

(c) A person may not operate a vehicle for the transportation of wastewater without a wastewater management vehicle ~~license~~ **identification number issued** under this chapter unless the person is exempted under section 4(a)(2) of this chapter.

(d) A person may not dispose of wastewater by land application without first obtaining approval of the land application site under this chapter.

(e) The department may issue a wastewater management permit that incorporates issuance of a wastewater management vehicle identification number and approval of a land application site.

~~(e)~~ **(f)** The department may issue new and renewal permits, ~~licenses,~~ **identification numbers,** and approvals under this chapter for a period the department determines appropriate. However, the period may not exceed three (3) years.

SECTION 10. IC 13-18-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) The board shall, in accordance with IC 13-14-8, adopt rules to establish the following:

(1) Standards for the following:

(A) The issuance of wastewater management permits under section 3 of this chapter.

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(B) Cleaning of sewage disposal systems.

(C) Transportation, storage, and treatment of wastewater, and disposal of wastewater, including land application.

(2) ~~Licensure~~ **Issuance** of **identification numbers for** all vehicles used in wastewater management services. However, the board may exempt by rule vehicles licensed on September 1, 1983, under the industrial waste haulers rule 320 IAC 5-10 as the rule existed on September 1, 1983.

(3) Procedures and standards for approval of sites for land application of wastewater.

(b) The board may designate a county or city health agency as the board's agent to approve land application sites in accordance with rules adopted under this section.

SECTION 11. IC 13-18-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Subject to subsections (b) and (c), the board may adopt a fee schedule for the issuance of:

(1) wastewater management permits;

(2) wastewater management vehicle ~~licenses,~~ **identification numbers;** and

(3) land application site approvals;

under this chapter.

(b) A permit fee may not exceed one hundred dollars ($100) per year.

(c) A vehicle ~~license~~ **identification number** or land application approval fee may not exceed thirty dollars ($30) per year per vehicle or site.

(d) Whenever the board designates a county or city health agency as the board's agent to approve land application sites under this chapter, the county or city health agency shall collect and retain the land application approval fee.

SECTION 12. IC 13-18-12-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6.5. In addition to any other authority in this title, the commissioner or a designated staff member may, under IC 4-21.5, revoke or modify a permit, ~~license,~~ **a vehicle identification number,** or approval issued under this chapter for any of the following reasons:

(1) Violation of a requirement of this chapter, rules adopted under this chapter, a permit, ~~a license,~~ **an identification number,** or an approval.

(2) Failure to disclose all relevant facts.

(3) A misrepresentation made in obtaining the permit, ~~license,~~

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identification number, or approval.

(4) Failing to meet the qualifications for a permit, ~~a license,~~ **an identification number,** or an approval or failing to comply with the requirements of the water pollution control laws or rules adopted by the board.

(5) Changes in circumstances relating to the permit, ~~license,~~ **identification number,** or approval that require either a temporary or permanent reduction in the discharge of contaminants.

SECTION 13. IC 13-18-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. This chapter does not require a person to obtain a permit or vehicle ~~license~~ **identification number** under this chapter if the person is:

(1) engaged in:

(A) servicing or maintaining publicly owned wastewater treatment facilities; or

(B) transportation of wastewater from a publicly owned wastewater treatment facility;

as long as the wastewater at that facility has been fully treated and is stabilized;

(2) transporting wastewater from the point of its removal to another location on the same site or tract owned by the same person, although disposal of the wastewater must be done in accordance with this chapter; or

(3) a homeowner who cleans and services the sewage disposal system serving only the homeowner's residence, although transportation and disposal of wastewater must be done in compliance with this chapter.

SECTION 14. IC 13-19-4-2, AS AMENDED BY P.L.154-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. Before an application for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

(1) a disclosure statement that:

(A) meets the requirements set forth in section 3(a) of this chapter; and

(B) is executed under section 3(b) of this chapter; or

(2) all of the following information:

(A) The information concerning legal proceedings that:

(i) is required under Section 13 or 15(d) of the federal

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Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(ii) the applicant or responsible party has reported under form 10-K.

(B) A description of all judgments that:

(i) have been entered against the applicant or responsible party in a proceeding described in section 3(a)(3) of this chapter; and

(ii) have imposed upon the applicant or responsible party a fine or penalty described in section 3(a)(3)(A) of this chapter.

