



February 19, 2010

**ENGROSSED  
SENATE BILL No. 209**

DIGEST OF SB 209 (Updated February 17, 2010 12:49 pm - DI 69)

**Citations Affected:** IC 13-11; IC 13-14; IC 13-15; IC 13-18; IC 13-20; IC 13-23; IC 13-25; IC 13-26; IC 36-1; IC 36-2; IC 36-3; IC 36-4; IC 36-5.

**Synopsis:** Environmental issues. Provides that the electronic digital signature act does not apply to the department of environmental management (IDEM). Amends definitions of "owner" and "operator" and defines "foreclosure" to delineate exceptions from potential liability for cleanup that: (1) are consistent with federal law under underground storage tank, petroleum facility, and hazardous substance facility statutes; and (2) apply to lenders that foreclose on sites at which they did not participate in management before foreclosure and that undertake certain enumerated activities after foreclosure. Replaces the undefined term "sanitary landfill" with "solid waste landfill". Establishes deadlines for action by IDEM on various permit applications with respect to certain solid waste processing facilities. Expands the grounds on which the commissioner of IDEM may suspend or revoke a drinking water or wastewater operator certification. For purposes of wastewater management statutes, replaces the term "wastewater" with "septage". Provides that wastewater management statutes apply to land application of septage.  
(Continued next page)

**Effective:** Upon passage; July 1, 2010.

**Gard, Charbonneau, Tallian, Breaux**  
(HOUSE SPONSORS — DVORAK, WOLKINS, BARNES)

January 5, 2010, read first time and referred to Committee on Energy and Environmental Affairs.

January 21, 2010, amended, reported favorably — Do Pass.

January 26, 2010, read second time, amended, ordered engrossed.

January 27, 2010, engrossed.

January 28, 2010, read third time, passed. Yeas 48, nays 0.

**HOUSE ACTION**

February 2, 2010, read first time and referred to Committee on Environmental Affairs.

February 18, 2010, amended, reported — Do Pass.

ES 209—LS 6618/DI 52+



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Digest Continued

Provides that a person who owns agricultural land in St. Joseph County is exempt from the requirement to connect to a regional sewage district's sewer system and to discontinue use of a septic tank soil absorption system if the person, at the person's own expense, obtains and provides to the district a certification from the local health department that the septic tank soil absorption system is functioning satisfactorily. Specifies that: (1) a person who qualifies for the exemption may not be required to connect to the district's sewer system for a period of five years beginning on the district's sewer system's anticipated connection date; and (2) if ownership of the exempt property passes from the owner who qualified for the exemption to another person during the exemption period, the exemption does not apply to the subsequent owner of the property. Provides that an environmental restrictive ordinance (ERO) is an ordinance adopted by a municipal corporation that seeks to control the use of groundwater in a manner and to a degree that protects human health and the environment against unacceptable exposure to a release of hazardous substances, petroleum, or both. Requires IDEM to give written notice to a municipal corporation that the department is relying on an ERO adopted by the municipal corporation as part of a risk based remediation proposal. Requires a municipal corporation to notify IDEM of adoption, repeal, or amendment of an ERO only if the municipal corporation received that written notice. Modifies the deductible for claims against the underground petroleum storage tank excess liability trust fund by certain underground storage tank owners.

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February 19, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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## ENGROSSED SENATE BILL No. 209

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 13-11-2-71.2, AS ADDED BY P.L.78-2009,  
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 UPON PASSAGE]: Sec. 71.2. "Environmental restrictive ordinance"  
 4 means, with respect to land, any ordinance that:  
 5 (1) is adopted by a municipal corporation (as defined in  
 6 IC 36-1-2-10); and  
 7 (2) ~~limits, regulates, or prohibits any of the following with respect~~  
 8 **to seeks to control the use of** groundwater  
 9 (A) Withdrawal;  
 10 (B) Human consumption;  
 11 (C) Any other use;  
 12 **in a manner and to a degree that protects human health and**  
 13 **the environment against unacceptable exposure to a release of**  
 14 **hazardous substances or petroleum, or both.**  
 15 SECTION 2. IC 13-11-2-85.6 IS ADDED TO THE INDIANA  
 16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

ES 209—LS 6618/DI 52+



[EFFECTIVE UPON PASSAGE]: **Sec. 85.6. "Foreclosure", for purposes of sections 148(e)(2), 150(c), and 151(e) of this chapter, means the acquisition of a vessel or facility for purposes of IC 13-25-4-8(c), an underground storage tank for purposes of IC 13-23-13, or a petroleum facility for purposes of IC 13-24-1 through any of the following:**

**(1) If the vessel or facility, underground storage tank, or petroleum facility was security for an extension of credit previously contracted:**

**(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure;**

**(B) a deed in lieu of foreclosure or a similar conveyance from a trustee; or**

**(C) repossession.**

**(2) Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement.**

**(3) Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility, underground storage tank, or petroleum facility in order to protect the security interest of the person.**

SECTION 3. IC 13-11-2-148, AS AMENDED BY P.L.78-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **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 subsections (e), (g), and (h), means a person:**

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

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1 the daily operation of an underground storage tank.

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

4 (1) A person who:

5 (A) does not participate in the management of an underground  
6 storage tank;

7 (B) is otherwise not engaged in the:

8 (i) production;

9 (ii) refining; and

10 (iii) marketing;

11 of regulated substances; and

12 (C) holds evidence of ownership, primarily to protect the  
13 owner's security interest in the tank.

14 **(2) A person that is a lender that did not participate in  
15 management of an underground storage tank before  
16 foreclosure, notwithstanding that the person:**

17 **(A) forecloses on the vessel or facility; and**

18 **(B) after foreclosure, sells, re-leases (in the case of a lease  
19 finance transaction), or liquidates the underground storage  
20 tank, maintains business activities, winds up operations,  
21 undertakes a response action under Section 107(d)(1) of  
22 CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of  
23 an on-scene coordinator appointed under the National  
24 Contingency Plan with respect to the underground storage  
25 tank, or takes any other measure to preserve, protect, or  
26 prepare the underground storage tank prior to sale or  
27 disposition;**

28 **if the person seeks to sell, re-lease (in the case of a lease  
29 finance transaction), or otherwise divest the person of the  
30 underground storage tank at the earliest practicable,  
31 commercially reasonable time, on commercially reasonable  
32 terms, taking into account market conditions and legal and  
33 regulatory requirements.**

34 ~~(2)~~ **(3) A person who:**

35 (A) does not own or lease, directly or indirectly, the facility or  
36 business at which the underground storage tank is located;

37 (B) does not participate in the management of the facility or  
38 business described in clause (A); and

39 (C) is engaged only in:

40 (i) filling;

41 (ii) gauging; or

42 (iii) filling and gauging;

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1 the product level in the course of delivering fuel to an  
 2 underground storage tank.  
 3 ~~(3)~~ (4) A political subdivision (as defined in IC 36-1-2-13) or unit  
 4 of federal or state government that:  
 5 (A) acquires ownership or control of an underground storage  
 6 tank on a brownfield because of:  
 7 (i) bankruptcy;  
 8 (ii) foreclosure;  
 9 (iii) tax delinquency, including an acquisition under  
 10 IC 6-1.1-24 or IC 6-1.1-25;  
 11 (iv) abandonment;  
 12 (v) the exercise of eminent domain, including any purchase  
 13 of property once an offer to purchase has been tendered  
 14 under IC 32-24-1-5;  
 15 (vi) receivership;  
 16 (vii) transfer from another political subdivision or unit of  
 17 federal or state government;  
 18 (viii) acquiring an area needing redevelopment (as defined  
 19 in 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  
 22 IC 36-7-15.1-15.5;  
 23 (ix) other circumstances in which the political subdivision  
 24 or unit of federal or state government involuntarily acquired  
 25 an interest in the property because of the political  
 26 subdivision's or unit's function as sovereign; or  
 27 (x) any other means to conduct remedial actions on a  
 28 brownfield; and  
 29 (B) is engaged only in activities in conjunction with:  
 30 (i) investigation or remediation of hazardous substances,  
 31 petroleum, and other pollutants associated with a  
 32 brownfield, including complying with land use restrictions  
 33 and institutional controls; or  
 34 (ii) monitoring or closure of an underground storage tank;  
 35 unless existing contamination on the brownfield is exacerbated  
 36 due to gross negligence or intentional misconduct by the  
 37 political subdivision or unit of federal or state government.  
 38 (f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton  
 39 misconduct constitutes gross negligence.  
 40 (g) "Operator" does not include a person that after June 30, 2009,  
 41 meets, for purposes of the determination under IC 13-23-13 of liability  
 42 for a release from an underground storage tank, the exemption criteria

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1 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for  
2 purposes of the determination of liability for a release of a hazardous  
3 substance.

