



Reprinted
April 15, 2009

ENGROSSED HOUSE BILL No. 1162

DIGEST OF HB 1162 (Updated April 14, 2009 3:37 pm - DI 52)

Citations Affected: IC 13-11; IC 13-12; IC 13-14; IC 13-15; IC 13-18; IC 13-19; IC 13-23; IC 13-25; IC 13-26; IC 34-30; IC 36-1; IC 36-2; IC 36-3; IC 36-4; IC 36-5; noncode.

Synopsis: Environmental issues. Provides that if a person has been issued a permit by the department of environmental management (IDEM) to construct, install, or operate a facility, equipment, or a device, the person may not start the construction, installation, operation, or modification of the facility, equipment, or device until the person has obtained any approval required by any county, city, or town in which the facility, equipment, or device is located. Allows the board of a regional water, sewer, or solid waste district to adopt an ordinance allowing payment of certain claims in advance of board allowance. Establishes the institutional control registry (ICR) administered by IDEM, and establishes the environmental trust fund to fund the ICR. Establishes in the ICR an inventory and computerized registry of restrictive covenants in Indiana and a computerized registry of

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Effective: Upon passage; June 1, 2009; July 1, 2009.

Tyler, Dodge, Dvorak

(SENATE SPONSORS — GARD, ERRINGTON, LANANE)

January 12, 2009, read first time and referred to Committee on Environmental Affairs.
February 9, 2009, amended, reported — Do Pass.
February 16, 2009, read second time, amended, ordered engrossed.
February 17, 2009, engrossed. Read third time, passed. Yeas 51, nays 42.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

March 24, 2009, reported favorably — Do Pass.
April 14, 2009, read second time, amended, ordered engrossed.

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environmental restrictive ordinances adopted by Indiana municipal corporations. Requires the IDEM to monitor compliance with the covenants, report noncompliance to the attorney general, collect fees applied to owners of tracts subject to restrictive covenants, and deposit fee revenue in the environmental trust fund. Establishes consequences for failure to pay the fee. Amends the definition of "restrictive covenant". Provides that the ICR applies to all restrictive covenants regardless when they were recorded, but that the fee applies only to those recorded after 2009. Provides that the state its officers, agents, and employees are immune from liability for acts or omissions related to maintenance of the inventory and the ICR. Provides no person may rely on the accuracy and completeness of information in the inventory and the ICR. Requires IDEM to: (1) establish a future sliding fee scale based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants; (2) consider whether a tract owner is a governmental entity; (3) consider whether the tract owner has developed and follows an environmental management system and agrees to provide an annual report to IDEM; (4) consider means of applying ICR activities to privately established environmental restrictive covenants and those established before ICR activities begin; and (5) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system. Amends the definitions of "owner" and "operator" for purposes of exceptions to liability for releases from underground storage tanks (UST) and of "owner or operator" for purposes of exceptions to liability for releases of petroleum. Expands the application of remediation and closure goals, objectives, and standards. Eliminates the authority of IDEM to approve environmental restrictive covenants, delineates the authority of IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners. Requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. Permits reimbursement from the underground petroleum storage tank excess liability trust fund of fees paid by the owner of a tract because the tract is subject to a restrictive covenant established to address issues related to a UST located on the tract. Provides that a covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at the time IDEM issued the certificate of completion. Allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant. With respect to local ordinances that establish certain land use restrictions, requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to IDEM not later than 30 days after passage, amendment, or repeal. Allows IDEM to waive the 60 days notice requirement. Requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk based remediation proposals. Provides that the remediation and closure goals, objectives, and standards for all remediation projects conducted under hazardous waste management, UST, petroleum, and hazardous substances response trust fund statutes must be consistent with the remediation objectives applicable to voluntary remediation work plans. Adjusts the circumstances under which additional action is not necessary after creation of a voluntary remediation work plan and the factors on which risk based remediation objectives based on site specific risk assessments must be based. Requires IDEM to consider and give effect to environmental restrictive covenants in evaluating risk based remediation proposals. Requires IDEM in the establishment of the total maximum daily load (TMDL) for a surface water to make every reasonable effort, when IDEM identifies the surface water, to identify the pollutant under

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consideration for the establishment of the TMDL. Establishes procedures IDEM must follow if IDEM: (1) is unable to identify the pollutant and later identifies one or more pollutants; or (2) identifies the pollutant and later identifies one or more other pollutants. Provides that each exceptional use water designated by the water pollution control board (WPCB) before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law. Repeals the definition of exceptional use water, and eliminates all references to that term. Specifies the categories of regulation for all waters of the state. For all waters of the state, requires IDEM to complete an antidegradation review and modification, if necessary, of the rules of the WPCB that authorize National Pollutant Discharge Elimination System (NPDES) general permits. Provides that after an antidegradation review of a rule is conducted, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review. Establishes the factors the IDEM commissioner must consider in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, and provides that the commissioner may rely on consideration of any one or a combination of the listed factors. Establishes a deadline for IDEM to adopt antidegradation standards and implementation procedures and to act on applications for approval of associated NPDES permits. Allows the IDEM commissioner to extend for cause for not more than 90 days the deadline for IDEM to adopt antidegradation standards and implementation procedures.

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Reprinted
April 15, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1162

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:

- 1 SECTION 1. IC 13-11-2-50.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 50.5.
3 "Degradation", for purposes of IC 13-18-3, means, with respect to a
4 National Pollutant Discharge Elimination System permit, the following:
5 (1) With respect to an outstanding national resource water, any
6 new or increased discharge of a pollutant or a pollutant parameter,
7 except for a short term, temporary increase.
8 (2) With respect to an outstanding state resource water, ~~or an~~
9 ~~exceptional use water~~, any new or increased discharge of a
10 pollutant or pollutant parameter that results in a significant
11 lowering of water quality for that pollutant or pollutant parameter,
12 unless:
13 (A) the activity causing the increased discharge:
14 (i) results in an overall improvement in water quality in the
15 outstanding state resource water; ~~or exceptional use water~~;
16 and
17 (ii) meets the applicable requirements of 327 IAC 2-1-2(1)

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1 and (2) and 327 IAC 2-1.5-4(a) and (b); or
 2 (B) the person proposing the increased discharge undertakes
 3 or funds a water quality improvement project in accordance
 4 with ~~IC 13-18-3-2(f)~~ **IC 13-18-3-2(k)** in the watershed of the
 5 outstanding state resource water ~~or exceptional use water~~ that:
 6 (i) results in an overall improvement in water quality in the
 7 outstanding state resource water; ~~or exceptional use water~~;
 8 and
 9 (ii) meets the applicable requirements of 327 IAC 2-1-2(1)
 10 and (2) and 327 IAC 2-1.5-4(a) and (b).

11 SECTION 2. IC 13-11-2-71.2 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive**
 14 **ordinance" means, with respect to land, any ordinance that:**

- 15 (1) is adopted by a municipal corporation (as defined in
- 16 IC 36-1-2-10); and
- 17 (2) limits, regulates, or prohibits any of the following with
- 18 respect to groundwater:

 - 19 (A) Withdrawal.
 - 20 (B) Human consumption.
 - 21 (C) Any other use.

22 SECTION 3. IC 13-11-2-71.4 IS ADDED TO THE INDIANA
 23 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust**
 25 **fund", for purposes of IC 13-19-6, refers to the environmental trust**
 26 **fund established by IC 13-19-6-1.**

27 SECTION 4. IC 13-11-2-90 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 90. "Governmental
 29 entity", for purposes of **IC 13-18-3** and IC 13-25-6, means the state or
 30 a political subdivision.

31 SECTION 5. IC 13-11-2-110.2 IS ADDED TO THE INDIANA
 32 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control**
 34 **registry", for purposes of IC 13-19-6, refers to the institutional**
 35 **control registry established by IC 13-19-6-1.**

36 SECTION 6. IC 13-11-2-148, AS AMENDED BY P.L.221-2007,
 37 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2009]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10,
 39 means the person in direct or responsible charge or control of one (1)
 40 or more confined feeding operations.

41 (b) "Operator", for purposes of IC 13-18-11 and environmental
 42 management laws, means the person in direct or responsible charge and

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- 1 supervising the operation of:
- 2 (1) a water treatment plant;
- 3 (2) a wastewater treatment plant; or
- 4 (3) a water distribution system.
- 5 (c) "Operator", for purposes of IC 13-20-6, means a corporation, a
- 6 limited liability company, a partnership, a business association, a unit,
- 7 or an individual who is a sole proprietor that is one (1) of the following:
- 8 (1) A broker.
- 9 (2) A person who manages the activities of a transfer station that
- 10 receives municipal waste.
- 11 (3) A transporter.
- 12 (d) "Operator", for purposes of IC 13-23, except as provided in
- 13 ~~subsection~~ **subsections (e), (g), and (h)**, means a person:
- 14 (1) in control of; or
- 15 (2) having responsibility for;
- 16 the daily operation of an underground storage tank.
- 17 (e) "Operator", for purposes of IC 13-23-13, does not include the
- 18 following:
- 19 (1) A person who:
- 20 (A) does not participate in the management of an underground
- 21 storage tank;
- 22 (B) is otherwise not engaged in the:
- 23 (i) production;
- 24 (ii) refining; and
- 25 (iii) marketing;
- 26 of regulated substances; and
- 27 (C) holds evidence of ownership, primarily to protect the
- 28 owner's security interest in the tank.
- 29 (2) A person who:
- 30 (A) does not own or lease, directly or indirectly, the facility or
- 31 business at which the underground storage tank is located;
- 32 (B) does not participate in the management of the facility or
- 33 business described in clause (A); and
- 34 (C) is engaged only in:
- 35 (i) filling;
- 36 (ii) gauging; or
- 37 (iii) filling and gauging;
- 38 the product level in the course of delivering fuel to an
- 39 underground storage tank.
- 40 (3) A political subdivision (as defined in IC 36-1-2-13) or unit of
- 41 federal or state government that:
- 42 (A) acquires ownership or control of an underground storage

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tank on a brownfield because of:

- (i) bankruptcy;
- (ii) foreclosure;
- (iii) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (iv) abandonment;
- (v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (vi) receivership;
- (vii) transfer from another political subdivision or unit of federal or state government;
- (viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (ix) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign; or
- (x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

- (i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or
- (ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a

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1 **release from an underground storage tank, the exemption criteria**
 2 **under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for**
 3 **purposes of the determination of liability for a release of a**
 4 **hazardous substance, except that the person acquires ownership of**
 5 **the facility after June 30, 2009.**

6 SECTION 7. IC 13-11-2-149.5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 149.5.
 8 "Outstanding national resource water", for purposes of section 50.5 of
 9 this chapter and IC 13-18-3, means a water designated as such by the
 10 general assembly after recommendations by the water pollution control
 11 board and the environmental quality service council under
 12 **IC 13-18-3-2(n) and IC 13-18-3-2(o).** ~~and IC 13-18-3-2(p).~~ The
 13 designation must describe the quality of the outstanding national
 14 resource water to serve as the benchmark of the water quality that shall
 15 be maintained and protected. Waters that may be considered for
 16 designation as outstanding national resource waters include water
 17 bodies that are recognized as:

18 (1) important because of protection through official action, such
 19 as:

- 20 (A) federal or state law;
- 21 (B) presidential or secretarial action;
- 22 (C) international treaty; or
- 23 (D) interstate compact;

24 (2) having exceptional recreational significance;

25 (3) having exceptional ecological significance;

26 (4) having other special environmental, recreational, or ecological
 27 attributes; or

28 (5) waters with respect to which designation as an outstanding
 29 national resource water is reasonably necessary for protection of
 30 other water bodies designated as outstanding national resource
 31 waters.