(C) A description of all judgments of conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(D) Any other related information to support the application requested by the department concerning either of the following:

(i) The applicant.

(ii) The responsible party.

SECTION 15. IC 13-19-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a disclosure statement required by section 2 of this chapter, the applicant or responsible party shall set forth the following information:

(1) The name **and** business address ~~and Social Security number~~ of the applicant or responsible party.

(2) A description of the applicant's or responsible party's experience in managing the type of waste that will be managed under the permit.

(3) A description of all civil and administrative complaints against the applicant or responsible party for the violation of any state or federal environmental protection law that:

(A) have resulted in a fine or penalty of more than ten thousand dollars ($10,000) within five (5) years before the date of the submission of the application; or

(B) allege an act or omission that:

(i) constitutes a material violation of the state or federal environmental protection law; and

(ii) presented a substantial endangerment to the public health or the environment.

(4) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that

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have been filed against the applicant or responsible party within five (5) years before the date of submission of the application.

(5) A description of all judgments of criminal conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(6) A description of all judgments of criminal conviction of a felony constituting a crime of moral turpitude under the laws of any state or the United States that are entered against the applicant or responsible party within five (5) years before the date of submission of the application.

(7) The location of all facilities at which the applicant or responsible party manages the type of waste that would be managed under the permit to which the application refers.

(b) A disclosure statement submitted under section 2(1) of this chapter:

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44-2-1.

SECTION 16. IC 13-20-17.7-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 0.5 (a) The goal of the program established under this chapter is to remove at least eighty percent (80%) of all mercury switches from end of life vehicles processed in Indiana by motor vehicle recyclers.**

(b) Implementing the program established under this chapter addresses the mercury national emission standards for hazardous air pollutants for facilities using recycled steel.

SECTION 17. IC 13-20-17.7-5, AS ADDED BY P.L.170-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Beginning thirty (30) days after the earliest date the commissioner approves a plan under section 4 of this chapter, **except as provided in subsection (f),** a motor vehicle recycler is required to remove all mercury switches from each end of life vehicle the motor vehicle recycler receives upon receipt of the vehicle.

(b) ~~After~~ A mercury switch **that** is removed from a vehicle ~~the mercury switch~~ shall be collected, stored, transported, and ~~otherwise handled~~ **recycled or properly disposed of** in accordance with the plan approved under section 4 of this chapter. **Either of the following that is removed from a vehicle shall be collected, stored, transported, and recycled or properly disposed of in the same manner as a mercury switch:**

(1) An ABS sensor.

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(2) Any other component containing more than ten (10) milligrams of mercury.

(c) Notwithstanding subsection (a), a motor vehicle recycler may accept an end of life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled if the motor vehicle recycler assumes responsibility for removing the mercury switches.

(d) A motor vehicle recycler or any other person that removes mercury switches, **ABS sensors, or any other components containing more than ten (10) milligrams of mercury** in accordance with this section shall maintain records that document the number of:

(1) end of life vehicles the person processed for recycling;

(2) end of life vehicles the person processed that contained mercury switches, **ABS sensors, or any other components containing more than ten (10) milligrams of mercury;** and

(3) mercury switches, **ABS sensors, and any other components containing more than ten (10) milligrams of mercury** the person collected.

A person that maintains records under this section shall retain the records for at least three (3) years.

(e) A person may not represent that mercury switches, **ABS sensors, or any other components containing more than ten (10) milligrams of mercury** have been removed from a motor vehicle being sold or otherwise conveyed for recycling if the person has not removed the mercury switches, **sensors, or other components** from the vehicle.

(f) ~~A motor vehicle recycler or other person that receives an~~ **Subsection (a) does not apply to a mercury switch in an end of life vehicle that is:**

(1) intentionally flattened, crushed, or baled; ~~end of life vehicle may not be considered to be in violation of this section if a mercury switch is found in the vehicle after the person acquires the vehicle.~~ **or**

(2) damaged to the extent that the mercury switch cannot be removed without dismantling the vehicle.