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

10 SECTION 4. IC 13-11-2-150, AS AMENDED BY P.L.78-2009,  
11 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
12 UPON PASSAGE]: Sec. 150. (a) "Owner", for purposes of IC 13-23  
13 (except as provided in subsections (b), (c), (d), (e), and (f)) means:

- 14 (1) for an underground storage tank that:
  - 15 (A) was:
    - 16 (i) in use on November 8, 1984; or
    - 17 (ii) brought into use after November 8, 1984;
  - 18 for the storage, use, or dispensing of regulated substances, a  
19 person who owns the underground storage tank; or
  - 20 (B) ~~is:~~ was:
    - 21 (i) in use before November 8, 1984; but
    - 22 (ii) no longer in use on November 8, 1984;
  - 23 a person who owned the tank immediately before the  
24 discontinuation of the tank's use; or
- 25 (2) a person who conveyed ownership or control of the  
26 underground storage tank to a political subdivision (as defined in  
27 IC 36-1-2-13) or unit of federal or state government because of:
  - 28 (A) bankruptcy;
  - 29 (B) foreclosure;
  - 30 (C) tax delinquency, including a conveyance under  
31 IC 6-1.1-24 or IC 6-1.1-25;
  - 32 (D) abandonment;
  - 33 (E) the exercise of eminent domain, including any purchase of  
34 property once an offer to purchase has been tendered under  
35 IC 32-24-1-5;
  - 36 (F) receivership;
  - 37 (G) acquiring an area needing redevelopment (as defined in  
38 IC 36-7-1-3) or conducting redevelopment activities,  
39 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,  
40 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
  - 41 (H) other circumstances in which a political subdivision or  
42 unit of federal or state government involuntarily acquired

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1 ownership or control because of the political subdivision's or  
 2 unit's function as sovereign; or  
 3 (I) any other means to conduct remedial actions on a  
 4 brownfield;  
 5 if the person was a person described in subdivision (1)  
 6 immediately before the person conveyed ownership or control of  
 7 the underground storage tank.  
 8 (b) "Owner", for purposes of IC 13-23-13, does not include a person  
 9 who:  
 10 (1) does not participate in the management of an underground  
 11 storage tank;  
 12 (2) is otherwise not engaged in the:  
 13 (A) production;  
 14 (B) refining; and  
 15 (C) marketing;  
 16 of regulated substances; and  
 17 (3) holds indicia of ownership primarily to protect the owner's  
 18 security interest in the tank.  
 19 **(c) "Owner", for purposes of IC 13-23, does not include a**  
 20 **person that is a lender that did not participate in management of**  
 21 **an underground storage tank before foreclosure, notwithstanding**  
 22 **that the person:**  
 23 **(1) forecloses on the underground storage tank; and**  
 24 **(2) after foreclosure, sells, re-leases (in the case of a lease**  
 25 **finance transaction), or liquidates the underground storage**  
 26 **tank, maintains business activities, winds up operations,**  
 27 **undertakes a response action under Section 107(d)(1) of**  
 28 **CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an**  
 29 **on-scene coordinator appointed under the National**  
 30 **Contingency Plan with respect to the underground storage**  
 31 **tank, or takes any other measure to preserve, protect, or**  
 32 **prepare the underground storage tank prior to sale or**  
 33 **disposition;**  
 34 **if the person seeks to sell, re-lease (in the case of a lease finance**  
 35 **transaction), or otherwise divest the person of the underground**  
 36 **storage tank at the earliest practicable, commercially reasonable**  
 37 **time, on commercially reasonable terms, taking into account**  
 38 **market conditions and legal and regulatory requirements.**  
 39 ~~(c)~~ (d) "Owner", for purposes of IC 13-23, does not include a  
 40 political subdivision (as defined in IC 36-1-2-13) or unit of federal or  
 41 state government that acquired ownership or control of an underground  
 42 storage tank because of:

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- 1 (1) bankruptcy;  
 2 (2) foreclosure;  
 3 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or  
 4 IC 6-1.1-25;  
 5 (4) abandonment;  
 6 (5) the exercise of eminent domain, including any purchase of  
 7 property once an offer to purchase has been tendered under  
 8 IC 32-24-1-5;  
 9 (6) receivership;  
 10 (7) transfer from another political subdivision or unit of federal or  
 11 state government;  
 12 (8) acquiring an area needing redevelopment (as defined in  
 13 IC 36-7-1-3) or conducting redevelopment activities, specifically  
 14 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,  
 15 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;  
 16 (9) other circumstances in which the political subdivision or unit  
 17 of federal or state government involuntarily acquired ownership  
 18 or control because of the political subdivision's or unit's function  
 19 as sovereign; or  
 20 (10) any other means to conduct remedial actions on a  
 21 brownfield;  
 22 unless the political subdivision or unit of federal or state government  
 23 causes or contributes to the release or threatened release of a regulated  
 24 substance, in which case the political subdivision or unit of federal or  
 25 state government is subject to IC 13-23 in the same manner and to the  
 26 same extent as a nongovernmental entity under IC 13-23.  
 27 ~~(d)~~ (e) "Owner", for purposes of IC 13-23, does not include a  
 28 nonprofit corporation that acquired ownership or control of an  
 29 underground storage tank to assist and support a political subdivision's  
 30 revitalization and reuse of a brownfield for noncommercial purposes,  
 31 including conservation, preservation, and recreation, unless the  
 32 nonprofit corporation causes or contributes to the release or threatened  
 33 release of a regulated substance, in which case the nonprofit  
 34 corporation is subject to IC 13-23 in the same manner and to the same  
 35 extent as any other nongovernmental entity under IC 13-23.  
 36 ~~(e)~~ (f) "Owner" does not include a person that after June 30, 2009,  
 37 meets, for purposes of the determination under IC 13-23-13 of liability  
 38 for a release from an underground storage tank, the exemption criteria  
 39 under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for  
 40 purposes of the determination of liability for a release of a hazardous  
 41 substance.  
 42 ~~(f)~~ (g) "Owner" does not include a person that meets, for purposes

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1 of the determination under IC 13-23-13 of liability for a release from  
2 an underground storage tank, the exemption criteria under Section  
3 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the  
4 determination of liability for a release of a hazardous substance, except  
5 that the person acquires ownership of the facility after June 30, 2009.

6 SECTION 5. IC 13-11-2-151, AS AMENDED BY P.L.78-2009,  
7 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 151. (a) "Owner or operator", for purposes of  
9 IC 13-24-1, means the following:

10 (1) For a petroleum facility, a person who owns or operates the  
11 facility.

12 (2) For a petroleum facility where title or control has been  
13 conveyed because of:

14 (A) bankruptcy;

15 (B) foreclosure;

16 (C) tax delinquency, including a conveyance under  
17 IC 6-1.1-24 or IC 6-1.1-25;

18 (D) abandonment;

19 (E) the exercise of eminent domain, including any purchase of  
20 property once an offer to purchase has been tendered under  
21 IC 32-24-1-5;

22 (F) receivership;

23 (G) acquiring an area needing redevelopment (as defined in  
24 IC 36-7-1-3) or conducting redevelopment activities,  
25 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,  
26 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

27 (H) other circumstances in which a political subdivision (as  
28 defined in IC 36-1-2-13) or unit of federal or state government  
29 involuntarily acquired title or control because of the political  
30 subdivision's or unit's function as sovereign; or

31 (I) any other means to conduct remedial actions on a  
32 brownfield;

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

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

40 (1) bankruptcy;

41 (2) foreclosure;

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

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- 1 IC 6-1.1-25;  
 2 (4) abandonment;  
 3 (5) the exercise of eminent domain, including any purchase of  
 4 property once an offer to purchase has been tendered under  
 5 IC 32-24-1-5;  
 6 (6) receivership;  
 7 (7) transfer from another political subdivision or unit of federal or  
 8 state government;  
 9 (8) acquiring an area needing redevelopment (as defined in  
 10 IC 36-7-1-3) or conducting redevelopment activities, specifically  
 11 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,  
 12 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;  
 13 (9) other circumstances in which the political subdivision or unit  
 14 of federal or state government involuntarily acquired ownership  
 15 or control because of the political subdivision's or unit's function  
 16 as sovereign; or  
 17 (10) any other means to conduct remedial actions on a brownfield.  
 18 (c) The term includes a political subdivision or unit of federal or  
 19 state government that causes or contributes to the release or threatened  
 20 release of a regulated substance, in which case the political subdivision  
 21 or unit of federal or state government is subject to IC 13-24-1:  
 22 (1) in the same manner; and  
 23 (2) to the same extent;  
 24 as a nongovernmental entity under IC 13-24-1.  
 25 (d) The term does not include a person who:  
 26 (1) does not participate in the management of a petroleum facility;  
 27 (2) is otherwise not engaged in the:  
 28 (A) production;  
 29 (B) refining; and  
 30 (C) marketing;  
 31 of petroleum; and  
 32 (3) holds evidence of ownership in a petroleum facility, primarily  
 33 to protect the owner's security interest in the petroleum facility.  
 34 **(e) The term does not include a person that is a lender that did**  
 35 **not participate in management of a petroleum facility before**  
 36 **foreclosure, notwithstanding that the person:**  
 37 **(1) forecloses on the petroleum facility; and**  
 38 **(2) after foreclosure, sells, re-leases (in the case of a lease**  
 39 **finance transaction), or liquidates the petroleum facility,**  
 40 **maintains business activities, winds up operations, undertakes**  
 41 **a response action under Section 107(d)(1) of CERCLA (42**  
 42 **U.S.C. 9607(d)(1)) or under the direction of an on-scene**

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1           **coordinator appointed under the National Contingency Plan**  
 2           **with respect to the petroleum facility, or takes any other**  
 3           **measure to preserve, protect, or prepare the petroleum**  
 4           **facility prior to sale or disposition;**  
 5           **if the person seeks to sell, re-lease (in the case of a lease finance**  
 6           **transaction), or otherwise divest the person of the petroleum**  
 7           **facility at the earliest practicable, commercially reasonable time,**  
 8           **on commercially reasonable terms, taking into account market**  
 9           **conditions and legal and regulatory requirements.**

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

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

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

30           SECTION 6. IC 13-11-2-167 IS AMENDED TO READ AS  
 31           FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 167. "Portable sanitary  
 32           unit", for purposes of ~~IC 13-18-12~~, **this chapter**, includes the  
 33           following:

- 34           (1) Portable toilets.
- 35           (2) Mobile restrooms.
- 36           (3) Similar devices or equipment of a portable nature containing  
 37           sanitary facilities for temporary or short term use.