32 SECTION 8. IC 13-11-2-150, AS AMENDED BY P.L.221-2007,
 33 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23
 35 (except as provided in subsections (b), (c), ~~and (d)~~ **(d), (e), and (f)**)
 36 means:

37 (1) for an underground storage tank that:

38 (A) was:

39 (i) in use on November 8, 1984; or

40 (ii) brought into use after November 8, 1984;

41 for the storage, use, or dispensing of regulated substances, a
 42 person who owns the underground storage tank; or

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- 1 (B) is:
- 2 (i) in use before November 8, 1984; but
- 3 (ii) no longer in use on November 8, 1984;
- 4 a person who owned the tank immediately before the
- 5 discontinuation of the tank's use; or
- 6 (2) a person who conveyed ownership or control of the
- 7 underground storage tank to a political subdivision (as defined in
- 8 IC 36-1-2-13) or unit of federal or state government because of:
- 9 (A) bankruptcy;
- 10 (B) foreclosure;
- 11 (C) tax delinquency, including a conveyance under
- 12 IC 6-1.1-24 or IC 6-1.1-25;
- 13 (D) abandonment;
- 14 (E) the exercise of eminent domain, including any purchase of
- 15 property once an offer to purchase has been tendered under
- 16 IC 32-24-1-5;
- 17 (F) receivership;
- 18 (G) acquiring an area needing redevelopment (as defined in
- 19 IC 36-7-1-3) or conducting redevelopment activities,
- 20 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
- 21 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- 22 (H) other circumstances in which a political subdivision or
- 23 unit of federal or state government involuntarily acquired
- 24 ownership or control because of the political subdivision's or
- 25 unit's function as sovereign; or
- 26 (I) any other means to conduct remedial actions on a
- 27 brownfield;
- 28 if the person was a person described in subdivision (1)
- 29 immediately before the person conveyed ownership or control of
- 30 the underground storage tank.
- 31 (b) "Owner", for purposes of IC 13-23-13, does not include a person
- 32 who:
- 33 (1) does not participate in the management of an underground
- 34 storage tank;
- 35 (2) is otherwise not engaged in the:
- 36 (A) production;
- 37 (B) refining; and
- 38 (C) marketing;
- 39 of regulated substances; and
- 40 (3) holds indicia of ownership primarily to protect the owner's
- 41 security interest in the tank.
- 42 (c) "Owner", for purposes of IC 13-23, does not include a political

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1 subdivision (as defined in IC 36-1-2-13) or unit of federal or state
 2 government that acquired ownership or control of an underground
 3 storage tank because of:

- 4 (1) bankruptcy;
 5 (2) foreclosure;
 6 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or
 7 IC 6-1.1-25;
 8 (4) abandonment;
 9 (5) the exercise of eminent domain, including any purchase of
 10 property once an offer to purchase has been tendered under
 11 IC 32-24-1-5;
 12 (6) receivership;
 13 (7) transfer from another political subdivision or unit of federal or
 14 state government;
 15 (8) acquiring an area needing redevelopment (as defined in
 16 IC 36-7-1-3) or conducting redevelopment activities, specifically
 17 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,
 18 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 19 (9) other circumstances in which the political subdivision or unit
 20 of federal or state government involuntarily acquired ownership
 21 or control because of the political subdivision's or unit's function
 22 as sovereign; or
 23 (10) any other means to conduct remedial actions on a
 24 brownfield;

25 unless the political subdivision or unit of federal or state government
 26 causes or contributes to the release or threatened release of a regulated
 27 substance, in which case the political subdivision or unit of federal or
 28 state government is subject to IC 13-23 in the same manner and to the
 29 same extent as a nongovernmental entity under IC 13-23.

30 (d) "Owner", for purposes of IC 13-23, does not include a nonprofit
 31 corporation that acquired ownership or control of an underground
 32 storage tank to assist and support a political subdivision's revitalization
 33 and reuse of a brownfield for noncommercial purposes, including
 34 conservation, preservation, and recreation, unless the nonprofit
 35 corporation causes or contributes to the release or threatened release of
 36 a regulated substance, in which case the nonprofit corporation is
 37 subject to IC 13-23 in the same manner and to the same extent as any
 38 other nongovernmental entity under IC 13-23.

39 (e) "Owner" **does not include a person that after June 30, 2009,**
 40 **meets, for purposes of the determination under IC 13-23-13 of**
 41 **liability for a release from an underground storage tank, the**
 42 **exemption criteria under Section 107(q) of CERCLA (42 U.S.C.**

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1 **9607(q)) that apply for purposes of the determination of liability**
 2 **for a release of a hazardous substance.**
 3 **(f) "Owner" does not include a person that meets, for purposes**
 4 **of the determination under IC 13-23-13 of liability for a release**
 5 **from an underground storage tank, the exemption criteria under**
 6 **Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for**
 7 **purposes of the determination of liability for a release of a**
 8 **hazardous substance, except that the person acquires ownership of**
 9 **the facility after June 30, 2009.**
 10 SECTION 9. IC 13-11-2-151, AS AMENDED BY P.L.221-2007,
 11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of
 13 IC 13-24-1, means the following:
 14 (1) For a petroleum facility, a person who owns or operates the
 15 facility.
 16 (2) For a petroleum facility where title or control has been
 17 conveyed because of:
 18 (A) bankruptcy;
 19 (B) foreclosure;
 20 (C) tax delinquency, including a conveyance under
 21 IC 6-1.1-24 or IC 6-1.1-25;
 22 (D) abandonment;
 23 (E) the exercise of eminent domain, including any purchase of
 24 property once an offer to purchase has been tendered under
 25 IC 32-24-1-5;
 26 (F) receivership;
 27 (G) acquiring an area needing redevelopment (as defined in
 28 IC 36-7-1-3) or conducting redevelopment activities,
 29 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
 30 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 31 (H) other circumstances in which a political subdivision (as
 32 defined in IC 36-1-2-13) or unit of federal or state government
 33 involuntarily acquired title or control because of the political
 34 subdivision's or unit's function as sovereign; or
 35 (I) any other means to conduct remedial actions on a
 36 brownfield;
 37 to a political subdivision or unit of federal or state government, a
 38 person who owned, operated, or otherwise controlled the
 39 petroleum facility immediately before title or control was
 40 conveyed.
 41 (b) Subject to subsection (c), the term does not include a political
 42 subdivision or unit of federal or state government that acquired

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1 ownership or control of the facility through:

2 (1) bankruptcy;

3 (2) foreclosure;

4 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or

5 IC 6-1.1-25;

6 (4) abandonment;

7 (5) the exercise of eminent domain, including any purchase of

8 property once an offer to purchase has been tendered under

9 IC 32-24-1-5;

10 (6) receivership;

11 (7) transfer from another political subdivision or unit of federal or

12 state government;

13 (8) acquiring an area needing redevelopment (as defined in

14 IC 36-7-1-3) or conducting redevelopment activities, specifically

15 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,

16 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

17 (9) other circumstances in which the political subdivision or unit

18 of federal or state government involuntarily acquired ownership

19 or control because of the political subdivision's or unit's function

20 as sovereign; or

21 (10) any other means to conduct remedial actions on a brownfield.

22 (c) The term includes a political subdivision or unit of federal or

23 state government that causes or contributes to the release or threatened

24 release of a regulated substance, in which case the political subdivision

25 or unit of federal or state government is subject to IC 13-24-1:

26 (1) in the same manner; and

27 (2) to the same extent;

28 as a nongovernmental entity under IC 13-24-1.

29 (d) The term does not include a person who:

30 (1) does not participate in the management of a petroleum facility;

31 (2) is otherwise not engaged in the:

32 (A) production;

33 (B) refining; and

34 (C) marketing;

35 of petroleum; and

36 (3) holds evidence of ownership in a petroleum facility, primarily

37 to protect the owner's security interest in the petroleum facility.

38 (e) The term does not include a nonprofit corporation that acquired

39 ownership or control of a facility to assist and support a political

40 subdivision's revitalization and reuse of a brownfield for

41 noncommercial purposes, including conservation, preservation, and

42 recreation, unless the nonprofit corporation causes or contributes to the

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1 release or threatened release of a regulated substance, in which case the
2 nonprofit corporation is subject to IC 13-24-1 in the same manner and
3 to the same extent as any other nongovernmental entity under
4 IC 13-24-1.

5 **(f) The term does not include a person that after June 30, 2009,**
6 **meets, for purposes of the determination under IC 13-24-1 of**
7 **liability for a release of petroleum, the exemption criteria under**
8 **Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for**
9 **purposes of the determination of liability for a release of a**
10 **hazardous substance.**

11 **(g) The term does not include a person that meets, for purposes**
12 **of the determination under IC 13-24-1 of liability for a release of**
13 **petroleum, the exemption criteria under Section 107(r) of**
14 **CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the**
15 **determination of liability for a release of a hazardous substance,**
16 **except that the person acquires ownership of the facility after June**
17 **30, 2009.**

18 SECTION 10. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008,
19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect
21 to land, any deed restriction, restrictive covenant, environmental
22 covenant, environmental notice, or other restriction or obligation that:

- 23 (1) limits the use of the land or the activities that may be
- 24 performed on or at the land or requires the maintenance of any
- 25 engineering control on the land designed to protect human health
- 26 or the environment;
- 27 (2) by its terms is intended to run with the land and be binding on
- 28 successors;
- 29 (3) is recorded with the county recorder's office in the county in
- 30 which the land is located; ~~and~~
- 31 (4) explains how it can be modified or terminated;
- 32 **(5) grants the department access to the land;**
- 33 **(6) requires notice to a transferee of:**
 - 34 **(A) the land; or**
 - 35 **(B) an interest in the land;**
- 36 **of the existence of the restrictive covenant; and**
- 37 **(7) identifies the means by which the environmental files at**
- 38 **the department that apply to the land can be located.**

39 SECTION 11. IC 13-11-2-233.5 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for
41 purposes of this chapter **and IC 13-19-6**, means any area of land that
42 is under common ownership and is contained within a continuous

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border.
SECTION 12. IC 13-12-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation and closure goals, objectives, and standards for activities:

- (1) conducted under IC 13-22 and IC 13-23; **and**
- (2) completed before July 1, 2009;**

shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

(b) The remediation and closure goals, objectives, and standards for all remediation projects that:

- (1) are conducted under IC 13-22, IC 13-23, IC 13-24, and IC 13-25-4; and**

(2) are:

- (A) in progress on July 1, 2009; or**
- (B) initiated after July 1, 2009;**

shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

~~(b)~~ **(c)** The groundwater quality standards adopted under IC 13-18-17-5 shall allow, as appropriate, groundwater remediations to be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

SECTION 13. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

- (1) enforce any final order of the commissioner or of one (1) of the boards;
- (2) collect any penalties or fees;
- (3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;
- (4) procure compliance with any standard or rule of one (1) of the boards; ~~or~~
- (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

- (A) executed before July 1, 2009;**
- (B) approved by the commissioner; and**
- (C) created in connection with any:**
 - (i) remediation;**
 - (ii) closure;**
 - (iii) cleanup; ~~or~~**
 - (iv) corrective action; or**

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- 1 (v) determination exercising enforcement discretion or
- 2 of no further action being required;
- 3 approved by the department under this title; in accordance
- 4 with the terms of the covenant; or
- 5 (6) enforce a restrictive covenant (as defined in
- 6 IC 13-11-2-193.5) in accordance with the terms of the
- 7 covenant if the covenant is:
- 8 (A) executed after June 30, 2009; and
- 9 (B) created in connection with any of the following
- 10 approved by the department under this title:
- 11 (i) A remediation.
- 12 (ii) A closure.
- 13 (iii) A cleanup.
- 14 (iv) A corrective action.
- 15 (v) A determination exercising enforcement discretion or
- 16 of no further action being required.

17 SECTION 14. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2009]: Sec. 8. (a) Subject to subsection (b), a restrictive covenant
 20 executed after June 30, 2009, is not subject to approval by the
 21 department.

- 22 (b) The department shall:
- 23 (1) review; and
- 24 (2) approve, disapprove, or partially approve and partially
- 25 disapprove;
- 26 activities and land use restrictions described in IC 13-11-2-193.5(1)
- 27 that are proposed as part of a remediation, closure, cleanup,
- 28 corrective action, or determination exercising enforcement
- 29 discretion or of no further action being required to be included in
- 30 a restrictive covenant.

31 (c) After 2009, the department may not require the owner of a
 32 tract that has paid a fee under IC 13-19-6-2(b) or IC 13-19-6-2(c)
 33 with respect to the tract to report to the department the extent of
 34 compliance with a restrictive covenant that:

- 35 (1) applies to the tract; and
- 36 (2) is the basis of the imposition of the fee.

