2001 Edition

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Editor
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How to Refer to ("cite") a Statute

The Indiana Code ("IC") is a compilation of the statutes enacted into law by the Indiana General Assembly. The statutes are grouped by subject into Titles. The laws relating to the environment are located in Title 13 - Environment.

Each Title of the Indiana Code is further subdivided into Articles, Chapters, and Sections. For instance, the citation:

IC 13-17-2-12

refers to the requirements found at Title 13, Article 17, Chapter 2, Section 12 of the Indiana Code.

The Table of Contents to this Volume is useful in understanding the organization of the Indiana statutes related to the Indiana Department of Environmental Management and the environmental boards. The requirements of IC 13-17-2-12, for instance, are located under the following hierarchy:

Title 13 ..... Environment
Article 17 ..... Air Pollution Control
Chapter 2 ..... Establishment of Air Pollution Control Board
Section 12 Technical Secretary

About This Volume

This *2001Indiana Environmental Statutes* volume includes all of the provisions of Indiana Code, Title 13 - Environment. In addition, as in past years, this *2001 Indiana Environmental Statutes* volume includes the Administrative Orders and Procedures Act (IC 4-21.5), the general law relating to administrative rulemaking (IC 4-22), and the relevant provisions of the public meetings law (IC 5-14-1.5), the public records law (IC 5-14-3), and relevant provisions of the property tax laws (IC 6-1.1).

Provisions in other statutes that refer to the Indiana Department of Environmental Management also are included, but statutes relating exclusively to duties of the State Department of Health, the Department of Natural Resources, and the Public Utility Commission are not included.

The text of all statutes is current as of the end of the regular session of the 2001 Indiana General Assembly session. Unless otherwise noted in the headnote to a section, all the provisions in this volume are in effect.

Non-code sections. Non-code or uncodified sections (i.e., provisions, generally of a temporary nature, that were a part of an Enrolled Act as passed by the General Assembly, but were not given an Indiana Code citation) have been included when they may be of interest to the user of this volume. The non-code sections included concern matters such as the establishment of temporary study committees, deadlines issued by the General Assembly to the environmental boards for the adoption of specified rules, etc. They also include specific legislative directives to IDEM. All non-code sections have been located in this *2001 Edition* at the end of the volume.

Headnotes. The headnotes contained in this volume—the short descriptive line in boldface type preceding each section—are not a part of the official law; they were prepared by the editor of this volume to aid the reader in locating the provisions sought. They are not to be used in interpreting the text of the law itself.

History lines. Immediately following most sections is a line in brackets and italics type, such as *[As amended by: P.L. 6-1989, §5.]*. This is the history line; it lists the most recent action relating to the section, but does not give the entire history of the provision. For a complete history, look to the official version of the Indiana Code published by the Indiana Legislative Council.

Note that a few sections have no history line; these are sections that have not been either added or amended since the 1976 version of the Indiana Code was adopted.

Tables. The *2001 Edition* contains the following Tables:

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Marcia J. Oddi
May 27, 2001

Sections Affected by the 2001 General Assembly

The following Table lists the sections of this 2001 Edition of the *Indiana Environmental Statutes* that were added ("N" = new), amended ("A" = amended) or repealed ("R" = repealed) as a result of the Acts of the 2001 session of the Indiana General Assembly.

New non-code (i.e., not included in the Indiana Code) provisions relevant to these environmental statutes also are included in this Table ("U" = uncodified).

The Table also lists the effective dates of the 2001 amendments, additions and repeals.

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4-21.5-2-4	A	01/01/2002	198-2001	1
4-21.5-2-6	A	01/01/2002	198-2001	2
4-21.5-2-6	A	07/01/2001	204-2001	5
4-21.5-3-4	A	07/01/2001	54-2001	2
4-21.5-5-6	A	01/01/2002	198-2001	3
4-22-2-37.1 (v.2)	A	07/01/2001	287-2001	1
4-22-2-37.1 (v.3)	A	01/01/2002	283-2001	1
4-22-2-37.1 (v.1)	A	07/01/2001	204-2001	6
5-14-3-2	A	07/01/2001	204-2001	12
5-14-3-4 (v.1)	A	07/01/2001	201-2001	1
5-14-3-4 (v.2)	A	07/01/2001	271-2001	1
5-14-3-8	A	07/01/2001	89-2001	1
6-1.1-12-28.5	A	01/01/2002	198-2001	34
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6-1.1-12.1-3	A	07/01/2001	198-2001	38
6-1.1-12.1-4.7	A	03/01/2001	205-2001	1
6-1.1-12.1-5.5	A	07/01/2001	198-2001	39
6-1.1-12.1-5.5	R	01/01/2002	198-2001	122
6-3.1-23	N	01/01/2002	109-2001	1
6-3.5-1.1-1.3	A	07/01/2001	70-2001	1
6-3.5-6-1.3	A	07/01/2001	70-2001	2
6-6-6.6-3	A	07/01/2001	101-2001	1
6-6-10-9	A	07/01/2001	92-2001	1
6-8.1-1-1	A	05/03/2001	151-2001	7
13-11-2-1.5	A	01/01/2002	1-2001	10
13-11-2-7.5	N	07/01/2001	225-2001	1
13-11-2-16	A	07/01/2001	14-2001	1
13-11-2-25.7	N	07/01/2001	14-2001	2
13-11-2-50.5	A	05/07/2001	1-2001	11
13-11-2-58	A	07/01/2001	225-2001	2
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13-11-2-126	A	07/01/2001	225-2001	3
13-11-2-128	A	07/01/2001	225-2001	4
13-11-2-128.3	N	07/01/2001	225-2001	5
13-11-2-128.5	N	07/01/2001	225-2001	6
13-11-2-128.6	N	07/01/2001	225-2001	7
13-11-2-128.7	N	07/01/2001	225-2001	8
13-11-2-133	A	07/01/2001	218-2001	1
13-11-2-142.6	N	07/01/2001	225-2001	9
13-11-2-149.5	A	05/07/2001	1-2001	13
13-11-2-149.6	A	05/07/2001	1-2001	14
13-11-2-158	A	07/01/2001	225-2001	10
13-11-2-176.5	N	07/01/2001	225-2001	11
13-11-2-180	A	07/01/2001	225-2001	12
13-11-2-193	A	07/01/2001	218-2001	2
13-11-2-193.5	N	07/01/2001	61-2001	2
13-11-2-199.5	N	07/01/2001	193-2001	1
13-11-2-206	A	07/01/2001	218-2001	3
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13-11-2-212	A	07/01/2001	218-2001	5
13-11-2-223.5	N	07/01/2001	55-2001	1
13-11-2-229	R	07/01/2001	14-2001	19
13-11-2-237.5	A	05/07/2001	1-2001	15
13-11-2-242	A	07/01/2001	225-2001	13
13-11-2-256	A	07/01/2001	225-2001	14
13-14-2-6	A	07/01/2001	61-2001	1
13-14-9.5-1.1	N	05/02/2001	146-2001	3
13-14-9.5-2	A	07/01/2001	146-2001	4
13-18-3-2	A	05/07/2001	1-2001	16
13-18-3-2.4	A	05/07/2001	1-2001	17
13-18-11-1	A	05/07/2001	1-2001	18
13-18-21-23	A	07/01/2001	55-2001	2
13-18-21-25	A	07/01/2001	55-2001	3
13-19-3-8	N	07/01/2001	257-2001	1
13-19-3-8.2	N	07/01/2001	218-2001	6
13-19-5-15	A	07/01/2001	109-2001	2
13-19-5-16	N	07/01/2001	291-2001	118
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13-20-4-8	R	07/01/2001	218-2001	11
13-20-7.5	R	07/01/2001	218-2001	11
13-20-8-9	N	07/01/2001	218-2001	8
13-20-17.5	N	07/01/2001	225-2001	15
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13-22-4-3.1	A	01/01/2002	1-2001	20
13-22-10-3	R	07/01/2001	1-2001	51
13-22-10-4	R	07/01/2001	1-2001	51
13-22-10-6	R	07/01/2001	1-2001	51
13-22-10-7	R	07/01/2001	1-2001	51
13-22-10-8	R	07/01/2001	1-2001	51
13-22-10-9	R	07/01/2001	1-2001	51
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13-22-10-12	R	07/01/2001	1-2001	51
13-22-10-13	R	07/01/2001	1-2001	51
13-22-10-14	R	07/01/2001	1-2001	51
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13-22-10-16	R	07/01/2001	1-2001	51
13-22-10-17	R	07/01/2001	1-2001	51
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13-22-10-21	R	07/01/2001	1-2001	51
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13-22-10-23	A	05/07/2001	1-2001	21
13-23-7-1	A	07/01/2001	14-2001	4
13-23-7-4	A	07/01/2001	14-2001	5
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13-23-8-3	A	07/01/2001	14-2001	8
13-23-8-4	A	07/01/2001	14-2001	9
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13-23-8-6	A	07/01/2001	14-2001	11
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13-23-9-3	A	07/01/2001	14-2001	16
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13-23-11-7	A	07/01/2001	14-2001	17
13-23-12-7	A	07/01/2001	14-2001	18
13-25-1-6	A	07/01/2001	92-2001	2
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13-25-6-5	A	04/18/2001	33-2001	2
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13-27.5-1-7	A	07/01/2001	248-2001	3
36-7-13.5	N	07/01/2001	31-2001	1
36-8-12.2	N	04/18/2001	33-2001	3
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P.L. 112-2000, §6 ... IDEM to prepare White River report

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TITLE 2. STATUTES CONCERNING THE GENERAL ASSEMBLY THAT ARE RELEVANT TO IDEM

IC 2-5-18. ADMINISTRATIVE RULES OVERSIGHT COMMITTEE

IC 2-5-18-1 ---------- Defined: agency

As used in this chapter, "agency" has the meaning set forth in IC 4-22-2-3.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-2 ---------- Defined: committee

As used in this chapter, "committee" refers to the administrative rules oversight committee established by section 4 of this chapter.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-3 ---------- Defined: rule

As used in this chapter, "rule" has the meaning set forth in IC 4-22-2-3.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-4 ---------- Rules oversight committee: established

The administrative rules oversight committee is established. The committee has oversight over the rules of any agency that is not listed in IC 4-21.5-2-4.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-5 ---------- Rules oversight committee: membership

(a) The committee consists of the following eight (8) members of the general assembly:

(1) Four (4) members of the house of representatives appointed by the speaker of the house of representatives. Not more than two (2) members appointed under this subdivision may be members of the same political party.

(2) Four (4) members of the senate appointed by the president pro tempore of the senate. Not more than two (2) members appointed under this subdivision may be members of the same political party.

(b) The appointing authorities shall make the appointments before December 1 of each even-numbered year. The appointments remain in effect until the election of the next general assembly.

(c) Any vacancy occurring on the committee must be filled by the appointing authority for the unexpired term.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-6 ---------- Rules oversight committee: chair; organization

(a) The speaker of the house of representatives shall appoint a member of the committee to be the chair of the committee during the first regular session of each general assembly. The member appointed to be chair by the speaker serves as chair until the beginning of the second regular session of that general assembly.

(b) The president pro tempore of the senate shall appoint a member of the committee to be chair of the committee during the second regular session of each general assembly. The member appointed to be chair by the president pro tempore serves as chair until the election of the next general assembly.

(c) The committee shall meet to organize on the call of the chair not later than December 15 of each year. The committee shall meet at the call of the chair.

[As amended by: P.L.4-1995, §11.]

IC 2-5-18-7 ---------- Rules oversight committee: expenses of members

Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council. These expenses shall be paid from funds appropriated to the legislative council.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-8 ---------- Rules oversight committee: authority

(a) The committee shall receive and may, at its discretion, review a complaint filed by a person regarding a rule or practice of an agency.

(b) The committee may review an agency rule, an agency practice, or a failure of an agency to adopt a rule.

(c) The committee may recommend that a rule be modified, repealed, or adopted.

(d) When appropriate, the committee shall prepare and arrange for the introduction of a bill to clarify the intent of the general assembly when the general assembly enacted a law or to correct the misapplication of a law by an agency.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-9 ---------- Rules oversight committee: quorum; voting

(a) Five (5) members of the committee constitute a quorum.

(b) The affirmative vote of five (5) members of the committee is required for the committee to take any action.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-10 --------- Rules oversight committee: public notification

(a) Notice of the time, place, and agenda of committee meetings may be given in the Indiana Register.

(b) The committee may require publication of a periodic announcement in the Indiana Register that describes the duties of the committee and the procedure for filing complaints.

(c) The committee may require publication in the Indiana Register of an account of all or part of the proceedings of the committee.

[As added by: P.L.12-1993, §1.]

IC 2-5-18-11 ---------- Rules oversight committee: staffing

Staff for the committee shall be provided by the legislative services agency.

[As added by: P.L.12-1993, §1.]

TITLE 4. STATUTES CONCERNING STATE AGENCIES THAT ARE RELEVANT TO IDEM

IC 4-3-11. INDIANA CORPORATION FOR SCIENCE AND TECHNOLOGY

IC 4-3-11-6 ---------- Consideration of recycled products

The corporation shall consider projects involving the creation of the following:

(1) Markets for products made from recycled materials.

(2) New products made from recycled materials.

[As added by: P.L.10-1990, §1.]

IC 4-4-3. DEPARTMENT OF COMMERCE (DOC)

IC 4-4-3-8 ---------- DOC: duties include developing and promoting recycling markets

(a) The department shall develop and promote programs designed to make the best use of the resources of the state so as to assure a balanced economy and continuing economic growth for Indiana and for those purposes may do the following:

(1) Cooperate with federal, state, and local governments and agencies in the coordination of programs to make the best use of the resources of the state.

(2) Receive and expend all funds, grants, gifts, and contributions of money, property, labor, interest accrued from loans made by the department, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government. The department:

(A) may accept federal grants for providing planning assistance, making grants, or providing other services or functions necessary to political subdivisions, planning commissions, or other public or private organizations;

(B) shall administer these grants in accordance with their terms; and

(C) may contract with political subdivisions, planning commissions, or other public or private organizations to carry out the purposes for which the grants were made.

(3) Direct that assistance, information, and advice regarding the duties and functions of the department be given the department by any officer, agent, or employee of the state. The head of any other state department or agency may assign one (1) or more of the department's or agency's employees to the department on a temporary basis, or may direct any division or agency under the department's or agency's supervision and control to make any special study or survey requested by the director.

(b) The department shall perform the following duties:

(1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.

(2) Plan, direct, and conduct research activities.

(3) Develop and implement industrial development programs to encourage expansion of existing industrial, commercial, and business facilities within Indiana and to encourage new industrial, commercial, and business locations within Indiana.

(4) Assist businesses and industries in acquiring, improving, and developing overseas markets and encourage international plant locations within Indiana. The director, with the approval of the governor, may establish foreign offices to assist in this function.

(5) Promote the growth of minority business enterprises by doing the following:

(A) Mobilizing and coordinating the activities, resources, and efforts of govern-

mental and private agencies, businesses, trade associations, institutions, and individuals.

(B) Assisting minority businesses in obtaining governmental or commercial financing for expansion, establishment of new businesses, or individual development projects.

(C) Aiding minority businesses in procuring contracts from governmental or private sources, or both.

(D) Providing technical, managerial, and counseling assistance to minority business enterprises.

(6) Assist in community economic development planning and the implementation of programs designed to further this development.

(7) Assist in the development and promotion of Indiana's tourist resources, facilities, attractions, and activities.

(8) Assist in the promotion and marketing of Indiana's agricultural products, and provide staff assistance to the director in fulfilling the director's responsibilities as commissioner of agriculture.

(9) Perform the following energy related functions:

(A) Assist in the development and promotion of alternative energy resources, including Indiana coal, oil shale, hydropower, solar, wind, geothermal, and biomass resources.

(B) Encourage the conservation and efficient use of energy, including energy use in commercial, industrial, residential, governmental, agricultural, transportation, recreational, and educational sectors.

(C) Assist in energy emergency preparedness.

(D) Not later than January 1, 1994, establish:

(i) specific goals for increased energy efficiency in the operations of state government and for the use of alternative fuels in vehicles owned by the state; and

(ii) guidelines for achieving the goals established under item (i).

(E) Establish procedures for state agencies to use in reporting to the department on energy issues.

(F) Carry out studies, research projects, and other activities required to:

(i) assess the nature and extent of energy resources required to meet the needs of the state, including coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable energy, and other energy resources;

(ii) promote cooperation among government, utilities, industry, institutions of higher education, consumers, and all other parties interested in energy and recycling market development issues; and

(iii) promote the dissemination of information concerning energy and recycling market development issues.

(10) Implement any federal program delegated to the state to effectuate the purposes of this chapter.

(11) Promote the growth of small businesses by doing the following:

(A) Assisting small businesses in obtaining and preparing the permits required to conduct business in Indiana.

(B) Serving as a liaison between small businesses and state agencies.

(C) Providing information concerning business assistance programs available through government agencies and private sources.

(12) Assist the Indiana commission for agriculture and rural development in performing its functions under IC 4-4-22.

(13) Develop and promote markets for the following recyclable items:

(A) Aluminum containers.

(B) Corrugated paper.

(C) Glass containers.

(D) Magazines.

(E) Steel containers.

(F) Newspapers.

(G) Office waste paper.

(H) Plastic containers.

(I) Foam polystyrene packaging.

(J) Containers for carbonated or malt beverages that are primarily made of a combination of steel and aluminum.

(14) Produce an annual recycled products guide and at least one (1) time each year distribute the guide to the following:

(A) State agencies.

(B) The judicial department of state government.

(C) The legislative department of state government.

(D) State educational institutions (as defined in IC 20-12-0.5-1).

(E) Political subdivisions (as defined in IC 36-1-2-13).

(F) Bodies corporate and politic created by statute.

A recycled products guide distributed under this subdivision must include a description of supplies and other products that contain recycled material and information concerning the availability of the supplies and products.

(c) The department shall submit a report to the general assembly before October 1 of each year concerning the availability of and location of markets for recycled products in Indiana. The report must include the following:

(1) A priority listing of recyclable materials to be targeted for market development. The listing must be based on an examination of the need and opportunities for the marketing of the following:

(A) Paper.

(B) Glass.

(C) Aluminum containers.

(D) Steel containers.

(E) Bi-metal containers.

(F) Glass containers.

(G) Plastic containers.

(H) Landscape waste.

(I) Construction materials.

(J) Waste oil.

(K) Waste tires.

(L) Coal combustion wastes.

(M) Other materials.

(2) A presentation of a market development strategy that:

(A) considers the specific material marketing needs of Indiana; and

(B) makes recommendations for legislative action.

(3) An analysis that examines the cost and effectiveness of future market development options.

[As amended by: P.L.13-1993, §2.]

IC 4-4-3-8.1 ---------- DOC: potential environmental impact of assistance

When considering offering economic development assistance to businesses and industries, the department shall do the following:

(1) Consider the potential environmental impact that would be caused by the assistance.

(2) Give priority to businesses and industries that, as the principal activity of the businesses and industries, convert recyclable materials into useful products or create markets for products made from recycled materials.

[As added by: P.L.10-1990, §2.]

IC 4-4-10.9. INDUSTRIAL DEVELOPMENT PROJECTS

IC 4-4-10.9-11 ------- Industrial development projects: definition includes pollution control facilities and recycling market development projects

(a) Except as provided in subsection (b), "industrial development project" includes:

(1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2;

(2) educational facility projects; and

(3) child care facility projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

(1) A pollution control facility.

(2) A manufacturing enterprise.

(3) A business service enterprise involved in:

(A) computer and data processing services; or

(B) commercial testing services.

(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.

(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.

(6) An agricultural enterprise in which:

(A) the enterprise operates pursuant to a producer or growout agreement; and

(B) the output of the enterprise is processed predominantly in Indiana.

(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.

(8) A recycling market development project.

(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

[As amended by: P.L.14-2000, §9.]

IC 4-4-10.9-23 ------- Industrial development projects: pollution defined

"Pollution" means all forms of environmental pollution, including water pollution, air pollution, sewage, solid and radioactive waste, thermal pollution, radiation contamination, and noise pollution.

[As added by: P.L.20-1985, §1.]

IC 4-4-10.9-24 ------- Industrial development projects: pollution control facility defined

"Pollution control facility" means a facility for the abatement, reduction, or prevention of pollution or for the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used. This includes the following:

(1) Coal washing, coal cleaning, or coal preparation facilities designed to reduce the sulfur and ash levels of Indiana coal.

(2) Coal-fired boiler facilities designed to reduce emissions while burning Indiana coal.

(3) Pollution control equipment to allow for the environmentally sound use of Indiana coal.

[As added by: P.L.20-1985, §1.]

IC 4-4-11.2. INDUSTRIAL DEVELOPMENT AUTHORITY: UNDERGROUND PETROLEUM STORAGE TANK EXCESS LIABILITY FUND

IC 4-4-11.2-1 --------- Excess liability fund: authority defined

As used in this chapter, "authority" refers to the Indiana development finance authority.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-2 --------- Excess liability fund: bonds defined

As used in this chapter, "bonds" means any bonds, notes, debentures, interim certificates, revenue anticipation notes, warrants, or any other evidences of indebtedness of the authority.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-3 --------- Excess liability fund: financial institution defined

As used in this chapter, "financial institution" means a financial institution (as defined in IC 28-1-1).
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-4 --------- Excess liability fund: holder defined

As used in this chapter, "holder" means a person who is:

(1) the bearer of any outstanding bond or note registered to bearer or not registered; or

(2) the registered owner of any outstanding bond or note that is registered other than to bearer.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-5 --------- Excess liability fund: person defined

As used in this chapter, "person" means any individual, partnership, firm, association, joint venture, limited liability company, or corporation.
[As amended by: P.L.8-1993, §16.]

IC 4-4-11.2-6 --------- Excess liability fund: reserve fund defined

As used in this chapter, "reserve fund" means a reserve fund established under section 15 of this chapter.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-7 --------- Excess liability fund: authorized purposes for issuance of bonds; security

(a) The authority may issue its bonds in principal amounts that it considers necessary to provide funds for any purposes under this chapter, including the following:

(1) Providing a source of money for the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

(2) Payment, funding, or refunding of the principal of, or interest or redemption premiums on, bonds issued by it under this chapter whether the bonds or interest to be paid, funded, or refunded have or have not become due.

(3) Establishment or increase of reserves to secure or to pay bonds or interest on bonds and all other costs or expenses of the authority incident to and necessary or convenient to carry out the authority's corporate purposes and powers.

(b) Every issue of bonds shall be obligations of the authority payable solely out of the revenues or funds of the authority under section 15 of this chapter, subject to agreements with the holders of a particular series of bonds pledging a particular revenue or fund. Bonds may be additionally secured by a pledge of a grant or contributions from the United States, a political subdivision, or a person, or by a pledge of income or revenues, funds, or money of the authority from any source.
[As amended by: P.L.9-1996, §1.]