38           SECTION 7. IC 13-11-2-199.2 IS ADDED TO THE INDIANA  
 39           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 40           [EFFECTIVE JULY 1, 2010]: **Sec. 199.2. "Septage", for purposes of**  
 41           **this chapter and IC 13-18-12, means the following:**

- 42           (1) The following from sewage disposal systems:

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- 1           **(A) Human excreta.**
- 2           **(B) Water.**
- 3           **(C) Scum.**
- 4           **(D) Sludge.**
- 5           **(E) Sewage.**
- 6           **(F) Incidental or accidental seepage.**
- 7           **(2) Retained contents of sewage holding tanks and portable**
- 8           **sanitary units.**
- 9           **(3) Grease, fats, and retained wastes from grease traps or**
- 10           **interceptors.**
- 11           **(4) Human wastes carried in liquid from ordinary living**
- 12           **processes.**

13           SECTION 8. IC 13-11-2-199.3 IS ADDED TO THE INDIANA  
 14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2010]: **Sec. 199.3. "Septage management",**  
 16 **for purposes of IC 13-18-12, includes the following:**

- 17           **(1) The cleaning of sewage disposal systems.**
- 18           **(2) The transportation, storage, treatment, or disposal of**
- 19           **septage.**

20           SECTION 9. IC 13-11-2-201 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 201. "Sewage disposal  
 22 system", for purposes of **this chapter, IC 13-18-12, and**  
 23 **IC 13-20-17.5,** means septic tanks, ~~wastewater~~ **septage** holding tanks,  
 24 seepage pits, cesspools, privies, composting toilets, interceptors or  
 25 grease traps, portable sanitary units, and other equipment, facilities, or  
 26 devices used to:

- 27           (1) store;
- 28           (2) treat;
- 29           (3) make inoffensive; or
- 30           (4) dispose of;

31 human excrement or liquid carrying wastes of a domestic nature.

32           SECTION 10. IC 13-11-2-208 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 208. "Solid waste  
 34 landfill", for purposes of IC 13-20-9, ~~IC 13-20-21-6,~~ **IC 13-20-21,** and  
 35 IC 13-22-9, means a solid waste disposal facility at which solid waste  
 36 is deposited on or beneath the surface of the ground as an intended  
 37 place of final location.

38           SECTION 11. IC 13-11-2-258 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 258. "Wastewater  
 40 treatment plant", for purposes of IC 13-18-11, **IC 13-20-17.5,** and  
 41 environmental management laws, means the system of treatment  
 42 works, regulatory devices, equipment, and other facilities and

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1 appurtenances installed to treat sewage, industrial wastes, and other  
2 wastes delivered by a system of sewers and other related facilities,  
3 whether owned or operated by the state, a municipality, or a person,  
4 firm, or corporation. The term does not include septic tank disposal  
5 systems.

6 SECTION 12. IC 13-14-13-2, AS ADDED BY P.L.114-2008,  
7 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 2. The department may accept the electronic  
9 submission of information only if the submission meets the following:

10 ~~(1) Standards established under IC 5-24 and corresponding rules.~~  
11 ~~(2)(1) Requirements of cross-media electronic reporting under 40~~  
12 ~~CFR 3.~~

13 ~~(3) (2) Procedures established by the department to accept~~  
14 ~~electronic information.~~

15 SECTION 13. IC 13-14-13-4, AS ADDED BY P.L.114-2008,  
16 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 UPON PASSAGE]: Sec. 4. (a) The department may adopt procedures  
18 that are consistent with federal law for compliance with this chapter to  
19 allow an applicant to submit an electronic document bearing the valid  
20 electronic signature of a signatory if that signatory would otherwise be  
21 required to sign the paper document for which the electronic document  
22 substitutes.

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

25 ~~(1) acceptable to the state board of accounts under IC 5-24; and~~  
26 ~~(2) consistent with 40 CFR 3.~~

27 SECTION 14. IC 13-14-13-6, AS ADDED BY P.L.114-2008,  
28 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 UPON PASSAGE]: Sec. 6. A person is subject to applicable state or  
30 federal civil, criminal, or other penalties and remedies for failure to  
31 comply with a reporting requirement if the person submits an electronic  
32 document that:

33 (1) is in place of a paper document under this chapter; and  
34 (2) fails to comply with the following:

35 ~~(A) Standards established under IC 5-24 and supporting rules.~~  
36 ~~(B) (A) Requirements of cross-media electronic reporting~~  
37 ~~under 40 CFR 3.~~

38 ~~(C) (B) Procedures established by the department to accept~~  
39 ~~electronic information.~~

40 SECTION 15. IC 13-15-4-1, AS AMENDED BY P.L.78-2009,  
41 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2010]: Sec. 1. (a) Except as provided in sections 2, 3, and 6

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1 of this chapter, the commissioner shall approve or deny an application  
2 filed with the department after July 1, 1995, within the following  
3 number of days:

4 (1) Three hundred sixty-five (365) days for an application  
5 concerning the following:

- 6 (A) A new hazardous waste or solid waste landfill.
- 7 (B) A new hazardous waste or solid waste incinerator.
- 8 (C) A major modification of a solid waste landfill.
- 9 (D) A major modification of a solid waste incinerator.
- 10 (E) A new hazardous waste treatment or storage facility.
- 11 (F) A new Part B permit issued under 40 CFR 270 et seq. for  
12 an existing hazardous waste treatment or storage facility.
- 13 (G) A Class 3 modification under 40 CFR 270.42 to a  
14 hazardous waste landfill.

15 **(H) A new solid waste processing facility other than a  
16 transfer station.**

17 (2) Except as provided in IC 13-18-3-2.1, two hundred seventy  
18 (270) days for an application concerning the following:

- 19 (A) A Class 3 modification under 40 CFR 270.42 of a  
20 hazardous waste treatment or storage facility.
- 21 (B) A major new National Pollutant Discharge Elimination  
22 System permit.

23 **(C) A major modification to a solid waste processing  
24 facility other than a transfer station.**

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

- 27 (A) A new ~~solid waste processing or recycling facility.~~  
28 **transfer station or a major modification to a transfer  
29 station.**
- 30 (B) A minor new National Pollutant Discharge Elimination  
31 System individual permit.
- 32 (C) A permit concerning the land application of wastewater.

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

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

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

- 40 (A) A minor modification to a **permit for the following:**
- 41 (i) A solid waste landfill. or
- 42 (ii) A **solid waste processing facility.**

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- 1                    **(iii) An incinerator. ~~permit.~~**
- 2                    (B) A wastewater facility or water facility construction permit.
- 3                    (7) The amount of time provided for in rules adopted by the air
- 4                    pollution control board for an application concerning the
- 5                    following:
- 6                    (A) An air pollution construction permit that is subject to 326
- 7                    IAC 2-2 and 326 IAC 2-3.
- 8                    (B) An air pollution facility construction permit (other than as
- 9                    defined in 326 IAC 2-2).
- 10                    (C) Registration of an air pollution facility.
- 11                    (8) Sixty (60) days for an application concerning the following:
- 12                    (A) A Class 1 modification under 40 CFR 270.42 requiring
- 13                    prior written approval, to a hazardous waste:
- 14                    (i) landfill;
- 15                    (ii) incinerator;
- 16                    (iii) treatment facility; or
- 17                    (iv) storage facility.
- 18                    (B) Any other permit not specifically described in this section
- 19                    for which the application fee exceeds forty-nine dollars (\$49)
- 20                    and for which a time frame has not been established under
- 21                    section 3 of this chapter.
- 22                    (b) When a person holding a valid permit concerning an activity of
- 23                    a continuing nature has made a timely and sufficient application for a
- 24                    renewal permit under the rules of one (1) of the boards, the
- 25                    commissioner shall approve or deny the application on or before the
- 26                    expiration date stated in the permit for which renewal is sought.
- 27                    SECTION 16. IC 13-18-11-8 IS AMENDED TO READ AS
- 28                    FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The
- 29                    commissioner may suspend or revoke the certificate of an operator
- 30                    **issued under this chapter**, following a hearing under IC 13-15-7-3 and
- 31                    IC 4-21.5, if any of the following conditions are found:
- 32                    (1) The operator has practiced fraud or deception **in any state or**
- 33                    **other jurisdiction.**
- 34                    (2) Reasonable care, judgment, or the application of the operator's
- 35                    knowledge or ability was not used in the performance of the
- 36                    operator's duties.
- 37                    (3) The operator is incompetent or unable to properly perform the
- 38                    operator's duties.
- 39                    **(4) A certificate of the operator issued:**
- 40                    **(A) under this chapter; or**
- 41                    **(B) by any other state or jurisdiction for a purpose**
- 42                    **comparable to the purpose for which a certificate is issued**

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**under this chapter;  
has been revoked.  
(5) The operator has been convicted of a crime related to a  
certificate of the operator issued:  
(A) under this chapter; or  
(B) by any other state or jurisdiction for a purpose  
comparable to the purpose for which a certificate is issued  
under this chapter.**

(b) A hearing and further proceedings shall be conducted in accordance with IC 4-21.5-7.

SECTION 17. IC 13-18-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. The water pollution control board and the department shall regulate persons who provide ~~wastewater~~ **septage** management services.

SECTION 18. IC 13-18-12-2, AS AMENDED BY P.L.114-2008, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) A person may not transport, treat, store, or dispose of ~~wastewater~~ **septage** in violation of this chapter.