37 SECTION 15. IC 13-15-3-5 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Whenever a
 39 permit is required by any rule of one (1) of the boards under IC 13-15-1
 40 for the construction, installation, operation, or modification of any
 41 facility, equipment, or device, the permit may be issued only after the
 42 department staff has:

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- 1 (1) approved the plans and specifications; and
- 2 (2) determined that the facility, equipment, or device meets the
- 3 requirement of the rule.
- 4 **(b) Notwithstanding subsection (a), a person to whom a permit**
- 5 **has been issued may not start the construction, installation,**
- 6 **operation, or modification of a facility, equipment, or a device until**
- 7 **the person has obtained any approval required by any:**
- 8 **(1) county;**
- 9 **(2) city; or**
- 10 **(3) town;**
- 11 **in which the facility, equipment, or device is located.**
- 12 SECTION 16. IC 13-15-4-1 IS AMENDED TO READ AS
- 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as
- 14 provided in sections 2, 3, and 6 of this chapter, the commissioner shall
- 15 approve or deny an application filed with the department after July 1,
- 16 1995, within the following number of days:
- 17 (1) Three hundred sixty-five (365) days for an application
- 18 concerning the following:
- 19 (A) A new hazardous waste or solid waste landfill.
- 20 (B) A new hazardous waste or solid waste incinerator.
- 21 (C) A major modification of a solid waste landfill.
- 22 (D) A major modification of a solid waste incinerator.
- 23 (E) A new hazardous waste treatment or storage facility.
- 24 (F) A new Part B permit issued under 40 CFR 270 et seq. for
- 25 an existing hazardous waste treatment or storage facility.
- 26 (G) A Class 3 modification under 40 CFR 270.42 to a
- 27 hazardous waste landfill.
- 28 (2) **Except as provided in IC 13-18-3-2.1**, two hundred seventy
- 29 (270) days for an application concerning the following:
- 30 (A) A Class 3 modification under 40 CFR 270.42 of a
- 31 hazardous waste treatment or storage facility.
- 32 (B) A major new National Pollutant Discharge Elimination
- 33 System permit.
- 34 (3) **Except as provided in IC 13-18-3-2.1**, one hundred eighty
- 35 (180) days for an application concerning the following:
- 36 (A) A new solid waste processing or recycling facility.
- 37 (B) A minor new National Pollutant Discharge Elimination
- 38 System individual permit.
- 39 (C) A permit concerning the land application of wastewater.
- 40 (4) **Except as provided in IC 13-18-3-2.1**, one hundred fifty
- 41 (150) days for an application concerning a minor new National
- 42 Pollutant Discharge Elimination System general permit.

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- 1 (5) One hundred twenty (120) days for an application concerning
- 2 a Class 2 modification under 40 CFR 270.42 to a hazardous waste
- 3 facility.
- 4 (6) Ninety (90) days for an application concerning the following:
- 5 (A) A minor modification to a solid waste landfill or
- 6 incinerator permit.
- 7 (B) A wastewater facility or water facility construction permit.
- 8 (7) The amount of time provided for in rules adopted by the air
- 9 pollution control board for an application concerning the
- 10 following:
- 11 (A) An air pollution construction permit that is subject to 326
- 12 IAC 2-2 and 326 IAC 2-3.
- 13 (B) An air pollution facility construction permit (other than as
- 14 defined in 326 IAC 2-2).
- 15 (C) Registration of an air pollution facility.
- 16 (8) Sixty (60) days for an application concerning the following:
- 17 (A) A Class 1 modification under 40 CFR 270.42 requiring
- 18 prior written approval, to a hazardous waste:
- 19 (i) landfill;
- 20 (ii) incinerator;
- 21 (iii) treatment facility; or
- 22 (iv) storage facility.
- 23 (B) Any other permit not specifically described in this section
- 24 for which the application fee exceeds forty-nine dollars (\$49)
- 25 and for which a time frame has not been established under
- 26 section 3 of this chapter.
- 27 (b) When a person holding a valid permit concerning an activity of
- 28 a continuing nature has made a timely and sufficient application for a
- 29 renewal permit under the rules of one (1) of the boards, the
- 30 commissioner shall approve or deny the application on or before the
- 31 expiration date stated in the permit for which renewal is sought.
- 32 SECTION 17. IC 13-18-2-3 IS AMENDED TO READ AS
- 33 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The
- 34 department shall prepare a list of impaired waters for the purpose of
- 35 complying with federal regulations implementing Section 303(d) of the
- 36 federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether
- 37 a water body is impaired, the department shall consider all existing and
- 38 readily available water quality data and related information. The
- 39 department, before submitting the list to the United States
- 40 Environmental Protection Agency, shall:
- 41 (1) publish the list in the Indiana Register;
- 42 (2) make the list available for public comment for at least ninety

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(90) days; and

(3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule must specify the methodology and criteria for including and removing waters from the list of impaired waters.

(c) In the establishment of the total maximum daily load for a surface water under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)), the department shall, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), make every reasonable effort to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load.

(d) The department shall comply with subsection (e) if either of the following applies:

(1) The department:

(A) is unable in identifying the surface water as described in subsection (c) to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the surface water as described in subsection (c), that one (1) or more pollutants should be under consideration for establishment of the total maximum daily load.

(2) The department:

(A) in identifying the surface water as described in subsection (c), identifies the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the pollutant or pollutants as described in clause (A), that one (1) or more other pollutants should be under consideration for establishment of the total maximum daily load.

(e) The department complies with subsection (d) if the department does the following before making a pollutant or pollutants the subject of consideration for the establishment of the total maximum daily load:

(1) Determines and demonstrates that the surface water is

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- impaired by the pollutant or pollutants.**
- (2) Publishes in the Indiana Register the determination referred to in subdivision (1).**
- (3) Makes the determination referred to in subdivision (1) available for public comment for at least ninety (90) days.**
- (4) Presents the determination referred to in subdivision (1) to the commissioner for final approval after the comment period under subdivision (3).**

SECTION 18. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

- (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and
- (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

~~(c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.~~

~~(d)~~ (c) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

~~(e)~~ (d) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

~~(f)~~ (e) "Watershed" has the meaning set forth in IC 14-8-2-310.

~~(g)~~ (f) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

~~(h)~~ (g) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

- (1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.
- (2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.
- (3) The level of current urban and agricultural development in the watershed.
- (4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on

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1 future population, development, and economic growth in the
 2 watershed, if the water body is in a watershed that has more than
 3 three percent (3%) of its land in urban land uses or serves a
 4 municipality with a population greater than five thousand (5,000).
 5 (5) Whether the designation of the water body as an outstanding
 6 state resource water is necessary to protect the unique or special
 7 ecological, recreational, or aesthetic significance of the water
 8 body.

9 ~~(j)~~ **(h)** Before the board may adopt a rule designating a water body
 10 as an outstanding state resource water, the board must make available
 11 to the public a written summary of the information considered by the
 12 board under subsections **(f) and (g)**, ~~and (h)~~; including the board's
 13 conclusions concerning that information.

14 ~~(j)~~ **(i)** The commissioner shall present a summary of the comments
 15 received from the comment period and information that supports a
 16 water body designation as an outstanding state resource water to the
 17 environmental quality service council not later than one hundred
 18 twenty (120) days after the rule regarding the designation is finally
 19 adopted by the board.

20 ~~(k)~~ **(j)** Notwithstanding any other provision of this section, the
 21 designation of an outstanding state resource water in effect on January
 22 1, 2000, remains in effect.

23 ~~(l)~~ **(k)** For a water body designated as an outstanding state resource
 24 water, the board shall provide by rule procedures that will:

- 25 (1) prevent degradation; and
- 26 (2) allow for increases and additions in pollutant loadings from an
 27 existing or new discharge if:
 - 28 (A) there will be an overall improvement in water quality for
 29 the outstanding state resource water as described in this
 30 section; and
 - 31 (B) the applicable requirements of 327 IAC 2-1-2(1) and 327
 32 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are
 33 met.

34 ~~(m)~~ **(l)** The procedures provided by rule under subsection ~~(h)~~ **(k)**
 35 must include the following:

- 36 (1) A definition of significant lowering of water quality that
 37 includes a de minimis quantity of additional pollutant load:
 - 38 (A) for which a new or increased permit limit is required; and
 - 39 (B) below which antidegradation implementation procedures
 40 do not apply.
- 41 (2) Provisions allowing the permittee to choose application of one
 42 (1) of the following for each activity undertaken by the permittee

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1 that will result in a significant lowering of water quality in the
 2 outstanding state resource water: ~~or exceptional use water:~~
 3 (A) Implementation of a water quality project in the watershed
 4 of the outstanding state resource water ~~or the exceptional use~~
 5 ~~water~~ that will result in an overall improvement of the water
 6 quality of the outstanding state resource water. ~~or the~~
 7 ~~exceptional use water:~~
 8 (B) Payment of a fee, not to exceed five hundred thousand
 9 dollars (\$500,000), based on the type and quantity of increased
 10 pollutant loadings, to the department for deposit in the
 11 outstanding state resource water improvement fund established
 12 under section 14 of this chapter **for use as permitted under**
 13 **that section.**
 14 (3) Criteria for the submission and timely approval of projects
 15 described in subdivision (2)(A).
 16 (4) A process for public input in the approval process.
 17 (5) Use of water quality data that is less than seven (7) years old
 18 and specific to the outstanding state resource water.
 19 (6) Criteria for using the watershed improvement fees to fund
 20 projects in the watershed that result in improvement in water
 21 quality in the outstanding state resource water. ~~or exceptional use~~
 22 ~~water:~~
 23 ~~(m)~~ **(m)** For a water body designated as an outstanding state resource
 24 water after June 30, 2000, the board shall provide by rule
 25 antidegradation implementation procedures before the water body is
 26 designated in accordance with this section.
 27 ~~(n)~~ **(n)** A water body may be designated as an outstanding national
 28 resource water only by the general assembly after recommendations for
 29 designation are made by the board and the environmental quality
 30 service council.
 31 ~~(o)~~ **(o)** Before recommending the designation of an outstanding
 32 national resource water, the department shall provide for an adequate
 33 public notice and comment period regarding the designation. The
 34 commissioner shall present a summary of the comments and
 35 information received during the comment period and the department's
 36 recommendation concerning designation to the environmental quality
 37 service council not later than ninety (90) days after the end of the
 38 comment period. The council shall consider the comments,
 39 information, and recommendation received from the department, and
 40 shall convey its recommendation concerning designation to the general
 41 assembly within six (6) months after receipt.
 42 **(p) This subsection applies to all surface waters of the state. The**

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1 department shall complete an antidegradation review and
2 modification, if necessary, of the rules of the board that authorize
3 NPDES general permits. After an antidegradation review of a rule
4 is conducted under this subsection, activities covered by an NPDES
5 general permit authorized by that rule are not required to undergo
6 an additional antidegradation review.

7 (q) Subject to subsection (r), the commissioner shall consider the
8 following factors in determining whether a proposed discharge is
9 socially or economically necessary under antidegradation
10 standards and implementation procedures:

- 11 (1) Creation, expansion, or maintenance of employment.
- 12 (2) Reduction of the unemployment rate.
- 13 (3) Increase of median household income.
- 14 (4) Reduction of the number of households below the poverty
15 level.
- 16 (5) Increase of the supply of needed housing.
- 17 (6) Growth in population.
- 18 (7) Increase of the community tax base.
- 19 (8) Provision of fire departments, schools, infrastructure, and
20 other necessary public services.
- 21 (9) Correction of a public health, safety, or environmental
22 problem.
- 23 (10) Production of goods and services that protect, enhance,
24 or improve the overall quality of life and related research and
25 development.
- 26 (11) Improvement of the quality of life for residents in the
27 area.
- 28 (12) Promotion of the fishing, recreation, and tourism
29 industries.
- 30 (13) Enhancement of threatened and endangered species.
- 31 (14) Maintenance of economic competitiveness.
- 32 (15) Demonstration by the permit applicant that the factors
33 identified and reviewed under subdivisions (1) through (13)
34 are necessary to accommodate important social or economic
35 development despite the proposed significant lowering of
36 water quality.
- 37 (16) Inclusion by the applicant of additional factors that may
38 enhance the social or economic necessity associated with the
39 proposed discharge, such as an approval that:
40 (A) recognizes social or economic necessity; and
41 (B) is given to the applicant by:
42 (i) a legislative body; or

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(ii) other government officials.

(17) Any other action or recommendation relevant to the antidegradation demonstration made by a:

- (A) state;
- (B) county;
- (C) township; or
- (D) municipality;

potentially affected by the proposed discharge.

(r) In determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, the commissioner:

- (1) must give substantial weight to any applicable determinations by governmental entities; and
- (2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (q).

(s) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law.

(t) Beginning June 1, 2009, all waters of the state are regulated as one (1) of the following categories:

- (1) Outstanding national resource waters.
- (2) Outstanding state resource waters.
- (3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.
- (4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.
- (5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.
- (6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.

SECTION 19. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. (a) If a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought, the deadline for the department to adopt antidegradation standards and implementation procedures under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.**

(b) The commissioner may extend for cause for not more than

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1 **ninety (90) days the deadline under subsection (a) for the**
 2 **department to adopt antidegradation standards and**
 3 **implementation procedures.**

4 SECTION 20. IC 13-18-3-14 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The
 6 outstanding state resource water improvement fund is established. All
 7 money collected under section 2 of this chapter and any money
 8 accruing to the fund are continuously appropriated to the fund to carry
 9 out the purposes of section 2 of this chapter. Money in the fund at the
 10 end of a state fiscal year does not revert to the state general fund, unless
 11 the outstanding state resource water improvement fund is abolished.