SECTION 18. IC 13-20-17.7-6, AS ADDED BY P.L.170-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) Subject to subsections (b), (c), and (d), a person is entitled to payment from the department for each ~~mercury switch~~ **of the following** the person removes from an end of life vehicle under ~~section 5(a)~~ **section 5** of this chapter:

(1) A mercury switch.

(2) An ABS sensor.

(3) Any other component containing more than ten (10)

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milligrams of mercury.

(b) The commissioner shall establish:

(1) the amount of the payment under subsection (a), which must be:

(A) at least one dollar ($1); and

(B) not more than five dollars ($5);

per mercury switch, **ABS sensor, or other component containing more than ten (10) milligrams of mercury;** and

(2) a procedure for claims for payment under this section.

(c) The commissioner shall determine:

(1) whether to use money in the state solid waste management fund; and

(2) if the commissioner determines under subdivision (1) to use money in that fund, the amount of money from the fund to be used;

to make payments under this section.

(d) The department is required to make payments under this section only to the extent of the amount of money determined by the commissioner under subsection (c)(2).

SECTION 19. IC 13-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. **(a) Subject to subsection (b),** the underground petroleum storage tank excess liability trust fund is established for the following purposes:

(1) Assisting owners and operators of underground petroleum storage tanks to establish evidence of financial responsibility as required under IC 13-23-4.

(2) Providing a source of money to satisfy liabilities incurred by owners and operators of underground petroleum storage tanks under IC 13-23-13-8 for corrective action.

(3) Providing a source of money for the indemnification of third parties under IC 13-23-9-3.

(4) Providing a source of money to pay for the expenses of the department incurred in paying and administering claims against the trust fund. Money may be provided under this subdivision only for those job activities and expenses that consist exclusively of administering the excess liability trust fund.

(5) Providing a source of money to pay for the expenses of the department incurred in inspecting underground storage tanks.

(b) The combined amount of payments described in subsection (a)(4) and (a)(5) from the underground petroleum storage tank excess liability trust fund in a state fiscal year may not exceed ten

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percent (10%) of the fund income in the immediately preceding state fiscal year.

SECTION 20. IC 13-30-10-1, AS ADDED BY P.L.137-2007, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) A person who knowingly or intentionally makes a material misstatement in connection with an application for a permit submitted to the department commits a Class D felony.

(b) A person who knowingly or intentionally destroys, alters, conceals, or falsely certifies a record that:

(1) is required to be maintained under the terms of a permit issued by the department; and

(2) may be used to determine the status of compliance;

commits a Class D felony.

(c) A person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a Class D felony.

(d) A person who knowingly or intentionally falsifies testing or monitoring data required by a permit issued by the department commits a Class D felony.

(e) The penalties under this section apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described in this section.

SECTION 21. IC 16-18-2-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 0.5. (a) "Abatement", for purposes of IC 16-41-39.5, means any measure or set of measures designed to permanently eliminate lead-based paint hazards. The term includes the following:**

(1) The removal of lead-based paint and lead-contaminated dust.

(2) The permanent enclosure or encapsulation of lead-based paint.

(3) The replacement of lead-painted surfaces or fixtures.

(4) The removal or covering of lead-contaminated soil.

(5) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with subdivisions (1) through (4).

(6) A project for which there is a written contract or other documentation, providing that a person will be conducting activities in or to a residential dwelling or child-occupied facility that:

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(A) will permanently eliminate lead-based paint hazards; or

(B) are designed to permanently eliminate lead-based paint hazards as described under subdivisions (1) through (5).

(7) A project resulting in the permanent elimination of lead-based paint hazards, conducted by persons certified under 40 CFR 745.226 or IC 13-17-14, unless the project is described under subsection (b) or (c).

(8) A project resulting in the permanent elimination of lead-based paint hazards, conducted by persons who, through the person's company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless those projects are described under subsection (b) or (c).

(9) A project resulting in the permanent elimination of lead-based paint hazards that is conducted in response to state or local abatement orders.

(b) The term does not include renovation, remodeling, landscaping, or other activities when those activities are not designed to permanently eliminate lead-based paint hazards but are designed to repair, restore, or remodel a structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(c) The term does not include interim controls, operations, or maintenance activities or other measures designed to temporarily reduce lead-based paint hazards.