(b) A person may not engage in:

- (1) the cleaning of sewage disposal systems; or
- (2) the transportation, treatment, storage, or disposal of ~~wastewater;~~ **septage;**

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

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

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

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

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

SECTION 19. IC 13-18-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. The board shall initiate, in accordance with IC 13-15, a ~~wastewater~~ **septage** management permit program for all persons who offer to perform or are

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1 performing ~~wastewater~~ **septage** management services.  
2 SECTION 20. IC 13-18-12-4, AS AMENDED BY P.L.114-2008,  
3 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2010]: Sec. 4. (a) The board shall, in accordance with  
5 IC 13-14-8, adopt rules to establish the following:

- 6 (1) Standards for the following:
  - 7 (A) The issuance of ~~wastewater~~ **septage** management permits
  - 8 under section 3 of this chapter.
  - 9 ~~(B) Cleaning of sewage disposal systems:~~
  - 10 ~~(C) (B) Transportation, storage, and treatment of wastewater,~~
  - 11 ~~septage, and disposal of wastewater; septage, including land~~
  - 12 ~~application.~~
  - 13 (2) Issuance of identification numbers for all vehicles used in
  - 14 ~~wastewater septage~~ management services. ~~However, the board~~
  - 15 ~~may exempt by rule vehicles licensed on September 1, 1983,~~
  - 16 ~~under the industrial waste haulers rule 320 IAC 5-10 as the rule~~
  - 17 ~~existed on September 1, 1983.~~
  - 18 (3) Procedures and standards for approval of sites for land
  - 19 application of ~~wastewater; septage.~~

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

23 SECTION 21. IC 13-18-12-5, AS AMENDED BY P.L.114-2008,  
24 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JULY 1, 2010]: Sec. 5. (a) Subject to subsections (b) and (c), the board  
26 may adopt a fee schedule for the issuance of:

- 27 (1) ~~wastewater septage~~ management permits;
- 28 (2) ~~wastewater septage~~ management vehicle identification
- 29 numbers; and
- 30 (3) land application site approvals;
- 31 under this chapter.

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

34 (c) A vehicle identification number or land application approval fee  
35 may not exceed thirty dollars (\$30) per year per vehicle or site.

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

40 SECTION 22. IC 13-18-12-7, AS AMENDED BY P.L.114-2008,  
41 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JULY 1, 2010]: Sec. 7. This chapter does not require a person to obtain

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1 a permit or vehicle identification number under this chapter if the  
2 person is:

3 (1) engaged in:

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

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

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

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

14 (3) a homeowner who cleans and services the sewage disposal  
15 system serving only the homeowner's residence, although  
16 transportation and disposal of ~~wastewater~~ **septage, including**  
17 **land application**, must be done in compliance with this chapter.

18 SECTION 23. IC 13-20-17.5-5 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. After July 1, 2003,  
20 a person may sell or provide a mercury commodity to another person  
21 in this state (other than for collection for recycling) only if:

22 (1) the person selling or providing the mercury commodity  
23 provides a material safety data sheet with the mercury  
24 commodity; and

25 (2) the person selling or providing the mercury commodity  
26 requires the purchaser or recipient to sign a statement with respect  
27 to the mercury in the mercury commodity that the purchaser or  
28 recipient:

29 (A) will use the mercury only:

30 (i) for medical purposes;

31 (ii) in dental amalgam dispose-caps;

32 (iii) for training;

33 (iv) for research; or

34 (v) for manufacturing purposes;

35 (B) understands that mercury is toxic;

36 (C) will store and use the mercury appropriately so that no  
37 individual is exposed to the mercury under normal conditions  
38 of use; and

39 (D) will not intentionally:

40 (i) place or cause to be placed; or

41 (ii) allow anyone under the control of the purchaser or  
42 recipient to place or cause to be placed;

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1 the mercury commodity in solid waste for disposal, ~~or~~ in a  
 2 ~~wastewater sewage~~ disposal system, ~~or in a wastewater~~  
 3 ~~treatment plant.~~

4 SECTION 24. IC 13-20-21-3 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. **(a) Except as**  
 6 **provided in subsections (b) and (c),** for solid waste permits, the  
 7 application fees are as follows:

New Permit or Major Modification	
	Fee
10 Sanitary Landfill	<del>\$31,300</del>
11 Construction\Demolition Site	\$20,000
12 Restricted Waste Site	
13 Type I	\$31,300
14 Type II	\$31,300
15 Type III	\$20,000
16 Processing Facility	
17 Transfer Station	\$12,150
18 Other	\$12,150
19 Incinerator	\$28,650
20 Waste Tire Storage	
21 Registration	\$ 500
22 Waste Tire Processing	\$ 200
23 Waste Tire	
24 Transportation	\$ 25
Permit Renewal	
26 Sanitary Landfill	<del>\$ 15,350</del>
27 Construction\ 28 Demolition Site	\$ 7,150
29 Restricted Waste Site	
30 Type I	\$ 15,350
31 Type II	\$ 15,350
32 Type III	\$ 7,150
33 Processing Facility	
34 Transfer Station	\$ 2,200
35 Other	\$ 2,200
36 Incinerator	\$ 5,900
37 Waste Tire Processing	\$ 200
38 Minor Modification	
39 Minor Modification	\$2,500

40 **(b) The fee for:**  
 41 **(1) a new permit; or**  
 42 **(2) a permit for a major modification;**

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1 **for a solid waste landfill not covered by subsection (a) is thirty-one**  
 2 **thousand three hundred dollars (\$31,300).**

3 **(c) The fee for a permit renewal for a solid waste landfill not**  
 4 **covered by subsection (a) is fifteen thousand three hundred fifty**  
 5 **dollars (\$15,350).**

6 SECTION 25. IC 13-20-21-4 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. For solid waste, the  
 8 annual operation fees are as follows:

	Fee
9	
10	<b>Sanitary Solid Waste Landfill</b>
11	<b>Not Otherwise Covered in This Section</b>
12	> 500 TPD \$35,000
13	250-499 TPD \$15,000
14	100-249 TPD \$ 7,000
15	<100 TPD \$ 2,000
16	Construction\
17	Demolition Site \$ 1,500
18	Restricted Waste Site
19	Type I \$35,000
20	Type II \$25,000
21	Type III \$10,000
22	Processing Facility
23	Transfer Station \$ 2,000
24	Other \$ 2,000
25	Incinerator
26	>500 TPD \$35,000
27	250-499 TPD \$15,000
28	100-249 TPD \$ 7,000
29	<100 TPD \$ 2,000
30	Infectious Waste
31	Incinerator (>7 TPD) \$ 5,000
32	Waste Tire Storage
33	Registration \$ 500
34	Waste Tire Transportation
35	Registration \$ 25
36	Groundwater
37	Compliance
38	Sampling
39	(per well) \$ 250

40 SECTION 26. IC 13-20-21-9 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. Solid waste disposal  
 42 fees must be paid by all solid waste disposal facilities, including

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1 ~~sanitary landfills,~~ **solid waste landfills,** incinerators, and  
 2 construction\demolition disposal facilities. Solid waste disposal fees:  
 3 (1) for the period of January 1 through June 30 of each year are  
 4 due on August 1 of that year; and  
 5 (2) for the period of July 1 through December 31 of each year are  
 6 due on February 1 of the following year.  
 7 SECTION 27. IC 13-23-8-3, AS AMENDED BY P.L.221-2007,  
 8 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2010]: Sec. 3. For the purposes of section 2 of this chapter, the  
 10 following amounts shall be used:  
 11 (1) If the underground petroleum storage tank that is involved in  
 12 the occurrence for which claims are made:  
 13 (A) is not in compliance with rules adopted by the board  
 14 concerning technical and safety requirements relating to the  
 15 physical characteristics of underground petroleum storage  
 16 tanks before the date the tank is required to be in compliance  
 17 with the requirements; and  
 18 (B) is in compliance on a date required under the requirements  
 19 described under section 4 of this chapter at the time a release  
 20 was discovered;  
 21 the amount is thirty-five thousand dollars (\$35,000).  
 22 (2) If the underground petroleum storage tank that is involved in  
 23 the occurrence for which claims are made:  
 24 (A) is in compliance with rules adopted by the board  
 25 concerning technical and safety requirements relating to the  
 26 physical characteristics of underground petroleum storage  
 27 tanks before the date the tank is required to be in compliance  
 28 with the requirements;  
 29 (B) is not a double walled underground petroleum storage  
 30 tank; and  
 31 (C) has piping that does not have secondary containment;  
 32 the amount is ~~twenty-five~~ **thirty** thousand dollars (~~\$25,000~~).  
 33 **(\$30,000).**  
 34 (3) If the underground petroleum storage tank that is involved in  
 35 the occurrence for which claims are made:  
 36 (A) is in compliance with rules adopted by the board  
 37 concerning technical and safety requirements relating to the  
 38 physical characteristics of underground petroleum storage  
 39 tanks before the date the tank is required to be in compliance  
 40 with the requirements;  
 41 (B) is not a double walled underground petroleum storage  
 42 tank; and

