CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1162

Citations Affected: IC 13-11-2; IC 13-12-3-2; IC 13-14-2; IC 13-15; IC 13-18; IC 13-25-5; IC 13-26-5-9; IC 36-1; IC 36-2-4-8; IC 36-3-4-14; IC 36-4-6-14; IC 36-5-2-10.

Synopsis: Environmental matters. CONFERENCE COMMITTEE REPORT FOR EHB 1162. Provides that: (1) 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; and (2) the approval referred to is an approval required by ordinance, rule, or regulation in effect at the time of the permit application. 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. Amends the definition of "restrictive covenant". 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 and delineates the authority of IDEM to enforce covenants. 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. 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 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 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 classifications of all waters of the state. For all waters of the state, requires IDEM to complete an antidegradation review of the rules of the WPCB that authorize National Pollutant Discharge Elimination System (NPDES) general permits. Permits the WPCB to modify those rules for purposes of antidegradation compliance. 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. Provides that an NPDES general permit may not be used to authorize a discharge into an outstanding national resource water (ONRW) or an outstanding state resource water (OSRW), except that a short term, temporary storm water discharge to an ONRW or to an OSRW may be permitted under an NPDES general permit if the IDEM commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge. Establishes the factors the IDEM commissioner must consider in antidegradation reviews for certain NPDES permits. Establishes a deadline for IDEM to complete the antidegradation review 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. Requires the IDEM commissioner to annually report to the environmental quality service council (EQSC) plans for the use and implementation of the outstanding state resource water improvement fund and the balance in the fund. Requires the EQSC to study: (1) the advisability of establishing an institutional control registry an environmental trust fund; and (2) the feasibility of incorporating notice of restrictive covenants and environmental restrictive ordinances into the "One Call" system. **(This conference committee report: (1) deletes the provisions concerning the institutional control registry and the environmental trust fund; (2) deletes the provision eliminating IDEM authority to require compliance reports from property owners; (3) provides that the amended definition of "restrictive covenant" applies only to restrictions or obligations executed after June 30, 2009; (4) applies the provision concerning consistency with the remediation objectives applicable to voluntary remediation work plans regardless of when the remediation project begins; (5) applies to all sites entered into the voluntary remediation program, regardless of when the entry occurred, the provisions concerning additional action after creation of a voluntary remediation work plan and concerning the factors on which risk based remediation objectives based on site specific risk assessments must be based; (6) adds the provision prohibiting the use of an NPDES general permit to authorize a discharge into an ONRW or an OSRW, but allowing NPDES permitting of short term, temporary storm water discharges under certain circumstances; (7) adjusts the factors the IDEM commissioner must consider in antidegradation reviews for certain NPDES permits; (8) establishes a deadline for IDEM to complete the antidegradation review and to act on applications for approval of associated NPDES permits; (9) deletes the requirement that IDEM study certain issues; (10) adds the provision that the local approval of a project subject to a permit is an approval required by ordinance, rule, or regulation in effect at the time of the permit application; (11) adds the requirement for the IDEM commissioner to annually report to the EQSC information on the outstanding state resource water improvement fund; and (12) adds the requirement that the EQSC study certain issues.)**

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

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1162 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

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(l)~~ **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 13-11-2-71.2 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 3. 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 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 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;
(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 13-11-2-149.5 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 **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.

SECTION 6. 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))** 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:
(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 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 7. 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 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

(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 8. 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) is executed before July 1, 2009, and:

~~(1)~~ **(A)** 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)~~ **(B)** by its terms is intended to run with the land and be binding on successors;

~~(3)~~ **(C)** is recorded with the county recorder's office in the county in which the land is located; and

~~(4)~~ **(D)** explains how it can be modified or terminated; **or**

(2) is executed after June 30, 2009, and:

(A) 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;

(B) by its terms is intended to run with the land and be binding on successors;

(C) is recorded with the county recorder's office in the county in which the land is located;

(D) explains how it can be modified or terminated;

(E) grants the department access to the land;

(F) requires notice to a transferee of:

(i) the land; or

(ii) an interest in the land;

of the existence of the restrictive covenant; and

(G) identifies the means by which the environmental files at the department that apply to the land can be located.

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~~ **all remediation projects** conducted under IC 13-22, ~~and~~ IC 13-23, **IC 13-24, and IC 13-25-4** shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5, **regardless of whether the remediation project begins before July 1, 2009, or after June 30, 2009.**

(b) 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:**

(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.

SECTION 12. IC 13-15-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** Whenever a permit is required by any rule of one (1) of the boards under IC 13-15-1 for the construction, installation, operation, or modification of any facility, equipment, or device, the permit may be issued only after the department staff has:

(1) approved the plans and specifications; and

(2) determined that the facility, equipment, or device meets the requirement of the rule**.**

(b) Notwithstanding subsection (a) and subject to subsection (c), 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.