12 (b) The outstanding state resource water improvement fund shall be
 13 administered as follows:

14 (1) The fund may be used by the department of environmental
 15 management to fund projects that will lead to overall
 16 improvement to the water quality of the affected ~~exceptional use~~
 17 ~~water or~~ outstanding state resource water.

18 (2) The treasurer of state may invest the money in the fund not
 19 currently needed to meet the obligations of the fund in the same
 20 manner as other public money may be invested.

21 (3) Any interest received accrues to the fund.

22 (4) The expenses of administering the fund shall be paid from the
 23 fund.

24 SECTION 21. IC 13-19-6 IS ADDED TO THE INDIANA CODE
 25 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2009]:

27 **Chapter 6. Institutional Control Registry and Environmental**
 28 **Trust Fund**

29 **Sec. 1. (a) The following are established:**

30 (1) **The institutional control registry.**

31 (2) **The environmental trust fund.**

32 (b) **The operations of the institutional control registry are**
 33 **funded solely from the environmental trust fund.**

34 (c) **The environmental trust fund:**

35 (1) **shall be administered, held, and managed by the treasurer**
 36 **of state;**

37 (2) **may be used only for the purposes of this chapter; and**

38 (3) **consists of:**

39 (A) **fees deposited in the environmental trust fund under**
 40 **section 2 of this chapter;**

41 (B) **appropriations to the environmental trust fund from**
 42 **the general assembly;**

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(C) grants, gifts, and donations intended for deposit in the environmental trust fund; and

(D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.

(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the treasurer of state shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in the same manner as other public money may be invested. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the treasurer of state may invest or cause to be invested all or a part of the environmental trust fund in a fiduciary account with a trustee that is a financial institution.

Sec. 2. (a) The department shall administer the institutional control registry by doing the following:

(1) Inventory by tract restrictive covenants throughout Indiana that are:

(A) recorded as described in IC 13-11-2-193.5(3), regardless of whether the restrictive covenants were recorded after 2009 or before 2010; and

(B) established as a part of a plan approved, determination exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

- (i) The department.
- (ii) The United States Environmental Protection Agency.

(2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.

(3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.

(4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).

(5) Develop a program to monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).

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1 (6) Report to the attorney general noncompliance with
2 restrictive covenants referred to in subdivision (1).

3 (7) Collect fees under subsection (d).

4 (8) Deposit fees collected under subdivision (7) in the
5 environmental trust fund.

6 (b) Except as provided in subsection (c), the owner of a tract
7 subject to one (1) or more restrictive covenants:

8 (1) referred to in subsection (a)(1); and

9 (2) recorded as described in IC 13-11-2-193.5(3) after 2009;
10 is liable for a fee in the amount of five thousand dollars (\$5,000).

11 (c) The department shall:

12 (1) establish a schedule of graduated fees; and

13 (2) consider the following to establish the fees:

14 (A) The relative costs of monitoring compliance under
15 subsection (a)(5) among various tracts of real property
16 subject to restrictive covenants.

17 (B) Whether the tract owner is a governmental entity.

18 (C) Whether the tract owner has developed and follows an
19 environmental management system (such as International
20 Organization for Standardization 14001) and agrees to
21 provide an annual report to the department.

22 (D) Any other factor the department considers relevant in
23 setting graduated fees.

24 The schedule of graduated fees established under this subsection
25 applies instead of the fee under subsection (b) to owners of real
26 property subject to restrictive covenants throughout Indiana that
27 are recorded as described in IC 13-11-2-193.5(3) after the effective
28 date of the schedule.

29 (d) A fee imposed under subsection (b) or (c) is payable to the
30 department for deposit into the environmental trust fund not later
31 than thirty (30) days after the recording of the restrictive covenant.
32 If the fee is not paid by that deadline:

33 (1) the department shall provide to the attorney general the
34 information necessary for commencement of a collection
35 action; and

36 (2) the department may withhold, until the fee is paid, the
37 department's approval of the:

38 (A) remediation;

39 (B) closure;

40 (C) cleanup;

41 (D) corrective action; or

42 (E) determination exercising enforcement discretion or of

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**no further action being required;
under which the restrictive covenant was executed.**

(e) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (a)(1) through (a)(3):

- (1) The state.**
- (2) Officers, agents, and employees of the state, either personally or in their official capacities.**

(f) No person, including the state, the institutional control registry, a political subdivision (as defined in IC 36-1-2-13), or a private person, may rely on the accuracy and completeness of information in the following:

- (1) An inventory under subsection (a)(1).**
- (2) A registry under subsection (a)(2) or (a)(3).**

Sec. 3. (a) The department may do the following:

- (1) Employ:**
 - (A) fiscal consultants;**
 - (B) engineers;**
 - (C) special counsel;**
 - (D) accountants; and**
 - (E) any other consultants, employees, and agents;****that the department considers necessary to carry out the purposes of this chapter.**
- (2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.**

(b) Notwithstanding any other law, no direction given by the department to a political subdivision under this chapter, service provided by the department to a political subdivision under this chapter, or other action allowed or taken by the department under this chapter is a defense for or otherwise excuses:

- (1) any act of a political subdivision that violates the law; or**
- (2) any failure by a political subdivision to act as required by law.**

SECTION 22. IC 13-23-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

- (1) The payment of the costs allowed under IC 13-23-9-2,**

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1 excluding:

2 (A) liabilities to third parties; and

3 (B) the costs of repairing or replacing an underground storage
4 tank;

5 arising out of releases of petroleum.

6 (2) Providing payment of part of the liability of owners and
7 operators of underground petroleum storage tanks:

8 (A) to third parties under IC 13-23-9-3; or

9 (B) for reasonable attorney's fees incurred in defense of a third
10 party liability claim.

11 **(3) Reimbursement of a fee that is:**

12 **(A) paid by the owner of a tract under IC 13-19-6-2(b) or**
13 **IC 13-19-6-2(c); and**

14 **(B) payable because the tract is subject to one (1) or more**
15 **restrictive covenants established to address issues related**
16 **to an underground storage tank located on the tract.**

17 SECTION 23. IC 13-23-9-1 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of
19 the excess liability trust fund shall process, approve, and deny requests
20 made for payments from the excess liability trust fund under sections
21 2, and 3, and 3.5 of this chapter.

22 SECTION 24. IC 13-23-9-3.5 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) To receive money from**
25 **the excess liability trust fund under IC 13-23-8-1(3), a claimant**
26 **must submit to the administrator of the excess liability trust fund**
27 **for the administrator's approval a copy of a receipt from the**
28 **department for payment of a fee referred to in IC 13-23-8-1(3).**

29 **(b) If, after receiving a receipt submitted under subsection (a),**
30 **the administrator determines that the receipt is valid, the**
31 **administrator shall approve the request for money to be paid from**
32 **the excess liability trust fund for reimbursement of the fee.**

33 **(c) The administrator shall notify the claimant of an approval**
34 **or a denial of a claim made under subsection (a) not later than**
35 **sixty (60) days after receiving the request. Except as provided in**
36 **subsection (f), the administrator shall notify the claimant of all**
37 **reasons for a denial or partial denial.**

38 **(d) Not later than seven (7) days after a request is approved by**
39 **the administrator under subsection (b), the administrator shall**
40 **forward a copy of a request approved under this section to the**
41 **auditor of state.**

42 **(e) Not later than thirty (30) days after receiving an approved**

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1 request under this section, the auditor of state shall pay to the
 2 claimant that submitted the approved receipt the approved amount
 3 from money available in the excess liability trust fund.

4 (f) If the administrator denies a claim made under subsection
 5 (a), the administrator shall notify the claimant in writing not later
 6 than sixty (60) days after receiving the request. The claimant has
 7 thirty (30) days after the receipt of the denial to notify the
 8 administrator of the claimant's intention to appeal the denial. If the
 9 claimant does not notify the administrator of an intention to appeal
 10 in the time provided, further review of the application is not
 11 required. If an intention to appeal is submitted within the time
 12 provided, the administrator has thirty (30) days after the receipt
 13 of the notice of the intention to appeal to provide the claimant with
 14 all additional reasons for the denial or partial denial of the request
 15 or to specify that all reasons have been provided. The claimant has
 16 thirty (30) days after receiving notification from the administrator
 17 of all additional reasons for the denial or partial denial or notice
 18 specifying that all reasons have been provided to file a petition for
 19 review of the denial or partial denial.

20 SECTION 25. IC 13-23-9-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. If the administrator
 22 denies a request made under section 2, ~~or~~ 3, ~~or~~ 3.5 of this chapter, the
 23 owner or operator who made the request may appeal the denial under
 24 IC 4-21.5 to the office of environmental adjudication under
 25 IC 4-21.5-7.

26 SECTION 26. IC 13-25-5-8.5 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary
 28 remediation work plan must specify the remediation objectives for the
 29 site.

30 (b) The remediation objectives for each hazardous substance and
 31 any petroleum on the site shall be based on:

- 32 (1) background levels of hazardous substances and petroleum that
 33 occur naturally on the site; or
 34 (2) an assessment of the risks pursuant to subsection (d) posed by
 35 the hazardous substance or petroleum presently found on the site
 36 taking into consideration the following:
 37 (A) Expected future use of the site.
 38 (B) Measurable risks to human health, natural resources, or the
 39 environment based on the:
 40 (i) activities that take place; and
 41 (ii) environmental impact;
 42 on the site.

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1 (c) **The following apply to voluntary remediation work plans:**

2 (1) **For a voluntary remediation work plan approved by the**
 3 **department under section 10 of this chapter before July 1,**
 4 **2009, if the:**

5 (~~1~~) **(A)** nature and extent of the hazardous substance or
 6 petroleum is adequately characterized under the voluntary
 7 remediation work plan; and

8 (~~2~~) **(B)** the level of the hazardous substance or petroleum is
 9 demonstrated to be below:

10 (~~A~~) **(i)** background levels of the hazardous substances and
 11 petroleum that occur naturally on the site; or

12 (~~B~~) **(ii)** the risk based levels developed under subsection (d);
 13 additional action is not necessary to protect human health or the
 14 environment.

15 (2) **For a site that does not on July 1, 2009, have a voluntary**
 16 **remediation work plan approved by the department under**
 17 **section 10 of this chapter, if the:**

18 **(A) nature and extent of the hazardous substance or**
 19 **petroleum is adequately characterized under the voluntary**
 20 **remediation work plan, considering the remediation**
 21 **objectives developed under this section; and**

22 **(B) the level of the hazardous substance or petroleum is**
 23 **demonstrated to be below:**

24 **(i) background levels of the hazardous substances and**
 25 **petroleum that occur naturally on the site; or**

26 **(ii) the risk based levels developed under subsection (d);**
 27 **additional action is not necessary to protect human health or**
 28 **the environment.**

29 (d) Risk based remediation objectives shall be based on one (1) of
 30 the following:

31 (1) Levels of hazardous substances and petroleum calculated by
 32 the department using standard equations and default values for
 33 particular hazardous substances or petroleum.

34 (2) Levels of hazardous substances and petroleum calculated
 35 using site specific data for the default values in the department's
 36 standard equations.

37 (3) **For voluntary remediation work plans approved by the**
 38 **department under section 10 of this chapter before July 1,**
 39 **2009, levels of hazardous substances and petroleum developed**
 40 **based on site specific risk assessments that take into account site**
 41 **specific factors.**

42 (4) **For a site that does not on July 1, 2009, have a voluntary**

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1 remediation work plan approved by the department under
2 section 10 of this chapter, levels of hazardous substances and
3 petroleum developed based on site specific risk assessments
4 that take into account site specific factors, including remedial
5 measures, restrictive covenants, and environmental restrictive
6 ordinances that:

- 7 (A) manage risk; and
- 8 (B) control completed or potential exposure pathways.

9 (c) For a site that does not on July 1, 2009, have a voluntary
10 remediation work plan approved by the department under section
11 10 of this chapter, the department shall consider and give effect to
12 restrictive covenants and environmental restrictive ordinances in
13 evaluating risk based remediation proposals.

14 SECTION 27. IC 13-25-5-18 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) If the
16 commissioner issues a certificate to a person under section 16 of this
17 chapter, the governor shall also provide the person with a covenant not
18 to sue for any liability, including future liability, or a claim resulting
19 from or based upon the release or threatened release of a hazardous
20 substance or petroleum that is addressed by an approved voluntary
21 remediation work plan under this chapter.