IC 4-4-11.2-8 --------- Excess liability fund: bonds are not governmental obligations; state will not impair bondholder rights

(a) A bond of the authority:

(1) is not a debt, liability, loan of the credit, or pledge of the faith and credit of the state or of any political subdivision;

(2) is payable solely from the money pledged or available for its payment under this chapter, unless funded or refunded by bonds of the authority; and

(3) must contain on its face a statement that the authority is obligated to pay principal and interest, and redemption premiums if any, and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond.

(b) The state pledges to and agrees with the holders of the bonds issued under this chapter that the state will not:

(1) limit or restrict the rights vested in the authority to fulfill the terms of any agreement made with the holders of its bonds; or

(2) in any way impair the rights or remedies of the holders of the bonds;

until the bonds, together with the interest on the bonds, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-9 --------- Excess liability fund: bonds are negotiable instruments

The bonds of the authority are negotiable instruments for all purposes of the Uniform Commercial Code (IC 26-1), subject only to the provisions of the bonds for registration.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-10 ------- Excess liability fund: formal bond requirements; rates of interest; mandatory redemption

(a) Bonds of the authority must be authorized by resolution of the authority, may be issued in one (1) or more series, and must:

(1) bear the date;

(2) mature at the time or times;

(3) be in the denomination;

(4) be in the form;

(5) carry the conversion or registration privileges;

(6) have the rank or priority;

(7) be executed in the manner;

(8) be payable from the sources in the medium of payment at the place inside or outside the state; and

(9) be subject to the terms of redemption;

as the resolution of the authority or the trust agreement securing the bonds provides.

(b) Bonds may be issued under this chapter without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in this chapter.

(c) The rate or rates of interest on the bonds may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution authorizing the issuance of the bonds. Bonds bearing a variable rate of interest may be converted to bonds bearing a fixed rate or rates of interest, and bonds bearing a fixed rate or rates of interest may be converted to bonds bearing a variable rate of interest, to the extent and in the manner set forth in the resolution pursuant to which the bonds are issued. The interest on bonds may be payable semiannually or annually or at any other interval or intervals as may be provided in the

resolution, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution.

(d) The bonds may be made subject to mandatory redemption by the authority at the times and under the circumstances set forth in the authorizing resolution.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-11 ------- Excess liability fund: public or private sale of bonds

Bonds of the authority may be sold at public or private sale at the price the authority determines. If bonds of the authority are to be sold at public sale, the authority shall publish notice of the sale for two (2) weeks in two (2) newspapers published and of general circulation in the city of Indianapolis.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-12 ------- Excess liability fund: periodic issuance and retirement of bonds

The authority may periodically issue its bonds under this chapter and pay and retire the principal of the bonds or pay the interest due thereon or fund or refund the bonds from proceeds of bonds, or from other funds or money of the authority available for that purpose in accordance with a contract between the authority and the holders of the bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-13 ------- Excess liability fund: bond trust agreements and resolutions

(a) In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state.

(b) The trust agreement or the resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of any such bonds as are reasonable and proper and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by the holders.

(d) In addition to the provisions of subsections (a), (b), and (c), any trust agreement or resolution may contain other provisions the authority considers reasonable and proper for the security of the holders of any bonds.

(e) All expenses incurred in carrying out the trust agreement or resolution may be paid from revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-14 ------- Excess liability fund: bond purchase by authority

The authority may purchase bonds of the authority out of its funds or money available for the purchase of its own bonds. The authority may hold, cancel, or resell the bonds subject to, and in accordance with, agreements with holders of its bonds. Unless cancelled, bonds so held are considered to be held for resale or transfer and the obligation evidenced by the bonds shall not be considered to be extinguished.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-15 ------- Excess liability fund: debt service and reserve funds

(a) The authority may establish and maintain a debt service fund, and if necessary, a reserve fund, for each issue of bonds in which there shall be deposited or transferred:

(1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 18(a) of this chapter;

(2) all proceeds of bonds required to be deposited in the fund by terms of a contract between the authority and its holders or a resolution of the authority with respect to the proceeds of bonds;

(3) all other money appropriated by the general assembly to the funds; and

(4) any other money or funds of the authority that it decides to deposit in either fund.

(b) Subject to section 18(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds of the authority as the interest and principal become due and payable and for the retirement of bonds.

(c) Money in any reserve fund in excess of the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-16 ------- Excess liability fund: investment of money in reserve fund

Money in any reserve fund may be invested in the manner provided in the trust agreement or the resolution authorizing issuance of the bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-17 ------- Excess liability fund: valuation of investments in reserve fund

For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-18 ------- Excess liability fund: legislative appropriations to debt service fund

(a) In order to assure the payment of debt service on bonds of the authority issued under this chapter or maintenance of the required debt service reserve in any reserve fund, the general assembly may annually or biannually appropriate to the authority for deposit in one (1) or more of the funds the sum including particularly sums from the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1, that is necessary to pay the debt service on the bonds or to restore one (1) or more of the funds to an amount equal to the required debt service reserve. This subsection does not create a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any fund shall be held and applied in accordance with section 15(b) of this chapter. However, at the end of each fiscal year, if the amount in any fund exceeds the debt service or required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the funds that exceeds the expenses of the authority for that fiscal year may be transferred to the underground petroleum storage tank excess liability trust fund.

[As amended by: P.L.9-1996, §2.]

IC 4-4-11.2-19 ------- Excess liability fund: combining of reserve funds

Subject to any agreement with its holders, the authority may combine a reserve fund established for an issue of bonds into one (1) or more reserve funds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-20 ------- Excess liability fund: additional reserves or other funds

The authority may establish additional reserves or other funds or accounts as the authority considers necessary, desirable, or convenient to further the accomplishment of its purposes or to comply with any of its agreements or resolutions.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-21 ------- Excess liability fund: limits on use of money in funds

Unless the resolution or trust agreement authorizing the bonds provides otherwise, money or investments in a fund or account of the authority established or held for the payment of bonds shall be applied to the payment or retirement of the bonds, and to no other purpose.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-22 ------- Excess liability fund: limitations on actions to contest the validity of bonds

(a) No action to contest the validity of any bonds of the authority to be sold at public sale may be brought after the fifteenth day following the first publication of notice of the sale of the bonds. No action to contest the validity of any bond sale under this chapter may be brought after the fifth day following the bond sale.

(b) If bonds are sold at private sale, no action to contest the validity of such bonds may be brought after the fifteenth day following the adoption of the resolution authorizing the issuance of the bonds.

(c) If an action challenging the bonds of the authority is not brought within the time prescribed by subsection (a) or (b), whichever is applicable, all bonds of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and a person or a qualified entity is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

(d) If this chapter is inconsistent with any other law (general, special, or local), this chapter controls.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-23 ------- Excess liability fund: property of authority exempt from judicial process

All property of the authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property. A judgment against the authority may not be a charge or lien upon its property. However, this section does not apply to or limit the rights of the holder of bonds to pursue a remedy for the enforcement of a pledge or lien given by the authority on its revenues or other money.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-24 ------- Excess liability fund: pledges of revenues

A pledge of revenues or other money made by the authority is binding from the time the pledge is made. Revenues or other money so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any further act, and the lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created needs to be filed or recorded except in the records of the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-25 ------- Excess liability fund: receipt of money provided for the authority authorized

The chairman of the authority may receive from the United States of America or any department or agency thereof, or any state agency, including the department of environmen-

tal management, any amount of money as and when appropriated, allocated, granted, turned over, or in any way provided for the purposes of the authority or this chapter, and those amounts shall, unless otherwise directed by the federal authority, be credited to and be available to the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-26 ------- Excess liability fund: undertakings of financial institution regarding deposits of the authority

A financial institution may give to the authority a good and sufficient undertaking with such sureties as are approved by the authority to the effect that the financial institution shall faithfully keep and pay over to the order of or upon the warrant of the authority or its authorized agent all those funds deposited with it by the authority and agreed interest under or by reason of this chapter, at such times or upon such demands as may be agreed with the authority or instead of these sureties, deposit with the authority or its authorized agent or a trustee or for the holders of bonds, as collateral, those securities as the authority may approve. The deposits of the authority may be evidenced by an agreement in the form and upon the terms and conditions that may be agreed upon by the authority and the financial institution.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-27 ------- Excess liability fund: authority may enter into agreements with financial institutions for rendering service

The authority may enter into agreements or contracts with a financial institution inside or outside the state as the authority considers necessary, desirable, or convenient for rendering services in connection with the care, custody, or safekeeping of securities or other investments held or owned by the authority, for rendering services in connection with the payment or collection of amounts payable as to principal or interest, and for rendering services in connection with the delivery to the authority of securities or other investments purchased by or sold by the authority, and to pay the cost of those services. The authority may also, in connection with any of the services to be rendered by a financial institution as to the custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, the authority considers necessary or desirable.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-28 ------- Excess liability fund: bonds of authority are legal investments

Notwithstanding the restrictions of any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds issued under this chapter.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-29 ------- Excess liability fund: property of authority, bonds issued, proceeds and interest are exempt from all state tax except inheritance tax

All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All bonds issued under this chapter are issued by a body corporate and public of the state, but not a state agency, and for an essential public and governmental purpose and the bonds, the interest thereon, the proceeds received by a holder from the sale of the bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption prior to maturity, and proceeds received at maturity and the receipt of the interest and proceeds shall be exempt from taxation in the state for all purposes except a state inheritance tax imposed under IC 6-4.1.

[As amended by: P.L.254(ss)-1997, §2.]

IC 4-4-11.2-30 ------- Excess liability fund: bonds of authority are exempt from securities registration

Any bonds issued by the authority under this chapter are exempt from the registration and other requirements of IC 23-2-1 and any other securities registration laws.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-31 ------- Excess liability fund: chapter supplemental

This chapter is supplemental to all other statutes governing the authority.

[As added by: P.L.13-1990, §1.]

IC 4-10-18. THE COUNTER-CYCLICAL REVENUE AND ECONOMIC STABILIZATION FUND

IC 4-10-18-12 -------- Transfer of money to the UST excess liability fund

If the amount of money in the underground petroleum storage tank excess liability fund established by IC 13-23-7-1 reaches zero (0), ten million dollars ($10,000,000) shall be transferred to the underground petroleum storage tank excess liability fund from the fund if the:

(1) underground petroleum storage tank financial assurance board recommends that the appropriation should be made; and

(2) budget committee approves the appropriation.

[As amended by: P.L.1-1996, §24.]

IC 4-21.5. ADMINISTRATIVE ORDERS AND PROCEDURES ACT (AOPA)

IC 4-21.5-1. AOPA DEFINITIONS

IC 4-21.5-1-1 --------- AOPA: applicability of definitions

The definitions in this chapter apply throughout this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-2 --------- AOPA: administrative law judge (ALJ) defined

"Administrative law judge" refers to an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-3 --------- AOPA: agency defined

"Agency" means any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article. Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government, the legislative department of state government, or a political subdivision.

[As amended by: P.L.41-1995, §1.]

IC 4-21.5-1-4 --------- AOPA: agency action defined

"Agency action" means any of the following:

(1) The whole or a part of an order.

(2) The failure to issue an order.

(3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-5 --------- AOPA: court defined

"Court" means a circuit or superior court responsible for taking any action under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-6 --------- AOPA: final agency action defined

"Final agency action" means:

(1) the entry of an order designated as a final order under this article; or

(2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-7 --------- AOPA: law defined

"Law" means the federal or state constitution, any federal or state statute, a rule of an agency, or a federal regulation.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-8 --------- AOPA: license defined

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-9 --------- AOPA: order defined

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:

(1) a license; or

(2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4).

[As amended by: P.L.42-1995, §1.]

IC 4-21.5-1-10 ------- AOPA: party defined

"Party" means:

(1) a person to whom the agency action is specifically directed; or

(2) a person expressly designated in the record of the proceeding as a party to the proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-11 ------- AOPA: person defined

"Person" means an individual, agency, political subdivision, partnership, corporation, limited liability company, association, or other entity of any character.

[As amended by: P.L.8-1993, §27.]

IC 4-21.5-1-12 ------- AOPA: political subdivision defined

"Political subdivision" has the meaning set forth in IC 36-1-2-13.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-13 ------- AOPA: proceeding defined

"Proceeding" refers to a proceeding under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-14 ------- AOPA: rule defined

"Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

[As amended by: P.L.35-1987, SEC.1.]

IC 4-21.5-1-15 ------- AOPA: authority defined

"Ultimate authority" means an individual or panel of individuals in whom the final authority of an agency is vested by law or executive order.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2. APPLICABILITY OF THE AOPA

IC 4-21.5-2-1 --------- AOPA: creates minimum procedural rights and imposes minimum procedural duties

This article creates minimum procedural rights and imposes minimum procedural duties.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-2 --------- AOPA: waiver of rights but not procedural duties

Except to the extent precluded by a law, a person may waive any right conferred upon that person by this article. This section does not permit the waiver of any procedural duty imposed by this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-3 --------- AOPA: agency applicability in general

This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise. This article applies (to the extent that a statute other than this article specifically applies this article) to a class of otherwise exempt orders or one (1) or more stages of an otherwise exempt proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-4 --------- AOPA: agencies exempted; railroad rate and tariff actions exempted [Effective until 1/1/2002]

(a) This article does not apply to any of the following agencies:

(1) The governor.

(2) The state board of accounts.

(3) The state educational institutions (as defined by IC 20-12-0.5-1).

(4) The department of workforce development.

(5) The unemployment insurance review board of the department of workforce development.

(6) The worker's compensation board.

(7) The military officers or boards.

(8) The Indiana utility regulatory commission.

(9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).

(10) The state board of tax commissioners.

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

[As amended by: P.L.21-1995, §7.]

IC 4-21.5-2-4 --------- AOPA: agencies exempted; railroad rate and tariff actions exempted [Effective 1/1/2002]

(a) This article does not apply to any of the following agencies:

(1) The governor.

(2) The state board of accounts.

(3) The state educational institutions (as defined by IC 20-12-0.5-1).

(4) The department of workforce development.

(5) The unemployment insurance review board of the department of workforce development.

(6) The worker's compensation board.

(7) The military officers or boards.

(8) The Indiana utility regulatory commission.

(9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

[As amended by: P.L.198-2001, §1.]

IC 4-21.5-2-5 --------- AOPA: agency actions exempted

This article does not apply to the following agency actions:

(1) The issuance of a warrant or jeopardy warrant for the collection of taxes.

(2) A determination of probable cause or no probable cause by the civil rights commission.

(3) A determination in a factfinding conference of the civil rights commission.

(4) A personnel action, except review of a personnel action by the state employees appeals commission under IC 4-15-2 or a personnel action that is not covered by IC 4-15-2 but may be taken only for cause.

(5) A resolution, directive, or other action of any agency that relates solely to the internal policy, organization, or procedure of that agency or another agency and is not a licensing or enforcement action. Actions to which this exemption applies include the statutory obligations of an agency to approve or ratify an action of another agency.

(6) An agency action related to an offender within the jurisdiction of the department of correction.

(7) A decision of the department of commerce, the department of environmental management, the enterprise zone board, the tourist information and grant fund review committee, the Indiana development finance authority, the Indiana business modernization and technology corporation, the corporation for innovation development, the Indiana small business development corporation, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.

(8) A decision to issue or not issue a complaint, summons, or similar accusation.

(9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.

(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4-18-1(g)(1), IC 22-4-40, or IC 22-4-41.

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke the driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

[As amended by P.L.172-1999, §10.]

IC 4-21.5-2-6 --------- AOPA: determinations exempted [Effective until 1/1/2002]

This article does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of any of the following:

(1) Determinations by the division of family and children.

(2) Determinations by the alcohol and tobacco commission.

(3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

[As amended by: P.L.204-2001, §5.]

IC 4-21.5-2-6 --------- AOPA: determinations exempted [Effective 1/1/2002]

(a) This article does not apply to the formulation, issuance, or administrative review (but does, except as provided in subsection (b), apply to the judicial review and civil enforcement) of any of the following:

(1) Determinations by the division of family and children.

(2) Determinations by the Indiana alcoholic beverage commission.

(3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

(4) A final determination of the Indiana board of tax review.

(b) IC 4-21.5-5-12 and IC 4-21.5-5-14 do not apply to judicial review of a final determination of the Indiana board of tax review.

[As amended by: P.L.198-2001, §2.]

IC 4-21.5-3. AOPA ADJUDICATIVE PROCEEDINGS

IC 4-21.5-3-1 --------- AOPA: procedures regarding notices, motions and filings

(a) This section applies to:

(1) the giving of any notice;

(2) the service of any motion, ruling, order, or other filed item; or

(3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as otherwise provided by law, a person shall serve papers by United States mail or personal service. If an agency mails or personally serves a paper, the agency shall keep a record of the time, date, and circumstances of the service.

(c) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(d) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

(1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or

(2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(e) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(f) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (c).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.

[As amended by P.L.35-1989, §.2.]

IC 4-21.5-3-2 --------- AOPA: computation of time

(a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:

(1) a Saturday;

(2) a Sunday;

(3) a legal holiday under a state statute; or

(4) a day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

(c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:

(1) the person is personally served with the notice; or

(2) a notice for the person is deposited in the United States mail.

(d) If section 1(d) of this chapter applies, a period of time under this article commences when a notice for the person is published in a newspaper.

(e) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-3 --------- AOPA: notice of, date of effectiveness for, staying of, and compliance with, orders; quorums

(a) An agency shall give notice concerning an order under section 4, 5, 6, or 8 of this chapter. An agency shall conduct additional proceedings under this chapter if required by section 7 or 8 of this chapter. However, IC 4-21.5-4 applies to the notice and proceedings necessary for emergency and other temporary orders.

(b) Notwithstanding IC 1-1-4-1, if:

(1) a panel of individuals responsible for an agency action has a quorum of its members present, as specified by law; and

(2) a statute other than IC 1-1-4-1 does not specify the number of votes necessary to take an agency action;

the panel may take the action by an affirmative vote of a majority of the members present and voting. For the purposes of this subsection, a member abstaining on a vote is not voting on the action.

(c) An order is effective when it is issued as a final order under this chapter, except to the extent that:

(1) a different date is set by this article;

(2) a later date is set by an agency in its order; or

(3) an order is stayed.

(d) After an order becomes effective, an agency may suspend the effect of an order, in whole or in part, by staying the order under this chapter.

(e) A party to an order may be required to comply with an order only after the party has been served with the order or has actual knowledge of the order.

[As amended by: P.L.35-1987, §3.]

IC 4-21.5-3-4 --------- AOPA: §4 notice provisions

(a) Notice must be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license by the bureau of motor vehicles under IC 9.

(2) The grant, renewal, restoration, transfer, or denial of a noncommercial fishing or hunting license by the department of natural resources under IC 14.

(3) The grant, renewal, restoration, transfer, or denial of a license by a board described in IC 25-1-8-1.

(4) The grant, renewal, suspension, revocation, or denial of a certificate of registration under IC 25-5.2.

(5) A personnel decision by an agency.

(6) The grant, renewal, restoration, transfer, or denial of a license by the department of environmental management or the commissioner of the department under the following:

(A) Environmental management laws (as defined in IC 13-11-2-71) for the construction, installation, or modification of:

(i) sewers and appurtenant facilities, devices, or structures for the collection and transport of sewage (as defined in IC 13-11-2-200) or storm water to a storage or treatment facility or to a point of discharge into the environment; or

(ii) pipes, pumps, and appurtenant facilities, devices, or structures that are part of a public water supply (as defined in IC 13-11-2-177) and that are used to transport water to a storage or treatment facility or to distribute water to the users of the public water supply;

where a federal, state, or local governmental body has given or will give public notice and has provided or will provide an opportunity for public participation concerning the activity that is the subject of the license.

(B) Environmental management laws (as defined in IC 13-11-2-71) for the registration of a device or a piece of equipment.

(C) IC 13-17-6-1 for a person to engage in the inspection, management, and abatement of asbestos containing material.

(D) IC 13-18-11 for a person to operate a wastewater treatment plant.

(E) IC 13-15-10 for a person to operate the following:

(i) A solid waste incinerator or a waste to energy facility.

(ii) A land disposal site.

(iii) A facility described under IC 13-15-1-3 whose operation could have an adverse impact on the environment if not operated properly.

(F) IC 13-20-4 for a person to operate a municipal waste collection and transportation vehicle.

(b) When an agency issues an order described by subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party on the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any information required by law.

(d) An order under this section is effective when it is served. However, if a timely and sufficient application has been made for renewal of a license described by subsection (a)(3) and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of the proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing under IC 4-21.5-4 an emergency or other temporary order with respect to the license.

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

[As amended by: P.L.54-2001, §2.]

IC 4-21.5-3-5 --------- AOPA: §5 notice provisions

(a) Notice shall be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license not described by section 4 of this chapter.

(2) The approval, renewal, or denial of a loan, grant of property or services, bond, financial guarantee, or tax incentive.

(3) The grant or denial of a license in the nature of a variance or exemption from a law.

(4) The determination of tax due or other liability.

(5) A determination of status.

(6) Any order that does not impose a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest.

(b) When an agency issues an order described in subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

(3) Each competitor who has applied to the agency for a mutually exclusive license, if issuance is the subject of the order and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted.

(4) Each person who has provided the agency with a written request for notification of the order, if the request:

(A) describes the subject of the order with reasonable particularity; and

(B) is delivered to the agency at least seven (7) days before the day that notice is given under this section.

(5) Each person who has a substantial and direct proprietary interest in the subject of the order.

(6) Each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice required by subsection (a) must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) A brief explanation of how the person may obtain notices of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings without intervening in the proceeding, if a petition for review is granted under section 7 of this chapter.

(4) Any other information required by law.

(d) An agency issuing an order under this section or conducting an administrative review of the order shall give notice of any:

(1) prehearing conference;

(2) preliminary hearing;

(3) hearing;

(4) stay; or

(5) order disposing of all proceedings;

concerning the order to a person notified under subsection (b) who requests these notices in the manner specified under subsection (c)(3).

(e) If a statute requires an agency to solicit comments from the public in a nonevidentiary public hearing before issuing an order described by subsection (a), the agency shall an-

nounce at the opening and the close of the public hearing how a person may receive notice of the order under subsection (b)(4).

(f) If a petition for review and a petition for stay of effectiveness of an order described in subsection (a) has not been filed, the order is effective fifteen (15) days (or any longer period during which a person may, by statute, seek administrative review of the order) after the order is served. If both a petition for review and a petition for stay of effectiveness are filed before the order becomes effective, any part of the order that is within the scope of the petition for stay is stayed for an additional fifteen (15) days. Any part of the order that is not within the scope of the petition is not stayed. The order takes effect regardless of whether the persons described by subsection (b)(5) or (b)(6) have been served. An agency shall make a good faith effort to identify and notify these persons, and the agency has the burden of persuasion that it has done so. The agency may request that the applicant for the order assist in the identification of these persons. Failure to notify any of these persons is not grounds for invalidating an order, unless an unnotified person is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the unnotified person.