SECTION 22. IC 16-18-2-54.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 54.7. "Child-occupied facility", for purposes of lead-based paint activities and IC 16-41-39.5, means a building or a portion of a building that:**

(1) was constructed before 1978;

(2) does not qualify as target housing (as defined in section 346.3 of this chapter); and

(3) is visited regularly by a child who is not more than six (6) years of age and any of the following conditions exist for the building or part of the building:

(A) The child visits at least two (2) days a week (Sunday through Saturday) and each of the visits lasts at least three (3) hours.

(B) The child visits at least six (6) hours each week.

(C) The child's combined annual visits during a calendar

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year total at least sixty (60) hours.

The term includes day care centers, preschools, and kindergarten classrooms.

SECTION 23. IC 16-18-2-66.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 66.7. "Component", for purposes of IC 16-41-39.5, has the meaning set forth in 24 CFR 35.110, as in effect July 1, 2002.**

SECTION 24. IC 16-18-2-106.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 106.6. "Elevated blood lead level", for purposes of IC 16-41-39.5, means a blood level of at least ten (10) micrograms of lead per deciliter of whole blood.**

SECTION 25. IC 16-18-2-114.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 114.5. "Encapsulant", for purposes of IC 16-41-39.5, means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.**

SECTION 26. IC 16-18-2-114.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 114.6. "Encapsulation", for purposes of IC 16-41-39.5, means the application of an encapsulant.**

SECTION 27. IC 16-18-2-198.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 198.5. "Lead-based paint", for purposes of IC 16-41-39.5, means paint or another surface coating that contains lead in an amount equal to or more than one (1) milligram per square centimeter, or in the amount of more than one-half percent (0.5%) by weight.**

SECTION 28. IC 16-18-2-198.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 198.6. (a) "Lead-based paint activities", for purposes of IC 16-41-39.5, means the inspection, risk assessment, and abatement of lead-based paint in target housing and child-occupied facilities.**

(b) The term includes project design and supervision.

SECTION 29. IC 16-18-2-346.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 346.3. (a) "Target housing",**

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for purposes of lead-based paint activities and IC 16-41-39.5, means housing constructed before January 1, 1978.

(b) The term does not include the following:

(1) Housing for the elderly or individuals with disabilities that is not occupied by or expected to be occupied by a child of not more than six (6) years of age.

(2) A building without a bedroom.

SECTION 30. IC 16-41-39.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 39.5. Lead-Based Paint Activities

Sec. 1. (a) This chapter does not apply to the following:

(1) A person making an inspection under the authority of IC 22-8-1.1.

(2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:

(A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or

(B) a child who:

(i) is not more than six (6) years of age or an age specified in rules adopted under section 6 of this chapter; and

(ii) resides in the building and has been identified as having an elevated blood lead level.

(b) This chapter may not be construed as requiring the abatement of lead-based paint hazards in a child-occupied facility or target housing.

Sec. 2. The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building specified in rules adopted under section 6 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

Sec. 3. (a) A person who engages in lead-based paint activities must obtain a license under this chapter and under rules adopted under section 6 of this chapter. Lead-based paint activities licenses issued under IC 13-17-14 (before its repeal) or under this chapter expire as follows:

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(1) On June 30, 2004, if issued before July 1, 2002.

(2) Three (3) years after the date of issuance, if issued after June 30, 2002.

(b) A person may receive a lead-based paint activities license under this chapter for the following disciplines:

(1) Inspector.

(2) Risk assessor.

(3) Project designer.

(4) Supervisor.

(5) Abatement worker.

(6) Contractor.

(c) A person may receive a clearance examiner license under this chapter. A person who engages in the clearance of nonabatement activities under 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002, must obtain a clearance examiner license under this chapter and under rules adopted under section 6 of this chapter. A clearance examiner license expires three (3) years after the date of issuance.

(d) A person who enters into a contract requiring the person to execute for compensation lead-based paint activities must hold a lead-based paint activities contractor's license.

(e) A person must:

(1) take required training and pass an examination provided in a lead-based paint training course or clearance examiner training course, as appropriate, approved by the state department;

(2) for a license in the discipline of:

(A) inspector;

(B) risk assessor;

(C) project designer; or

(D) supervisor;

pass an examination provided by the state department or a third party as required by rules adopted under section 6 of this chapter; and

(3) meet any requirements established by rules adopted under section 6 of this chapter;

before the person may receive a lead-based paint activities license or clearance examiner license.