- 22 (b) A covenant not to sue issued under this section bars suit against:
 - 23 (1) a person who received the certificate of completion under
 - 24 section 16 of this chapter; or
 - 25 (2) any other person who receives the certificate of completion:
 - 26 (A) through a legal transfer of the certificate of completion; or
 - 27 (B) by acquiring property to which the certificate of
 - 28 completion applies;

29 from all public or private claims arising under this title or rules adopted
30 under this title in connection with the release or threatened release of
31 a hazardous substance or petroleum that was the subject of the
32 approved voluntary remediation work plan, except as provided in
33 subsection (c).

34 (c) A covenant not to sue issued under this section may not apply to
35 future liability for a condition or the extent of a condition that:

- 36 (1) was present:
 - 37 (A) on property that was involved in an approved and
 - 38 completed voluntary remediation work plan; and
 - 39 (B) at the time the commissioner issued the certificate of
 - 40 completion under section 16 of this chapter; and
- 41 (2) was not known to the commissioner at the time the
- 42 commissioner issued the certificate of completion under section

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1 16 of this chapter.

2 **(d) A certificate of completion issued under section 16 of this**
3 **chapter may include conditions that must be performed or**
4 **maintained after issuance of the certificate.**

5 **(e) A covenant not to sue issued under this section may include**
6 **conditions that must be performed or maintained after issuance of**
7 **the covenant.**

8 ~~(d)~~ **(f)** Except as:

9 (1) provided under federal law; or

10 (2) agreed to by a federal governmental entity;

11 a covenant not to sue issued under this section may not release a person
12 from liability to the federal government for claims based on federal
13 law.

14 ~~(e)~~ **(g)** After an applicant and the department have signed a
15 voluntary remediation agreement, a person may not bring an action,
16 including an administrative action, against the applicant or any other
17 person proceeding under this chapter on behalf of the applicant for any
18 cause of action arising under this title or rules adopted under this title
19 and relating to the release or threatened release of a hazardous
20 substance or petroleum that is the subject of the agreement. However,
21 this section does not apply if:

22 (1) the applicant fails to file a proposed voluntary remediation
23 work plan within the time period established in section 8(a)(8) of
24 this chapter;

25 (2) the commissioner rejects a proposed voluntary remediation
26 work plan submitted in good faith and the rejection is upheld in
27 any appeal brought under section 12 of this chapter;

28 (3) the applicant or another person proceeding under this chapter
29 on behalf of the applicant fails to complete a voluntary
30 remediation in accordance with an approved voluntary
31 remediation work plan; or

32 (4) the commissioner withdraws the commissioner's approval of
33 the voluntary remediation work plan and the withdrawal is upheld
34 in any appeal under section 19 of this chapter.

35 However, if the commissioner withdraws approval of the plan under
36 section 19(a)(2) of this chapter, the commissioner may bring an action,
37 including an administrative action, against the applicant.

38 ~~(f)~~ **(h)** A person who purchases property that is the subject of a
39 voluntary remediation agreement at the time the property is purchased
40 may not be subject to an enforcement action to the same extent as an
41 applicant under subsection ~~(e)~~: **(g)**.

42 SECTION 28. IC 13-26-5-9 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2009]: **Sec. 9. (a) A board may adopt an ordinance allowing
3 money to be disbursed for lawful district purposes under this
4 section.**

5 **(b) Notwithstanding IC 5-11-10, with the prior written approval
6 of the board, the fiscal officer of the district may make claim
7 payments in advance of board allowance for the following kinds of
8 expenses if the board has adopted an ordinance under subsection
9 (a):**

- 10 **(1) Property or services purchased or leased from the United**
- 11 **States government, its agencies, or its political subdivisions.**
- 12 **(2) License or permit fees.**
- 13 **(3) Insurance premiums.**
- 14 **(4) Utility payments or utility connection charges.**
- 15 **(5) General grant programs for which advance funding is not**
- 16 **prohibited and the contracting party posts sufficient security**
- 17 **to cover the amount advanced.**
- 18 **(6) Grants of state funds authorized by statute.**
- 19 **(7) Maintenance or service agreements.**
- 20 **(8) Leases or rental agreements.**
- 21 **(9) Bond or coupon payments.**
- 22 **(10) Payroll.**
- 23 **(11) State or federal taxes.**
- 24 **(12) Expenses that must be paid because of emergency**
- 25 **circumstances.**
- 26 **(13) Expenses described in an ordinance.**

27 **(c) Each payment of expenses under this section must be**
28 **supported by a fully itemized invoice or bill and certification by the**
29 **fiscal officer of the district.**

30 **(d) The board shall review and allow the claim at its next**
31 **regular or special meeting following the preapproved payment of**
32 **the expense.**

33 SECTION 29. IC 34-30-2-51.5 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning**
36 **actions relating to the institutional control registry).**

37 SECTION 30. IC 36-1-2-4.7 IS ADDED TO THE INDIANA CODE
38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2009]: **Sec. 4.7. "Environmental restrictive ordinance" means,**
40 **with respect to land, any ordinance that:**

- 41 **(1) is adopted by a municipal corporation; and**
- 42 **(2) limits, regulates, or prohibits one (1) or more of the**

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1 following with respect to groundwater:

2 (A) Withdrawal.

3 (B) Human consumption.

4 (C) Any other use.

5 SECTION 31. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2009]: Sec. 11. (a) The legislative body of a municipal
8 corporation shall:

9 (1) subject to subsection (b), give written notice to the
10 department of environmental management not later than
11 sixty (60) days before amendment or repeal of an
12 environmental restrictive ordinance; and

13 (2) give written notice to the department of environmental
14 management not later than thirty (30) days after passage,
15 amendment, or repeal of an environmental restrictive
16 ordinance.

17 (b) Upon written request by the legislative body, the department
18 of environmental management may waive the notice requirement
19 of subsection (a)(1).

20 (c) An environmental restrictive ordinance passed or amended
21 after 2009 by the legislative body must state the notice
22 requirements of subsection (a).

23 (d) The failure of an environmental restrictive ordinance to
24 comply with subsection (c) does not void the ordinance.

25 SECTION 32. IC 36-2-4-8 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) An ordinance,
27 order, or resolution is considered adopted when it is signed by the
28 presiding officer. If required, an adopted ordinance, order, or resolution
29 must be promulgated or published according to statute before it takes
30 effect.

31 (b) An ordinance prescribing a penalty or forfeiture for a violation
32 must, before it takes effect, be published once each week for two (2)
33 consecutive weeks, according to IC 5-3-1. However, if such an
34 ordinance is adopted by the legislative body of a county subject to
35 IC 36-2-3.5 and there is an urgent necessity requiring its immediate
36 effectiveness, it need not be published if:

- 37 (1) the county executive proclaims the urgent necessity; and
38 (2) copies of the ordinance are posted in three (3) public places in
39 each of the districts of the county before it takes effect.

40 (c) The following apply in addition to the other requirements of this
41 section:

42 (1) An ordinance or resolution passed by the legislative body of

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1 a county subject to IC 36-2-3.5 is considered adopted only if it is:
2 ~~(1)~~ **(A)** approved by signature of a majority of the county
3 executive;
4 ~~(2)~~ **(B)** neither approved nor vetoed by a majority of the
5 executive, within ten (10) days after passage by the legislative
6 body; or
7 ~~(3)~~ **(C)** passed over the veto of the executive by a two-thirds
8 (2/3) vote of the legislative body, within sixty (60) days after
9 presentation of the ordinance or resolution to the executive.
10 **(2) The legislative body of a county shall:**
11 **(A) subject to subdivision (3), give written notice to the**
12 **department of environmental management not later than**
13 **sixty (60) days before amendment or repeal of an**
14 **environmental restrictive ordinance; and**
15 **(B) give written notice to the department of environmental**
16 **management not later than thirty (30) days after passage,**
17 **amendment, or repeal of an environmental restrictive**
18 **ordinance.**
19 **(3) Upon written request by the legislative body, the**
20 **department of environmental management may waive the**
21 **notice requirement of subdivision (2)(A).**
22 **(4) An environmental restrictive ordinance passed or**
23 **amended after 2009 by the legislative body must state the**
24 **notice requirements of subdivision (2).**
25 **(5) The failure of an environmental restrictive ordinance to**
26 **comply with subdivision (4) does not void the ordinance.**
27 (d) After an ordinance or resolution passed by the legislative body
28 of a county subject to IC 36-2-3.5 has been signed by the presiding
29 officer, the county auditor shall present it to the county executive, and
30 record the time of the presentation. Within ten (10) days after an
31 ordinance or resolution is presented to it, the executive shall:
32 (1) approve the ordinance or resolution, by signature of a majority
33 of the executive, and send the legislative body a message
34 announcing its approval; or
35 (2) veto the ordinance or resolution, by returning it to the
36 legislative body with a message announcing its veto and stating
37 its reasons for the veto.
38 (e) This section does not apply to a zoning ordinance or amendment
39 to a zoning ordinance, or a resolution approving a comprehensive plan,
40 that is adopted under IC 36-7.
41 (f) An ordinance increasing a building permit fee on new
42 development must:

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- 1 (1) be published:
- 2 (A) one (1) time in accordance with IC 5-3-1; and
- 3 (B) not later than thirty (30) days after the ordinance is
- 4 adopted by the legislative body in accordance with IC 5-3-1;
- 5 and
- 6 (2) delay the implementation of the fee increase for ninety (90)
- 7 days after the date the ordinance is published under subdivision
- 8 (1).
- 9 SECTION 33. IC 36-3-4-14 IS AMENDED TO READ AS
- 10 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance
- 11 or resolution passed by a legislative body is considered adopted when
- 12 it is:
- 13 (1) signed by the presiding officer; and
- 14 (2) if subject to veto, either approved by the executive or passed
- 15 over ~~his~~ **the executive's** veto by the legislative body, under
- 16 section 16 of this chapter.
- 17 (b) All ordinances and resolutions of a legislative body are subject
- 18 to veto, except the following:
- 19 (1) An ordinance or resolution, or part of either, providing for the
- 20 budget or appropriating money for an office or officer of the
- 21 county provided for by the Constitution of Indiana or for a judicial
- 22 office or officer.
- 23 (2) An ordinance or resolution approving or modifying the budget
- 24 of a political subdivision that the legislative body is permitted by
- 25 statute to review.
- 26 (3) A resolution making an appointment that the legislative body
- 27 is authorized to make.
- 28 (4) A resolution selecting officers or employees of the legislative
- 29 body.
- 30 (5) A resolution prescribing rules for the internal management of
- 31 the legislative body.
- 32 (6) A zoning ordinance or amendment to a zoning ordinance, or
- 33 a resolution approving a comprehensive plan, that is adopted
- 34 under IC 36-7.
- 35 (c) An ordinance prescribing a penalty or forfeiture for a violation
- 36 must, before it takes effect, be published in the manner prescribed by
- 37 IC 5-3-1, unless:
- 38 (1) it is published under subsection (d); or
- 39 (2) there is an urgent necessity requiring its immediate
- 40 effectiveness, the executive proclaims the urgent necessity, and
- 41 copies of the ordinance are posted in three (3) public places in the
- 42 county.

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1 (d) If a legislative body publishes any of its ordinances in book or
2 pamphlet form, no other publication is required. If an ordinance
3 prescribing a penalty or forfeiture for a violation is published under this
4 subsection, it takes effect two (2) weeks after the publication of the
5 book or pamphlet. Publication under this subsection, if authorized by
6 the legislative body, constitutes presumptive evidence:

- 7 (1) of the ordinances in the book or pamphlet;
- 8 (2) of the date of adoption of the ordinances; and
- 9 (3) that the ordinances have been properly signed, attested,
10 recorded, and approved.

11 (e) Unless a legislative body provides in an ordinance or resolution
12 for a later effective date, the ordinance or resolution takes effect when
13 it is adopted, subject to subsections (c) and (d).

14 (f) Subsections (a), (c), (d), and (e) do not apply to zoning
15 ordinances or amendments to zoning ordinances, or resolutions
16 approving comprehensive plans, that are adopted under IC 36-7.

17 **(g) The legislative body shall:**

- 18 **(1) subject to subsection (h), give written notice to the**
- 19 **department of environmental management not later than**
- 20 **sixty (60) days before amendment or repeal of an**
- 21 **environmental restrictive ordinance; and**
- 22 **(2) give written notice to the department of environmental**
- 23 **management not later than thirty (30) days after passage,**
- 24 **amendment, or repeal of an environmental restrictive**
- 25 **ordinance.**

26 **(h) Upon written request by the legislative body, the department**
27 **of environmental management may waive the notice requirement**
28 **of subsection (g)(1).**

29 **(i) An environmental restrictive ordinance passed or amended**
30 **after 2009 by the legislative body must state the notice**
31 **requirements of subsection (g).**

32 **(j) The failure of an environmental restrictive ordinance to**
33 **comply with subsection (i) does not void the ordinance.**

34 SECTION 34. IC 36-4-6-14 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance,
36 order, or resolution passed by the legislative body is considered
37 adopted when it is:

- 38 (1) signed by the presiding officer; and
- 39 (2) either approved by the city executive or passed over ~~his~~ **the**
40 **executive's** veto by the legislative body, under section 16 of this
41 chapter.