(g) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of a proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license.

(h) On the motion of any party or other person having a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued before or after the order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties, any person who has a pending petition for intervention in the proceeding, and any person who has requested notice under subsection (d). It must include a statement of the facts and law on which it is based.

[As amended by: P.L.35-1987, §4.]

IC 4-21.5-3-6 --------- AOPA: §6 notice provisions

(a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.

(4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.

(5) A license revocation under:

(A) IC 24-4.5-3;

(B) IC 28-1-29;

(C) IC 28-7-5;

(D) IC 28-8-4; or

(E) IC 28-8-5.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

[As amended by P.L.80-1998, §1.]

IC 4-21.5-3-7 --------- AOPA: petitions for review

(a) To qualify for review of a personnel action to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) if an order described in section 4, 5, 6(a)(1) or 6(a)(2) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) if a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

[As amended by: P.L.2-1997, §11.]

IC 4-21.5-3-8 --------- AOPA: notice provisions for agency actions not covered by §§4, 5 or 6

(a) An agency may issue a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest not described by section 4, 5, or 6 of this chapter only after conducting a proceeding under this chapter. However, this subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of the proceeding.

(b) When an agency seeks to issue an order that is described by subsection (a), the agency shall serve a complaint upon:

(1) each person to whom any resulting order will be specifically directed; and

(2) any other person required by law to be notified.

A person notified under this subsection is not a party to the proceeding unless the person is a person against whom any resulting order will be specifically directed or the person is designated by the agency as a party in the record of the proceeding.

(c) The complaint required by subsection (b) must include the following:

(1) A short, plain statement showing that the pleader is entitled to an order.

(2) A demand for the order that the pleader seeks.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-9 --------- AOPA: selection, withdrawal, disqualification and substitution of administrative law judges (ALJs)

(a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

(1) act as an administrative law judge;

(2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or

(3) designate one (1) or more other individuals, not necessarily employees of the agency, to act as an administrative law judge.

A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:

(1) withdraw as the administrative law judge; or

(2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

(e) If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

(f) Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

[As amended by P.L.35-1987, §.7.]

IC 4-21.5-3-10 ------- AOPA: disqualification of administrative law judges

Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

(1) bias, prejudice, or interest in the outcome of a proceeding;

(2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party; or

(3) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-11 ------- AOPA: administrative law judge ex parte communication

(a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

(1) any party;

(2) any individual who has a direct or indirect interest in the outcome of the proceeding;

(3) any individual who presided at a previous stage of the proceeding; or

(4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

(1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or

(2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

(1) place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and

(2) advise all parties that these matters have been placed on the record.

Any person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) shall be allowed to rebut a charge of wrongful ex parte communication upon requesting the opportunity for rebuttal within fifteen (15) days after notice of the communication.

(f) If necessary to eliminate the effect of an ex parte communication received in violation of this section, an administrative law judge who receives the communication may be disqualified and the portions of the record pertaining to the communication may be corrected, modified, or preserved by protective order.

(g) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As amended by P.L.35-1987, §8.]

IC 4-21.5-3-12 ------- AOPA: disqualification and sanction of an administrative law judge

An administrative law judge who:

(1) comments publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or

(2) engages in financial or business dealings that tend to:

(A) reflect adversely on the administrative law judge's impartiality;

(B) interfere with the proper performance of the administrative law judge's duties;

(C) exploit the administrative law judge's position; or

(D) involve the administrative law judge in frequent financial or business dealings with attorneys or other persons who are likely to come before the administrative law judge;

is subject to disqualification. A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-13 ------- AOPA: eligibility of persons who have served in other roles in a proceeding to serve as administrative law judge; sanctions

(a) An individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(b) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(c) An individual who has made a determination of probable cause or other equivalent preliminary determination in a proceeding may serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(d) An individual may serve as an administrative law judge or a person presiding under sections 28, 29, 30, and 31 of this chapter at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(e) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-14 ------- AOPA: record of proceedings; motions based on facts not in the record; affirmative defenses

(a) An administrative law judge conducting a proceeding shall keep a record of the administrative law judge's proceedings under this article.

(b) If a motion is based on facts not otherwise appearing in the record for the proceeding, the administrative law judge may hear the matter on affidavits presented by the respective parties or the administrative law judge may direct that the matter be heard wholly or partly on oral testimony or depositions.

(c) At each stage of the proceeding, the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense. Before the hearing on which the party intends to assert it, a party shall, to the extent possible, disclose any affirmative defense specified by law on which the party intends to rely. If a prehearing conference is held in the proceeding, a party notified of the conference shall disclose the party's affirmative defense in the conference.

[As amended by: P.L.35-1987, §9.]

IC 4-21.5-3-15 ------- AOPA: participation of a party in person and by counsel or another representative

(a) Any party may participate in a proceeding in person or, if the party is not an individual or is incompetent to participate, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative.

[As amended by: P.L.33-1989, §3.]

IC 4-21.5-3-16 ------- AOPA: interpreters

(a) A person who:

(1) cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons; and

(2) is a party or witness in any proceeding under this article;

is entitled to an interpreter to assist the person throughout the proceeding under this article.

(b) The interpreter may be retained by the person or may be appointed by the agency before which the proceeding is pending. If an interpreter is appointed by the agency, the fee for the services of the interpreter shall be set by the agency. The fee shall be paid from any funds available to the agency or be paid in any other manner ordered by the agency.

(c) Any agency may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving as an interpreter.

(d) Every interpreter for another person in a proceeding shall take the following oath:

Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), the questions that may be asked him (her), and the answers that he (she) shall give to the questions, relative to the cause now under consideration before this agency?

(e) IC 35-44-2-1 concerning perjury applies to an interpreter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-17 ------- AOPA: filings and other submissions, notices and orders

(a) The administrative law judge, at appropriate stages of a proceeding, shall give all parties full opportunity to file pleadings, motions, and objections and submit offers of settlement.

(b) The administrative law judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, proposed findings of fact, and proposed orders.

(c) A party shall serve copies of any filed item on all parties.

(d) The administrative law judge shall serve copies of all notices, orders, and other papers generated by the administrative law judge on all parties. The administrative law judge shall give notice of preliminary hearings, prehearing conferences, hearings, stays, and orders disposing of the proceeding to persons described by section 5(d) of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-18 ------- AOPA: notices of prehearing conferences

(a) The administrative law judge for the hearing, subject to the agency's rules, may, on the administrative law judge's own motion, and shall, on the motion of a party, conduct a prehearing conference. The administrative law judge may deny a motion for a prehearing conference if the administrative law judge has previously conducted a prehearing conference in the proceeding.

(b) This section and section 19 of this chapter apply if the conference is conducted.

(c) The administrative law judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to the following:

(1) All parties.

(2) All persons who have filed written petitions to intervene in the matter.

(3) All persons entitled to notice under any law.

(d) The initial prehearing conference notice in a proceeding must include the following:

(1) The names and mailing addresses of all known parties and other persons to whom notice is being given by the administrative law judge.

(2) The names and mailing addresses of all publications used to provide notice under this section.

(3) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.

(4) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(5) A statement of the time, place, and nature of the prehearing conference.

(6) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.

(7) The name, official title, and mailing address of the administrative law judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(e) Any subsequent prehearing conference notice in the proceeding may omit the information described in subsections (d)(1), (d)(2), (d)(3), (d)(6), and (d)(8).

(f) Any notice under this section may include any other matters that the administrative law judge considers desirable to expedite the proceedings.

[As amended by: P.L.35-1987, §10.]

IC 4-21.5-3-19 ------- AOPA: procedures for prehearing conferences

(a) This section and section 18 of this chapter apply to prehearing conferences.

(b) To expedite a decision on pending motions and other issues, the administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity:

(1) to participate in;

(2) to hear; and

(3) if technically feasible, to see;

the entire proceeding while it is taking place.

(c) The administrative law judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as the following:

(1) Resolution of the issues in the proceeding under section 23 of this chapter.

(2) Exploration of settlement possibilities.

(3) Preparation of stipulations.

(4) Clarification of issues.

(5) Rulings on identity and limitation of the number of witnesses.

(6) Objections to proffers of evidence.

(7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.

(8) The order of presentation of evidence and cross-examination.

(9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.

(10) Such other matters as will promote the orderly and prompt conduct of the hearing.

The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(d) If a prehearing conference is not held, the administrative law judge for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-20 ------- AOPA: notices of hearings

(a) The administrative law judge for the hearing shall set the time and place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall give at least five (5) days notice of the hearing.

(b) The notice must include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it the initial hearing notice in a proceeding must include the following:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the administrative law judge.

(2) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the hearing.

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(6) The name, official title, and mailing address of the administrative law judge and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement of the issues involved and, to the extent known to the administrative law judge, of the matters asserted by the parties.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(d) Subsequent hearing notices in the proceeding may omit the information described in subsections (c)(1), (c)(2), (c)(5), and (c)(8).

(e) Any notice under this section may include any other matters the administrative law judge considers desirable to expedite the proceedings.

(f) The administrative law judge shall give notice to persons other than parties and petitioners for intervention who are entitled to notice under any law. Notice under this subsection may include all types of information provided in subsections (a) through (e) or may consist of a brief statement indicating:

(1) the subject matter, parties, time, place, and nature of the hearing;

(2) the manner in which copies of the notice to the parties may be inspected and copied;

(3) the name of the administrative law judge; and

(4) a telephone number through which information concerning proceeding hearing schedules and procedures may be obtained.

[As amended by: P.L.35-1987, §11.]

IC 4-21.5-3-21 ------- AOPA: petitions for intervention

(a) Before the beginning of the hearing on the subject of the proceeding, the administrative law judge shall grant a petition for intervention in a proceeding and identify the petitioner in the record of the proceeding as a party if:

(1) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding; and

(B) states facts demonstrating that a statute gives the petitioner an unconditional right to intervene in the proceeding; or

(2) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding, at least three (3) days before the hearing; and

(B) states facts demonstrating that the petitioner is aggrieved or adversely affected by the order or a statute gives the petitioner a conditional right to intervene in the proceeding.

(b) The administrative law judge, at least twenty-four (24) hours before the beginning of the hearing, shall issue an order granting or denying each pending petition for intervention.

(c) After the beginning of the hearing on the subject of the proceeding, but before the close of evidence in the hearing, anyone may be permitted to intervene in the proceeding if:

(1) a statute confers a conditional right to intervene or an applicant's claim or defense and the main action have a question of law or fact in common; and

(2) the administrative law judge determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

In exercising its discretion, the administrative law judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the legal interests of any of the parties.

(d) An order granting or denying a petition for intervention must specify any condition and briefly state the reasons for the order. The administrative law judge may modify the order at any time, stating the reasons for the modification. The administrative law judge shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

[As amended by: P.L.35-1987, §12.]

IC 4-21.5-3-22 ------- AOPA: subpoenas, discovery and protective orders

(a) The administrative law judge at the request of any party or an agency shall, and upon the administrative law judge's own motion may, issue:

(1) subpoenas;

(2) discovery orders; and

(3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. If ordered by the administrative law judge, the sheriff in the county in which the order is to be served shall serve the subpoena, discovery order, or protective order.

(c) Subpoenas and orders issued under this section may be enforced under IC 4-21.5-6.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-23 ------- AOPA: motions for summary judgment

(a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion must be supported with affidavits or other evidence permitted under this section and set forth specific facts showing that there is not a genuine issue in dispute.

(b) The motion must be served at least five (5) days before the time fixed for the hearing on the motion. The adverse party may serve opposing affidavits before the day of hearing. The administrative law judge may direct the parties to give oral argument on the motion. The judgment sought shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered upon fewer than all the issues or claims (such as the issue of penalties alone) although there is a genuine issue as to damages or liability, as the case may be. A summary judgment upon fewer than all the issues involved in a proceeding or with respect to fewer than all the claims or parties is not a final order. The administrative law judge shall designate the issues or claims upon which the judge finds no genuine issue as to any material facts. Summary judgment may not be granted as a matter of course because the opposing party fails to offer opposing affidavits or evidence, but the administrative law judge shall make a determination from the affidavits and testimony offered upon the matters placed in issue by the pleadings or the evidence. If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the administrative law judge may make any order that is just.

(c) If on motion under this section no order is rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating any person, shall if practicable ascertain:

(1) what material facts exist without substantial controversy; and

(2) what material facts are actually and in good faith controverted.

The administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing further proceedings in the action as are just. Upon the hearing of the action, the facts specified are established in the judge's order under this subsection.

(d) Supporting and opposing affidavits must:

(1) be made on personal knowledge;

(2) set forth facts that are admissible in evidence; and

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(e) The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or testimony of witnesses.

(f) If a motion for summary judgment is made and supported under this section, an adverse party may not rely upon the mere allegations or denials made in the adverse party's pleadings as a response to the motion. The adverse party shall respond to the motion with affidavits or other evidence permitted under this section and set forth specific facts showing that there is a genuine issue in dispute. If the adverse party does not respond as required by this subsection, the administrative law judge may enter summary judgment against the adverse party.

[As amended by: P.L.5-1988, §27.]

IC 4-21.5-3-24 ------- AOPA: default and dismissal orders

(a) At any stage of a proceeding, if a party fails to:

(1) file a responsive pleading required by statute or rule;

(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or

(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-25 ------- AOPA: conduct of hearing by administrative law judge

(a) This section and section 26 of this chapter govern the conduct of any hearing held by an administrative law judge.

(b) The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.

(c) To the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(d) The administrative law judge may, after a prehearing order is issued under section 19 of this chapter, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as the following:

(1) Limiting the party's participation to designated issues in which the party has a particular interest demonstrated by the petition.

(2) Limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.

(3) Requiring two (2) or more parties to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

If a person is allowed to intervene in the proceeding after the commencement of a hearing under this section, the administrative law judge may prohibit the intervener from recalling any witness who has been heard or reopening any matter that has been resolved, unless the intervener did not receive a notice required by this chapter or the intervener presents facts that demonstrate that fraud, perjury, or an abuse of discretion has occurred. Any proceedings conducted before the giving of a notice required by this chapter are voidable upon the motion of the party who failed to receive the notice.

(e) The administrative law judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(f) The administrative law judge may give nonparties an opportunity to present oral or written statements. If the administrative law judge proposes to consider a statement by a nonparty, the judge shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the judge shall require the statement to be given under oath or affirmation.

(g) The administrative law judge shall have the hearing recorded at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless required to do so by law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. Notwithstanding IC 5-14-3-8, an agency may charge a person who requests that an agency provide a transcript (other than for judicial review under IC 4-21.5-5-13) the reasonable costs of preparing the transcript.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-26 ------- AOPA: more on conduct of hearing by administrative law judge

(a) This section and section 25 of this chapter govern the conduct of any hearing conducted by an administrative law judge. Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the administrative law judge may exclude objectionable evidence. The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of parties and witnesses must be made under oath or affirmation.

(c) Statements presented by nonparties in accordance with section 25 of this chapter may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(f) Official notice may be taken of the following:

(1) Any fact that could be judicially noticed in the courts.

(2) The record of other proceedings before the agency.

(3) Technical or scientific matters within the agency's specialized knowledge.

(4) Codes or standards that have been adopted by an agency of the United States or this state.

(g) Parties must be:

(1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and

(2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (f).

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-27 ------- AOPA: requirements for order issued by administrative law judge

(a) If the administrative law judge is the ultimate authority for the agency, the ultimate authority's order disposing of a proceeding is a final order. If the administrative law judge is not the ultimate authority, the administrative law judge's order disposing of the proceeding becomes a final order when affirmed under section 29 of this chapter. Regardless of whether the order is final, it must comply with this section.

(b) This subsection applies only to an order not subject to subsection (c). The order must include, separately stated, findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(c) This subsection applies only to an order of the ultimate authority entered under IC 13, IC 14, or IC 25. The order must include separately stated findings of fact and, if a final order, conclusions of law for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Conclusions of law must consider prior final orders (other than negotiated orders) of the ultimate authority under the same or similar circumstances if those prior final orders are raised on the record in writing by a party and must state the reasons for deviations from those prior orders. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(d) Findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The administrative law judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(e) A substitute administrative law judge may issue the order under this section upon the record that was generated by a previous administrative law judge.

(f) The administrative law judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) An order under this section shall be issued in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f), unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The administrative law judge shall have copies of the order under this section delivered to each party and to the ultimate authority for the agency (if it is not rendered by the ultimate authority).

[As amended by: P.L.2-1998, §10.]

IC 4-21.5-3-28 ------- AOPA: proceedings when administrative law judge order is subject to review by ultimate authority

(a) This section applies to proceedings under sections 29, 30, and 31 of this chapter.

(b) The ultimate authority or its designee shall conduct proceedings to issue a final order. A designee may be selected in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be selected for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(c) Any individual serving alone or with others in a proceeding may be disqualified for any of the reasons that an administrative law judge may be disqualified. The procedures in section 9 of this chapter apply to the disqualification and substitution of the individual.

(d) Motions and petitions submitted by a party to the ultimate authority shall be served on each party to the proceeding and to any person described by section 5(d) of this chapter.

(e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:

(1) afford each party an opportunity to present oral argument;

(2) have a transcript prepared, at the agency's expense, of any portion of the record of a proceeding that the ultimate authority or its designee considers necessary;

(3) exercise the powers of an administrative law judge to hear additional evidence under sections 25 and 26 of this chapter; or

(4) allow nonparties to participate in a proceeding in accordance with section 25 of this chapter.

Sections 15 and 16 of this chapter concerning representation and interpreters apply to the proceedings of the ultimate authority or its designee.

(f) Notices and orders of the ultimate authority or its designee shall be served on all parties and all other persons who have requested notice under section 5 of this chapter.

(g) The final order of the ultimate authority or its designee must:

(1) identify any differences between the final order and the nonfinal order issued by the administrative law judge under section 27 of this chapter;

(2) include findings of fact meeting the standards of section 27 of this chapter or incorporate the findings of fact in the administrative law judge's order by express reference to the order; and

(3) briefly explain the available procedures and time limit for seeking administrative review of the final order by another agency under section 30 of this chapter (if any is available).

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-29 ------- AOPA: more on proceedings when administrative law judge order is subject to review by ultimate authority

(a) This section does not apply if the administrative law judge issuing an order under section 27 of this chapter is the ultimate authority for the agency.

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

(1) affirming;

(2) modifying; or

(3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

(f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

(1) the date that the order was issued under section 27 of this chapter;

(2) the receipt of briefs; or

(3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

(g) After remand of an order under this section to an administrative law judge, the judge's order is also subject to review under this section.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-30 ------- AOPA: proceedings where an agency may review the final order of another agency

If, under a statute, an agency may review the final order of another agency, the review shall be treated as if it was a continuous proceeding before a single agency. For the purposes of this review and the application of section 3 of this chapter concerning the effectiveness of an order, a final order of the first agency shall be treated as a nonfinal order of an administrative law judge, and the second agency shall review the order under section 29 of this chapter. To preserve an issue for judicial review, a party must comply with section 29(d) of this chapter before the second agency. The ultimate authority for the second agency or its designee may conduct proceedings under section 31 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-31 ------- AOPA: modification of final order by agency; petitions for stay or rehearing; tolling of time periods

(a) An agency has jurisdiction to modify a final order under this section before the earlier of the following:

(1) Thirty (30) days after the agency has served the final order under section 27, 29, or 30 of this chapter.

(2) Another agency assumes jurisdiction over the final order under section 30 of this chapter.

(3) A court assumes jurisdiction over the final order under IC 4-21.5-5.

(b) A party may petition the ultimate authority for an agency for a stay of effectiveness of a final order. The ultimate authority or its designee may, before or after the order becomes effective, stay the final order in whole or in part.

(c) A party may petition the ultimate authority for an agency for a rehearing of a final order. The ultimate authority or its designee may grant a petition for rehearing only if the petitioning party demonstrates that:

(1) the party is not in default under this chapter;

(2) newly discovered material evidence exists; and

(3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence. If the rehearing is conducted by a person other than the ultimate authority, section 29 of this chapter applies to review of the order resulting from the rehearing.

(d) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected by an ultimate authority or its designee on the motion of any party or on the motion of the ultimate authority or its designee.

(e) An action of a petitioning party or an agency under this section neither tolls the period in which a party may object to a second agency under section 30 of this chapter nor tolls the period in which a party may petition for judicial review under IC 4-21.5-5. However, if a rehearing is granted under subsection (c), these periods are tolled and a new period begins on the date that a new final order is served.

[As amended by P.L.35-1987, §14.]

IC 4-21.5-3-32 ------- AOPA: availability of written final orders; indexing; value as precedent

(a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3. The agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed. An agency shall delete from these orders identifying details to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order.

(b) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in subsection (a). However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency.

[As amended by P.L.35-1987, §15.]

IC 4-21.5-3-33 ------- AOPA: elements of official agency record; record is exclusive basis for agency action and judicial review

(a) An agency shall maintain an official record of each proceeding under this chapter.

(b) The agency record of the proceeding consists only of the following:

(1) Notices of all proceedings.

(2) Any prehearing order.

(3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.

(4) Evidence received or considered.

(5) A statement of matters officially noticed.

(6) Proffers of proof and objections and rulings on them.

(7) Proposed findings, requested orders, and exceptions.

(8) The record prepared for the administrative law judge or for the ultimate authority or its designee under sections 28 through 31 of this chapter, at a hearing, and any transcript of the record considered before final disposition of the proceeding.

(9) Any final order, nonfinal order, or order on rehearing.

(10) Staff memoranda or data submitted to the administrative law judge or a person presiding in a proceeding under sections 28 through 31 of this chapter.

(11) Matters placed on the record after an ex parte communication.

(c) Except to the extent that a statute provides otherwise, the agency record described by subsection (b) constitutes the exclusive basis for agency action in proceedings under this chapter and for judicial review of a proceeding under this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-34 ------- AOPA: development of informal procedures encouraged

An agency is encouraged to develop informal procedures that are consistent with this article and make unnecessary more elaborate proceedings under this article. An agency may adopt rules, under IC 4-22-2, setting specific procedures to facilitate informal settlement of matters. This section does not require any person to settle a matter under the agency's informal procedures.

[As amended by: P.L.35-1987, §16.]