(f) The state department may issue a license for a position listed under subsection (b) or (c) if the applicant submits proof to the state department that the applicant satisfies the training, examination, and other requirements for the license under this

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chapter.

(g) A:

(1) lead-based paint activities license; or

(2) clearance examiner license;

issued under IC 13-17-14 (before its repeal) or this chapter may be renewed for a period of three (3) years. To renew a license, a person who holds a license for a position listed in subsection (b) or (c) must complete refresher training and pass any reexamination required by rules adopted under section 6 of this chapter.

(h) A lead-based paint activities contractor licensed under this chapter may not allow an agent or employee of the contractor to:

(1) exercise control over a lead-based paint activities project;

(2) come into contact with lead-based paint; or

(3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(i) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted under section 6 of this chapter and the applicable work practice standards established in section 13 of this chapter for performing the appropriate lead-based paint activities.

Sec. 4. (a) A lead-based paint activities training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license listed in section 3(b) of this chapter.

(b) The state department may approve a lead-based paint activities training course offered by a person who satisfies the requirements of subsection (a).

(c) A lead-based paint activities training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

Sec. 5. (a) A clearance examiner training program must meet requirements specified in rules adopted under section 6 of this chapter before providing initial or refresher training to a person seeking a license under section 3(c) of this chapter.

(b) The state department may approve a clearance examiner training course offered as part of a program that satisfies the requirements of subsection (a).

(c) A clearance examiner training course must be conducted by an instructor approved by the state department as provided in the rules adopted under section 6 of this chapter.

Sec. 6. (a) Rules adopted by the air pollution control board before January 1, 2009, under IC 13-17-14-5 (repealed) are

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considered rules of the state department after December 31, 2008. The state department shall adopt rules under IC 4-22-2 to replace the rules of the air pollution control board and to implement this chapter. The rules adopted by the state department must contain at least the elements required to receive program authorization under 40 CFR 745, Subpart L, as in effect July 1, 2002, and must do the following:

(1) Establish minimum requirements for the issuance of a license for:

(A) lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors; and

(B) clearance examiners.

(2) Establish minimum requirements for approval of the providers of:

(A) lead-based paint activities training courses; and

(B) clearance examiner training courses.

(3) Establish minimum qualifications for:

(A) lead-based paint activities training course instructors; and

(B) clearance examiner training course instructors.

(4) Extend the applicability of the licensing requirements to other facilities as determined necessary by the board.

(5) Establish work practice standards.

(6) Establish a state department or third-party examination process.

(7) Identify activities, if any, that are exempted from licensing requirements.

(8) Establish a fee of not more than one hundred fifty dollars ($150) per person, per license, for the period the license is in effect for a person seeking a license under section 3 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

(A) A state.

(B) A municipal corporation (as defined in IC 36-1-2-10).

(C) A unit (as defined in IC 36-1-2-23).

(9) Establish a fee of not more than one thousand dollars ($1,000) per course, per year, for a lead-based paint training program seeking approval of a lead-based paint training course under section 4 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

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(A) A state.
(B) A municipal corporation (as defined in IC 36-1-2-10).
(C) A unit (as defined in IC 36-1-2-23).
(D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(10) Establish a fee of not more than one thousand dollars ($1,000) per course, per year, for a clearance examiner training program seeking approval of a clearance examiner training course under section 5 of this chapter. However, the following may not be required to pay a fee established under this subdivision:
(A) A state.
(B) A municipal corporation (as defined in IC 36-1-2-10).
(C) A unit (as defined in IC 36-1-2-23).
(D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(b) The amount of the fees under subsection (a) may not be more than is necessary to recover the cost of administering this chapter.

(c) The proceeds of the fees under subsection (a) must be deposited in the lead trust fund established by section 7 of this chapter.

(d) The minimum requirements established under subsection (a)(1) must be sufficient to allow the clearance examiner to perform clearance examinations without the approval of a certified risk assessor or inspector as provided in 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002.

Sec. 7. (a) The lead trust fund established by IC 13-17-14-6 (repealed) is reestablished to provide a source of money for the purposes set forth in subsection (f).