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1 (C) has piping that has secondary containment;  
 2 the amount is twenty-five thousand dollars (\$25,000).  
 3 (4) If the underground petroleum storage tank that is involved in  
 4 the occurrence for which claims are made:  
 5 (A) is in compliance with rules adopted by the board  
 6 concerning technical and safety requirements relating to the  
 7 physical characteristics of underground petroleum storage  
 8 tanks before the date the tank is required to be in compliance  
 9 with the requirements;  
 10 (B) is a double walled underground petroleum storage tank;  
 11 and  
 12 (C) has piping that does not have secondary containment;  
 13 the amount is twenty-five thousand dollars (\$25,000).  
 14 (5) If the underground petroleum storage tank that was involved  
 15 in the occurrence for which claims are made:  
 16 (A) is in compliance with rules adopted by the board  
 17 concerning technical and safety requirements relating to the  
 18 physical characteristics of underground petroleum storage  
 19 tanks before the date the tank is required to be in compliance  
 20 with the requirements;  
 21 (B) is a double walled underground petroleum storage tank;  
 22 and  
 23 (C) has piping that has secondary containment;  
 24 the amount is twenty thousand dollars (\$20,000).  
 25 SECTION 28. IC 13-23-13-14 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. For purposes  
 27 of IC 13-11-2-148(e), ~~and~~ IC 13-11-2-150(b), **and IC 13-11-2-150(c)**,  
 28 a person that is a lender and that holds evidence of ownership primarily  
 29 to protect a security interest in an underground storage tank shall be  
 30 considered to participate in management (as defined in  
 31 IC 13-11-2-151.2) of the underground storage tank only if, while the  
 32 borrower is still in possession of the underground storage tank  
 33 encumbered by the security interest, the person:  
 34 (1) exercises decision making control over the environmental  
 35 compliance related to the underground storage tank such that the  
 36 person has undertaken responsibility for the hazardous substance  
 37 handling or disposal practices related to the underground storage  
 38 tank; or  
 39 (2) exercises control at a level comparable to that of a manager of  
 40 the underground storage tank such that the person has assumed or  
 41 manifested responsibility:  
 42 (A) for the overall management of the underground storage

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1 tank encompassing day to day decision making with respect to  
 2 environmental compliance; or  
 3 (B) over all or substantially all of the operational functions (as  
 4 distinguished from financial or administrative functions) of the  
 5 underground storage tank other than the function of  
 6 environmental compliance.

7 SECTION 29. IC 13-25-4-8, AS AMENDED BY P.L.221-2007,  
 8 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 UPON PASSAGE]: Sec. 8. (a) Except as provided in subsection (b),  
 10 (c), or (d), a person that is liable under Section 107(a) of CERCLA (42  
 11 U.S.C. 9607(a)) for:

- 12 (1) the costs of removal or remedial action incurred by the
- 13 commissioner consistent with the national contingency plan;
- 14 (2) the costs of any health assessment or health effects study
- 15 carried out by or on behalf of the commissioner under Section
- 16 104(i) of CERCLA (42 U.S.C. 9604(i)); or
- 17 (3) damages for:
  - 18 (A) injury to;
  - 19 (B) destruction of; or
  - 20 (C) loss of;
- 21 natural resources of Indiana;

22 is liable, in the same manner and to the same extent, to the state under  
 23 this section.

24 (b) The exceptions provided by Sections 107(b), 107(q), and 107(r)  
 25 of CERCLA 42 U.S.C. 9607(b), 42 U.S.C. 9607(q), and 42 U.S.C.  
 26 9607(r) to liability otherwise imposed by Section 107(a) of CERCLA  
 27 (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise  
 28 imposed under subsection (a).

29 (c) Notwithstanding any liability imposed by the environmental  
 30 management laws:

- 31 (1) a lender **that meets, for purposes of the determination**
- 32 **under this section of liability for a release of hazardous**
- 33 **substances, the exception criteria under Section 101(20)(E) of**
- 34 **CERCLA (42 U.S.C. 9601(20)(E));**
- 35 (2) a secured or unsecured creditor; or
- 36 (3) a fiduciary;

37 is not liable under the environmental management laws, in connection  
 38 with the release or threatened release of a hazardous substance from a  
 39 facility unless the lender, the fiduciary, or creditor has participated in  
 40 the management of the hazardous substance at the facility.

41 (d) Notwithstanding any liability imposed by the environmental  
 42 management laws, the liability of a fiduciary for a release or threatened

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1 release of a hazardous substance from a facility that is held by the  
2 fiduciary in its fiduciary capacity may be satisfied only from the assets  
3 held by the fiduciary in the same estate or trust as the facility that gives  
4 rise to the liability.

5 (e) Except as provided in subsection (g), a political subdivision (as  
6 defined in IC 36-1-2-13) or unit of federal or state government is not  
7 liable to the state under this section for costs or damages associated  
8 with the presence of a hazardous substance on, in, or at a property in  
9 which the political subdivision or unit of federal or state government  
10 acquired an interest because of:

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

31 (f) If a transfer of an interest in property as described in subsection  
32 (e) occurs, a person who owned, operated, or otherwise controlled the  
33 property immediately before the political subdivision or unit of federal  
34 or state government acquired the interest in the property remains liable  
35 under this section:

- 36 (1) in the same manner; and
  - 37 (2) to the same extent;
- 38 as the person was liable immediately before the person's interest in the  
39 property was acquired by the political subdivision or unit of federal or  
40 state government.

41 (g) Notwithstanding subsection (e), a political subdivision or unit of  
42 federal or state government that causes or contributes to the release or

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1 threatened release of a hazardous substance on, in, or at a property  
2 remains subject to this section:

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

5 as a nongovernmental entity under this section.

6 (h) Except as provided in subsection (i), a nonprofit corporation is  
7 not liable to the state under this section for costs or damages associated  
8 with the presence of a hazardous substance on, in, or at a property in  
9 which the nonprofit corporation acquired an interest to assist and  
10 support a political subdivision's revitalization and reuse of a brownfield  
11 for noncommercial purposes, including conservation, preservation, and  
12 recreation.

13 (i) Notwithstanding subsection (h), a nonprofit corporation that  
14 causes or contributes to a release or threatened release of a hazardous  
15 substance on, in, or at a property remains subject to this section:

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

18 as any other nongovernmental entity under this section.

19 (j) A political subdivision or unit of federal or state government that  
20 establishes an exemption or defense under subsection (b) or (e) may  
21 undertake any activity related to:

- 22 (1) investigation, removal, or remedial action on a brownfield,  
23 including complying with land use restrictions and institutional  
24 controls; or
- 25 (2) monitoring or closure of an underground storage tank;

26 without being considered as contributing to the existing release or  
27 threatened release of hazardous substances on, in, or at the brownfield  
28 unless existing contamination on the brownfield is exacerbated due to  
29 gross negligence or intentional misconduct by the political subdivision  
30 or unit of federal or state government.

31 (k) For purposes of subsection (j), reckless, willful, or wanton  
32 misconduct constitutes gross negligence.

33 SECTION 30. IC 13-25-5-8.5, AS AMENDED BY P.L.78-2009,  
34 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 UPON PASSAGE]: Sec. 8.5. (a) A voluntary remediation work plan  
36 must specify the remediation objectives for the site. Subsections (b)  
37 through (e) apply to a site regardless of whether the site was entered  
38 into the voluntary remediation program before July 1, 2009, or after  
39 June 30, 2009.

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

- 42 (1) background levels of hazardous substances and petroleum that

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- 1 occur naturally on the site; or  
 2 (2) an assessment of the risks pursuant to subsection (d) posed by  
 3 the hazardous substance or petroleum presently found on the site  
 4 taking into consideration the following:  
 5 (A) Expected future use of the site.  
 6 (B) Measurable risks to human health, natural resources, or the  
 7 environment based on the:  
 8 (i) activities that take place; and  
 9 (ii) environmental impact;  
 10 on the site.  
 11 (c) If the:  
 12 (1) nature and extent of the hazardous substance or petroleum is  
 13 adequately characterized under the voluntary remediation work  
 14 plan, considering the remediation objectives developed under this  
 15 section; and  
 16 (2) the level of the hazardous substance or petroleum is  
 17 demonstrated to be below:  
 18 (A) background levels of the hazardous substances and  
 19 petroleum that occur naturally on the site; or  
 20 (B) the risk based levels developed under subsection (d);  
 21 additional action is not necessary to protect human health or the  
 22 environment.  
 23 (d) Risk based remediation objectives shall be based on one (1) of  
 24 the following:  
 25 (1) Levels of hazardous substances and petroleum calculated by  
 26 the department using standard equations and default values for  
 27 particular hazardous substances or petroleum.  
 28 (2) Levels of hazardous substances and petroleum calculated  
 29 using site specific data for the default values in the department's  
 30 standard equations.  
 31 (3) Levels of hazardous substances and petroleum developed  
 32 based on site specific risk assessments that take into account site  
 33 specific factors, including remedial measures, restrictive  
 34 covenants, and environmental restrictive ordinances that:  
 35 (A) manage risk; and  
 36 (B) control completed or potential exposure pathways.  
 37 (e) The department shall consider and give effect to restrictive  
 38 covenants and environmental restrictive ordinances in evaluating risk  
 39 based remediation proposals.  
 40 **(f) The department, or a person authorized under subsection (g),**  
 41 **shall give written notice to a municipal corporation that the**  
 42 **department is relying on an environmental restrictive ordinance**

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1 adopted by the municipal corporation as part of a risk based  
2 remediation proposal:

- 3 (1) approved by the department; and
- 4 (2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,  
5 or IC 13-25-5.

6 (g) The department may delegate authority to give the written  
7 notice referred to in subsection (f) to the person who proposed the  
8 risk based remediation.

9 SECTION 31. IC 13-26-5-2.8 IS ADDED TO THE INDIANA  
10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE UPON PASSAGE]: **Sec. 2.8. (a) As used in this section,**  
12 **"agricultural land" means land that is:**

- 13 (1) zoned or otherwise designated as agricultural land; or
- 14 (2) used for growing crops or raising livestock.