(c) Subsection (b) applies only to an approval required in an applicable ordinance, rule, or regulation in effect at the time the person submits the permit application to the issuing state agency.

SECTION 13. 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 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 14. IC 13-18-2-3 IS AMENDED TO READ AS 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~~ **a** rule **that:**

(1) establishes the methodology to be used in identifying waters as impaired; ~~The rule must specify~~ **and**

(2) specifies 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 either or both of the following apply:

(A) The surface water does not attain water quality standards (as established in 327 IAC 2-1 and 327 IAC 2-1.5) due to an individual pollutant, multiple pollutants, pollution, or an unknown cause of impairment.

(B) The surface water:

(i) receives a thermal discharge from one (1) or more point sources; and

(ii) does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

(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 15. 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 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.

~~(i)~~ **(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.

~~(j)~~ **(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.

~~(k)~~ **(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.

~~(l)~~ **(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 **IAC** 2-1.5-4(b) are met.

~~(m)~~ **(l)** The procedures provided by rule under subsection ~~(l)~~ **(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.~~

~~(m)~~ **(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 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 of the rules of the board that authorize NPDES general permits. The board may modify those rules for purposes of antidegradation compliance. 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. An NPDES general permit may not be used to authorize a discharge into an outstanding national resource water or an outstanding state resource water, except that

a short term, temporary storm water discharge to an outstanding national resource water or to an outstanding state resource water may be permitted under an NPDES general permit if the commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge.

(q) Subsection (r) applies to an application for:

(1) 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); or

(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in subsection (l)(1).

(r) For purposes of an antidegradation review with respect to an application referred to in subsection (q), the applicant shall demonstrate at the time the application is submitted to the department, and the commissioner shall review:

(1) an analysis of alternatives to the proposed discharge; and

(2) subject to subsection (s), social or economic factors indicating the importance of the proposed discharge if alternatives to the proposed discharge are not practicable.

(s) Subject to subsection (t), the commissioner shall consider the following factors in determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures:

(1) Creation, expansion, or maintenance of employment.

(2) The unemployment rate.

(3) The median household income.

(4) The number of households below the poverty level.

(5) Community housing needs.

(6) Change in population.

(7) The impact on 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) The impact on the quality of life for residents in the area.

(12) The impact on the fishing, recreation, and tourism industries.

(13) The impact on threatened and endangered species.

(14) The impact on economic competitiveness.

(15) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (14) 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 importance associated with

the proposed discharge, such as an approval that:
(A) recognizes social or economic importance; 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.
(18) Any other action or recommendation relevant to the antidegradation demonstration received during the public participation process.
(19) Any other factors that the commissioner:
(A) finds relevant; or
(B) is required to consider under the Clean Water Act.
(t) In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located 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 (s).
(u) 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.
(v) Beginning June 1, 2009, all waters of the state are classified in 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 16. 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:**
(1) 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); or
(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant

lowering of water quality as defined in IC 13-18-3-2(l)(1); is sought, the deadline for the department to complete the antidegradation review 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 complete the antidegradation review.

SECTION 17. 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.

(c) The commissioner shall annually report to the environmental quality service council:

(1) plans for the use and implementation of the outstanding state resource water improvement fund; and

(2) the balance in the fund.

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. **Subsections (b) through (e) apply to a site regardless of whether the site was entered into the voluntary remediation program before July 1, 2009, or after June 30, 2009.**

(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) If the:

(1) 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

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

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

(B) 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) 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) 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.

(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.

~~(d)~~ **(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.

~~(e)~~ **(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:

(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 ~~(c).~~ **(g).**

SECTION 20. 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):

(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.

SECTION 21. 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 22. 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 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 23. 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 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 24. 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 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 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 25. 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 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 26. 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 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).

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

SECTION 27. [EFFECTIVE UPON PASSAGE] **(a) The environmental quality service council established by IC 13-13-7-1 shall do the following:**

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

(A) as set forth in SB 460-2009; or

(B) in a different manner.

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

(A) restrictive covenants; and

(B) environmental restrictive ordinances;

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

(b) The environmental quality service council shall include its findings and recommendations developed under subsection (a) in the council's 2009 final report to the legislative council.

(c) This SECTION expires January 1, 2010.

SECTION 28. IC 13-11-2-72.5 IS REPEALED [EFFECTIVE JUNE 1, 2009].

SECTION 29. **An emergency is declared for this act.**

(Reference is to EHB 1162 as reprinted April 15, 2009.)

Conference Committee Report
on
Engrossed House Bill 1162

Signed by:

_____	_____
Representative Tyler Chairperson	Senator Gard
_____	_____
Representative Dodge	Senator Errington
House Conferees	**Senate Conferees**