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:
(1) License fees established under section 6 of this chapter.
(2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.
(3) Penalties imposed under sections 14 and 15 of this chapter

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for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

(f) The state department may use money in the fund to do the following:

(1) Pay the expenses of administering this chapter.

(2) Cover other costs related to implementation of 40 CFR 745 for lead-based paint activities in target housing and child occupied facilities.

Sec. 8. (a) A lead-based paint activities contractor licensed under this chapter shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

(1) The name, address, and proof of license of the following:

(A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.

(B) Each employee or agent of the lead-based paint activities contractor that worked on the project.

(2) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(3) The site of the lead-based paint activities project.

(4) A description of the lead-based paint activities project.

(5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.

(6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.

(7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.

(8) The occupant protection plan.

(9) The results of clearance testing and all soil analysis (if applicable) and the name of each federally approved laboratory that conducted the analysis.

(10) The amount of material containing lead-based paint that was removed from the site of the project.

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(11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(11) must be included in the records concerning the lead-based paint activities project that are compiled under this section.

(c) A lead-based paint activities contractor shall retain the records compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(d) A lead-based paint activities contractor shall make records kept under this section available to the state department upon request.

Sec. 9. A political subdivision or a state agency may not accept a bid for a lead-based paint activities project from a person who does not hold a lead-based paint activities license.

Sec. 10. Without limiting the authority to inspect under IC 16-41-5-1, the state department may do the following:

(1) Inspect the site of a lead-based paint activities project:

(A) during the project; or

(B) after the project is completed.

(2) Conduct an investigation of a lead-based paint activities project upon:

(A) the state department's own initiation; or

(B) the receipt of a complaint by a person.

(3) Conduct an investigation of the provider of a lead-based paint activities training course upon:

(A) the state department's own initiation; or

(B) the receipt of a complaint by a person.

Sec. 11. (a) If the state department finds that a lead-based paint activities project is not being performed in accordance with applicable laws or rules, the state department may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

(1) the lead-based paint activities contractor engaged in the lead-based paint activities project; or

(2) an agent or representative of the lead-based paint activities contractor.

(b) A notice issued under this section must:

(1) specify the violations of laws or rules that are occurring on

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the lead-based paint activities project; and

(2) prohibit further work on the lead-based paint activities project until the violations specified under subdivision (1) cease and the notice is rescinded by the state department.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the state department shall issue a determination regarding recission of the notice.

(d) A lead-based paint activities contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the state department's action under IC 4-21.5.

Sec. 12. (a) The state department may under IC 4-21.5 reprimand, suspend, or revoke the license of a clearance examiner or a lead-based paint activities inspector, risk assessor, project designer, supervisor, worker, or contractor for any of the following reasons:

(1) Violating any requirements of this chapter or rules adopted under section 6 of this chapter.

(2) Fraudulently or deceptively obtaining or attempting to obtain a license under this chapter.

(3) Failing to meet the qualifications for a license or failing to comply with the requirements of applicable laws or rules.

(4) Failing to meet an applicable federal or state standard for lead-based paint activities.

(b) The state department may under IC 4-21.5 reprimand a lead-based paint activities contractor or suspend or revoke the license of a lead-based paint activities contractor that employs a person who is not licensed under this chapter for a purpose that requires the person to hold a license issued under this chapter.

(c) The state department may under IC 4-21.5 revoke the approval of a clearance examiner or a lead-based paint activities training course for any of the following reasons:

(1) Violating any requirement of this chapter.

(2) Falsifying information on an application for approval.

(3) Misrepresenting the extent of a training course's approval.

(4) Failing to submit required information or notifications in a timely manner.

(5) Failing to maintain required records.

(6) Falsifying approval records, instructor qualifications, or other approval information.

Sec. 13. (a) This section applies to:

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(1) remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960; and

(2) lead-based paint activities.

(b) This section does not apply to an individual who performs remodeling, renovation, or maintenance activities within a residential dwelling that the individual owns, unless the residential dwelling is occupied:

(1) while the activities are being performed, by an individual other than the owner or a member of the owner's immediate family; or

(2) by a child who:

(A) is less than seven (7) years of age or an age specified in rules adopted under section 6 of this chapter; and

(B) resides in the building and has been identified as having an elevated blood lead level.