15 (b) As used in this section, "septic tank soil absorption system"  
16 has the meaning set forth in IC 13-11-2-199.5.

17 (c) Subject to subsection (e), a person who owns agricultural  
18 land in St. Joseph County is exempt from the requirement to  
19 connect to a district's sewer system and to discontinue use of a  
20 septic tank soil absorption system if the following conditions are  
21 met:

22 (1) The person, at the person's own expense, obtains and  
23 provides to the district a certification from the local health  
24 department or the department's designee that the septic tank  
25 soil absorption system is functioning satisfactorily. If the local  
26 health department or the department's designee denies the  
27 issuance of a certificate to the person, the person may appeal  
28 the denial to the board of the local health department. The  
29 decision of the board is final and binding.

30 (2) The person provides the district with:  
31 (A) the written notification of potential qualification for  
32 the exemption described in subsection (g); and  
33 (B) the certification described in subdivision (1);  
34 within the time limits set forth in subsection (g).

35 (d) If a person, within the time allowed under subsection (g),  
36 notifies a district in writing that the person qualifies for the  
37 exemption under this section, the district shall, until the person's  
38 eligibility for an exemption under this section is determined,  
39 suspend the requirement that the person discontinue use of a septic  
40 tank soil absorption system and connect to the district's sewer  
41 system.

42 (e) A person who qualifies for the exemption provided under

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1 this section may not be required to connect to the district's sewer  
2 system for a period of five (5) years beginning on the district's  
3 sewer system's anticipated connection date. If ownership of the  
4 property passes from the owner who qualified for the exemption to  
5 another person during the exemption period, the exemption does  
6 not apply to the subsequent owner of the property.

7 (f) A district that has filed plans with the department to create  
8 or expand a sewage district shall, within ten (10) days after filing  
9 the plans, provide written notice to affected persons who own  
10 agricultural land in St. Joseph County:

- 11 (1) that the person may be required to discontinue the use of
- 12 a septic tank soil absorption system;
- 13 (2) that the person may qualify for an exemption from the
- 14 requirement to discontinue the use of the septic tank soil
- 15 absorption system; and
- 16 (3) of the procedures to claim an exemption.

17 (g) To qualify for an exemption under this section, a person  
18 must:

- 19 (1) within sixty (60) days after the date of the written notice
- 20 given to the person under subsection (f), notify the district in
- 21 writing that the person qualifies for the exemption under this
- 22 section; and
- 23 (2) within sixty (60) days after the district receives the written
- 24 notice provided under subdivision (1), provide the district
- 25 with the certification required under subsection (c)(1).

26 SECTION 32. IC 36-1-2-4.7, AS ADDED BY P.L.78-2009,  
27 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 UPON PASSAGE]: Sec. 4.7. "Environmental restrictive ordinance"  
29 means, with respect to land, any ordinance that:

- 30 (1) is adopted by a municipal corporation; and
- 31 (2) ~~limits, regulates, or prohibits one (1) or more of the following~~
- 32 ~~with respect to seeks to control the use of groundwater~~
- 33 ~~(A) Withdrawal.~~
- 34 ~~(B) Human consumption.~~
- 35 ~~(C) Any other use.~~

36 **in a manner and to a degree that protects human health and**  
37 **the environment against unacceptable exposure to a release of**  
38 **hazardous substances or petroleum, or both.**

39 SECTION 33. IC 36-1-6-11, AS ADDED BY P.L.78-2009,  
40 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
41 UPON PASSAGE]: Sec. 11. (a) **Subject to subsection (e)**, the  
42 legislative body of a municipal corporation shall:

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1 (1) subject to subsection (b), give written notice to the department  
 2 of environmental management not later than sixty (60) days  
 3 before amendment or repeal of an environmental restrictive  
 4 ordinance; and  
 5 (2) give written notice to the department of environmental  
 6 management not later than thirty (30) days after passage,  
 7 amendment, or repeal of an environmental restrictive ordinance.  
 8 (b) Upon written request by the legislative body, the department of  
 9 environmental management may waive the notice requirement of  
 10 subsection (a)(1).  
 11 (c) An environmental restrictive ordinance passed or amended after  
 12 2009 by the legislative body must state the notice requirements of  
 13 subsection (a).  
 14 (d) The failure of an environmental restrictive ordinance to comply  
 15 with subsection (c) does not void the ordinance.  
 16 (e) **The notice requirements of subsection (a) apply only if the**  
 17 **municipal corporation received under IC 13-25-5-8.5(f) written**  
 18 **notice that the department is relying on the environmental**  
 19 **restrictive ordinance referred to in subsection (a) as part of a risk**  
 20 **based remediation proposal:**  
 21 (1) **approved by the department; and**  
 22 (2) **conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,**  
 23 **or IC 13-25-5.**  
 24 SECTION 34. IC 36-2-4-8, AS AMENDED BY P.L.78-2009,  
 25 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 UPON PASSAGE]: Sec. 8. (a) An ordinance, order, or resolution is  
 27 considered adopted when it is signed by the presiding officer. If  
 28 required, an adopted ordinance, order, or resolution must be  
 29 promulgated or published according to statute before it takes effect.  
 30 (b) An ordinance prescribing a penalty or forfeiture for a violation  
 31 must, before it takes effect, be published once each week for two (2)  
 32 consecutive weeks, according to IC 5-3-1. However, if such an  
 33 ordinance is adopted by the legislative body of a county subject to  
 34 IC 36-2-3.5 and there is an urgent necessity requiring its immediate  
 35 effectiveness, it need not be published if:  
 36 (1) the county executive proclaims the urgent necessity; and  
 37 (2) copies of the ordinance are posted in three (3) public places in  
 38 each of the districts of the county before it takes effect.  
 39 (c) The following apply in addition to the other requirements of this  
 40 section:  
 41 (1) An ordinance or resolution passed by the legislative body of  
 42 a county subject to IC 36-2-3.5 is considered adopted only if it is:

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

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- 1 (A) one (1) time in accordance with IC 5-3-1; and
- 2 (B) not later than thirty (30) days after the ordinance is
- 3 adopted by the legislative body in accordance with IC 5-3-1;
- 4 and
- 5 (2) delay the implementation of the fee increase for ninety (90)
- 6 days after the date the ordinance is published under subdivision
- 7 (1).

8 **(g) The notice requirements of subsection (c)(2) apply only if the**  
 9 **municipal corporation received under IC 13-25-5-8.5(f) written**  
 10 **notice that the department is relying on the environmental**  
 11 **restrictive ordinance referred to in subsection (c)(2) as part of a**  
 12 **risk based remediation proposal:**

- 13 **(1) approved by the department; and**
- 14 **(2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,**  
 15 **or IC 13-25-5.**

16 SECTION 35. IC 36-3-4-14, AS AMENDED BY P.L.78-2009,  
 17 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 UPON PASSAGE]: Sec. 14. (a) An ordinance or resolution passed by  
 19 a legislative body is considered adopted when it is:

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

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

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

42 (c) An ordinance prescribing a penalty or forfeiture for a violation

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1 must, before it takes effect, be published in the manner prescribed by  
2 IC 5-3-1, unless:

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

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

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

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

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

24 (g) **Subject to subsection (k)**, the legislative body shall:

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

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

35 (i) An environmental restrictive ordinance passed or amended after  
36 2009 by the legislative body must state the notice requirements of  
37 subsection (g).

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

40 **(k) The notice requirements of subsection (g) apply only if the**  
41 **municipal corporation received under IC 13-25-5-8.5(f) written**  
42 **notice that the department is relying on the environmental**

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1 **restrictive ordinance referred to in subsection (g) as part of a risk**  
2 **based remediation proposal:**

- 3 (1) approved by the department; and
- 4 (2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,
- 5 or IC 13-25-5.

6 SECTION 36. IC 36-4-6-14, AS AMENDED BY P.L.78-2009,  
7 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 14. (a) An ordinance, order, or resolution  
9 passed by the legislative body is considered adopted when it is:

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

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

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

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

25 (c) Except as provided in subsection (e), if a city publishes any of  
26 its ordinances in book or pamphlet form, no other publication is  
27 required. If an ordinance prescribing a penalty or forfeiture for a  
28 violation is published under this subsection, it takes effect two (2)  
29 weeks after the publication of the book or pamphlet. Publication under  
30 this subsection, if authorized by the legislative body, constitutes  
31 presumptive evidence:

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

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

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

- 41 (1) be published:
- 42 (A) one (1) time in accordance with IC 5-3-1; and

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1 (B) not later than thirty (30) days after the ordinance is  
 2 adopted by the legislative body in accordance with IC 5-3-1;  
 3 and  
 4 (2) delay the implementation of the fee increase for ninety (90)  
 5 days after the date the ordinance is published under subdivision  
 6 (1).

7 (f) **Subject to subsection (j)**, the legislative body shall:  
 8 (1) subject to subsection (g), give written notice to the department  
 9 of environmental management not later than sixty (60) days  
 10 before amendment or repeal of an environmental restrictive  
 11 ordinance; and  
 12 (2) give written notice to the department of environmental  
 13 management not later than thirty (30) days after passage,  
 14 amendment, or repeal of an environmental restrictive ordinance.

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

18 (h) An environmental restrictive ordinance passed or amended after  
 19 2009 by the legislative body must state the notice requirements of  
 20 subsection (f).