IC 4-21.5-3-35 ------- AOPA: granting of additional procedural rights and adoption of procedural rules by agencies

An agency may grant procedural rights to persons in addition to those conferred by this article so long as the rights conferred upon other persons by any law are not substantially prejudiced. The agency may adopt rules, under IC 4-22-2, concerning the nature and requirements of all procedures for requesting a proceeding or engaging in a proceeding, so long as the rules are not inconsistent with this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-36 ------- AOPA: knowing or intentional violation of statute by administrative law judge a misdemeanor

An individual who:

(1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter; and

(2) knowingly or intentionally violates section 11, 12, or 13 of this chapter;

commits a Class A misdemeanor.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-37 ------- AOPA: aiding, intentionally inducing or causing violation of statute by administrative law judge a misdemeanor

A person who:

(1) aids, induces, or causes an individual serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter to violate section 11, 12, or 13 of this chapter; and

(2) acts with the intent to:

(A) have the individual described in subdivision (1) disqualified from serving in a proceeding; or

(B) influence the individual described in subdivision (1) with respect to any issue in a proceeding;

commits a Class A misdemeanor.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3.5. MEDIATION

IC 4-21.5-3.5-1 ------ Mediation: applicability of chapter

(a) Except as provided in subsections (b) and (c), the mediation guidelines adopted by rule under this chapter must supplement the procedural rights established by this article.

(b) An agency described in IC 4-21.5-2-4 that is exempt from administrative orders and procedures required under IC 4-21.5 may adopt rules consistent with this chapter for the use of mediation to resolve proceedings.

(c) An agency may elect to use the mediation provisions of this chapter for determinations described in IC 4-21.5-2-6 that are exempt from the administrative orders and procedures required under IC 4-21.5.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-2 ------ Mediation: ultimate authority to determine appropriate types of proceedings; agency may adopt rules

(a) For each type of administrative proceeding, the ultimate authority shall determine whether mediation is an appropriate means of alternative dispute resolution.

(b) For proceedings that an ultimate authority determines to be appropriate for mediation, the agency may adopt rules under IC 4-22-2 to implement this chapter. The rules, to the extent possible, shall not be inconsistent with Rule 2 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-3 ------ Mediation: parties must agree

Before a proceeding is initiated, an agency and a person who may be the subject of an agency action may agree to use mediation to resolve a dispute.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-4 ------ Mediation: mediator has immunity

A mediator, co-mediator, or team mediator appointed and acting under this chapter has immunity in the same manner and to the same extent as a judge having jurisdiction in Indiana.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-5 ------ Mediation: ALJ may select proceeding for mediation; objections

(a) If a proceeding is of a type that has been identified as appropriate for alternative dispute resolution under section 2 of this chapter, the administrative law judge assigned to the proceeding may, on the administrative law judge's own motion or upon motion of any party, select the proceeding for mediation.

(b) Not more than fifteen (15) days after an order of selection for mediation, a party may object by filing a written objection specifying the grounds. The administrative law judge shall promptly consider an objection to mediation and any response to the objection and shall reconsider whether the proceeding is appropriate for mediation.

(c) In considering an order for mediation under this section, the administrative law judge shall consider:

(1) the willingness of the parties to mutually resolve their dispute;

(2) the ability of the parties to participate in the mediation process;

(3) the need for discovery and the extent to which it has been conducted; and

(4) any other factors that affect the potential for fair resolution of the dispute through the mediation process.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-6 ------ Mediation: selection of mediator

(a) If a proceeding is conducted by mediation, the administrative law judge assigned to the proceeding shall within fifteen (15) days after the date of the order for mediation make available to the parties, at no cost, a mediator who is qualified under section 8 of this chapter, or the parties may elect to use, at their own cost, an outside mediator who is:

(1) qualified under section 8 of this chapter; and

(2) approved by the administrative law judge assigned to the proceeding.

(b) If a mediator is not selected by agreement or choice under subsection (a), the administrative law judge assigned to the proceeding shall designate three (3) mediators from the approved list of mediators described in subsection 7(d) and allow fifteen (15) days for alternate striking by each side. The party initiating the proceeding shall strike first. The mediator remaining after the striking process is the mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-7 ------ Mediation: mediator listings

(a) A person, other than agency personnel, who wishes to serve as a mediator under this chapter shall file an application with the ultimate authority or its designee describing the type of proceeding in which the person desires to serve as a mediator and setting forth qualifications as required by section 8 of this chapter and the rules adopted under this chapter.

(b) A mediator must reapply if required by the rules.

(c) The administrative law judge assigned to a proceeding may allow mediation teams and co-mediators.

(d) The ultimate authority or its designee that uses mediation for dispute resolution shall maintain a list of approved mediators and the types of proceedings in which each mediator is authorized to serve. A mediator may be removed from the approved list for good cause, after a hearing.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-8 ------ Mediation: required mediation training

A person who applies to be a mediator under this chapter must have:

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

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

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

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-9 ------ Mediation: rules for selection of mediator

If rules are adopted under section 2 of this chapter, the rules must include guidelines for selection of a mediator for the ultimate authority when there is no appropriate mediator or listed mediator available and the parties cannot agree on an unlisted mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-10 ----- Mediation: mediator may choose not to serve

A person selected to serve as a mediator under this chapter may choose not to serve for any reason.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-11 ----- Mediation: replacement of mediator for good cause

At any time, a party to a proceeding may request that the administrative law judge replace the mediator of the proceeding for good cause.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-12 ----- Mediation: procedure for replacement of mediator

If a mediator chooses not to serve or the administrative law judge decides to replace a mediator, the mediator selection process described in this chapter shall be repeated.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-13 ----- Mediation: reasons for ineligibility of mediator

A mediator may not be selected to mediate a proceeding if the mediator:

(1) has an interest in the outcome of the proceeding;

(2) is related to any of the parties or attorneys in the proceeding; or

(3) is employed by any of the parties or attorneys involved in the proceeding, except that an employee of the agency involved may serve as a mediator if the employee of the agency:

(A) has not participated in the investigation or prosecution of the dispute; and

(B) does not otherwise have an interest in the outcome of the proceeding.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-14 ----- Mediation: mediation costs

(a) If the parties to a proceeding elect to use an outside mediator, the costs of mediation must be paid as agreed by the parties. If there is no agreement of the parties, the administrative law judge assigned to the proceeding shall determine the mediation costs, if necessary, and equitably divide the mediation costs among the parties.

(b) To make the determination required by subsection (a), the administrative law judge shall consider the following:

(1) The complexity of the litigation.

(2) The skill levels needed to mediate the proceeding.

(3) The ability of a party to pay.

(c) Mediation costs must be paid not more than thirty (30) days after the mediation is completed unless otherwise agreed among the mediator and the parties.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-15 ----- Mediation: continuation of proceeding during mediation

If a proceeding is selected for mediation, the administrative law judge assigned to the proceeding shall continue the proceeding until the mediation is completed.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-16 ----- Mediation: responsibilities of mediator

A mediator for a proceeding under this chapter shall:

(1) inform the parties of the anticipated cost of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;

(5) advise each of the parties to consider independent legal advice;

(6) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties;

(7) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure;

(8) inform the parties that they may introduce the written mediated agreement into evidence if the agreement is signed by all parties to the dispute;

(9) advise the parties of the time, date, and location of the mediation at least ten (10) days in advance, unless a shorter period is agreed to by the parties; and

(10) advise the parties of all persons whose presence at the mediation might facilitate settlement.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-17 ----- Mediation: attendance at mediation sessions and conferences

(a) The parties and their attorneys, if any, must be present at any mediation session unless otherwise agreed. A mediator may allow nonparties to the dispute to be present at a mediation session if the parties agree.

(b) All parties, attorneys with settlement authority, representatives with settlement authority, and necessary individuals must be present at each mediation conference to facilitate settlement of a dispute, unless excused by the administrative law judge.

(c) Mediation sessions are not open to the public.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-18 ----- Mediation: confidential statements

(a) The attorney for a party to a proceeding may submit to the mediator a confidential statement of the proceeding, not to exceed ten (10) pages, before a mediation conference. The statement submitted under this section must include the following:

(1) The legal and factual contentions of the party.

(2) The factors considered in arriving at a settlement posture.

(3) The settlement negotiations to date.

(b) A confidential statement under this section may be supplemented by exhibits or evidence that must be made available to the opposing party or the opposing party's counsel at least five (5) days before the mediation conference.

(c) A confidential statement is privileged and confidential unless an agreement by the parties to the contrary is provided to the mediator.

(d) If the mediation process does not result in settlement, any submitted confidential statement must be returned to the submitting attorney or party.

(e) Notwithstanding IC 4-21.5-4-6, the following are not public records or part of the agency record, gathered by the mediator in the course of mediation, in a proceeding:

(1) A confidential statement.

(2) Exhibits.

(3) Evidence.

(4) Other information.

(5) Draft settlement documents.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-19 ----- Mediation: settlement evaluation

In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the proceeding to one (1) or more parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may share revealed settlement authority with other parties or their representatives.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-20 ----- Mediation: completion, termination or extension of mediation process

(a) As soon after mediation as practicable, the mediator shall report to the administrative law judge that the mediation process has been completed, terminated, or extended.

(b) The mediator shall terminate mediation whenever:

(1) the mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or

(2) the ability or willingness of any party to participate meaningfully in mediation is lacking to the extent that a reasonable agreement is unlikely.

(c) After at least two (2) mediation sessions have been completed, any party may terminate mediation. The mediator may not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned to the proceeding by the administrative law judge for the proceeding.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-21 ----- Mediation: mediator's report; mediation agreement; joint stipulation of disposition

(a) If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of an agreement without comment or recommendation to the administrative law judge assigned to the proceeding. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) An agreement as a result of mediation must be in writing and signed by the parties. The agreement must be filed with the administrative law judge assigned to the proceeding. If the agreement is complete on all issues, it must be accompanied by a joint stipulation of disposition. Upon approval of a joint stipulation of disposition by the administrative law judge, it has the same force and effect as an agreed order approved by an administrative law judge from the agency involved.

(c) An approved joint stipulation of disposition under this chapter is considered a contract between the parties.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-22 ----- Mediation: subsequent disputes

A person who has served as a mediator in a proceeding may act as a mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the mediator on a periodic basis. However, the mediator shall decline to act in any capacity, except as a mediator, unless the subsequent association is clearly distinct from the mediation issues.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-23 ----- Mediation: subsequent matters

A mediator is required to use an effective system to identify potential conflict of interest at the time of appointment to a proceeding as a mediator. The mediator may not subsequently act as an investigator or make any recommendations regarding the mediated proceeding. A person may not serve as an administrative law judge in a subsequent hearing of a matter in which the person served as a mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-24 ----- Mediation: applicability of rules of evidence

With the exception of privileged communications, the rules of evidence do not apply to mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-25 ----- Mediation: limitations on discovery

Whenever possible, parties to a proceeding are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. By agreement of the parties, or as ordered by the administrative law judge, discovery may be deferred during mediation.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-26 ----- Mediation: subsequent admissibility of evidence from mediation proceeding

(a) Mediation shall be regarded as a settlement negotiation. Evidence of furnishing or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount is not admissible in a proceeding to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in the course of mediation is not admissible. However, this subsection does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of the mediation process. This subsection does not require exclusion when the evidence is offered for another purpose, such as bias or prejudice of a witness or negating a contention of undue delay.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-27 ----- Mediation: confidentiality of mediation matters

(a) A mediator is not subject to process requiring disclosure of any matter discussed during the mediation. Matters discussed during mediation are confidential and privileged.

(b) The confidentiality requirement of subsection (a) may not be waived by the parties.

(c) An objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-4. SPECIAL PROCEEDINGS; EMERGENCY AND OTHER TEMPORARY ORDERS

IC 4-21.5-4-1 --------- AOPA: when an agency may conduct special proceedings

An agency may conduct proceedings under this chapter if:

(1) an emergency exists; or

(2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-2 --------- AOPA: orders issued in special proceedings

(a) The agency shall issue the order under this chapter by one (1) of the following procedures:

(1) Except as provided in IC 25-1-9-10, without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.

(2) After a hearing conducted by an administrative law judge.

(b) The resulting order must include a brief statement of the facts and the law that justifies the agency's decision to take the specific action under this chapter.

[As amended by: P.L.43-1995, §1.]

IC 4-21.5-4-3 --------- AOPA: notice in special proceedings

The agency shall give such notice as is practicable to persons who are required to comply with the order under this chapter. The order is effective when issued.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-4 --------- AOPA: hearings on orders issued in special proceedings

Upon a request by a party for a hearing on an order rendered under section 2(a)(1) of this chapter, the agency shall, as quickly as is practicable, set the matter for an evidentiary hearing. An administrative law judge shall determine whether the order under this chapter should be voided, terminated, modified, stayed, or continued.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-5 --------- AOPA: expiration of orders issued in special proceedings

(a) Except as provided in subsection (c), an order issued under this chapter expires on the earliest of the following:

(1) The date set in the order.

(2) The date set by a statute other than this article.

(3) The elapse of ninety (90) days.

(b) During the pendency of any related proceedings under IC 4-21.5-3, the agency responsible for the proceeding may renew the order for successive ninety (90) day periods unless a statute other than this article prohibits the renewal of the order.

(c) An order issued under this chapter and IC 15-2.1-6 does not expire.

[As amended by: P.L.26-1997, §1.]

IC 4-21.5-4-6 --------- AOPA: agency record in special proceedings

The agency record in a proceeding under this chapter consists of any documents regarding the matter that were considered or prepared by the agency in a proceeding under section 2(a)(1) of this chapter and, if a hearing is conducted under section 2(a)(2) or 4 of this chapter, the items described in IC 4-21.5-3-33.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5. JUDICIAL REVIEW

IC 4-21.5-5-1 --------- AOPA: exclusive means for judicial review of an agency action established

Except as provided in IC 22-9 and IC 22-9.5, this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.

[As amended by: P.L.14-1994, §1.]

IC 4-21.5-5-2 --------- AOPA: initiation of judicial review; procedural qualifications for review

(a) Judicial review is initiated by filing a petition for review in the appropriate court.

(b) Only a person who qualifies under:

(1) section 3 of this chapter concerning standing;

(2) section 4 of this chapter concerning exhaustion of administrative remedies;

(3) section 5 of this chapter concerning the time for filing a petition for review;

(4) section 13 of this chapter concerning the time for filing the agency record for review; and

(5) any other statute that sets conditions for the availability of judicial review;

is entitled to review of a final agency action.

(c) A person is entitled to judicial review of a nonfinal agency action only if the person establishes both of the following:

(1) Immediate and irreparable harm.

(2) No adequate remedy exists at law. (The failure of a person to comply with the procedural requirements of this article may not be the basis for a finding of an inadequate remedy at law.)

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-3 --------- AOPA: standing for judicial review of agency action

(a) The following persons have standing to obtain judicial review of an agency action:

(1) A person to whom the agency action is specifically directed.

(2) A person who was a party to the agency proceedings that led to the agency action.

(3) A person eligible for standing under a law applicable to the agency action.

(4) A person otherwise aggrieved or adversely affected by the agency.

(b) A person has standing under subsection (a)(4) only if:

(1) the agency action has prejudiced or is likely to prejudice the interests of the person;

(2) the person:

(A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or

(B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;

(3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the agency action.

[As amended by: P.L.35-1987, §18.]

IC 4-21.5-5-4 --------- AOPA: exhaustion of administrative remedies; waiver of right to judicial review

(a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review.

(b) A person who:

(1) fails to timely object to an order or timely petition for review of an order within the period prescribed by this article; or

(2) is in default under this article;

has waived the person's right to judicial review under this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-5 --------- AOPA: timeliness of petition for judicial review

Except as otherwise provided, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-6 --------- AOPA: venue, jurisdiction and parties [Effective until 1/1/2002]

(a) Venue is in the judicial district where:

(1) the petitioner resides or maintains a principal place of business;

(2) the agency action is to be carried out or enforced; or

(3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-6 --------- AOPA: venue, jurisdiction and parties [Effective 1/1/2002]

(a) (a) Except as provided in subsection (e), venue is in the judicial district where:

(1) the petitioner resides or maintains a principal place of business;

(2) the agency action is to be carried out or enforced; or

(3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

(e) Venue with respect to judicial review of an action of the Indiana board of tax review is in the tax court.

[As amended by: P.L.198-2001, §3.]

IC 4-21.5-5-7 --------- AOPA: contents of petition for judicial review

(a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

(1) The name and mailing address of the petitioner.

(2) The name and mailing address of the agency whose action is at issue.

(3) Identification of the agency action at issue, together with a copy, summary, or brief description of the agency action.

(4) Identification of persons who were parties in any proceedings that led to the agency action.

(5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 2 of this chapter.

(6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 14 of this chapter.

(7) A request for relief, specifying the type and extent of relief requested.

[As amended by: P.L.35-1987, §19.]

IC 4-21.5-5-8 --------- AOPA: service and notice of petition for judicial review

(a) A petitioner for judicial review shall serve a copy of the petition upon:

(1) the ultimate authority issuing the order;

(2) the ultimate authority for each other agency exercising administrative review of the order;

(3) the attorney general; and

(4) each party to the proceeding before an agency;

in the manner provided by the rules of procedure governing civil actions in the courts. If the ultimate authority consists of more than one (1) individual, service on the ultimate authority must be made to the secretary or chairperson of the ultimate authority.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review to all other parties in any proceedings that led to the agency action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-9 --------- AOPA: petitions for judicial review and for stay orders

(a) If a petition for judicial review concerns a matter other than an assessment or determination of tax due or claimed to be due the state, and the law concerning the agency whose order is being reviewed does not preclude a stay of the order by the court, the person seeking the review may seek, by filing a verified petition, an order of the court staying the action of the agency pending decision by the court. The court may enter an order staying the agency order pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the order or determination appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the order of the agency if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars ($500).

(b) If a petition for review concerns a revocation or suspension of a license and the law governing the agency permits a staying of the action of the agency by court order pending judicial review, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the determination of the agency is approved on final determination, the revocation or suspension of the license immediately becomes effective.

[As amended by: P.L.35-1987, §20.]

IC 4-21.5-5-10 ------- AOPA: judicial review of issues not raised before the agency

A person may obtain judicial review of an issue that was not raised before the agency, only to the extent that:

(1) the issue concerns whether a person who was required to be notified by this article of the commencement of a proceeding was notified in substantial compliance with this article; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the agency action.

[As amended by: P.L.35-1987, §21.]

IC 4-21.5-5-11 ------- AOPA: limits on judicial review of disputed facts

Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the agency.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-12 ------- AOPA: limits on additional evidence; remand before final disposition of petition for review

(a) The court may receive evidence, in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

(1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action.

(2) Unlawfulness of procedure or of decision-making process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the agency before final disposition of a petition for review with directions that the agency conduct further factfinding or that the agency prepare an adequate record, if:

(1) the agency failed to prepare or preserve an adequate record;

(2) the agency improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the agency action and the court determines that the new provision of law may control the outcome.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-13 ------- AOPA: submission of agency record for judicial review

(a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of:

(1) any agency documents expressing the agency action;

(2) other documents identified by the agency as having been considered by it before its action and used as a basis for its action; and

(3) any other material described in this article as the agency record for the type of agency action at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the agency taking the action being reviewed shall prepare the agency record for the petitioner. If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

(d) Notwithstanding IC 5-14-3-8, the agency shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-19-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 12 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

[As amended by: P.L.3-1989, §24.]

IC 4-21.5-5-14 ------- AOPA: burden of demonstrating the invalidity of agency action, standards of review, findings; grounds for judicial relief

(a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

[As amended by P.L.35-1987, §22.]

IC 4-21.5-5-15 ------- AOPA: judicial remedies for finding of prejudice by agency action

If the court finds that a person has been prejudiced under section 14 of this chapter, the court may set aside an agency action and:

(1) remand the case to the agency for further proceedings; or

(2) compel agency action that has been unreasonably delayed or unlawfully withheld.

[As amended by P.L.35-1987, §23.]

IC 4-21.5-5-16 ------- AOPA: appeal of decision on petition for review of agency action

Decisions on petitions for review of agency action are appealable in accordance with the rules governing civil appeals from the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6. CIVIL ENFORCEMENT

IC 4-21.5-6-1 --------- AOPA: petition for civil enforcement to enforce an order

In addition to any other remedy provided by law:

(1) an agency in its own name;

(2) an agency in the name of the state;

(3) the attorney general in the name of the attorney general; or

(4) the attorney general in the name of the state at the request of an agency;

may apply for a court order in a circuit or superior court to enforce an order issued under this article by a verified petition for civil enforcement.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-2 --------- AOPA: enforcement of a subpoena, discovery order, or protective order issued by an agency

(a) This section applies only to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Any party to a proceeding before an agency who has obtained an order from an administrative law judge may apply for a court order in a circuit or superior court to enforce the subpoena or order issued by an agency by a verified petition for civil enforcement. Notice of an application under this section shall be given:

(1) to the administrative law judge issuing the order;

(2) to the attorney general; and

(3) to each party to the proceeding before the agency;

by personal service or by the United States mail at the time the application is filed.

[As amended by P.L.35-1987, §.24.]

IC 4-21.5-6-3 --------- AOPA: enforcement of orders other than a subpoena, discovery order, or protective order

(a) This section does not apply to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Nothing in this chapter limits or precludes civil action under IC 13-30-1.

(c) Any party to a proceeding concerning an agency's order may file a petition for civil enforcement of that order.

(d) The action may not be commenced under this section if:

(1) less than sixty (60) days has elapsed since the petitioner gave notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(2) the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same defendant; or

(3) a petition for review of the same order has been filed and is pending in court.

(e) The petition under this section must name as defendants each alleged violator against whom the petitioner seeks civil enforcement.

(f) The agency whose order is sought to be enforced is not a party to an action under this section unless the agency moves to intervene. The court shall grant an agency's motion to intervene and shall allow the agency to intervene as a plaintiff or defendant.

(g) The agency whose order is sought to be enforced under this section may move to dismiss on the grounds that the petition fails to qualify under this section or that enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss unless the petitioner demonstrates that:

(1) the petition qualifies under this section; and

(2) the agency's failure to enforce its order is based on an exercise of discretion that is improper on one (1) or more of the grounds provided in IC 4-21.5-5-14.

(h) Except to the extent expressly authorized by law, a petition for civil enforcement filed under this section may not request, and the court may not grant, any monetary payment apart from taxable costs.

[As amended by P.L.1-1996, §26.]