42 If required by statute, an adopted ordinance, order, or resolution must

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1 be promulgated or published before it takes effect.

2 (b) An ordinance prescribing a penalty or forfeiture for a violation

3 must, before it takes effect, be published in the manner prescribed by

4 IC 5-3-1, unless:

5 (1) it is published under subsection (c); or

6 (2) there is an urgent necessity requiring its immediate

7 effectiveness, the city executive proclaims the urgent necessity,

8 and copies of the ordinance are posted in three (3) public places

9 in each of the districts from which members are elected to the

10 legislative body.

11 (c) Except as provided in subsection (e), if a city publishes any of

12 its ordinances in book or pamphlet form, no other publication is

13 required. If an ordinance prescribing a penalty or forfeiture for a

14 violation is published under this subsection, it takes effect two (2)

15 weeks after the publication of the book or pamphlet. Publication under

16 this subsection, if authorized by the legislative body, constitutes

17 presumptive evidence:

18 (1) of the ordinances in the book or pamphlet;

19 (2) of the date of adoption of the ordinances; and

20 (3) that the ordinances have been properly signed, attested,

21 recorded, and approved.

22 (d) This section does not apply to a zoning ordinance or amendment

23 to a zoning ordinance, or a resolution approving a comprehensive plan,

24 that is adopted under IC 36-7.

25 (e) An ordinance increasing a building permit fee on new

26 development must:

27 (1) be published:

28 (A) one (1) time in accordance with IC 5-3-1; and

29 (B) not later than thirty (30) days after the ordinance is

30 adopted by the legislative body in accordance with IC 5-3-1;

31 and

32 (2) delay the implementation of the fee increase for ninety (90)

33 days after the date the ordinance is published under subdivision

34 (1).

35 **(f) The legislative body shall:**

36 **(1) subject to subsection (g), give written notice to the**

37 **department of environmental management not later than**

38 **sixty (60) days before amendment or repeal of an**

39 **environmental restrictive ordinance; and**

40 **(2) give written notice to the department of environmental**

41 **management not later than thirty (30) days after passage,**

42 **amendment, or repeal of an environmental restrictive**

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ordinance.
(g) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

SECTION 35. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under IC 36-1-5; or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(d) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(e) The legislative body shall:

- (1) subject to subsection (f), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an**

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1 environmental restrictive ordinance; and
 2 (2) give written notice to the department of environmental
 3 management not later than thirty (30) days after passage,
 4 amendment, or repeal of an environmental restrictive
 5 ordinance.
 6 (f) Upon written request by the legislative body, the department
 7 of environmental management may waive the notice requirement
 8 of subsection (e)(1).
 9 (g) An environmental restrictive ordinance passed or amended
 10 after 2009 by the legislative body must state the notice
 11 requirements of subsection (e).
 12 (h) The failure of an environmental restrictive ordinance to
 13 comply with subsection (g) does not void the ordinance.
 14 SECTION 36. [EFFECTIVE JULY 1, 2009] (a) The department
 15 of environmental management shall do the following:
 16 (1) Conduct a study to develop recommendations for policies
 17 and legislation necessary to impose fees as described in
 18 IC 13-19-6-2, as added by this act, with respect to:
 19 (A) real property covenants that meet the description of a
 20 restrictive covenant under IC 13-11-2-193.5, as in effect
 21 before the effective date of this act, that were recorded
 22 before 2010; and
 23 (B) real property covenants that meet the description of a
 24 restrictive covenant under IC 13-11-2-193.5, either as
 25 amended by this act or as in effect before the effective date
 26 of this act, except that they are not imposed as a part of a
 27 plan, or a determination exercising enforcement discretion
 28 or of no further action being required, approved by either
 29 or both of the following:
 30 (i) The department of environmental management.
 31 (ii) The United States Environmental Protection Agency.
 32 (2) Conduct a study and develop recommendations
 33 concerning the feasibility of incorporating notice of:
 34 (A) restrictive covenants (as defined in IC 13-11-2-193.5, as
 35 amended by this act); and
 36 (B) environmental restrictive ordinances (as defined in
 37 IC 36-1-2-4.7, as added by this act);
 38 into the "One Call" system managed by the Indiana
 39 Underground Plant Protection Service under IC 8-1-26.
 40 (3) Before September 1, 2010, report the results of the studies
 41 under subdivisions (1) and (2) to the environmental quality
 42 service council.

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1 **(b) This SECTION expires January 1, 2011.**
2 SECTION 37. IC 13-11-2-72.5 IS REPEALED [EFFECTIVE JUNE
3 1, 2009].
4 SECTION 38. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1162, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 2, after "5." insert "(a)".

Page 1, line 7, reset in roman "and".

Page 1, line 9, delete "; and" and insert ".".

Page 1, delete lines 10 through 14, begin a new paragraph and insert:

"(b) Notwithstanding subsection (a), a person to whom a permit has been issued may not start the construction, installation, operation, or modification of a facility, equipment, or a device until the person has obtained any approval required by any:

(1) county;

(2) city; or

(3) town;

in which the facility, equipment, or device is located."

and when so amended that said bill do pass.

(Reference is to HB 1162 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1162 be amended to read as follows:

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 2. IC 13-26-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. (a) A board may adopt an ordinance allowing money to be disbursed for lawful district purposes under this section.**

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board, the fiscal officer of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted an ordinance under subsection (a):

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- (1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.
- (2) License or permit fees.
- (3) Insurance premiums.
- (4) Utility payments or utility connection charges.
- (5) General grant programs for which advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.
- (6) Grants of state funds authorized by statute.
- (7) Maintenance or service agreements.
- (8) Leases or rental agreements.
- (9) Bond or coupon payments.
- (10) Payroll.
- (11) State or federal taxes.
- (12) Expenses that must be paid because of emergency circumstances.
- (13) Expenses described in an ordinance.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer of the district.

(d) The board shall review and allow the claim at its next regular or special meeting following the preapproved payment of the expense."

Renumber all SECTIONS consecutively.

(Reference is to HB 1162 as printed February 10, 2009.)

DODGE

COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred House Bill No. 1162, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1162 as printed February 17, 2009.)

GARD, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1162 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-50.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 50.5. "Degradation", for purposes of IC 13-18-3, means, with respect to a National Pollutant Discharge Elimination System permit, the following:

- (1) With respect to an outstanding national resource water, any new or increased discharge of a pollutant or a pollutant parameter, except for a short term, temporary increase.
- (2) With respect to an outstanding state resource water, ~~or an exceptional use water~~, any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or pollutant parameter, unless:

(A) the activity causing the increased discharge:

- (i) results in an overall improvement in water quality in the outstanding state resource water; ~~or exceptional use water~~; and
- (ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b); or

(B) the person proposing the increased discharge undertakes or funds a water quality improvement project in accordance with ~~IC 13-18-3-2(f)~~ **IC 13-18-3-2(k)** in the watershed of the outstanding state resource water ~~or exceptional use water~~ that:

- (i) results in an overall improvement in water quality in the outstanding state resource water; ~~or exceptional use water~~; and
- (ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b)."

SECTION 2. IC 13-11-2-90 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 90. "Governmental entity", for purposes of **IC 13-18-3 and** IC 13-25-6, means the state or a political subdivision.

SECTION 3. IC 13-11-2-149.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 149.5. "Outstanding national resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under

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IC 13-18-3-2(n) and IC 13-18-3-2(o). ~~and IC 13-18-3-2(p).~~ The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

- (1) important because of protection through official action, such as:
 - (A) federal or state law;
 - (B) presidential or secretarial action;
 - (C) international treaty; or
 - (D) interstate compact;
- (2) having exceptional recreational significance;
- (3) having exceptional ecological significance;
- (4) having other special environmental, recreational, or ecological attributes; or
- (5) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other water bodies designated as outstanding national resource waters."

Page 1, after line 17, begin a new paragraph and insert:

SECTION 5. IC 13-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

- (1) Three hundred sixty-five (365) days for an application concerning the following:
 - (A) A new hazardous waste or solid waste landfill.
 - (B) A new hazardous waste or solid waste incinerator.
 - (C) A major modification of a solid waste landfill.
 - (D) A major modification of a solid waste incinerator.
 - (E) A new hazardous waste treatment or storage facility.
 - (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
 - (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.
- (2) **Except as provided in IC 13-18-3-2.1**, two hundred seventy (270) days for an application concerning the following:
 - (A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.
 - (B) A major new National Pollutant Discharge Elimination

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System permit.

(3) **Except as provided in IC 13-18-3-2.1**, one hundred eighty (180) days for an application concerning the following:

- (A) A new solid waste processing or recycling facility.
- (B) A minor new National Pollutant Discharge Elimination System individual permit.
- (C) A permit concerning the land application of wastewater.

(4) **Except as provided in IC 13-18-3-2.1**, one hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

(5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.

(6) Ninety (90) days for an application concerning the following:

- (A) A minor modification to a solid waste landfill or incinerator permit.
- (B) A wastewater facility or water facility construction permit.

(7) The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:

- (A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.
- (B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).
- (C) Registration of an air pollution facility.

(8) Sixty (60) days for an application concerning the following:

- (A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:
 - (i) landfill;
 - (ii) incinerator;
 - (iii) treatment facility; or
 - (iv) storage facility.
- (B) Any other permit not specifically described in this section for which the application fee exceeds forty-nine dollars (\$49) and for which a time frame has not been established under section 3 of this chapter.

(b) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a renewal permit under the rules of one (1) of the boards, the commissioner shall approve or deny the application on or before the expiration date stated in the permit for which renewal is sought.

SECTION 6. IC 13-18-2-3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with federal regulations implementing Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether a water body is impaired, the department shall consider all existing and readily available water quality data and related information. The department, before submitting the list to the United States Environmental Protection Agency, shall:

- (1) publish the list in the Indiana Register;
- (2) make the list available for public comment for at least ninety (90) days; and
- (3) present the list to the board.

If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule must specify the methodology and criteria for including and removing waters from the list of impaired waters.

(c) In the establishment of the total maximum daily load for a surface water under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)), the department shall, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), make every reasonable effort to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load.

(d) The department shall comply with subsection (e) if either of the following applies:

- (1) The department:**
 - (A) is unable in identifying the surface water as described in subsection (c) to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and**
 - (B) determines, after identifying the surface water as described in subsection (c), that one (1) or more pollutants should be under consideration for establishment of the total maximum daily load.**
- (2) The department:**
 - (A) in identifying the surface water as described in subsection (c), identifies the pollutant or pollutants under consideration for the establishment of the total maximum**

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daily load; and

(B) determines, after identifying the pollutant or pollutants as described in clause (A), that one (1) or more other pollutants should be under consideration for establishment of the total maximum daily load.

(e) The department complies with subsection (d) if the department does the following before making a pollutant or pollutants the subject of consideration for the establishment of the total maximum daily load:

(1) Determines and demonstrates that the surface water is impaired by the pollutant or pollutants.

(2) Publishes in the Indiana Register the determination referred to in subdivision (1).

(3) Makes the determination referred to in subdivision (1) available for public comment for at least ninety (90) days.

(4) Presents the determination referred to in subdivision (1) to the commissioner for final approval after the comment period under subdivision (3).

SECTION 7. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

~~(c) "Exceptional use water" has the meaning set forth in IC 13-11-2-72.5.~~

~~(d)~~ (c) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

~~(e)~~ (d) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

~~(f)~~ (e) "Watershed" has the meaning set forth in IC 14-8-2-310.

~~(g)~~ (f) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

~~(h)~~ (g) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party,

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taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

~~(h)~~ **(h)** Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections **(f) and (g)**, ~~and (h)~~, including the board's conclusions concerning that information.

~~(i)~~ **(i)** The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

~~(j)~~ **(j)** Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

~~(k)~~ **(k)** For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

- (1) prevent degradation; and
- (2) allow for increases and additions in pollutant loadings from an existing or new discharge if:
 - (A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and
 - (B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are

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met.

~~(m)~~ **(l)** The procedures provided by rule under subsection ~~(j)~~ **(k)** must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

- (A) for which a new or increased permit limit is required; and
- (B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water: ~~or exceptional use water:~~

(A) Implementation of a water quality project in the watershed of the outstanding state resource water ~~or the exceptional use water~~ that will result in an overall improvement of the water quality of the outstanding state resource water. ~~or the exceptional use water.~~

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000), based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter **for use as permitted under that section.**

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water. ~~or exceptional use water.~~

~~(n)~~ **(m)** For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

~~(o)~~ **(n)** A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

~~(p)~~ **(o)** Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate

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public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

(p) This subsection applies to all surface waters of the state. The department shall complete an antidegradation review and modification, if necessary, of the rules of the board that authorize NPDES general permits. After an antidegradation review of a rule is conducted under this subsection, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review.