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

23 (j) **The notice requirements of subsection (f) apply only if the**  
 24 **municipal corporation received under IC 13-25-5-8.5(f) written**  
 25 **notice that the department is relying on the environmental**  
 26 **restrictive ordinance referred to in subsection (f) as part of a risk**  
 27 **based remediation proposal:**  
 28 (1) **approved by the department; and**  
 29 (2) **conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,**  
 30 **or IC 13-25-5.**

31 SECTION 37. IC 36-5-2-10, AS AMENDED BY P.L.78-2009,  
 32 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 UPON PASSAGE]: Sec. 10. (a) An ordinance, order, or resolution  
 34 passed by the legislative body is considered adopted when it is signed  
 35 by the executive. If required by statute, an adopted ordinance, order, or  
 36 resolution must be promulgated or published before it takes effect.

37 (b) An ordinance prescribing a penalty for a violation must, before  
 38 it takes effect, be published in the manner prescribed by IC 5-3-1,  
 39 unless:  
 40 (1) it is published under IC 36-1-5; or  
 41 (2) it declares an emergency requiring its immediate effectiveness  
 42 and is posted in:

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- 1 (A) one (1) public place in each district in the town; or
- 2 (B) a number of public places in the town equal to the number
- 3 of town legislative body members, if the town has abolished
- 4 legislative body districts under section 4.1 of this chapter.
- 5 (c) This section **(other than subsection (e))** does not apply to a
- 6 zoning ordinance or amendment to a zoning ordinance, or a resolution
- 7 approving a comprehensive plan, that is adopted under IC 36-7.
- 8 (d) An ordinance increasing a building permit fee on new
- 9 development must:
- 10 (1) be published:
- 11 (A) one (1) time in accordance with IC 5-3-1; and
- 12 (B) not later than thirty (30) days after the ordinance is
- 13 adopted by the legislative body in accordance with IC 5-3-1;
- 14 and
- 15 (2) delay the implementation of the fee increase for ninety (90)
- 16 days after the date the ordinance is published under subdivision
- 17 (1).
- 18 (e) **Subject to subsection (i)**, the legislative body shall:
- 19 (1) subject to subsection (f), give written notice to the department
- 20 of environmental management not later than sixty (60) days
- 21 before amendment or repeal of an environmental restrictive
- 22 ordinance; and
- 23 (2) give written notice to the department of environmental
- 24 management not later than thirty (30) days after passage,
- 25 amendment, or repeal of an environmental restrictive ordinance.
- 26 (f) Upon written request by the legislative body, the department of
- 27 environmental management may waive the notice requirement of
- 28 subsection (e)(1).
- 29 (g) An environmental restrictive ordinance passed or amended after
- 30 2009 by the legislative body must state the notice requirements of
- 31 subsection (e).
- 32 (h) The failure of an environmental restrictive ordinance to comply
- 33 with subsection (g) does not void the ordinance.
- 34 (i) **The notice requirements of subsection (e) apply only if the**
- 35 **municipal corporation received under IC 13-25-5-8.5(f) written**
- 36 **notice that the department is relying on the environmental**
- 37 **restrictive ordinance referred to in subsection (e) as part of a risk**
- 38 **based remediation proposal:**
- 39 (1) **approved by the department; and**
- 40 (2) **conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4,**
- 41 **or IC 13-25-5.**
- 42 SECTION 38. THE FOLLOWING ARE REPEALED [EFFECTIVE

COPY



1 JULY 1, 2010]: IC 13-11-2-256; IC 13-11-2-257.  
2 SECTION 39. **An emergency is declared for this act.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 209, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 11.

Page 2, line 6, delete "the groundwater" and insert "**human health and the environment**".

Page 10, between lines 27 and 28, begin a new paragraph and insert: "SECTION 11. IC 13-14-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. Except as provided in sections 4.5, 7, ~~and 8~~, **and 14** of this chapter, a board may not adopt a rule under this chapter until the board has conducted at least two (2) public comment periods, each of which must be at least thirty (30) days in length.

SECTION 12. IC 13-14-9-8, AS AMENDED BY P.L.204-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) **Except as provided in subsection (g)**, unless a board determines that a proposed rule should be subject to additional comments or makes a determination described in subsection (f), sections 2 through 7 and sections 9 through 14 of this chapter do not apply to a rulemaking action if the commissioner determines that:

- (1) the proposed rule constitutes:
  - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    - (i) is or will be applicable to Indiana; and
    - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) of this chapter from the following:
  - (A) Exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter.
  - (B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.

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(C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.

(b) If the commissioner makes a determination under subsection (a), the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in:

- (1) the notice of adoption of the proposed rule; and
- (2) the written materials to be considered by the board at the public hearing held under this section.

(c) The notice of adoption of a proposed rule under this section must:

- (1) be published in the Indiana Register; and
- (2) include the following:
  - (A) Draft rule language that includes the language described in subsection (a)(1).
  - (B) A written comment period of at least thirty (30) days.
  - (C) A notice of public hearing before the appropriate board.

(d) The department shall include the following in the written materials to be considered by the board at the public hearing referred to in subsection (c):

- (1) The full text of the proposed rule as most recently prepared by the department.
- (2) Written responses of the department to written comments received during the comment period referred to in subsection (c).
- (3) The commissioner's findings under subsection (b).

(e) At the public hearing referred to in subsection (c), the board may:

- (1) adopt the proposed rule;
- (2) adopt the proposed rule with amendments;**
- ~~(2)~~ **(3)** reject the proposed rule;
- ~~(3)~~ **(4)** determine that additional public comment is necessary; or
- ~~(4)~~ **(5)** determine to reconsider the proposed rule at a subsequent board meeting.

(f) If the board determines under subsection (e) that additional public comment is necessary, the department shall publish a second notice in accordance with section 4 of this chapter and complete the rulemaking in accordance with this chapter.

**(g) If the board adopts the proposed rule with amendments under subsection (e)(2), the amendments must meet the logical outgrowth requirements of section 10 of this chapter, except that the board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering**

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**whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (c)(2)(C).**

SECTION 13. IC 13-14-9-14, AS ADDED BY P.L.100-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Except as provided in subsection (g)**, sections 1 through 13 of this chapter do not apply to a rule adopted under this section.

(b) The water pollution control board may use the procedures in this section to adopt a rule to establish new water quality standards for a community served by a combined sewer that has:

- (1) an approved long term control plan; and
- (2) an approved use attainability analysis that supports the use of a CSO wet weather limited use subcategory established under IC 13-18-3-2.5.

(c) After the department approves the long term control plan and use attainability analysis, the department shall publish in the Indiana Register a notice of adoption of a proposed rule to establish a CSO wet weather limited use subcategory for the area defined by the approved use attainability analysis.

(d) The notice under subsection (c) must include the following:

- (1) Suggested rule language that amends the designated use to allow for a CSO wet weather limited use subcategory in accordance with IC 13-18-3-2.5.
- (2) A written comment period of at least thirty (30) days.
- (3) A notice of public hearing before the water pollution control board.

(e) The department shall include the following in the written materials to be considered by the water pollution control board at the public hearing referred to in subsection (d)(3):

- (1) The full text of the proposed rule as most recently prepared by the department.
- (2) Written responses of the department to written comments received during the comment period referred to in subsection (d)(2).
- (3) The letter prepared by the department approving the long term control plan and use attainability analysis.

(f) At the public hearing referred to in subsection (d)(3), the board may:

- (1) adopt the proposed rule to establish a new water quality

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standard amending the designated use to allow for a CSO wet weather limited use subcategory;

**(2) adopt the proposed rule with amendments;**

~~(2)~~ **(3) reject the proposed rule; or**

~~(3)~~ **(4) determine to reconsider the proposed rule at a subsequent board meeting.**

**(g) If the board adopts the proposed rule with amendments under subsection (f)(2), the amendments must meet the logical outgrowth requirements of section 10 of this chapter, except that the board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (d)(3).**

~~(g)~~ **(h) The department shall submit a new water quality standard established in a rule adopted under subsection ~~(f)(1)~~ (f) to the United States Environmental Protection Agency for approval."**

Page 18, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 30. IC 13-23-8-3, AS AMENDED BY P.L.221-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. For the purposes of section 2 of this chapter, the following amounts shall be used:

(1) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is not in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements; and

(B) is in compliance on a date required under the requirements described under section 4 of this chapter at the time a release was discovered;

the amount is thirty-five thousand dollars (\$35,000).

(2) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

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(B) is not a double walled underground petroleum storage tank; and

(C) has piping that does not have secondary containment; the amount is ~~twenty-five~~ **thirty** thousand dollars (~~\$25,000~~): **(\$30,000)**.

(3) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is not a double walled underground petroleum storage tank; and

(C) has piping that has secondary containment; the amount is twenty-five thousand dollars (\$25,000).

(4) If the underground petroleum storage tank that is involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is a double walled underground petroleum storage tank; and

(C) has piping that does not have secondary containment; the amount is twenty-five thousand dollars (\$25,000).

(5) If the underground petroleum storage tank that was involved in the occurrence for which claims are made:

(A) is in compliance with rules adopted by the board concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements;

(B) is a double walled underground petroleum storage tank; and

(C) has piping that has secondary containment; the amount is twenty thousand dollars (\$20,000)."

Page 22, line 37, delete "the groundwater" and insert "**human health and the environment**".

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Page 30, delete lines 6 through 7.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 209 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 209 be amended to read as follows:

Replace the effective dates in SECTIONS 11 through 13 with "[EFFECTIVE JULY 1, 2010]".