IC 4-21.5-6-4 --------- AOPA: naming of defendants in a petition for civil enforcement

A petition for civil enforcement must name as defendants each alleged violator against whom the party seeks to obtain civil enforcement.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-5 --------- AOPA: venue in a petition for civil enforcement

Venue is determined in accordance with the rules governing civil actions in the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-6 --------- AOPA: remedies court may grant upon a showing of violation of an order

Upon a showing that a person has violated an order issued under this article, the court may grant:

(1) an injunction requested by any petitioner without bond;

(2) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 1 of this chapter without bond;

(3) a subpoena, discovery order, or protective order requested under section 2 of this chapter without a bond; or

(4) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 3 of this chapter with the bond specified by the court.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-7 --------- AOPA: appeal of decisions on petitions for civil enforcement

Decisions on petitions for civil enforcement are appealable in accordance with the rules governing civil appeals from the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-7. ENVIRONMENTAL ADJUDICATION

IC 4-21.5-7-1 --------- AOPA/environmental adjudication: director defined

As used in this chapter, "director" refers to the director of the office of environmental adjudication established by section 3 of this chapter.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-2 --------- AOPA/environmental adjudication: office defined

As used in this chapter, "office" refers to the office of environmental adjudication established by section 3 of this chapter.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-3 --------- AOPA/environmental adjudication: office established; purpose; jurisdiction

The office of environmental adjudication is established to review, under this article, decisions of the commissioner of the department of environmental management. Adjudicatory hearings required to implement:

(1) air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19; and

(2) rules of:

(A) the air pollution control board;

(B) the water pollution control board;

(C) the solid waste management board; and

(D) the financial assurance board;

shall be conducted by the office of environmental adjudication under IC 4-21.5.

[As amended by: P.L. 1-1996, §27.]

IC 4-21.5-7-4 --------- AOPA/environmental adjudication: employees of office; director

The office consists of the following employees:

(1) A director appointed by the governor who may serve as an environmental law judge.

(2) Environmental law judges, employed by the director.

(3) Any other staff, employed by the director, that are necessary to carry out the functions of the office.

(b) In the event of a vacancy, the governor shall appoint the director based upon recommendations by a four member (4) panel. Not more than two (2) members of the panel may be affiliated with the same political party. The panel shall consist of:

(1) one (1) person, who shall serve as the chair of the panel, appointed by the chief justice of the supreme court of Indiana;

(2) one (1) person appointed by the governor;

(3) one (1) person appointed by the speaker of the house of representatives;

(4) one (1) person appointed by the president pro tempore of the senate;

The panel shall nominate three (3) candidates for each vacancy and certify them to the governor as promptly as possible, but not later than sixty (60) days from the date a vacancy occurs. Not later than thirty (30) days after receipt of the panel's list of three (3) candidates, the governor may select one (1) candidate from the panel's list, or the governor may request that the panel nominate three (3) additional candidates. The panel shall meet whenever there is a vacancy in the director position.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-5 --------- AOPA/environmental adjudication: ultimate authority of environmental law judges

An environmental law judge is the ultimate authority under this article for reviews of decisions of the commissioner of environmental management.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-6 --------- AOPA/environmental adjudication: qualifications of environmental law judges; removal

(a) An environmental law judge hired after July 1, 1995, and the director must:

(1) be attorneys admitted to the bar of Indiana;

(2) have at least five (5) years of experience practicing administrative or environmental law in Indiana;

(3) be independent of the department of environmental management; and

(4) be subject to all provisions applicable to an administrative law judge under this article.

(b) The director or an environmental law judge may be removed for cause under:

(1) this article;

(2) IC 4-15-2; or

(3) applicable provisions of the Code of Judicial Conduct.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-7 --------- AOPA/environmental adjudication: adoption of forms, procedural rules

The office may:

(1) adopt forms; and

(2) establish procedural rules IC 4-22-2;

consistent with this article.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-8 --------- AOPA/environmental adjudication: expenses of office

(a) The director shall prepare the proposed budget for the office.

(b) The expenses of the office shall be paid from money allotted to the office of environmental adjudication to maintain the office.

[As amended by: P.L. 25-1997, §2.]

IC 4-21.5-7-9 --------- AOPA/environmental adjudication: authority to receive gifts

The office, on behalf of the state, may accept and receive from any source gifts and other funds that are made available to the state for the purposes of this chapter.

[As added by: P.L. 25-1997, §3.]

IC 4-22-2. ADOPTION OF ADMINISTRATIVE RULES

IC 4-22-2-3 ---------- Administrative rules: definitions

(a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the legislative services agency operating under the direction of the council.

(g) The definitions in this section apply throughout this article.

[As amended by: P.L.8-1993, §28.]

IC 4-22-2-13 --------- Administrative rules: applicability of chapter

(a) Subject to subsections (b), (c), and (d), this chapter applies to the addition, amendment, or repeal of a rule in every rulemaking action.

(b) This chapter does not apply to the following agencies:

(1) Any military officer or board.

(2) Any state educational institution (as defined in IC 20-12-0.5-1).

(c) This chapter does not apply to a rulemaking action that results in any of the following rules:

(1) A resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.

(2) A restriction or traffic control determination of a purely local nature that:

(A) is ordered by the commissioner of the Indiana department of transportation;

(B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or IC 9-20-7; and

(C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.

(3) A rule adopted by the secretary of state under IC 26-1-9.1-526.

(4) An executive order or proclamation issued by the governor.

(d) Except as specifically set forth in IC 13-14-19, sections 24, 26, 27, and 29 of this chapter do not apply to rulemaking actions under IC 13-14-19.

[As amended by: P.L.57-2000, §1.]

IC 4-22-2-14 --------- Administrative rules: procedural rights and duties

This chapter creates only procedural rights and imposes only procedural duties. These procedural rights and duties are in addition to those created and imposed by other law.

[As added by: P.L.31-1985, §3.]

IC 4-22-2-15 --------- Administrative rules: who may perform rulemaking actions

Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29 or 37.1 of this chapter, may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29 or 37.1 of this chapter, including readoption of a rule that is subject to sections 24 through 36 or to section 37.1 of this chapter and recalled for further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

[As amended by: P.L.1-1991, §15.]

IC 4-22-2-16 --------- Administrative rules: compliance with the open door law

For the purposes of this section, "governing body", "public agency", and "official action" have the meanings set forth in IC 5-14-1.5. When a governing body of a public agency performs an official action under this chapter, the agency shall comply with IC 5-14-1.5 (the Open Door Law).

[As added by: P.L.31-1985, §5.]

IC 4-22-2-17 --------- Administrative rules: applicability of the public records law

(a) IC 5-14-3 applies to the text of a rule that an agency intends to adopt from the earlier of the date that the agency takes any action under section 24 of this chapter, otherwise notifies the public of its intent to adopt a rule under any statute, or adopts the rule.

(b) IC 5-14-3 applies both to a rule and to the full text of a matter directly or indirectly incorporated by reference into the rule.

[As added by: P.L.31-1985, §6.]

IC 4-22-2-18 --------- Administrative rules: joint rule procedures

(a) If more than one (1) agency is required by statute to adopt the same rule, the agencies may publish a joint notice of a public hearing and conduct a joint public hearing. However, each agency shall separately draft and adopt a rule that covers the same subject matter.

(b) If an agency is authorized to adopt a rule and one (1) or more agencies are required to approve the rule, only the agency that is authorized to adopt the rule is required to comply with this chapter.

[As added by: P.L.31-1985, §7.]

IC 4-22-2-19 --------- Administrative rules: adoption of rule before statutory authorization becomes effective

(a) Except as provided in section 23.1 of this chapter, this section does not apply to the adoption of rules:

(1) required by statute if initiation of the rules is contingent upon the receipt of a waiver under federal law;

(2) that amend an existing rule;

(3) required by statutes enacted before June 30, 1995; or

(4) required by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

(c) However, an agency shall:

(1) begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule; or

(2) if an agency cannot comply with subdivision (1), immediately provide written notification to the administrative rules oversight committee stating the reasons for the agency's noncompliance.

If an agency notifies the administrative rules oversight committee concerning a rule in compliance with subdivision (2), failure to adopt the rule within the time specified in subdivision (1) does not invalidate the rule.

[As amended by: P.L.44-1995, §2.]

IC 4-22-2-19.1 ------- Administrative rules: retroactive tax interpretations

A state agency may not retroactively apply a change in the agency's interpretation of a statute, regulation, or one of the agency's information bulletins, if that change increases a taxpayer's liability for a state tax or a property tax.

[As added by P.L.17-1996, §1.]

IC 4-22-2-19.5 ------- Administrative rules: strictures

(a) To the extent possible, a rule adopted under this article or under IC 13-14-9.5 shall comply with the following:

(1) Minimize the expenses to:

(A) regulated entities that are required to comply with the rule;

(B) persons who pay taxes or pay fees for government services affected by the rule; and

(C) consumers of products and services of regulated entities affected by the rule.

(2) Achieve the regulatory goal in the least restrictive manner.

(3) Avoid duplicating standards found in state or federal laws.

(4) Be written for ease of comprehension.

(5) Have practicable enforcement.

(b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

[As added by P.L.17-1996, §2.]

IC 4-22-2-20 --------- Administrative rules: requirements that agency's written rule document must meet

Whenever an agency submits a rule to the publisher, the attorney general, the governor, or the secretary of state under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

[As added by: P.L.31-1985, §9.]

IC 4-22-2-21 --------- Administrative rules: requirements for incorporations by reference

(a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of any of the following matters:

(1) A federal or state statute, rule, or regulation.

(2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.

(3) A manual of the state board of tax commissioners adopted in a rule described in IC 6-1.1-31-9.

(b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.

(c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the primary matter.

(d) Whenever an agency submits a rule to the attorney general, the governor, or the secretary of state under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

(1) An Indiana statute or rule.

(2) A form or instructions for a form numbered by the commission on public records under IC 5-15-5.1-6.

(3) The source of a statement that is quoted or paraphrased in full in the rule.

(4) Any matter that has been filed with the secretary of state before the date that the rule containing the incorporation is filed.

(5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

[As amended by: P.L.6-1997, §4.]

IC 4-22-2-22 --------- Administrative rules: attorney general is legal advisor

The attorney general is the legal advisor to all agencies in the drafting and preparation of rules.

[As added by: P.L.31-1985, §11.]

IC 4-22-2-23 --------- Administrative rules: solicitation of public comments on a rulemaking; publication of notice of intent

(a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register at least thirty (30) days before the preliminary adoption of the rule. The publication notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule. The requirement to publish a notice of intent to adopt a rule does not apply to rulemaking under IC 13-14-9. The agency shall solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. The agency shall prepare a written response that contains a summary of the comments received during any part of the rulemaking process. The written response is a public document. The agency shall make the written response available to interested parties upon request.

[As amended by: P.L.1-1996, §29.]

IC 4-22-2-23.1 ------- Administrative rules: solicitation of public comments on a rulemaking involving a temporary emergency rule

(a) This section and section 19(b) of this chapter apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

[As added by: P.L.44-1995, §4.]

IC 4-22-2-24 --------- Administrative rules: publication of notice of public hearing

(a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c).

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper.

(c) The agency shall cause a notice of public hearing and the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

(1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;

(2) a general description of the subject matter of the proposed rule; and

(3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

[As added by: P.L.31-1985, §13.]

IC 4-22-2-25 --------- Administrative rules: rule must be approved by governor within one year after publication of intent; exception

(a) An agency has one (1) year from the date that it publishes a notice of intent to adopt a rule in the Indiana Register under section 23 of this chapter to comply with sections 26 through 33 of this chapter and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of intent to adopt a rule under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of the notice of intent to adopt a rule under section 23 of this chapter, notify the chairperson of the administrative oversight committee in writing of the:

(1) reasons why the rule was not adopted and the expected date the rule will be completed; and

(2) expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter.

(b) If a rule is not approved before the later of:

(1) one (1) year after the agency publishes notice of intent to adopt the rule under section 23 of this chapter; or

(2) the expected date contained in a notice concerning the rule that is provided to the administrative rules oversight committee under subsection (a)(2);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

[As amended by: P.L.44-1995, §5.]

IC 4-22-2-26 --------- Administrative rules: public hearing procedures

(a) After the notices and the text of an agency's proposed rule are published under section 24 of this chapter, the agency shall conduct a public hearing on the proposed rule.

(b) The agency shall convene the public hearing on the date and at the time and place stated in its notices.

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

(1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and

(2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened.

[As added by: P.L.31-1985, §15.]

IC 4-22-2-27 --------- Administrative rules: requisite consideration of comments from public hearing

The individual or group of individuals who will finally adopt the rule under section 29 of this chapter shall fully consider comments received at the public hearing required by section 26 of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

[As added by: P.L.31-1985, §16.]

IC 4-22-2-28 --------- Administrative rules: Indiana economic development council review and comment; LSA fiscal analysis

(a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars ($500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. Before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

(1) state; and

(2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

[As amended by: P.L.17-1996, §3.]

IC 4-22-2-29 --------- Administrative rules: agency options on rule adoption; logical outgrowth

(a) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

(1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 24 of this chapter;

(2) subject to subsection (b), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section 24 of this chapter and considered under section 27 of this chapter;

(3) subject to subsection (b), adopt part of one (1) or more proposed rules described in subsection (a)(2) in two (2) or more separate adoption actions; or

(4) subject to subsection (b), adopt a revised version of a proposed rule published under section 24 of this chapter and include provisions that did not appear in the published version.

(b) An agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted during the public comment period.

[As amended by: P.L.12-1993, §2.]

IC 4-22-2-31 --------- Administrative rules: submission of rule to attorney general

(a) After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The attorney general shall determine the number of copies of the rule and other documents to be submitted under this section.

[As amended by: P.L.1-1996, §30.]

IC 4-22-2-32 --------- Administrative rules: attorney general review of rule

(a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter. The attorney general shall consider the following:

(1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.

(2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.

In the review, the attorney general shall consider whether the adopted rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

(1) has been adopted without statutory authority;

(2) has been adopted without complying with this chapter;

(3) does not comply with requirements under section 29 of this chapter; or

(4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(2) of this chapter, the attorney general may:

(1) disapprove the rule; or

(2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

(1) The governor.

(2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

(1) submits a rule under section 31 of this chapter; or

(2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

(1) shall determine whether the rule adopted by the agency under IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3); and

(2) may disapprove a rule under this section only if the rule:

(A) has been adopted without statutory authority;

(B) has been adopted without complying with this chapter or IC 13-14-9;

(C) is not a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of the testimony presented at the board meeting held under IC 13-14-9-5(a)(3); or

(D) violates another law.

[As amended by: P.L.1-1996, §31.]

IC 4-22-2-33 --------- Administrative rules: submission of rule to governor

(a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The governor shall determine the number of copies of the rule and other documents to be submitted under this section.

[As added by: P.L.31-1985, §22.]

IC 4-22-2-34 --------- Administrative rules: governor's review of rule

(a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the secretary of state within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disap-

prove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the secretary of state without the approval of the governor.

[As added by: P.L.31-1985, §23.]

IC 4-22-2-35 --------- Administrative rules: submission of rule to secretary of state

(a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this section.

(c) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time the rule is accepted on every duplicate original copy submitted.

[As added by: P.L.31-1985, §24.]

IC 4-22-2-36 --------- Administrative rules: effective date of rule

A rule that has been accepted for filing under section 35 of this chapter takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 35 of this chapter.

(3) The effective date stated by the agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

[As added by: P.L.31-1985, §25.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 1; Effective until 1/1/2002]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.204-2001, §6.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 2; Effective 1/1/2002]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcoholic beverage commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted

for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.287-2001, §1.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 3; Effective 1/1/2002]]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcoholic beverage commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-17.7-2-6 to implement the uninsured parents program.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.283-2001, §1.]

IC 4-22-2-38 --------- Administrative rules: corrections

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20 of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 24 through 37.1 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the secretary of state for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that it is accepted on every duplicate original copy that is submitted.

(g) Subject to subsection (h), a rule described in subsection (a) takes effect on the latest of the following dates:

(1) The date that the rule being corrected by a rule adopted under this section becomes effective.

(2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).

(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the secretary of state, the objection has the effect of invalidating the rule.

[As amended by: P.L.1-1991, §16.]

IC 4-22-2-39 --------- Administrative rules: acceptance of rule for filing by the secretary of state

(a) When an agency submits a rule for filing under section 35, 37.1, or 38 of this chapter, the secretary of state may accept the rule for filing only if the following conditions are met:

(1) A sufficient number of duplicate original copies of the rule are submitted to allow the secretary of state to comply with IC 4-22-7-5.

(2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

(3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the secretary of state shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

(1) an agency has complied with requirements established by the federal or state government;

(2) a specific period of time has elapsed; or

(3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the secretary of state reviews the rule under this section.

(c) The secretary of state shall take no more than three (3) business days to complete the review of a rule under this section.

[As amended by: P.L.1-1991, §17.]

IC 4-22-2-40 --------- Administrative rules: rule recall, readoption and resubmission

(a) At any time before a rule is accepted for filing by the secretary of state under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether it has been disapproved by the attorney general under section 32 of this chapter or disapproved by the governor under section 34 of this chapter.

(b) Sections 24 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. Sections 24 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

(1) subject to sections 31 and 33 of this chapter;

(2) recalled under subsection (a); and

(3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. The agency also shall comply with any other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, or 38 of this chapter.

[As amended by: P.L.12-1993, §4.]

IC 4-22-2-41 --------- Administrative rules: agency withdrawal of rule

(a) At any time before a rule is accepted by the secretary of state for filing under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

[As amended by: P.L.1-1991, §19.]

IC 4-22-2-42 --------- Administrative rules: rules publisher to establish format

The publisher, with the assistance of the code revision commission, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

[As added by: P.L.31-1985, §31.]

IC 4-22-2-43 --------- Administrative rules: supplemental rules concerning rulemaking procedures

(a) Subject to section 42 of this chapter, the attorney general may adopt rules under this chapter to interpret or implement this chapter.

(b) An agency may adopt rules under this chapter to supplement the procedures in this chapter for its own rulemaking actions.

[As added by: P.L.31-1985, §32.]

IC 4-22-2-44 --------- Administrative rules: nonconforming rulemaking actions invalid

A rulemaking action that does not conform with this chapter is invalid, and a rule that is the subject of a noncomplying rulemaking action does not have the effect of law until it is adopted in conformity with this chapter. However, the failure of an agency to comply with section 20(2) of this chapter does not invalidate the rulemaking action.

[As amended by: P.L.36-1989, §2.]

IC 4-22-2-45 --------- Administrative rules: two year limit on challenges to the validity of environmental rules

A:

(1) claim; or

(2) defense;

that asserts that a rule is invalid on procedural grounds may not be asserted if the claim or defense is based on rulemaking procedures that were followed or should have been followed by a board described in IC 13-14-9-1 or the department in adopting a rule under this chapter unless the claim or defense that asserts the procedural defect is filed not more than two (2) years after the date the rule becomes effective. However, a claim may be filed or a defense raised at any time for an alleged procedural defect that is alleged to have caused substantial harm to the due process rights of an individual.

[As amended by: P.L.1-1996, §33.]

IC 4-22-2-46 --------- Administrative rules: administrative rules oversight committee to review rules with fiscal impact over $500,000

The administrative rules oversight committee shall carry out a program to review each rule adopted under this chapter that has a fiscal impact of more than five hundred thousand dollars ($500,000) for the following:

(1) Economic impact.

(2) Compliance with the intent of the general assembly.

(3) The extent to which the rule creates an unfunded mandate on any state agency or political subdivision.

(4) The extent to which the rule complies with the standards in IC 4-22-2-19.5.

[As amended by: P.L.17-1996, §6.]

IC 4-22-2.5. EXPIRATION AND READOPTION OF ADMINISTRATIVE RULES

IC 4-22-2.5-1 --------- Rule readoption: applicability

This chapter does not apply to the following:

(1) Rules adopted by the department of state revenue.

(2) Rules adopted by the state board of tax commissioners.

(3) Rules adopted under IC 13-14-9 by the department of environmental management or a board that has rulemaking authority under IC 13.

(4) A rule that incorporates a federal regulation by reference or adopts under a federal mandate a federal regulation in its entirety without substantive additions.

[As added by: P.L.17-1996, §7.]

IC 4-22-7. CODIFICATION, DISTRIBUTION AND PUBLICATION OF RULES AND OTHER AGENCY STATEMENTS

IC 4-22-7-6 ---------- Publication of rules and other agency statements: agency may publish rules

An agency may publish its rules under IC 4-13-4.1. A publication containing rules also may include other matter that may assist the public in conducting its business with the agency.

[As added by: P.L.31-1985, §34.]

IC 4-22-7-7 ---------- Publication of rules and other agency statements: publication in the Indiana Register

(a) This section applies to the following agency statements:

(1) Executive orders issued by the governor.

(2) Notices that a rule has been disapproved or objected to by the attorney general under IC 4-22-2-32 or IC 4-22-2-38, or disapproved or objected to by the governor under IC 4-22-2-34 or IC 4-22-2-38.

(3) Official opinions of the attorney general (excluding advisory letters).

(4) Official explanatory opinions of the state board of accounts based on an official opinion of the attorney general.

(5) Any other statement:

(A) that:

(i) interprets, supplements, or implements a statute or rule;

(ii) has not been adopted in compliance with IC 4-22-2;

(iii) is not intended by its issuing agency to have the effect of law; and

(iv) may be used in conducting the agency's external affairs; or

(B) that specifies a policy that an agency relies upon to:

(i) enforce a statute or rule;

(ii) conduct an audit or investigation to determine compliance with a statute or rule; or

(iii) impose a sanction for violation of a statute or rule.

This subdivision includes information bulletins, revenue rulings (including, subject to IC 6-8.1-3-3.5, a letter of findings), and other guidelines of an agency.

(6) A statement of the governor concerning extension of an approval period under IC 4-22-2-34.

(b) Whenever an agency adopts a statement described by subsection (a), the agency shall distribute two (2) duplicate copies of the statement to the publisher for publication and indexing in the Indiana Register and the copies required by IC 4-23-7.1-26 to the Indiana library and historical department. However, if a statement under subsection (a)(5)(B) is in the form of a manual, book, pamphlet, or reference publication, the publisher is required to publish only the title of the manual, book, or reference publication.

(c) Every agency that adopts a statement described under subsection (a) also shall maintain a current list of all agency statements described in subsection (a) that it may use in its external affairs. The agency shall update the listing at least every thirty (30) days. The agency shall include on the list the name of the agency and the following information for each statement:

(1) Title.

(2) Identification number.

(3) Date originally adopted.

(4) Date of last revision.

(5) Reference to all other statements described in subsection (a) that are repealed or amended by the statement.

(6) Brief description of the subject matter of the statement.

(d) At least quarterly, every agency that maintains a list under subsection (c) shall distribute two (2) copies of the list to the publisher and two (2) copies to the Indiana library and historical department and the administrative rules oversight committee.

[As amended by: P.L.28-1997, §1.]

IC 4-23-5.5. INDIANA RECYCLING AND ENERGY DEVELOPMENT BOARD

IC 4-23-5.5-1 --------- Recycling/energy development board: definitions

As used in this chapter:

(1) "board" means the Indiana recycling and energy development board created by this chapter;

(2) "department" means the department of commerce; and

(3) "director" refers to the director of the office of energy policy of the department.

[As amended by: P.L.27-1993, §7.]