(q) Subject to subsection (r), the commissioner shall consider the following factors in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures:

- (1) Creation, expansion, or maintenance of employment.**
- (2) Reduction of the unemployment rate.**
- (3) Increase of median household income.**
- (4) Reduction of the number of households below the poverty level.**
- (5) Increase of the supply of needed housing.**
- (6) Growth in population.**
- (7) Increase of the community tax base.**
- (8) Provision of fire departments, schools, infrastructure, and other necessary public services.**
- (9) Correction of a public health, safety, or environmental problem.**
- (10) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.**
- (11) Improvement of the quality of life for residents in the area.**
- (12) Promotion of the fishing, recreation, and tourism industries.**
- (13) Enhancement of threatened and endangered species.**
- (14) Maintenance of economic competitiveness.**
- (15) Demonstration by the permit applicant that the factors**

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identified and reviewed under subdivisions (1) through (13) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.

(16) Inclusion by the applicant of additional factors that may enhance the social or economic necessity associated with the proposed discharge, such as an approval that:

(A) recognizes social or economic necessity; and

(B) is given to the applicant by:

(i) a legislative body; or

(ii) other government officials.

(17) Any other action or recommendation relevant to the antidegradation demonstration made by a:

(A) state;

(B) county;

(C) township; or

(D) municipality;

potentially affected by the proposed discharge.

(r) In determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, the commissioner:

(1) must give substantial weight to any applicable determinations by governmental entities; and

(2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (q).

(s) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law.

(t) Beginning June 1, 2009, all waters of the state are regulated as one (1) of the following categories:

(1) Outstanding national resource waters.

(2) Outstanding state resource waters.

(3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.

(4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.

(5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.

(6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.

SECTION 8. IC 13-18-3-2.1 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2.1. (a) If a discharge results from an activity for which an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4) is sought, the deadline for the department to adopt antidegradation standards and implementation procedures under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.**

(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to adopt antidegradation standards and implementation procedures.

SECTION 9. IC 13-18-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14. (a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.**

(b) The outstanding state resource water improvement fund shall be administered as follows:

- (1) The fund may be used by the department of environmental management to fund projects that will lead to overall improvement to the water quality of the affected ~~exceptional use water~~ or outstanding state resource water.**
- (2) The treasurer of state may 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.**
- (3) Any interest received accrues to the fund.**
- (4) The expenses of administering the fund shall be paid from the fund."**

Page 2, after line 33, begin a new paragraph and insert:

SECTION 11. IC 13-11-2-72.5 IS REPEALED [EFFECTIVE JUNE 1, 2009].

SECTION 12. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1162 as printed March 25, 2009.)

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1162 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-71.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation (as defined in IC 36-1-2-10); and**
- (2) limits, regulates, or prohibits any of the following with respect to groundwater:**
 - (A) Withdrawal.**
 - (B) Human consumption.**
 - (C) Any other use.**

SECTION 2. IC 13-11-2-71.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust fund", for purposes of IC 13-19-6, refers to the environmental trust fund established by IC 13-19-6-1.**

SECTION 3. IC 13-11-2-110.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control registry", for purposes of IC 13-19-6, refers to the institutional control registry established by IC 13-19-6-1.**

SECTION 4. IC 13-11-2-148, AS AMENDED BY P.L.221-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 148. (a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.**

(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

- (1) a water treatment plant;**
- (2) a wastewater treatment plant; or**
- (3) a water distribution system.**

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.**
- (2) A person who manages the activities of a transfer station that**

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receives municipal waste.

(3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in ~~subsection~~ **subsections (e), (g), and (h)**, means a person:

- (1) in control of; or
- (2) having responsibility for;

the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include the following:

- (1) A person who:
 - (A) does not participate in the management of an underground storage tank;
 - (B) is otherwise not engaged in the:
 - (i) production;
 - (ii) refining; and
 - (iii) marketing;
 of regulated substances; and
 - (C) holds evidence of ownership, primarily to protect the owner's security interest in the tank.

- (2) A person who:
 - (A) does not own or lease, directly or indirectly, the facility or business at which the underground storage tank is located;
 - (B) does not participate in the management of the facility or business described in clause (A); and
 - (C) is engaged only in:
 - (i) filling;
 - (ii) gauging; or
 - (iii) filling and gauging;
 the product level in the course of delivering fuel to an underground storage tank.

(3) A political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that:

- (A) acquires ownership or control of an underground storage tank on a brownfield because of:
 - (i) bankruptcy;
 - (ii) foreclosure;
 - (iii) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
 - (iv) abandonment;
 - (v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

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- (vi) receivership;
- (vii) transfer from another political subdivision or unit of federal or state government;
- (viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (ix) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign; or
- (x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

- (i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or
- (ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 5. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~) **(d), (e), and (f)**

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means:

- (1) for an underground storage tank that:
 - (A) was:
 - (i) in use on November 8, 1984; or
 - (ii) brought into use after November 8, 1984;
 for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or
 - (B) is:
 - (i) in use before November 8, 1984; but
 - (ii) no longer in use on November 8, 1984;
 a person who owned the tank immediately before the discontinuation of the tank's use; or
- (2) a person who conveyed ownership or control of the underground storage tank to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
 - (F) receivership;
 - (G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 - (H) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
 - (I) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

- (1) does not participate in the management of an underground storage tank;
- (2) is otherwise not engaged in the:

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- (A) production;
 - (B) refining; and
 - (C) marketing;
- of regulated substances; and
- (3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(c) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

- (1) bankruptcy;
- (2) foreclosure;
- (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield;

unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(d) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of

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a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

(e) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(f) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 6. IC 13-11-2-151, AS AMENDED BY P.L.221-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

- (1) For a petroleum facility, a person who owns or operates the facility.
- (2) For a petroleum facility where title or control has been conveyed because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
 - (F) receivership;
 - (G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 - (H) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or
 - (I) any other means to conduct remedial actions on a

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brownfield;

to a political subdivision or unit of federal or state government, a person who owned, operated, or otherwise controlled the petroleum facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a political subdivision or unit of federal or state government that acquired ownership or control of the facility through:

- (1) bankruptcy;
- (2) foreclosure;
- (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield.

(c) The term includes a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-24-1:

- (1) in the same manner; and
- (2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

- (1) does not participate in the management of a petroleum facility;
- (2) is otherwise not engaged in the:
 - (A) production;
 - (B) refining; and
 - (C) marketing;
 of petroleum; and

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(3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

(e) The term does not include a nonprofit corporation that acquired ownership or control of a facility to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-24-1 in the same manner and to the same extent as any other nongovernmental entity under IC 13-24-1.

(f) The term does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(g) The term does not include a person that meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 7. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect to land, any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation that:

- (1) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;
- (2) by its terms is intended to run with the land and be binding on successors;
- (3) is recorded with the county recorder's office in the county in which the land is located; ~~and~~
- (4) explains how it can be modified or terminated;
- (5) grants the department access to the land;**
- (6) requires notice to a transferee of:**
 - (A) the land; or**
 - (B) an interest in the land;**

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**of the existence of the restrictive covenant; and
(7) identifies the means by which the environmental files at
the department that apply to the land can be located.**

SECTION 8. IC 13-11-2-233.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for purposes of this chapter **and IC 13-19-6**, means any area of land that is under common ownership and is contained within a continuous border.

SECTION 9. IC 13-12-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation and closure goals, objectives, and standards for activities:

- (1) conducted under IC 13-22 and IC 13-23; and**
- (2) completed before July 1, 2009;**

shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

(b) The remediation and closure goals, objectives, and standards for all remediation projects that:

- (1) are conducted under IC 13-22, IC 13-23, IC 13-24, and IC 13-25-4; and**
- (2) are:**

- (A) in progress on July 1, 2009; or**
- (B) initiated after July 1, 2009;**

shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

~~(b)~~ (c) The groundwater quality standards adopted under IC 13-18-17-5 shall allow, as appropriate, groundwater remediations to be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

SECTION 10. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

- (1) enforce any final order of the commissioner or of one (1) of the boards;
- (2) collect any penalties or fees;
- (3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;
- (4) procure compliance with any standard or rule of one (1) of the boards; ~~or~~
- (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

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- (A) executed before July 1, 2009;**
- (B) approved by the commissioner; and**
- (C) created in connection with any:**
 - (i) remediation;**
 - (ii) closure;**
 - (iii) cleanup; or**
 - (iv) corrective action; or**
 - (v) determination exercising enforcement discretion or of no further action being required;**
- approved by the department under this title; in accordance with the terms of the covenant; or**
- (6) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:**
 - (A) executed after June 30, 2009; and**
 - (B) created in connection with any of the following approved by the department under this title:**
 - (i) A remediation.**
 - (ii) A closure.**
 - (iii) A cleanup.**
 - (iv) A corrective action.**
 - (v) A determination exercising enforcement discretion or of no further action being required.**

SECTION 11. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) Subject to subsection (b), a restrictive covenant executed after June 30, 2009, is not subject to approval by the department.**

(b) The department shall:

- (1) review; and**
 - (2) approve, disapprove, or partially approve and partially disapprove;**
- activities and land use restrictions described in IC 13-11-2-193.5(1) that are proposed as part of a remediation, closure, cleanup, corrective action, or determination exercising enforcement discretion or of no further action being required to be included in a restrictive covenant.**

(c) After 2009, the department may not require the owner of a tract that has paid a fee under IC 13-19-6-2(b) or IC 13-19-6-2(c) with respect to the tract to report to the department the extent of compliance with a restrictive covenant that:

- (1) applies to the tract; and**

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(2) is the basis of the imposition of the fee."

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 13. IC 13-19-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 6. Institutional Control Registry and Environmental Trust Fund

Sec. 1. (a) The following are established:

- (1) The institutional control registry.**
- (2) The environmental trust fund.**

(b) The operations of the institutional control registry are funded solely from the environmental trust fund.

(c) The environmental trust fund:

- (1) shall be administered, held, and managed by the treasurer of state;**
- (2) may be used only for the purposes of this chapter; and**
- (3) consists of:**
 - (A) fees deposited in the environmental trust fund under section 2 of this chapter;**
 - (B) appropriations to the environmental trust fund from the general assembly;**
 - (C) grants, gifts, and donations intended for deposit in the environmental trust fund; and**
 - (D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.**

(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the treasurer of state shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in the same manner as other public money may be invested. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the treasurer of state may invest or cause to be invested all or a part of the environmental trust fund in a fiduciary account with a trustee that is a financial institution.

Sec. 2. (a) The department shall administer the institutional control registry by doing the following:

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(1) Inventory by tract restrictive covenants throughout Indiana that are:

(A) recorded as described in IC 13-11-2-193.5(3), regardless of whether the restrictive covenants were recorded after 2009 or before 2010; and

(B) established as a part of a plan approved, determination exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

(i) The department.

(ii) The United States Environmental Protection Agency.

(2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.

(3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.

(4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).

(5) Develop a program to monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).

(6) Report to the attorney general noncompliance with restrictive covenants referred to in subdivision (1).

(7) Collect fees under subsection (d).

(8) Deposit fees collected under subdivision (7) in the environmental trust fund.

(b) Except as provided in subsection (c), the owner of a tract subject to one (1) or more restrictive covenants:

(1) referred to in subsection (a)(1); and

(2) recorded as described in IC 13-11-2-193.5(3) after 2009; is liable for a fee in the amount of five thousand dollars (\$5,000).

(c) The department shall:

(1) establish a schedule of graduated fees; and

(2) consider the following to establish the fees:

(A) The relative costs of monitoring compliance under subsection (a)(5) among various tracts of real property subject to restrictive covenants.

(B) Whether the tract owner is a governmental entity.

(C) Whether the tract owner has developed and follows an environmental management system (such as International Organization for Standardization 14001) and agrees to provide an annual report to the department.

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(D) Any other factor the department considers relevant in setting graduated fees.

The schedule of graduated fees established under this subsection applies instead of the fee under subsection (b) to owners of real property subject to restrictive covenants throughout Indiana that are recorded as described in IC 13-11-2-193.5(3) after the effective date of the schedule.