Page 1, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 4. IC 13-11-2-85.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 85.6. "Foreclosure", for purposes of sections 148(e)(2), 150(c), and 151(e) of this chapter, means the acquisition of a vessel or facility for purposes of IC 13-25-4-8(c), an underground storage tank for purposes of IC 13-23-13, or a petroleum facility for purposes of IC 13-24-1 through any of the following:**

**(1) If the vessel or facility, underground storage tank, or petroleum facility was security for an extension of credit previously contracted:**

**(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure;**

**(B) a deed in lieu of foreclosure or a similar conveyance from a trustee; or**

**(C) repossession.**

**(2) Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement.**

**(3) Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility, underground storage tank, or petroleum facility in order to protect the security interest of the person."**

Page 2, line 23, after "who" insert ":".

Page 2, reset in roman lines 24 through 32.

Page 2, delete lines 33 through 34, begin a new line single block

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indented and insert:

**"(2) A person that is a lender that did not participate in management of an underground storage tank before foreclosure, notwithstanding that the person:**

**(A) forecloses on the vessel or facility; and**

**(B) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the underground storage tank, maintains business activities, winds up operations, undertakes a response action under Section 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan with respect to the underground storage tank, or takes any other measure to preserve, protect, or prepare the underground storage tank prior to sale or disposition;**

**if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the underground storage tank at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements."**

Page 2, line 35, strike "(2)" and insert "(3)".

Page 3, line 4, strike "(3)" and insert "(4)".

Page 5, line 12, after "who" insert ":".

Page 5, reset in roman lines 13 through 21.

Page 5, delete lines 22 through 23, begin a new paragraph and insert:

**"(c) "Owner", for purposes of IC 13-23, does not include a person that is a lender that did not participate in management of an underground storage tank before foreclosure, notwithstanding that the person:**

**(1) forecloses on the underground storage tank; and**

**(2) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the underground storage tank, maintains business activities, winds up operations, undertakes a response action under Section 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan with respect to the underground storage tank, or takes any other measure to preserve, protect, or prepare the underground storage tank prior to sale or disposition;**

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**if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the underground storage tank at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements."**

Page 5, line 24, strike "(c)" and insert "(d)".

Page 6, line 12, strike "(d)" and insert "(e)".

Page 6, line 21, strike "(e)" and insert "(f)".

Page 6, line 27, strike "(f)" and insert "(g)".

Page 8, line 10, after "who" insert ":".

Page 8, reset in roman lines 11 through 18.

Page 8, delete lines 19 through 20, begin a new paragraph and insert:

**"(e) The term does not include a person that is a lender that did not participate in management of a petroleum facility before foreclosure, notwithstanding that the person:**

**(1) forecloses on the petroleum facility; and**

**(2) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the petroleum facility, maintains business activities, winds up operations, undertakes a response action under Section 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan with respect to the petroleum facility, or takes any other measure to preserve, protect, or prepare the petroleum facility prior to sale or disposition;**

**if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the petroleum facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements."**

Page 8, line 21, strike "(e)" and insert "(f)".

Page 8, line 30, strike "(f)" and insert "(g)".

Page 8, line 35, strike "(g)" and insert "(h)".

Page 23, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 31. IC 13-23-13-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. For purposes of IC 13-11-2-148(e), ~~and~~ IC 13-11-2-150(b), **and IC 13-11-2-150(c)**, a person that is a lender and that holds evidence of ownership primarily to protect a security interest in an underground storage tank shall be considered to participate in management (as defined in

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IC 13-11-2-151.2) of the underground storage tank only if, while the borrower is still in possession of the underground storage tank encumbered by the security interest, the person:

- (1) exercises decision making control over the environmental compliance related to the underground storage tank such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank; or
- (2) exercises control at a level comparable to that of a manager of the underground storage tank such that the person has assumed or manifested responsibility:
  - (A) for the overall management of the underground storage tank encompassing day to day decision making with respect to environmental compliance; or
  - (B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank other than the function of environmental compliance.

SECTION 32. IC 13-25-4-8, AS AMENDED BY P.L.221-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as provided in subsection (b), (c), or (d), a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

- (1) the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan;
- (2) the costs of any health assessment or health effects study carried out by or on behalf of the commissioner under Section 104(i) of CERCLA (42 U.S.C. 9604(i)); or
- (3) damages for:
  - (A) injury to;
  - (B) destruction of; or
  - (C) loss of;
 natural resources of Indiana;

is liable, in the same manner and to the same extent, to the state under this section.

(b) The exceptions provided by Sections 107(b), 107(q), and 107(r) of CERCLA 42 U.S.C. 9607(b), 42 U.S.C. 9607(q), and 42 U.S.C. 9607(r) to liability otherwise imposed by Section 107(a) of CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise imposed under subsection (a).

(c) Notwithstanding any liability imposed by the environmental management laws:

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- (1) a lender **that meets, for purposes of the determination under this section of liability for a release of hazardous substances, the exception criteria under Section 101(20)(E) of CERCLA (42 U.S.C. 9601(20)(E));**
- (2) a secured or unsecured creditor; or
- (3) a fiduciary;

is not liable under the environmental management laws, in connection with the release or threatened release of a hazardous substance from a facility unless the lender, the fiduciary, or creditor has participated in the management of the hazardous substance at the facility.

(d) Notwithstanding any liability imposed by the environmental management laws, the liability of a fiduciary for a release or threatened release of a hazardous substance from a facility that is held by the fiduciary in its fiduciary capacity may be satisfied only from the assets held by the fiduciary in the same estate or trust as the facility that gives rise to the liability.

(e) Except as provided in subsection (g), a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the political subdivision or unit of federal or state government acquired an interest 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.

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(f) If a transfer of an interest in property as described in subsection (e) occurs, a person who owned, operated, or otherwise controlled the property immediately before the political subdivision or unit of federal or state government acquired the interest in the property remains liable under this section:

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

as the person was liable immediately before the person's interest in the property was acquired by the political subdivision or unit of federal or state government.

(g) Notwithstanding subsection (e), a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:

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

as a nongovernmental entity under this section.

(h) Except as provided in subsection (i), a nonprofit corporation is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the nonprofit corporation acquired an interest to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation.

(i) Notwithstanding subsection (h), a nonprofit corporation that causes or contributes to a release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:

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

as any other nongovernmental entity under this section.

(j) A political subdivision or unit of federal or state government that establishes an exemption or defense under subsection (b) or (e) may undertake any activity related to:

- (1) investigation, removal, or remedial action on a brownfield, including complying with land use restrictions and institutional controls; or
- (2) monitoring or closure of an underground storage tank;

without being considered as contributing to the existing release or threatened release of hazardous substances on, in, or at the brownfield 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.

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(k) For purposes of subsection (j), reckless, willful, or wanton misconduct constitutes gross negligence."

Delete page 24.

Page 25, delete lines 1 through 23.

Renumber all SECTIONS consecutively.

(Reference is to SB 209 as printed January 22, 2010.)

GARD

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 209, 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 5, line 19, delete "or the real" and insert ";".

Page 5, delete line 20.

Page 5, line 21, delete "both;".

Page 12, delete lines 8 through 42.

Delete pages 13 through 14.

Page 15, delete lines 1 through 16.

Page 16, line 9, after "IC 13-15-4-1" insert ", AS AMENDED BY P.L.78-2009, SECTION 13,".

Page 16, line 27, delete "Two" and insert "Except as provided in IC 13-18-3-2.1, two".

Page 16, line 35, delete "One" and insert "Except as provided in IC 13-18-3-2.1, one".

Page 17, line 1, delete "One" and insert "Except as provided in IC 13-18-3-2.1, one".

Page 29, between lines 18 and 19, begin a new paragraph and insert:  
**"SECTION 31. IC 13-26-5-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.8. (a) As used in this section, "agricultural land" means land that is:**

**(1) zoned or otherwise designated as agricultural land; or**

**(2) used for growing crops or raising livestock.**

**(b) As used in this section, "septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5.**

**(c) Subject to subsection (e), a person who owns agricultural land in St. Joseph County is exempt from the requirement to connect to a district's sewer system and to discontinue use of a**

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septic tank soil absorption system if the following conditions are met:

(1) The person, at the person's own expense, obtains and provides to the district a certification from the local health department or the department's designee that the septic tank soil absorption system is functioning satisfactorily. If the local health department or the department's designee denies the issuance of a certificate to the person, the person may appeal the denial to the board of the local health department. The decision of the board is final and binding.

(2) The person provides the district with:

(A) the written notification of potential qualification for the exemption described in subsection (g); and

(B) the certification described in subdivision (1);

within the time limits set forth in subsection (g).

(d) If a person, within the time allowed under subsection (g), notifies a district in writing that the person qualifies for the exemption under this section, the district shall, until the person's eligibility for an exemption under this section is determined, suspend the requirement that the person discontinue use of a septic tank soil absorption system and connect to the district's sewer system.

(e) A person who qualifies for the exemption provided under this section may not be required to connect to the district's sewer system for a period of five (5) years beginning on the district's sewer system's anticipated connection date. If ownership of the property passes from the owner who qualified for the exemption to another person during the exemption period, the exemption does not apply to the subsequent owner of the property.

(f) A district that has filed plans with the department to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected persons who own agricultural land in St. Joseph County:

(1) that the person may be required to discontinue the use of a septic tank soil absorption system;

(2) that the person may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and

(3) of the procedures to claim an exemption.

(g) To qualify for an exemption under this section, a person must:

(1) within sixty (60) days after the date of the written notice

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**given to the person under subsection (f), notify the district in writing that the person qualifies for the exemption under this section; and**

**(2) within sixty (60) days after the district receives the written notice provided under subdivision (1), provide the district with the certification required under subsection (c)(1)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 209 as reprinted January 27, 2010.)

DVORAK, Chair

Committee Vote: yeas 10, nays 0.

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