(c) A person not exempted under subsection (b) from the application of this section who performs an activity under subsection (a) that disturbs:

(1) exterior painted surfaces of more than twenty (20) square feet;

(2) interior painted surfaces of more than two (2) square feet in any one (1) room or space; or

(3) more than ten percent (10%) of the combined interior and exterior painted surface area of components of the building;

shall meet the requirements of subsections (e), (f), and (g).

(d) For purposes of this section, paint is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted under this chapter.

(e) A person may not use any of the following methods to remove lead-based paint:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without high efficiency particulate air local exhaust control.

(3) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control.

(4) A heat gun that:

(A) operates above one thousand one hundred (1,100) degrees Fahrenheit; or

(B) chars the paint.

(5) Dry scraping, except:

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(A) in conjunction with a heat gun; or

(B) within one (1) foot of an electrical outlet.

(6) Dry sanding, except within one (1) foot of an electrical outlet.

(f) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200, as in effect July 1, 2002.

(g) A person conducting activities under subsection (a) on painted exterior surfaces may not allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

Sec. 14. (a) A person who violates:

(1) any provision of this chapter; or

(2) a rule or standard adopted by the state department under section 6 of this chapter;

is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day of any violation.

(b) The state department may:

(1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and

(2) request in the action that the person be enjoined from continuing the violation.

Sec. 15. A person who obstructs, delays, resists, prevents, or interferes with:

(1) the state department; or

(2) the state department's personnel or designated agent;

in the performance of an inspection or investigation performed under IC 16-41-5-1 commits a Class C infraction. Each day of violation of this section constitutes a separate infraction.

SECTION 31. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2009]: IC 13-11-2-0.5; IC 13-11-2-25.5; IC 13-11-2-36.5; IC 13-11-2-61.5; IC 13-11-2-66.5; IC 13-11-2-66.7; IC 13-11-2-118.3; IC 13-11-2-118.5; IC 13-11-2-229.5; IC 13-17-14.

SECTION 32. [EFFECTIVE JANUARY 1, 2009] **(a)The treasurer of state shall retain in the lead trust fund reestablished by IC 16-41-39.5-7, as added by this act, the balance in that fund on December 31, 2008.**

(b) This SECTION expires July 1, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 200, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 10, line 1, after "containing" insert "**more than ten (10) milligrams of**".

Page 10, line 7, after "containing" insert "**more than ten (10) milligrams of**".

Page 10, line 13, after "containing" insert "**more than ten (10) milligrams of**".

Page 10, line 15, after "containing" insert "**more than ten (10) milligrams of**".

Page 10, line 19, after "containing" insert "**more than ten (10) milligrams of**".

Page 10, line 40, after "containing" insert "**more than ten (10) milligrams of**".

Page 11, line 5, after "containing" insert "**more than ten (10) milligrams of**".

Page 14, line 4, delete "an excessive" and insert "**a blood level of at least ten (10) micrograms of lead per deciliter of whole blood.**".

Page 14, delete lines 5 through 9.

Page 17, line 37, after "(a)" insert "**Rules adopted by the air pollution control board before January 1, 2009, under IC 13-17-14-5 (repealed) are considered rules of the state department after December 31, 2008.**".

Page 17, line 38, delete "before January 1, 2009,".

Page 17, line 38, after "to" insert "**replace the rules of the air pollution control board and to**".

Page 17, line 39, after "rules" insert "**adopted by the state department**".

Page 23, line 6, delete "5" and insert "**6**".

and when so amended that said bill do pass.

(Reference is to SB 200 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 200 be amended to read as follows:

Page 11, line 21, delete "The" and insert "**(a) Subject to subsection (b),** the".

Page 11, between lines 39 and 40, begin a new paragraph and insert:

"**(b) The combined amount of payments described in subsection (a)(4) and (a)(5) from the underground petroleum storage tank excess liability trust fund in a state fiscal year may not exceed ten percent (10%) of the fund income in the immediately preceding state fiscal year.**".

(Reference is to SB 200 as printed January 17, 2008.)

GARD

SENATE MOTION

Madam President: I move that Senator Riegsecker be added as second author of Engrossed Senate Bill 200.

GARD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 200, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 9, nays 0.

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