IC 4-23-5.5-2 --------- Recycling/energy development board: established

(a) The Indiana recycling and energy development board is created and constitutes a public instrumentality of the state. The exercise by the board of the powers conferred by this chapter is an essential governmental function.

(b) The board consists of thirteen (13) members, one (1) of whom shall be the lieutenant governor or the lieutenant governor's designee and twelve (12) of whom shall be appointed by the governor for four (4) year terms. The governor's appointees shall be chosen from among representatives of:

(1) the coal industry;

(2) other regulated and nonregulated energy related industries;

(3) Indiana universities and colleges with expertise in:

(A) recycling research and development; or

(B) energy research and development;

(4) agriculture;

(5) labor;

(6) industrial and commercial consumers;

(7) environmental groups; and

(8) private citizens with a special interest in:

(A) recycling; or

(B) energy resources development.

No more than six (6) appointive members shall be of the same political party.

(c) A vacancy in the office of an appointive member, other than by expiration, shall be filled in like manner as the original appointment for the remainder of the term of that retiring member. Appointed members may be removed by the governor for cause.

(d) The board shall have eight (8) ex officio advisory members as follows:

(1) The governor.

(2) The director of the office of energy policy of the department.

(3) The director of the department of natural resources.

(4) The commissioner of the department of environmental management.

(5) Two (2) members from the house of representatives of opposite political parties appointed by the speaker of the house of representatives for two (2) year terms.

(6) Two (2) members from the senate of opposite political parties appointed by the president pro tempore of the senate for two (2) year terms.

(e) The department shall serve as the staff of the board.

[As amended by: P.L.27-1993, §8.]

IC 4-23-5.5-3 --------- Recycling/energy development board: chairman; quorum; expenses

(a) The governor shall appoint one (1) of the appointed members as chairman. Seven (7) members of the board shall constitute a quorum and the affirmative vote of a majority of the membership shall be necessary for any action taken by the board. A vacancy in the membership of the board does not impair the right of the quorum to act.

(b) All the members of the board shall be reimbursed for their actual expenses incurred in the performance of their duties. The appointed members may also receive a per diem allowance as determined by the budget agency for attendance of board meetings and activities. All reimbursement for expenses shall be as provided by law.

[As amended by: P.L.10-1990, §5; P.L.27-1993, SEC.9.]

IC 4-23-5.5-4 --------- Recycling/energy development board: staffing

The director shall be the chief administrative officer for the board and shall direct and supervise the administrative affairs and technical activities of the board in accordance with rules, regulations, and policies established by the board. The director may appoint such employees as the board may require and such agents or consultants as may be necessary for implementing this chapter. The director shall prepare an annual administrative budget for review by the budget agency and the budget committee.

[As amended by: P.L.27-1993, §10.]

IC 4-23-5.5-5 --------- Recycling/energy development board: disclosure of interests

A member of the board must disclose to the board any interest in a project the board may be considering for action. The board shall determine whether that member shall be allowed to participate in activities related to that project.

[As added by: ACTS 1980, P.L.20, §1.]

IC 4-23-5.5-6 --------- Recycling/energy development board: responsibilities of board

(a) The board shall do the following:

(1) Adopt procedures for the regulation of its affairs and the conduct of its business.

(2) Meet at the offices of the department on call of the director, at least once each calendar quarter. The meetings shall be upon ten (10) days written notification, shall be open to the public, and shall have official minutes recorded for public scrutiny.

(3) Report annually to the legislative council the projects in which it has participated and is currently participating with a complete list of expenditures for those projects.

(4) Annually prepare an administrative budget for review by the budget agency and the budget committee.

(5) Keep proper records of accounts and make an annual report of its condition to the state board of accounts.

(b) The board may request that the department conduct assessments of the opportunities and constraints presented by all sources of energy. The board shall encourage the balanced use of all sources of energy with primary emphasis on:

(1) the utilization of Indiana's high sulphur coal; and

(2) the utilization of Indiana's agricultural and forest resources and products for the production of alcohol fuel.

However, the board shall seek to avoid possible undesirable consequences of total reliance on a single source of energy.

(c) The board shall consider projects involving the creation of the following:

(1) Markets for products made from recycled materials.

(2) New products made from recycled materials.

(d) The board may promote, fund, and encourage programs facilitating the development and effective use of all sources of energy in Indiana.

[As amended by: P.L.27-1993, §11.]

IC 4-23-5.5-7 --------- Recycling/energy development board: authorized expenditures

The board, upon approval by the governor and the budget agency, may make the following expenditures:

(1) Matching grants to federal, state, and local governmental agencies for research and development of energy resources projects and recycling market development projects in Indiana.

(2) Matching grants to individuals, corporations, limited liability companies, partnerships, educational institutions, and other private sector groups for energy resources and recycling market research and development.

(3) Direct grants, loans, or loan guarantees to those individuals and organizations specified in subdivision (1) or (2) of this section.

(4) Contractual services for energy resources and recycling market research and development programs.

(5) Purchase or lease land for energy resources and recycling market research and development projects.

(6) Other projects and expenses consistent with this chapter.

[As amended by: P.L.1-1994, §11.]

IC 4-23-5.5-8 --------- Recycling/energy development board: no eminent domain authority

The board does not have the authority to exercise the power of eminent domain.

[As added by: ACTS 1980, P.L.20, §1.]

IC 4-23-5.5-9 --------- Recycling/energy development board: powers of board

The board may:

(1) on behalf of the state receive and accept grants, gifts, and contributions from public agencies, including the federal government, and from private agencies and private sources, including the Indiana business modernization and technology corporation, for the purpose of researching and developing energy resources within the state, and may administer such, including contracting with other public and private organizations, to carry out the purposes for which such grants, gifts, and contributions were made;

(2) establish application forms and procedures for programs consistent with this chapter;

(3) accept applications from private and public sources for funding of programs consistent with this chapter;

(4) provide funding for studies, research projects, and other activities required to assess the nature and extent of recycling markets in Indiana and the nature and extent of energy resources to meet the needs of the state, including but not limited to coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable, and other energy resources;

(5) deposit funds not currently needed to meet the obligations of the board with the treasurer of state to the credit of the fund, or invest in obligations as provided by IC 5-13-10.5; and

(6) participate in or sponsor programs, conferences, or seminars aimed at assisting the state in promoting recycling market development and the effective use of all sources of energy in Indiana.

[As amended by: P.L.18-1996, §1.]

IC 4-23-5.5-10 ------- Recycling/energy development board: energy development fund established

(a) The "energy development fund" is established as a dedicated fund to be administered by the board. Money in the fund shall be expended by the board exclusively to effect the provisions of this chapter and may include administrative costs.

(b) All money received by the board for deposit in the energy development fund shall be deposited in the fund.

(c) No portion of the fund shall revert to the general fund of the state at the end of a fiscal year. However, if the fund is abolished its contents shall revert to the general fund of the state.

(d) All money accruing to the fund is appropriated continuously for the purposes specified in this chapter.

[As amended by: P.L.27-1993, §14.]

IC 4-23-5.5-11 ------- Recycling/energy development board: revolving loan program authorized

The board may establish and administer a revolving loan program for the purpose of making low interest loans to projects designed to promote the development and efficient use of energy resources or to promote recycling market development. The interest rates for the loans shall be fixed by the board.

[As amended by: P.L.27-1993, §15.]

IC 4-23-5.5-14 ------- Recycling/energy development board: recycling promotion and assistance fund established

(a) The Indiana recycling promotion and assistance fund is established. The purpose of the fund is to promote and assist recycling throughout Indiana by focusing economic development efforts on businesses and projects involving recycling. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Repayment proceeds of loans made from the fund.

(3) Gifts and donations.

(4) Money from the solid waste management fund.

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

(d) The board may use money in the fund to make loans to assist:

(1) persons in establishing new recycling businesses;

(2) in the expansion of existing recycling businesses; and

(3) manufacturers in retrofitting equipment necessary to reuse or recycle secondary materials.

(e) The board shall establish loan:

(1) amounts;

(2) terms; and

(3) interest rates.

(f) The board may use money in the fund to make grants for research and development projects involving recycling. The board shall establish amounts for grants.

(g) A person, business, or manufacturer that wants a grant or loan from the fund must file an application with the board.

(h) The board shall establish criteria for awarding grants and loans under this section.

[As added by: P.L.10-1990, §9.]

IC 4-23-5.5-15 ------- Recycling/energy development board: energy efficiency loan fund established

(a) The Indiana energy efficiency loan fund is established for the purpose of assisting Indiana industries and governing bodies (as defined in IC 36-1-12.5-1.5) in undertaking energy efficiency projects. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Repayment proceeds, including interest, of loans made from the fund.

(3) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.

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

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

(e) The board shall establish:

(1) amounts, terms, and interest rates for loans under this section; and

(2) criteria for awarding loans under this section.

(f) A person, business, governing body, or manufacturer that wants a loan from the fund must file an application in the manner prescribed by the board.

[As amended by: P.L.227-1999, §11.]

IC 4-23-5.5-16 ------- Recycling/energy development board: Indiana coal research fund established

(a) The Indiana coal research grant fund is established for the purpose of providing grants for research and other projects designed to develop and expand markets for Indiana coal. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.

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

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

(e) The board shall establish:

(1) amounts for grants under this section; and

(2) criteria for awarding grants under this section.

(f) A person, business, or manufacturer that wants a grant from the fund must file an application in the manner prescribed by the board.

[As added by: P.L.24-1993, §3.]

TITLE 5. STATUTES CONCERNING GOVERNMENTAL AGENCIES THAT ARE RELEVANT TO IDEM

IC 5-3-1. PUBLICATION OF NOTICES; PROCEDURES

IC 5-3-1-6 ---------- Publication of notices: procedures

(a) In all cases where notices are required by law to be published in the public newspaper by or under the supervision of any state officer, board, commission, or institution of the state of Indiana, said notices are hereby required to be published in each of two (2) daily newspapers published in the city of Indianapolis and in such other cities as is required by law, said notices to be in all cases published in two (2) newspapers in each city where they are required to be published. In all cases where the officer, board, commission, or institution making said publication is located outside of the city of Indianapolis, said notices shall also be published in newspapers published within the county where said officer, board, commission, or institution maintains its office. The rate charged for all such notices and advertising shall be the same as is set out in section 1 of this chapter.

(b) In addition to the requirements of subsection (a), a state officer, board, commission, or institution of the state of Indiana that is required by law to publish a notice of a public meeting shall also provide electronic access to the notice through the computer gateway administered by the intelenet commission under IC 5-21-2.

[As amended by: P.L.251-1999, §3.]

IC 5-14-1.5. OPEN DOOR LAW

IC 5-14-1.5-1 --------- Open door law: findings, intent and purpose

In enacting this chapter, the general assembly finds and declares that this state and its political subdivisions exist only to aid in the conduct of the business of the people of this state. It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. The purposes of this chapter are remedial, and its provisions are to be liberally construed with the view of carrying out its policy.

[As amended by: P.L.67-1987, §1.]

IC 5-14-1.5-2 --------- Open door law: definitions

For the purposes of this chapter:

(a) "Public agency" means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by a school corporation to conduct collective bargaining on behalf of that school corporation does not constitute a governing body for purposes of this chapter.

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include:

(1) any social or chance gathering not intended to avoid this chapter;

(2) any on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus.

(d) "Official action" means to:

(1) receive information;

(2) deliberate;

(3) make recommendations;

(4) establish policy;

(5) make decisions; or

(6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

[As amended by: P.L.1-1998, §71.]

IC 5-14-1.5-3 --------- Open door law: meetings of governing bodies of public agencies to be open

(a) Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

(b) A secret ballot vote may not be taken at a meeting.

(c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not violate this section.

[As amended by: P.L.1-1991, §35.]

IC 5-14-1.5-4 --------- Open door law: posting of agenda; memoranda of proceedings; minutes

(a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

(b) As the meeting progresses, the following memoranda shall be kept:

(1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken, by individual members if there is a roll call.

(5) Any additional information required under IC 5-1.5-2-2.5 or IC 20-12-63-7.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying.

[As amended by: P.L.76-1995, §1.]

IC 5-14-1.5-5 --------- Open door law: public notice of meetings required

(a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) depositing in the United States mail with postage prepaid or by delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelenet commissioner under IC 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the state board of tax commissioners or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

[As amended by: P.L.251-1999, §4.]

IC 5-14-1.5-6.1 ------ Open door law: limitations on executive sessions

(a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or

(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.

(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is a physician.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

[As amended by: P.L.37-2000, §1.]

IC 5-14-1.5-7 --------- Open door law: judicial actions to declare void certain actions

(a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;

(2) enjoin continuing, threatened, or future violations of this chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any executive session in violation of section 3(a) of this chapter or at any meeting of which notice is not given in accordance with section 5 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section.
[As amended by: P.L70-1999, §1. and P.L.191-1999, §1.]

IC 5-14-1.5-8 --------- Open door law: accessibility of meetings to persons with disabilities

(a) This section applies only to the following public agencies:

(1) A public agency described in section 2(a)(1) of this chapter.

(2) A public agency:

(A) described in section 2(a)(5) of this chapter; and

(B) created to advise the governing body of a public agency described in section 2(a)(1) of this chapter.

(b) As used in this section, "accessible" means the design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (41 C.F.R. 101-19.6, App. A (1991)) or with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (56 Fed. Reg. 35605 (1991)).

(c) As used in this section, "individual with a disability" means an individual who has a temporary or permanent physical disability.

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability.
[As added by: P.L38-1992, §2.].

IC 5-14-3. PUBLIC RECORDS LAW

IC 5-14-3-1 ---------- Public records law: policy and purpose

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.
[As amended by: P.L.77-1995, §1.]

IC 5-14-3-2 ---------- Public records law: definitions

As used in this chapter:

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

"Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

"Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

(1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or

(2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

"Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

"Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

(2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.

(3) In the case of public records available:

(A) by enhanced access under section 3.5 of this chapter; or

(B) to a governmental entity under section 3(c)(2) of this chapter;

to examine and copy the public records by use of an electronic device.

(4) In the case of electronically stored data, to manually transcribe and make notes, abstracts, or memoranda or to duplicate the data onto a disk, tape, drum, or any other medium of electronic storage.

"Investigatory record" means information compiled in the course of the investigation of a crime.

"Patient" has the meaning set out in IC 16-18-2-272(d).

"Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

"Provider" has the meaning set out in IC 16-18-2-295(a) and includes employees of the state department of health or local boards of health who create patient records at the request of another provider or who are social workers and create records concerning the family background of children who may need assistance.

"Public agency" means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts.

(4) Any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police

or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

"Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

"Trade secret" has the meaning set forth in IC 24-2-3-2.

"Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under section 4 of this chapter.

[As amended by: P.L.204-2001, §12.]

IC 5-14-3-3 ---------- Public records law: inspection and copying of public records

(a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of this chapter. A request for inspection or copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency.

No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on his own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or may not do the following:

(1) In accordance with a contract described in section 3.5 of this chapter, permit a person to inspect and copy through the use of enhanced access public records containing information owned by or entrusted to the public agency.

(2) Permit a governmental entity to use an electronic device to inspect and copy public records containing information owned by or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. This subsection does not apply to an electronic map (as defined by IC 5-14-3-2).

(e) A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person (as defined in IC 5-14-3-2) for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

(f) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

(g) If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

[As amended by: P.L.77-1995, §3.]

IC 5-14-3-3.5 --------- Public records law: enhanced state public records

(a) As used in this section, "state agency" has the meaning set forth in IC 4-13-1-1. The term does not include the office of the following elected state officials:

(1) Secretary of state.

(2) Auditor.

(3) Treasurer.

(4) Attorney general.

(5) Superintendent of public instruction.

(6) Clerk of the Supreme Court.

However, each state office described in subdivisions (1) through (6) may use the computer gateway administered by the intelenet commission established under IC 5-21-2, subject to the requirements of this section.

(b) As an additional means of inspecting and copying public records, a state agency may provide enhanced access to public records maintained by the state agency.

(c) If the state agency has entered into a contract with a third party under which the state agency provides enhanced access to the person through the third party's computer gateway or otherwise, all of the following apply to the contract:

(1) The contract between the state agency and the third party must provide for the protection of public records in accordance with subsection (d).

(2) The contract between the state agency and the third party may provide for the payment of a reasonable fee to the state agency by either:

(A) the third party; or

(B) the person.

(d) A contract required by this section must provide that the person and the third party will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A state agency shall provide enhanced access to public records only through the computer gateway administered by the intelenet commission established under IC 5-21-2, except as permitted by the data process oversight commission established under IC 4-23-16-1.

[As amended by: P.L.19-1997, §2.]

IC 5-14-3-3.6 --------- Public records law: enhanced public agency records

(a) As used in this section "public agency" does not include a state agency (as defined in section 3.5(a) of this chapter).

(b) As an additional means of inspecting and copying public records, a public agency may provide enhanced access to public records maintained by the public agency.

(c) A public agency may provide a person with enhanced access to public records if any of the following apply:

(1) The public agency provides enhanced access to the person through its own computer gateway and provides for the protection of public records under subsection (d).

(2) The public agency has entered into a contract with a third party under which the public agency provides enhanced access to the person through the third party's computer gateway or otherwise, and the contract between the public agency and the third party provides for the protection of public records in accordance with subsection (d).

(d) A contract entered into under this section and any other provision of enhanced access must provide that the third party and the person will not engage in the following:

(1) Unauthorized enhanced access to public records.

(2) Unauthorized alteration of public records.

(3) Disclosure of confidential public records.

(e) A contract entered into under this section or any provision of enhanced access may require the payment of a reasonable fee to either the third party to a contract or to the public agency, or both, from the person.

(f) A public agency may provide enhanced access to public records through the computer gateway administered by the intelenet commission established under IC 5-21-2.

[As added by: P.L.19-1997, §3.]

IC 5-14-3-4 ---------- Public records law: records which may not be disclosed; records which may be excepted from disclosure at discretion of agency; lists of names and addresses [Version 1]

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. How-

ever, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Social Security number.

(C) Address.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records

and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

[As amended by: P.L.201-2001, §1.]

IC 5-14-3-4 ---------- Public records law: records which may not be disclosed; records which may be excepted from disclosure at discretion of agency; lists of names and addresses [Version 2]

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material,

including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the

driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

[As amended by: P.L.271-2001, §1.]

IC 5-14-3-6 ---------- Public records law: records containing disclosable and nondisclosable information

(a) If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying.

(b) If a public record stored on computer tape, computer disks, microfilm, or a similar or analogous record system is made available to:

(1) a person by enhanced access under section 3.5 of this chapter; or

(2) a governmental entity by an electronic device;

the public agency may not make the record available for inspection without first separating the material in the manner required by subsection (a).

(c) A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

(1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and

(2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

(d) A public agency is not required to reprogram a computer system to provide:

(1) enhanced access; or

(2) access to a governmental entity by an electronic device.

[As amended by: P.L.77-1995, §5.]

IC 5-14-3-6.5 --------- Public records law: maintaining confidentiality of records

A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record.

[As added by: P.L.34-1984, §3.]

IC 5-14-3-7 ---------- Public records law: duty to protect public records

(a) A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.

(b) A public agency shall take precautions that protect the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

(c) This section does not operate to deny to any person the rights secured by section 3 of this chapter.

[As amended by P.L.58-1993, §6.]

IC 5-14-3-8 ---------- Public records law: fees for copying records

(a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

(1) to inspect a public record; or

(2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents ($0.10) per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment, and does not include labor costs or overhead costs.

(e) If:

(1) a person is entitled to a copy of a public record under this chapter; and

(2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the public record;

the public agency must provide at least one (1) copy of the public record to the person. However, if a public agency does not have reasonable access to a machine capable of reproducing the record or if the person cannot reproduce the record by use of enhanced access

under section 3.5 of this chapter, the person is only entitled to inspect and manually transcribe the record. A public agency may require that the payment for copying costs be made in advance.

(f) Notwithstanding subsection (b), (c), (d), (g), (h), or (i), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchasers, that does not exceed the sum of the following:

(1) The agency's direct cost of supplying the information in that form.

(2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

(3) In the case of the legislative services agency, a reasonable percentage of the agency's direct cost of maintaining the system in which the information is stored. However, the amount charged by the legislative services agency under this subdivision may not exceed the sum of the amounts it may charge under subdivisions (1) and (2).

(h) This subsection applies to the fee charged by a public agency for providing enhanced access to a public record. A public agency may charge any reasonable fee agreed on in the contract under section 3.5 of this chapter for providing enhanced access to public records.

(i) This subsection applies to the fee charged by a public agency for permitting a governmental entity to inspect public records by means of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection or the public agency may waive any fee for the inspection.

(j) Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

(k) The fee charged by a public agency under subsection (j) to cover costs for maintaining, upgrading, and enhancing an electronic map may be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

(1) Public agency program support.

(2) Nonprofit activities.

(3) Journalism.

(4) Academic research.

[As amended by P.L.89-2001, §1.]

IC 5-14-3-9 ---------- Public records law: denial of disclosure by a public agency

(a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.

(b) If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the

public agency receives the request.

(c) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

(1) the denial is in writing or by facsimile; and

(2) the denial includes:

(A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and

(B) the name and the title or position of the person responsible for the denial.

(d) A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

(1) that a request for release of the public record has been denied; and

(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

(e) The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

(f) If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

(g) The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

(h) In any action filed under this section, a court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the action was frivolous or vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary because the denial of access to a public record under this chapter would prevent the plaintiff from presenting that public record to a public agency preparing to act on a matter of relevance to the public record whose disclosure was denied.

(i) A court shall expedite the hearing of an action filed under this section.

[As amended by: P.L.70-1999, §2 and P.L.191-1999, §2.]

IC 5-14-3-10 --------- Public records law: penalties for disclosure of confidential information

(a) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency, except as provided by IC 4-15-10, who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor.

(b) A public employee may be disciplined in accordance with the personnel policies of the agency by which the employee is employed if the employee intentionally, knowingly, or recklessly discloses or fails to protect information classified as confidential by state statute.

(c) A public employee, a public official, or an employee or officer of a contractor or subcontractor of a public agency who unintentionally and unknowingly discloses confidential or erroneous information in response to a request under IC 5-14-3-3(d) or who discloses confidential information in reliance on an advisory opinion by the public access counselor is immune from liability for such a disclosure.

(d) This section does not apply to any provision incorporated into state law from a federal statute.

[As amended by: P.L.70-1999, §3 and P.L.191-1999, §3.]

IC 5-22-17. PUBLIC PURCHASING - CONTRACTS

IC 5-22-17-3 --------- Contracts: limits on term of contracts

(a) This section does not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity.

(b) Subject to subsections (c) through (e) and section 5 of this chapter, a contract for supplies may be entered into for a period not to exceed four (4) years.

(c) County and municipal hospitals may contract for the purchase of supplies for more than one (1) year but not more than five (5) years if the supplies are purchased under IC 5-22-7.