(d) A fee imposed under subsection (b) or (c) is payable to the department for deposit into the environmental trust fund not later than thirty (30) days after the recording of the restrictive covenant. If the fee is not paid by that deadline:

- (1) the department shall provide to the attorney general the information necessary for commencement of a collection action; and**
 - (2) the department may withhold, until the fee is paid, the department's approval of the:**
 - (A) remediation;**
 - (B) closure;**
 - (C) cleanup;**
 - (D) corrective action; or**
 - (E) determination exercising enforcement discretion or of no further action being required;**
- under which the restrictive covenant was executed.**

(e) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (a)(1) through (a)(3):

- (1) The state.**
- (2) Officers, agents, and employees of the state, either personally or in their official capacities.**

(f) No person, including the state, the institutional control registry, a political subdivision (as defined in IC 36-1-2-13), or a private person, may rely on the accuracy and completeness of information in the following:

- (1) An inventory under subsection (a)(1).**
- (2) A registry under subsection (a)(2) or (a)(3).**

Sec. 3. (a) The department may do the following:

- (1) Employ:**
 - (A) fiscal consultants;**
 - (B) engineers;**
 - (C) special counsel;**
 - (D) accountants; and**
 - (E) any other consultants, employees, and agents;**

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that the department considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.

(b) Notwithstanding any other law, no direction given by the department to a political subdivision under this chapter, service provided by the department to a political subdivision under this chapter, or other action allowed or taken by the department under this chapter is a defense for or otherwise excuses:

- (1) any act of a political subdivision that violates the law; or**
- (2) any failure by a political subdivision to act as required by law.**

SECTION 14. IC 13-23-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

- (1) The payment of the costs allowed under IC 13-23-9-2, excluding:
 - (A) liabilities to third parties; and
 - (B) the costs of repairing or replacing an underground storage tank; arising out of releases of petroleum.
- (2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:
 - (A) to third parties under IC 13-23-9-3; or
 - (B) for reasonable attorney's fees incurred in defense of a third party liability claim.

(3) Reimbursement of a fee that is:

- (A) paid by the owner of a tract under IC 13-19-6-2(b) or IC 13-19-6-2(c); and**
- (B) payable because the tract is subject to one (1) or more restrictive covenants established to address issues related to an underground storage tank located on the tract.**

SECTION 15. IC 13-23-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of the excess liability trust fund shall process, approve, and deny requests made for payments from the excess liability trust fund under sections 2, and 3, and 3.5 of this chapter.

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SECTION 16. IC 13-23-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) To receive money from the excess liability trust fund under IC 13-23-8-1(3), a claimant must submit to the administrator of the excess liability trust fund for the administrator's approval a copy of a receipt from the department for payment of a fee referred to in IC 13-23-8-1(3).**

(b) If, after receiving a receipt submitted under subsection (a), the administrator determines that the receipt is valid, the administrator shall approve the request for money to be paid from the excess liability trust fund for reimbursement of the fee.

(c) The administrator shall notify the claimant of an approval or a denial of a claim made under subsection (a) not later than sixty (60) days after receiving the request. Except as provided in subsection (f), the administrator shall notify the claimant of all reasons for a denial or partial denial.

(d) Not later than seven (7) days after a request is approved by the administrator under subsection (b), the administrator shall forward a copy of a request approved under this section to the auditor of state.

(e) Not later than thirty (30) days after receiving an approved request under this section, the auditor of state shall pay to the claimant that submitted the approved receipt the approved amount from money available in the excess liability trust fund.

(f) If the administrator denies a claim made under subsection (a), the administrator shall notify the claimant in writing not later than sixty (60) days after receiving the request. The claimant has thirty (30) days after the receipt of the denial to notify the administrator of the claimant's intention to appeal the denial. If the claimant does not notify the administrator of an intention to appeal in the time provided, further review of the application is not required. If an intention to appeal is submitted within the time provided, the administrator has thirty (30) days after the receipt of the notice of the intention to appeal to provide the claimant with all additional reasons for the denial or partial denial of the request or to specify that all reasons have been provided. The claimant has thirty (30) days after receiving notification from the administrator of all additional reasons for the denial or partial denial or notice specifying that all reasons have been provided to file a petition for review of the denial or partial denial.

SECTION 17. IC 13-23-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. If the administrator**

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denies a request made under section 2, ~~or~~ 3, **or 3.5** of this chapter, the owner or operator who made the request may appeal the denial under IC 4-21.5 to the office of environmental adjudication under IC 4-21.5-7.

SECTION 18. IC 13-25-5-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary remediation work plan must specify the remediation objectives for the site.

(b) The remediation objectives for each hazardous substance and any petroleum on the site shall be based on:

- (1) background levels of hazardous substances and petroleum that occur naturally on the site; or
 - (2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:
 - (A) Expected future use of the site.
 - (B) Measurable risks to human health, natural resources, or the environment based on the:
 - (i) activities that take place; and
 - (ii) environmental impact;
- on the site.

(c) **The following apply to voluntary remediation work plans:**

(1) For a voluntary remediation work plan approved by the department under section 10 of this chapter before July 1, 2009, if the:

- ~~(1)~~ **(A)** nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan; and
 - ~~(2)~~ **(B)** the level of the hazardous substance or petroleum is demonstrated to be below:
 - ~~(A)~~ **(i)** background levels of the hazardous substances and petroleum that occur naturally on the site; or
 - ~~(B)~~ **(ii)** the risk based levels developed under subsection (d);
- additional action is not necessary to protect human health or the environment.

(2) For a site that does not on July 1, 2009, have a voluntary remediation work plan approved by the department under section 10 of this chapter, if the:

- (A) nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan, considering the remediation objectives developed under this section; and**

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(B) the level of the hazardous substance or petroleum is demonstrated to be below:

(i) background levels of the hazardous substances and petroleum that occur naturally on the site; or

(ii) the risk based levels developed under subsection (d); additional action is not necessary to protect human health or the environment.

(d) Risk based remediation objectives shall be based on one (1) of the following:

(1) Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.

(2) Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.

(3) For voluntary remediation work plans approved by the department under section 10 of this chapter before July 1, 2009, levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors.

(4) For a site that does not on July 1, 2009, have a voluntary remediation work plan approved by the department under section 10 of this chapter, levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that:

(A) manage risk; and

(B) control completed or potential exposure pathways.

(e) For a site that does not on July 1, 2009, have a voluntary remediation work plan approved by the department under section 10 of this chapter, the department shall consider and give effect to restrictive covenants and environmental restrictive ordinances in evaluating risk based remediation proposals.

SECTION 19. IC 13-25-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) If the commissioner issues a certificate to a person under section 16 of this chapter, the governor shall also provide the person with a covenant not to sue for any liability, including future liability, or a claim resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

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- (b) A covenant not to sue issued under this section bars suit against:
 - (1) a person who received the certificate of completion under section 16 of this chapter; or
 - (2) any other person who receives the certificate of completion:
 - (A) through a legal transfer of the certificate of completion; or
 - (B) by acquiring property to which the certificate of completion applies;

from all public or private claims arising under this title or rules adopted under this title in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved voluntary remediation work plan, except as provided in subsection (c).

(c) A covenant not to sue issued under this section may not apply to future liability for a condition or the extent of a condition that:

- (1) was present:
 - (A) on property that was involved in an approved and completed voluntary remediation work plan; and
 - (B) at the time the commissioner issued the certificate of completion under section 16 of this chapter; and**
- (2) was not known to the commissioner at the time the commissioner issued the certificate of completion under section 16 of this chapter.

(d) A certificate of completion issued under section 16 of this chapter may include conditions that must be performed or maintained after issuance of the certificate.

(e) A covenant not to sue issued under this section may include conditions that must be performed or maintained after issuance of the covenant.

- ~~(f)~~ **(f)** Except as:
 - (1) provided under federal law; or
 - (2) agreed to by a federal governmental entity;

a covenant not to sue issued under this section may not release a person from liability to the federal government for claims based on federal law.

~~(g)~~ **(g)** After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

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- (1) the applicant fails to file a proposed voluntary remediation work plan within the time period established in section 8(a)(8) of this chapter;
- (2) the commissioner rejects a proposed voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;
- (3) the applicant or another person proceeding under this chapter on behalf of the applicant fails to complete a voluntary remediation in accordance with an approved voluntary remediation work plan; or
- (4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter.

However, if the commissioner withdraws approval of the plan under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

(f) **(h)** A person who purchases property that is the subject of a voluntary remediation agreement at the time the property is purchased may not be subject to an enforcement action to the same extent as an applicant under subsection ~~(e)~~: **(g)**."

Page 2, after line 33, begin a new paragraph and insert:

"SECTION 21. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning actions relating to the institutional control registry).**

SECTION 22. IC 36-1-2-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.7. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation; and**
- (2) limits, regulates, or prohibits one (1) or more of the following with respect to groundwater:**
 - (A) Withdrawal.**
 - (B) Human consumption.**
 - (C) Any other use.**

SECTION 23. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The legislative body of a municipal corporation shall:**

- (1) subject to subsection (b), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an**

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**environmental restrictive ordinance; and
(2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(b) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (a)(1).

(c) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (a).

(d) The failure of an environmental restrictive ordinance to comply with subsection (c) does not void the ordinance.

SECTION 24. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) An ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2) consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

- (1) the county executive proclaims the urgent necessity; and
- (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) **The following apply** in addition to the other requirements of this section:

- (1) An ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 is considered adopted only if it is:
 - (~~1~~) **(A)** approved by signature of a majority of the county executive;
 - (~~2~~) **(B)** neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or
 - (~~3~~) **(C)** passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.

- (2) **The legislative body of a county shall:**
 - (A) subject to subdivision (3), give written notice to the**

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department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(B) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(3) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subdivision (2)(A).

(4) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subdivision (2).

(5) The failure of an environmental restrictive ordinance to comply with subdivision (4) does not void the ordinance.

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

(1) approve the ordinance or resolution, by signature of a majority of the executive, and send the legislative body a message announcing its approval; or

(2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(f) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 25. IC 36-3-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance or resolution passed by a legislative body is considered adopted when

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it is:

- (1) signed by the presiding officer; and
- (2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

- (1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.
- (2) An ordinance or resolution approving or modifying the budget of a political subdivision that the legislative body is permitted by statute to review.
- (3) A resolution making an appointment that the legislative body is authorized to make.
- (4) A resolution selecting officers or employees of the legislative body.
- (5) A resolution prescribing rules for the internal management of the legislative body.
- (6) A zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(c) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under subsection (d); or
- (2) there is an urgent necessity requiring its immediate effectiveness, the executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in the county.

(d) If a legislative body publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(e) Unless a legislative body provides in an ordinance or resolution

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for a later effective date, the ordinance or resolution takes effect when it is adopted, subject to subsections (c) and (d).

(f) Subsections (a), (c), (d), and (e) do not apply to zoning ordinances or amendments to zoning ordinances, or resolutions approving comprehensive plans, that are adopted under IC 36-7.

(g) The legislative body shall:

(1) subject to subsection (h), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(h) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (g)(1).

(i) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (g).

(j) The failure of an environmental restrictive ordinance to comply with subsection (i) does not void the ordinance.

SECTION 26. IC 36-4-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is:

- (1) signed by the presiding officer; and
- (2) either approved by the city executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under subsection (c); or
- (2) there is an urgent necessity requiring its immediate effectiveness, the city executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in each of the districts from which members are elected to the legislative body.

(c) Except as provided in subsection (e), if a city publishes any of

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its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(f) The legislative body shall:

- (1) subject to subsection (g), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**
- (2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(g) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

SECTION 27. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance,

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order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under IC 36-1-5; or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(d) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(e) The legislative body shall:

- (1) subject to subsection (f), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**
- (2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

(f) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (e)(1).

(g) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (e).

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(h) The failure of an environmental restrictive ordinance to comply with subsection (g) does not void the ordinance.

SECTION 28. [EFFECTIVE JULY 1, 2009] (a) The department of environmental management shall do the following:

(1) Conduct a study to develop recommendations for policies and legislation necessary to impose fees as described in IC 13-19-6-2, as added by this act, with respect to:

(A) real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, as in effect before the effective date of this act, that were recorded before 2010; and

(B) real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, either as amended by this act or as in effect before the effective date of this act, except that they are not imposed as a part of a plan, or a determination exercising enforcement discretion or of no further action being required, approved by either or both of the following:

(i) The department of environmental management.

(ii) The United States Environmental Protection Agency.

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

(A) restrictive covenants (as defined in IC 13-11-2-193.5, as amended by this act); and

(B) environmental restrictive ordinances (as defined in IC 36-1-2-4.7, as added by this act);

into the "One Call" system managed by the Indiana Underground Plant Protection Service under IC 8-1-26.

(3) Before September 1, 2010, report the results of the studies under subdivisions (1) and (2) to the environmental quality service council.

(b) This SECTION expires January 1, 2011."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1162 as printed March 25, 2009.)

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