(d) The contract must specify that payment and performance obligations are subject to the appropriation and availability of funds.

(e) A political subdivision must have available a sufficient appropriation balance or an approved additional appropriation before a purchasing agent may award a contract.

[As added by: P.L.49-1997, §1.]

IC 5-22-17-4 --------- Contracts: price escalation clause; renewals

(a) A contract that contains a provision for escalation of the price of the contract may be renewed under this section if the price escalation is computed using:

(1) a commonly accepted index named in the contract; or

(2) a formula set forth in the contract.

(b) Subject to section 5 of this chapter, with the agreement of the contractor and the purchasing agency, a contract may be renewed any number of times.

(c) The term of a renewed contract may not be longer than the term of the original contract.

[As amended by: P.L.153-1999, §5.]

IC 5-22-17-5 --------- Contracts: funding availability

(a) When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled.

(b) A determination by the fiscal body that funds are not appropriated or otherwise available to support continuation of performance is final and conclusive.

[As added by P.L.49-1997, §1.]

IC 5-22-17-7 --------- Contracts: term of contract for remediation of a hazardous waste site

(a) As used in this section "release" means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, or spilling into the environment. The term includes the abandonment or discarding of barrels, containers, or other closed receptacles containing any petroleum or hazardous substance.

(b) As used in this section, "remediation" means any of the following:

(1) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment that may otherwise result from a release or threat of a release.

(2) Actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release of petroleum or a hazardous substance into the environment to eliminate the release of petroleum or hazardous substances so that the petroleum or hazardous substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(3) The cleanup or removal of released petroleum or hazardous substances from the environment.

(c) Notwithstanding section 3 of this chapter, a contract for remediation of a hazardous waste site may be entered into for any period not to exceed ten (10) years. The other provisions of section 3 of this chapter apply to a contract for remediation of hazardous waste.

[As added by: P.L.49-1997, §1.]

TITLE 6. STATUTES CONCERNING TAXATION THATARE RELEVANTTO IDEM

IC 6-1.1-10. EXEMPTIONS FROM PROPERTY TAX

IC 6-1.1-10-9 --------- Property tax exemptions: industrial waste control facility defined

(a) For purposes of this section, "industrial waste control facility" means personal property which is:

(1) included either as a part of or an adjunct to a privately owned manufacturing or industrial plant or coal mining operation; and

(2) used predominantly to:

(A) prevent, control, reduce, or eliminate pollution of a stream or a public body of water located within or adjoining this state by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, or disposing of waste or contaminants generated by the plant; or

(B) meet state or federal reclamation standards for a coal mining operation.

The term includes personal property that is under construction or in the process of installation and that will be used for the purposes described in this subsection when placed in service. The term also includes spare parts held exclusively for installation in or as part of personal property that qualifies for the exemption under this section.

(b) An industrial waste control facility is exempt from property taxation if it is not used in the production of property for sale.

[As amended by: P.L.41-1993, §8.]

IC 6-1.1-10-10 ------- Property tax exemptions: for industrial waste control facilities

(a) The owner of an industrial waste control facility who wishes to obtain the exemption provided in section 9 of this chapter shall file an exemption claim with the assessor of the township in which the property is located when he files his annual personal property return. The claim shall describe and state the assessed value of the property for which an exemption is claimed.

(b) The owner shall, by registered or certified mail, forward a copy of the exemption claim to the department of environmental management. The department shall acknowledge its receipt of the claim.

(c) The department of environmental management may investigate any claim. The department may also determine if the property for which the exemption is claimed is being utilized as an industrial waste control facility. Within one hundred twenty (120) days after a claim is mailed to the department, the department may certify its written determination to the township assessor with whom the claim was filed.

(d) The determination of the department remains in effect:

(1) as long as the owner owns the property and uses the property as an industrial waste control facility; or

(2) for five (5) years;

whichever is less. In addition, during the five (5) years after the department's determination the owner of the property must notify the township assessor and the department in writing if any of the property on which the department's determination was based is disposed of or removed from service as an industrial waste control facility.

(e) The department may revoke a determination if the department finds that the property is not predominantly used as an industrial waste control facility.

(f) The township assessor, in accord with the determination of the department, shall allow or deny in whole or in part each exemption claim. However, if the owner provides the assessor with proof that a copy of the claim has been mailed to the department, and if the

department has not certified a determination to the assessor within one hundred twenty (120) days after the claim has been mailed to the department, the assessor shall allow the total exemption claimed by the owner.

(g) The assessor shall reduce the assessed value of the owner's personal property for the year for which an exemption is claimed by the amount of exemption allowed.

[As amended by: P.L.41-1993, §9.]

IC 6-1.1-10-11 ------- Property tax exemptions: for industrial waste control facilities; appeal of IDEM determination

A determination by the department of environmental management under section 10 of this chapter may be appealed by the property owner to the circuit court of the county in which the property is located. The court shall try the appeal without a jury. Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

[As amended by: P.L.143-1985, §184.]

IC 6-1.1-10-12 ------- Property tax exemptions: for air pollution control systems

(a) Personal property is exempt from property taxation if:

(1) it is part of a stationary or unlicensed mobile air pollution control system of a private manufacturing, fabricating, assembling, extracting, mining, processing, generating, refining, or other industrial facility;

(2) it is not primarily used in the production of property for sale;

(3) it is employed predominantly in the operation of the air pollution control system;

(4) the air pollution control system is designed and used for the improvement of public health and welfare by the prevention or elimination of air contamination caused by industrial waste or contaminants;

(5) a sanitary treatment or elimination service for the waste or contaminants is not provided by public authorities; and

(6) it is acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards.

(b) The property that is exempt under this section includes the following personal property:

(1) Personal property that is under construction or in the process of installation and that will be used for the purposes described in subsection (a) when placed in service.

(2) Spare parts held exclusively for installation in or as part of personal property that qualifies for the exemption under this section.

[As amended by :P.L.41-1993, §10.]

IC 6-1.1-10-13 ------- Property tax exemptions: for air pollution control systems; procedural aspects

(a) The owner of personal property which is part of a stationary or unlicensed mobile air pollution control system who wishes to obtain the exemption provided in section 12 of this chapter shall claim the exemption on his annual personal property return which he files with the assessor of the township in which the property is located. On the return, the owner shall describe and state the assessed value of the property for which the exemption is claimed.

(b) The township assessor shall review the exemption claim, and he shall allow or deny it in whole or in part. In making his decision, the township assessor shall consider the requirements stated in section 12 of this chapter.

(c) The township assessor shall reduce the assessed value of the owner's personal property for the year for which the exemption is claimed by the amount of exemption allowed.

[As amended by: Acts 1980, P.L.37, §2.]

IC 6-1.1-10-14 ------- Property tax exemptions: assessor's action shall be treated as an assessment of personal property

The action taken by a township assessor on an exemption claim filed under section 10 or section 13 of this chapter shall be treated as an assessment of personal property. Thus, the assessor's action is subject to all the provisions of this article pertaining to notice, review, or appeal of personal property assessments.

IC 6-1.1-12. ASSESSED VALUE DEDUCTIONS AND DEDUCTION PROCEDURES

IC 6-1.1-12-28.5 ----- Deductions from assessed valuation: resource recovery systems [Effective until 1/1/2002]

(a) For purposes of this section:

"Hazardous waste" has the meaning set forth in IC 13-11-2-99(a) and includes a waste determined to be a hazardous waste under IC 13-22-2-3(b).

"Resource recovery system" means tangible property directly used to dispose of solid waste or hazardous waste by converting it into energy or other useful products.

"Solid waste" has the meaning set forth in IC 13-11-2-205(a) but does not include dead animals or any animal solid or semisolid wastes.

(b) Except as provided in this section, the owner of a resource recovery system is entitled to an annual deduction in an amount equal to ninety-five percent (95%) of the assessed value of the system if:

(1) the system was certified by the department of environmental management for the 1993 assessment year or a prior assessment year; and

(2) the owner filed a timely application for the deduction for the 1993 assessment year.

For purposes of this section, a system includes tangible property that replaced tangible property in the system after the certification by the department of environmental management.

(c) The owner of a resource recovery system that is directly used to dispose of hazardous waste is not entitled to the deduction provided by this section for a particular assessment year if during that assessment year the owner:

(1) is convicted of any violation under IC 13-7-13-3 (repealed), IC 13-7-13-4 (repealed), or IC 13-30-6; or

(2) is subject to an order or a consent decree with respect to property located in Indiana based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

(d) The certification of a resource recovery system by the department of environmental management for the 1993 assessment year or a prior assessment year is valid through the 1997 assessment year so long as the property is used as a resource recovery system. If the property is no longer used for the purpose for which the property was used when the property was certified, the owner of the property shall notify the county auditor. However, the deduction from the assessed value of the system is:

(1) ninety-five percent (95%) for the 1994 assessment year;

(2) ninety percent (90%) for the 1995 assessment year;

(3) seventy-five percent (75%) for the 1996 assessment year; and

(4) sixty percent (60%) for the 1997 assessment year.

Notwithstanding this section as it existed before 1995, for the 1994 assessment year, the portion of any tangible property comprising a resource recovery system that was assessed and first deducted for the 1994 assessment year may not be deducted for property taxes first due and payable in 1995 or later.

(e) In order to qualify for a deduction under this section, the person who desires to claim the deduction must file an application with the county auditor after February 28 and before May 16 of the current assessment year unless the person has been granted an extension under IC 6-1.1-3-7. If the person has been granted an extension, the person must file the application after February 28 and before June 15 of the current assessment year. An application must be filed in each year for which the person desires to obtain the deduction. The application may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. If the application is not filed before the applicable deadline under this subsection, the deduction is waived. The application must be filed on a form prescribed by the state board of tax commissioners. The application for a resource recovery system deduction must include:

(1) a certification by the department of environmental management for the 1993 assessment year or a prior assessment year as described in subsection (d); or

(2) the certification by the department of environmental management for the 1993 assessment year as described in subsection (g).

Beginning with the 1995 assessment year a person must also file an itemized list of all property on which a deduction is claimed. The list must include the date of purchase of the property and the cost to acquire the property.

(f) Before July 1, 1995, the department of environmental management shall transfer all the applications, records, or other material the department has with respect to resource recovery system deductions under this section for the 1993 and 1994 assessment years. The township assessor shall verify each deduction application filed under this section and the county auditor shall determine the deduction. The county auditor shall send to the state board of tax commissioners a copy of each deduction application. The county auditor shall notify the county property tax assessment board of appeals of all deductions allowed under this section. A denial of a deduction claimed under this subsection may be appealed as provided in IC 6-1.1-15. The appeal is limited to a review of a determination made by the township assessor or the county auditor.

(g) Notwithstanding subsection (d), the certification for the 1993 assessment year of a resource recovery system in regard to which a political subdivision is liable for the payment of the property taxes remains valid at the ninety-five percent (95%) deduction level allowed before 1994 as long as the political subdivision remains liable for the payment of the property taxes on the system.

[As amended by: P.L.6-1997, §55.]

IC 6-1.1-12-28.5 ----- Deductions from assessed valuation: resource recovery systems [Effective 1/1/2002]

(a) For purposes of this section:

"Hazardous waste" has the meaning set forth in IC 13-11-2-99(a) and includes a waste determined to be a hazardous waste under IC 13-22-2-3(b).

"Resource recovery system" means tangible property directly used to dispose of solid waste or hazardous waste by converting it into energy or other useful products.

"Solid waste" has the meaning set forth in IC 13-11-2-205(a) but does not include dead animals or any animal solid or semisolid wastes.

(b) Except as provided in this section, the owner of a resource recovery system is entitled to an annual deduction in an amount equal to ninety-five percent (95%) of the assessed value of the system if:

(1) the system was certified by the department of environmental management for the 1993 assessment year or a prior assessment year; and

(2) the owner filed a timely application for the deduction for the 1993 assessment year.

For purposes of this section, a system includes tangible property that replaced tangible property in the system after the certification by the department of environmental management.

(c) The owner of a resource recovery system that is directly used to dispose of hazardous

waste is not entitled to the deduction provided by this section for a particular assessment year if during that assessment year the owner:

(1) is convicted of any violation under IC 13-7-13-3 (repealed), IC 13-7-13-4 (repealed), or IC 13-30-6; or

(2) is subject to an order or a consent decree with respect to property located in Indiana based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

(d) The certification of a resource recovery system by the department of environmental management for the 1993 assessment year or a prior assessment year is valid through the 1997 assessment year so long as the property is used as a resource recovery system. If the property is no longer used for the purpose for which the property was used when the property was certified, the owner of the property shall notify the county auditor. However, the deduction from the assessed value of the system is:

(1) ninety-five percent (95%) for the 1994 assessment year;

(2) ninety percent (90%) for the 1995 assessment year;

(3) seventy-five percent (75%) for the 1996 assessment year; and

(4) sixty percent (60%) for the 1997 assessment year.

Notwithstanding this section as it existed before 1995, for the 1994 assessment year, the portion of any tangible property comprising a resource recovery system that was assessed and first deducted for the 1994 assessment year may not be deducted for property taxes first due and payable in 1995 or later.

(e) In order to qualify for a deduction under this section, the person who desires to claim the deduction must file an application with the county auditor after February 28 and before May 16 of the current assessment year. An application must be filed in each year for which the person desires to obtain the deduction. The application may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. If the application is not filed before the applicable deadline under this subsection, the deduction is waived. The application must be filed on a form prescribed by the department of local government finance. The application for a resource recovery system deduction must include:

(1) a certification by the department of environmental management for the 1993 assessment year or a prior assessment year as described in subsection (d); or

(2) the certification by the department of environmental management for the 1993 assessment year as described in subsection (g).

Beginning with the 1995 assessment year a person must also file an itemized list of all property on which a deduction is claimed. The list must include the date of purchase of the property and the cost to acquire the property.

(f) Before July 1, 1995, the department of environmental management shall transfer all the applications, records, or other material the department has with respect to resource recovery system deductions under this section for the 1993 and 1994 assessment years. The township assessor shall verify each deduction application filed under this section and the county auditor shall determine the deduction. The county auditor shall send to the department of local government finance a copy of each deduction application. The county auditor shall notify the county property tax assessment board of appeals of all deductions allowed under this section. A denial of a deduction claimed under this subsection may be appealed as provided in IC 6-1.1-15. The appeal is limited to a review of a determination made by the township assessor or the county auditor.

(g) Notwithstanding subsection (d), the certification for the 1993 assessment year of a resource recovery system in regard to which a political subdivision is liable for the payment of the property taxes remains valid at the ninety-five percent (95%) deduction level allowed before 1994 as long as the political subdivision remains liable for the payment of the property taxes on the system.

[As amended by: P.L.198-2001, §34.]

IC 6-1.1-12-29 ------- Deductions from assessed valuation: wind power devices

(a) For purposes of this section, "wind power device" means a device, such as a windmill or a wind turbine, that is designed to utilize the kinetic energy of moving air to provide mechanical energy or to produce electricity.

(b) The owner of real property, or a mobile home that is not assessed as real property, that is equipped with a wind power device is entitled to an annual property tax deduction. The amount of the deduction equals the remainder of (1) the assessed value of the real property or mobile home with the wind power device included, minus (2) the assessed value of the real property or mobile home without the wind power device.

[As added by: Acts 1979, P.L.56, §3.]

IC 6-1.1-12-30 ------- Deductions from assessed valuation: wind power devices; filing

Except as provided in section 36 of this chapter, a person who desires to claim the deduction provided by section 29 of this chapter must file a certified statement in duplicate, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the real property or mobile home is subject to assessment. With respect to real property, the person must file the statement between March 1 and May 10, inclusive, of each year for which he desires to obtain the deduction. With respect to a mobile home which is not assessed as real property, the person must file the statement between January 15 and March 31, inclusive, of each year for which he desires to obtain the deduction. On verification of the statement by the assessor of the township in which the real property or mobile home is subject to assessment, the county auditor shall allow the deduction.

[As amended by: P.L.43-1984, §2.]

IC 6-1.1-12-31 ------- Deductions from assessed valuation: coal conversion systems

(a) For purposes of this section, "coal conversion system" means tangible property directly used to convert coal into a gaseous or liquid fuel or char. This definition includes coal liquification, gasification, pyrolysis, and a fluid bed combustion system designed for pollution control.

(b) For each calendar year which begins after December 31, 1979, and before January 1, 1988, the owner of a coal conversion system which is used to process coal is entitled to a deduction from the assessed value of the system. The amount of the deduction for a particular calendar year equals the product of (1) ninety-five percent (95%) of the assessed value of the system, multiplied by (2) a fraction. The numerator of the fraction is the amount of Indiana coal converted by the system during the immediately preceding calendar year and the denominator of the fraction is the total amount of coal converted by the system during the immediately preceding calendar year.

[As amended by: P.L.24-1984, §4.]

IC 6-1.1-12-33 ------- Deductions from assessed valuation: hydroelectric power devices

(a) For purposes of this section "hydroelectric power device" means a device which is installed after December 31, 1981, and is designed to utilize the kinetic power of moving water to provide mechanical energy or to produce electricity.

(b) The owner of real property, or a mobile home that is not assessed as real property, that is equipped with a hydroelectric power device is annually entitled to a property tax deduction. The amount of the deduction equals the remainder of: (1) the assessed value of the real property or mobile home with the hydroelectric power device; minus (2) the assessed value of the real property or mobile home without the hydroelectric power device.

[As added by: Acts 1981, P.L.71, §1.]

IC 6-1.1-12-34 ------- Deductions from assessed valuation: geothermal energy heating or cooling devices

(a) For purposes of this section, "geothermal energy heating or cooling device" means a device that is installed after December 31, 1981, and is designed to utilize the natural heat from the earth to provide hot water, produce electricity, or generate heating or cooling.

(b) The owner of real property, or a mobile home that is not assessed as real property, that is equipped with a geothermal energy heating or cooling device is annually entitled to a property tax deduction. The amount of the deduction equals the remainder of: (1) the assessed value of the real property or mobile home with the geothermal heating or cooling device; minus (2) the assessed value of the real property or mobile home without the geothermal heating or cooling device.

[As added by: Acts 1981, P.L.71, §2.]

IC 6-1.1-12-35 ------- Deductions from assessed valuation: certification by IDEM [Repealed effective 1/1/2002]

(a) Except as provided in section 36 of this chapter, a person who desires to claim the deduction provided by section 31, 33, or 34 of this chapter must file a certified statement in duplicate, on forms prescribed by the state board of tax commissioners, and proof of certification under subsection (b) with the auditor of the county in which the property for which the deduction is claimed is subject to assessment. Except as provided in subsection (e), with respect to property that is not assessed under IC 6-1.1-7, the person must file the statement between March 1 and May 10, inclusive, of the assessment year. The person must file the statement in each year for which he desires to obtain the deduction. With respect to a property which is assessed under IC 6-1.1-7, the person must file the statement between January 15 and March 31, inclusive, of each year for which he desires to obtain the deduction. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. On verification of the statement by the assessor of the township in which the property for which the deduction is claimed is subject to assessment, the county auditor shall allow the deduction.

(b) The department of environmental management, upon application by a property owner, shall determine whether a system or device qualifies for a deduction provided by section 31, 33, or 34 of this chapter. If the department determines that a system or device qualifies for a deduction, it shall certify the system or device and provide proof of the certification to the property owner. The department shall prescribe the form and manner of the certification process required by this subsection.

(c) If the department of environmental management receives an application for certification before April 10 of the assessment year, the department shall determine whether the system or device qualifies for a deduction before May 10 of the assessment year. If the department fails to make a determination under this subsection before May 10 of the assessment year, the system or device is considered certified.

(d) A denial of a deduction claimed under section 31, 33, or 34 of this chapter may be appealed as provided in IC 6-1.1-15. The appeal is limited to a review of a determination made by the township assessor, county property tax assessment board of appeals, or state board of tax commissioners.

(e) A person who timely files a personal property return under IC 6-1.1-3-7(a) for an assessment year and who desires to claim the deduction provided in section 31 of this chapter for property that is not assessed under IC 6-1.1-7 must file the statement described in subsection (a) between March 1 and May 15, inclusive, of that year. A person who obtains a filing extension under IC 6-1.1-3-7(b) for an assessment year must file the application between March 1 and the extended due date for that year.

[As amended by: P.L.198-2001, §35.]

IC 6-1.1-12-36 ------- Deductions from assessed valuation: filing requirements for subsequent years

(a) A person who receives a deduction provided under section 26, 29, 33, 34, or 38 of this chapter for a particular year and who remains eligible for the deduction for the following year is not required to file a statement to apply for the deduction for the following year.

(b) A person who receives a deduction provided under section 26, 29, 33, 34, or 38 of this chapter for a particular year and who becomes ineligible for the deduction for the following year shall notify the auditor of the county in which the real property or mobile home for which he received the deduction is located of his ineligibility before March 31 of the year for which he becomes ineligible.

(c) The auditor of each county shall, in a particular year, apply a deduction provided under section 26, 29, 33, 34, or 38 of this chapter to each person who received the deduction in the preceding year unless the auditor determines that the person is no longer eligible for the deduction.

[As amended by: P.L.10-1997, §12.]

IC 6-1.1-12-38 ------- Deductions from assessed valuation: fertilizer and pesticide storage

(a) A person is entitled to a deduction from the assessed value of the person's property in an amount equal to the difference between:

(1) the assessed value of the person's property, including the assessed value of the improvements made to comply with the fertilizer storage rules adopted by the state chemist under IC 15-3-3-12 and the pesticide storage rules adopted by the state chemist under IC 15-3-3.5-11; minus

(2) the assessed value of the person's property, excluding the assessed value of the improvements made to comply with the fertilizer storage rules adopted by the state chemist under IC 15-3-3-12 and the pesticide storage rules adopted by the state chemist under IC 15-3-3.5-11.

(b) To obtain the deduction under this section, a person must file a certified statement in duplicate, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the property is subject to assessment. In addition to the certified statement, the person must file a certification by the state chemist listing the improvements that were made to comply with the fertilizer storage rules adopted under IC 15-3-3-12 and the pesticide storage rules adopted by the state chemist under IC 15-3-3.5-11. The statement and certification must be filed before May 10 of the year preceding the year the deduction will first be applied. Upon the verification of the statement and certification by the assessor of the township in which the property is subject to assessment, the county auditor shall allow the deduction.

[As added by: P.L.41-1992, §3.]

IC 6-1.1-12.1. DEDUCTION FOR REHABILITATION OR REDEVELOPMENT OF REAL PROPERTY IN ECONOMIC REVITALIZATION AREAS

IC 6-1.1-12.1-1 ------ Rehabilitation deduction: definitions

For purposes of this chapter:

(1) "Economic revitalization area" means an area which is within the corporate limits of a city, town, or county which has become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property. The term "economic revitalization area" also includes:

(A) any area where a facility or a group of facilities that are technologically, eco-

nomically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues; and

(B) a residentially distressed area, except as otherwise provided in this chapter.

(2) "City" means any city in this state, and "town" means any town incorporated under IC 36-5-1.

(3) "New manufacturing equipment" means any tangible personal property which:

(A) was: installed after February 28, 1983, and before January 1, 2006, in an area that is declared an economic revitalization area after February 28, 1983, in which a deduction for tangible personal property is allowed;

(B) is used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property, including but not limited to use to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(C) was acquired by its owner for use as described in clause (B), and was never before used by its owner for any purpose in Indiana.

However, notwithstanding any other law, the term includes tangible personal property that is used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products and was installed after March 1, 1993, and before March 2, 1996, even if the property was installed before the area where the property is located was designated as an economic revitalization area or the statement of benefits for the property was approved by the designating body.

(4) "Property" means a building or structure, but does not include land.

(5) "Redevelopment" means the construction of new structures in economic revitalization areas, either:

(A) on unimproved real estate; or

(B) on real estate upon which a prior existing structure is demolished to allow for a new construction.

(6) "Rehabilitation" means the remodeling, repair, or betterment of property in any manner or any enlargement or extension of property.

(7) "Designating body" means the following:

(A) For a county that does not contain a consolidated city, the fiscal body of the county, city, or town.

(B) For a county containing a consolidated city, the metropolitan development commission.

(8) "Deduction application" means either:

(A) the application filed in accordance with section 5 of this chapter by a property owner who desires to obtain the deduction provided by section 3 of this chapter; or

(B) the application filed in accordance with section 5.5 of this chapter by a person who desires to obtain the deduction provided by section 4.5 of this chapter.

(9) "Designation application" means an application that is filed with a designating body to assist that body in making a determination about whether a particular area should be designated as an economic revitalization area.

(10) "Hazardous waste" has the meaning set forth in IC 13-11-2-99(a). The term includes waste determined to be a hazardous waste under IC 13-22-2-3(b).

(11) "Solid waste" has the meaning set forth in IC 13-11-2-205(a). However, the term does not include dead animals or any animal solid or semisolid wastes.

(12) "New research and development equipment" means tangible personal property that:

(A) is installed after June 30, 2000, and before January 1, 2006, in an economic revitalization area in which a deduction for tangible personal property is allowed;

(B) consists of:

(i) laboratory equipment;

(ii) research and development equipment;

(iii) computers and computer software;

(iv) telecommunications equipment; or

(v) testing equipment;

(C) is used in research and development activities devoted directly and exclusively to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products; and

(D) is acquired by the property owner for purposes described in this subdivision and was never before used by the owner for any purpose in Indiana.

The term does not include equipment installed in facilities used for or in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising or promotion, or research in connection with literacy, history, or similar projects.

[As amended by: P.L.4-2000, §1.]

IC 6-1.1-12.1-2 ------ Rehabilitation deduction: designation of area

(a) A designating body may find that a particular area within its jurisdiction is an economic revitalization area. However, the deduction provided by this chapter for economic revitalization areas not within a city or town shall not be available to retail businesses.

(b) In a county containing a consolidated city or within a city or town, a designating body may find that a particular area within its jurisdiction is a residentially distressed area. Designation of an area as a residentially distressed area has the same effect as designating an area as an economic revitalization area, except that the amount of the deduction shall be calculated as specified in section 4.1 of this chapter and the deduction is allowed for not more than five (5) years. In order to declare a particular area a residentially distressed area, the designating body must follow the same procedure that is required to designate an area as an economic revitalization area and must make all the following additional findings or all the additional findings described in subsection (c):

(1) The area is comprised of parcels that are either unimproved or contain only one (1) or two (2) family dwellings or multifamily dwellings designed for up to four (4) families, including accessory buildings for those dwellings.

(2) Any dwellings in the area are not permanently occupied and are:

(A) the subject of an order issued under IC 36-7-9; or

(B) evidencing significant building deficiencies.

(3) Parcels of property in the area:

(A) have been sold and not redeemed under IC 6-1.1-24 and IC 6-1.1-25; or

(B) are owned by a unit of local government.

However, in a city in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the designating body is only required to make one (1) of the additional findings described in this subsection or one (1) of the additional findings described in subsection (c).

(c) In a county containing a consolidated city or within a city or town, a designating body that wishes to designate a particular area a residentially distressed area may make the following additional findings as an alternative to the additional findings described in subsection (b):

(1) A significant number of dwelling units within the area are not permanently occupied or a significant number of parcels in the area are vacant land.

(2) A significant number of dwelling units within the area are:

(A) the subject of an order issued under IC 36-7-9; or

(B) evidencing significant building deficiencies.

(3) The area has experienced a net loss in the number of dwelling units, as documented by census information, local building and demolition permits, or certificates of occupancy, or the area is owned by Indiana or the United States.

(4) The area (plus any areas previously designated under this subsection) will not exceed ten percent (10%) of the total area within the designating body's jurisdiction.

However, in a city in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the designating body is only required to make one (1) of the additional findings described in this subsection as an alternative to one (1) of the additional findings described in subsection (b).

(d) A designating body is required to attach the following conditions to the grant of a residentially distressed area designation:

(1) The deduction will not be allowed unless the dwelling is rehabilitated to meet local code standards for habitability.

(2) If a designation application is filed, the designating body may require that the redevelopment or rehabilitation be completed within a reasonable period of time.

(e) To make a designation described in subsection (a) or (b), the designating body shall use procedures prescribed in section 2.5 of this chapter.

(f) The property tax deductions provided by sections 3 and 4.5 of this chapter are only available within an area which the designating body finds to be an economic revitalization area.

(g) The designating body may adopt a resolution establishing general standards to be used, along with the requirements set forth in the definition of economic revitalization area, by the designating body in finding an area to be an economic revitalization area. The standards must have a reasonable relationship to the development objectives of the area in which the designating body has jurisdiction. The following three (3) sets of standards may be established:

(1) One (1) relative to the deduction under section 3 of this chapter for economic revitalization areas that are not residentially distressed areas.

(2) One (1) relative to the deduction under section 3 of this chapter for residentially distressed areas.

(3) One (1) relative to the deduction allowed under section 4.5 of this chapter.

(h) A designating body may impose a fee for filing a designation application for a person requesting the designation of a particular area as an economic revitalization area. The fee may be sufficient to defray actual processing and administrative costs. However, the fee charged for filing a designation application for a parcel that contains one (1) or more owner-occupied, single-family dwellings may not exceed the cost of publishing the required notice.

(i) In declaring an area an economic revitalization area, the designating body may:

(1) limit the time period to a certain number of calendar years during which the area shall be so designated;

(2) limit the type of deductions that will be allowed within the economic revitalization area to either the deduction allowed under section 3 of this chapter or the deduction allowed under section 4.5 of this chapter;

(3) limit the dollar amount of the deduction that will be allowed with respect to new manufacturing equipment and new research and development equipment if a deduction under this chapter had not been filed before July 1, 1987, for that equipment;

(4) limit the dollar amount of the deduction that will be allowed with respect to redevelopment and rehabilitation occurring in areas that are designated as economic revitalization areas on or after September 1, 1988; or

(5) impose reasonable conditions related to the purpose of this chapter or to the general standards adopted under subsection (g) for allowing the deduction for the redevelopment or rehabilitation of the property or the installation of the new manufacturing equipment or new research and development equipment, or both.

To exercise one (1) or more of these powers a designating body must include this fact in the resolution passed under section 2.5 of this chapter.

(j) Notwithstanding any other provision of this chapter, if a designating body limits the time period during which an area is an economic revitalization area, that limitation does not:

(1) prevent a taxpayer from obtaining a deduction for new manufacturing equipmentor or new research and development equipment, or both, installed before January 1, 2006, but after the expiration of the economic revitalization area if:

(A) the economic revitalization area designation expires after December 30, 1995; and

(B) the new manufacturing equipment or new research and development equipment, or both, was described in a statement of benefits submitted to and approved by the designating body in accordance with section 4.5 of this chapter before the expiration of the economic revitalization area designation; or

(2) limit the length of time a taxpayer is entitled to receive a deduction to a number of years that is less than the number of years designated under section 4 or 4.5 of this chapter.

(k) Notwithstanding any other provision of this chapter, deductions:

(1) that are authorized under section 3 of this chapter for property in an area designated as an urban development area before March 1, 1983, and that are based on an increase in assessed valuation resulting from redevelopment or rehabilitation that occurs before March 1, 1983; or

(2) that are authorized under section 4.5 of this chapter for new manufacturing equipment installed in an area designated as an urban development area before March 1, 1983;

apply according to the provisions of this chapter as they existed at the time that an application for the deduction was first made. No deduction that is based on the location of property or new manufacturing equipment in an urban development area is authorized under this chapter after February 28, 1983, unless the initial increase in assessed value resulting from the redevelopment or rehabilitation of the property or the installation of the new manufacturing equipment occurred before March 1, 1983.

(l) If property located in an economic revitalization area is also located in an allocation area (as defined in IC 36-7-14-39 or IC 36-7-15.1-26), an application for the property tax deduction provided by this chapter may not be approved unless the commission that designated the allocation area adopts a resolution approving the application.

[As amended by: P.L.4-2000, §2.]

IC 6-1.1-12.1-2.5 ---- Rehabilitation deduction: declaration of designation by resolution

(a) If a designating body finds that an area in its jurisdiction is an economic revitalization area, it shall either:

(1) prepare maps and plats that identify the area; or

(2) prepare a simplified description of the boundaries of the area by describing its location in relation to public ways, streams, or otherwise.

(b) After the compilation of the materials described in subsection (a), the designating body shall pass a resolution declaring the area an economic revitalization area. The resolu-

tion must contain a description of the affected area and be filed with the county assessor. A resolution adopted after June 30, 2000, may include a determination of the number of years a deduction under section 3 of this chapter is allowed. In addition, if the resolution is adopted after June 30, 2000, the resolution may include a determination of the number of years a deduction under section 4.5 of this chapter is allowed.

(c) After approval of a resolution under subsection (b), the designating body shall do the following:

(1) Publish notice of the adoption and substance of the resolution in accordance with IC 5-3-1.

(2) File the following information with each taxing unit that has authority to levy property taxes in the geographic area where the economic revitalization area is located:

(A) A copy of the notice required by subdivision (1).

(B) A statement containing substantially the same information as a statement of benefits filed with the designating body before the hearing required by this section under sections 3 and 4.5 of this chapter.

The notice must state that a description of the affected area is available and can be inspected in the county assessor's office. The notice must also name a date when the designating body will receive and hear all remonstrances and objections from interested persons. The designating body shall file the information required by subdivision (2) with the officers of the taxing unit who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days before the date of the public hearing. After considering the evidence, the designating body shall take final action determining whether the qualifications for an economic revitalization area have been met and confirming, modifying and confirming, or rescinding the resolution. This determination is final except that an appeal may be taken and heard as provided under subsections (d) and (e).

(d) A person who filed a written remonstrance with the designating body under this section and who is aggrieved by the final action taken may, within ten (10) days after that final action, initiate an appeal of that action by filing in the office of the clerk of the circuit or superior court a copy of the order of the designating body and his remonstrance against that order, together with his bond conditioned to pay the costs of his appeal if the appeal is determined against him. The only ground of appeal that the court may hear is whether the proposed project will meet the qualifications of the economic revitalization area law. The burden of proof is on the appellant.

(e) An appeal under this section shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal, and may confirm the final action of the designating body or sustain the appeal. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

[As amended by: P.L.4-2000, §3.]

IC 6-1.1-12.1-3 ------ Rehabilitation deduction: statement of benefits; eligibility

(a) An applicant must provide a statement of benefits to the designating body. If the designating body requires information from the applicant for economic revitalization area status for use in making its decision about whether to designate an economic revitalization area, the applicant shall provide the completed statement of benefits form to the designating body before the hearing required by section 2.5(c) of this chapter. Otherwise, the statement of benefits form must be submitted to the designating body before the initiation of the redevelopment or rehabilitation for which the person desires to claim a deduction under this chapter. The state board of tax commissioners shall prescribe a form for the statement of benefits. The statement of benefits must include the following information:

(1) A description of the proposed redevelopment or rehabilitation.

(2) An estimate of the number of individuals who will be employed or whose employment will be retained by the person as a result of the redevelopment or rehabilitation and an estimate of the annual salaries of these individuals.

(3) An estimate of the value of the redevelopment or rehabilitation.

With the approval of the designating body, the statement of benefits may be incorporated in a designation application. Notwithstanding any other law, a statement of benefits is a public record that may be inspected and copied under IC 5-14-3-3.

(b) The designating body must review the statement of benefits required under subsection (a). The designating body shall determine whether an area should be designated an economic revitalization area or whether a deduction should be allowed, based on (and after it has made) the following findings:

(1) Whether the estimate of the value of the redevelopment or rehabilitation is reasonable for projects of that nature.

(2) Whether the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.

(3) Whether the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described redevelopment or rehabilitation.

(4) Whether any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described redevelopment or rehabilitation.

(5) Whether the totality of benefits is sufficient to justify the deduction.

A designating body may not designate an area an economic revitalization area or approve a deduction unless the findings required by this subsection are made in the affirmative.

(c) Except as provided in subsections (a) through (b), the owner of property which is located in an economic revitalization area is entitled to a deduction from the assessed value of the property. If the area is a residentially distressed area, the period is not more than five (5) years. For all other economic revitalization areas designated before July 1, 2000, the period is three (3), six (6), or ten (10) years. For all economic revitalization areas designated after June 30, 2000, the period is the number of years determined under subsection (d). The owner is entitled to a deduction if:

(1) the property has been rehabilitated; or

(2) the property is located on real estate which has been redeveloped.

The owner is entitled to the deduction for the first year, and any successive year or years, in which an increase in assessed value resulting from the rehabilitation or redevelopment occurs and for the following years, determined under subsection (d). However, property owners who had an area designated an urban development area pursuant to an application filed prior to January 1, 1979, are only entitled to a deduction for a five (5) year period. In addition, property owners who are entitled to a deduction under this chapter pursuant to an application filed after December 31, 1978, and before January 1, 1986, are entitled to a deduction for a ten (10) year period.

(d) For an area designated as an economic revitalization area after June 30, 2000, that is not a residentially distressed area, the designating body shall determine the number of years for which the property owner is entitled to a deduction. However, the deduction may not be allowed for more than ten (10) years. This determination shall be made:

(1) as part of the resolution adopted under section 2.5 of this chapter; or

(2) by resolution adopted within sixty (60) days after receiving a copy of a property owner's certified deduction application from the county auditor. A certified copy of the resolution shall be sent to the county auditor who shall make the deduction as provided in section 5 of this chapter.

A determination about the number of years the deduction is allowed that is made under subdivision (1) is final and may not be changed by following the procedure under subdivision (2).

(e) Except for deductions related to redevelopment or rehabilitation of real property in a county containing a consolidated city or a deduction related to redevelopment or rehabilitation of real property initiated before December 31, 1987, in areas designated as economic revitalization areas before that date, a deduction for the redevelopment or rehabilitation of real property may not be approved for the following facilities:

(1) Private or commercial golf course.

(2) Country club.

(3) Massage parlor.

(4) Tennis club.

(5) Skating facility (including roller skating, skateboarding, or ice skating).

(6) Racquet sport facility (including any handball or racquetball court).

(7) Hot tub facility.

(8) Suntan facility.

(9) Racetrack.

(10) Any facility the primary purpose of which is:

(A) retail food and beverage service;

(B) automobile sales or service; or

(C) other retail;

unless the facility is located in an economic development target area established under section 7 of this chapter.

(11) Residential, unless:

(A) the facility is a multifamily facility that contains at least twenty percent (20%) of the units available for use by low and moderate income individuals;

(B) the facility is located in an economic development target area established under section 7 of this chapter; or

(C) the area is designated as a residentially distressed area.

(12) A package liquor store that holds a liquor dealer's permit under IC 7.1-3-10 or any other entity that is required to operate under a license issued under IC 7.1. However, this subdivision does not apply to an applicant that:

(A) was eligible for tax abatement under this chapter before July 1, 1995; or

(B) is described in IC 7.1-5-7-11.

(f) This subsection applies only to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). Notwithstanding subsection (e)(11), in a county subject to this subsection a designating body may, before September 1, 2000, approve a deduction under this chapter for the redevelopment or rehabilitation of real property consisting of residential facilities that are located in unincorporated areas of the county if the designating body makes a finding that the facilities are needed to serve any combination of the following:

(1) Elderly persons who are predominately low-income or moderate-income persons.

(2) Disabled persons.

A designating body may adopt an ordinance approving a deduction under this subsection only one (1) time. This subsection expires January 1, 2011.

[As amended by: P.L. 198-2001, §38.]

IC 6-1.1-12.1-4 ------ Rehabilitation deduction: calculation of amount of deduction in non-residentially distressed areas

(a) Except as provided in section 2(i)(4) of this chapter, the amount of the deduction which the property owner is entitled to receive under section 3 of this chapter for a particular year equals the product of:

(1) the increase in the assessed value resulting from the rehabilitation or redevelopment; multiplied by

(2) the percentage prescribed in the table set forth in subsection (d).

(b) The amount of the deduction determined under subsection (a) shall be adjusted in accordance with this subsection in the following circumstances:

(1) If a general reassessment of real property occurs within the particular period of the deduction, the amount determined under subsection (a)(1) shall be adjusted to reflect the percentage increase or decrease in assessed valuation that resulted from the general reassessment.

(2) If an appeal of an assessment is approved that results in a reduction of the assessed value of the redeveloped or rehabilitated property, the amount of any deduction shall be adjusted to reflect the percentage decrease that resulted from the appeal.

The state board of tax commissioners shall adopt rules under IC 4-22-2 to implement this subsection.

(c) Property owners who had an area designated an urban development area pursuant to an application filed prior to January 1, 1979, are only entitled to the deduction for the first through the fifth years as provided in subsection (d)(10). In addition, property owners who are entitled to a deduction under this chapter pursuant to an application filed after December 31, 1978, and before January 1, 1986, are entitled to a deduction for the first through the tenth years, as provided in subsection (d)(10).

(d) The percentage to be used in calculating the deduction under subsection (a) is as follows:

(1) For deductions allowed over a one (1) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%

(2) For deductions allowed over a two (2) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	50%

(3) For deductions allowed over a three (3) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	66%
3rd	33%

(4) For deductions allowed over a four (4) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	75%
3rd	50%
4th	25%

(5) For deductions allowed over a five (5) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	80%
3rd	60%
4th	40%
5th	20%

(6) For deductions allowed over a six (6) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	17%

(7) For deductions allowed over a seven (7) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	71%
4th	57%
5th	43%
6th	29%
7th	14%

(8) For deductions allowed over an eight (8) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	75%
4th	63%
5th	50%
6th	38%
7th	25%
8th	13%

(9) For deductions allowed over a nine (9) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	77%
4th	66%
5th	55%
6th	44%
7th	33%
8th	22%
9th	11%

(10) For deductions allowed over a ten (10) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	95%
3rd	80%
4th	65%
5th	50%
6th	40%
7th	30%

8th	20%
9th	10%
10th	5%

[As amended by: P.L.4-2000, §5.]

IC 6-1.1-12.1-4.1 ---- Rehabilitation deduction: calculation of amount of deduction in residentially distressed areas

(a) Section 4 of this chapter applies to economic revitalization areas that are not residentially distressed areas.

(b) This subsection applies to economic revitalization areas that are residentially distressed areas. The amount of the deduction that a property owner is entitled to receive under section 3 of this chapter for a particular year equals the lesser of:

(1) the assessed value of the improvement to the property after the rehabilitation or redevelopment has occurred; or

(2) the following amount:

TYPE OF DWELLING	AMOUNT
One (1) family dwelling	$36,000
Two (2) family dwelling	$51,000
Three (3) unit multifamily dwelling	$75,000
Four (4) unit multifamily dwelling	$96,000

[As amended by: P.L.6-1997, §58.]

IC 6-1.1-12.1-4.5 ---- Rehabilitation deduction: review of new manufacturing equipment statement of benefits by designating body; years of allowance of deduction

(a) For purposes of this section, "personal property" means personal property other than inventory (as defined in IC 6-1.1-3-11(a)).

(b) An applicant must provide a statement of benefits to the designating body. The applicant must provide the completed statement of benefits form to the designating body before the hearing specified in section 2.5(c) of this chapter or before the installation of the new manufacturing equipment or new research and development equipment, or both, for which the person desires to claim a deduction under this chapter. The state board of tax commissioners shall prescribe a form for the statement of benefits. The statement of benefits must include the following information:

(1) A description of the new manufacturing equipment or new research and development equipment, or both, that the person proposes to acquire.

(2) With respect to:

(A) new manufacturing equipment not used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(B) new research and development equipment;

an estimate of the number of individuals who will be employed or whose employment will be retained by the person as a result of the installation of the new manufacturing equipment or new research and development equipment, or both, and an estimate of the annual salaries of these individuals.

(3) An estimate of the cost of the new manufacturing equipment or new research and development equipment, or both..

(4) With respect to new manufacturing equipment used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or

other useful products, an estimate of the amount of solid waste or hazardous waste that will be converted into energy or other useful products by the new manufacturing equipment.

With the approval of the state board of tax commissioners, the statement of benefits may be incorporated in a designation application. Notwithstanding any other law, a statement of benefits is a public record that may be inspected and copied under IC 5-14-3-3.

(c) The designating body must review the statement of benefits required under subsection (b). The designating body shall determine whether an area should be designated an economic revitalization area or whether the deduction shall be allowed, based on (and after it has made) the following findings:

(1) Whether the estimate of the cost of the new manufacturing equipment or new research and development equipment, or both, is reasonable for equipment of that type.

(2) With respect to:

(A) new manufacturing equipment not used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products; and

(B) new research and development equipment;

whether the estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the installation of the new manufacturing equipment or new research and development equipment, or both.

(3) Whether the estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed installation of new manufacturing equipment or new research and development equipment, or both.

(4) With respect to new manufacturing equipment used to dispose of solid waste or hazardous waste by converting the solid waste or hazardous waste into energy or other useful products, whether the estimate of the amount of solid waste or hazardous waste that will be converted into energy or other useful products can be reasonably expected to result from the installation of the new manufacturing equipment.

(5) Whether any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed installation of new manufacturing equipment or new research and development equipment, or both.

(6) Whether the totality of benefits is sufficient to justify the deduction.

The designating body may not designate an area an economic revitalization area or approve the deduction unless it makes the findings required by this subsection in the affirmative.

(d) Except as provided in subsection (f), an owner of new manufacturing equipment whose statement of benefits is approved before May 1, 1991, is entitled to a deduction from the assessed value of that equipment for a period of five (5) years. Except as provided in subsections (f) and (i), an owner of new manufacturing equipment or new research and development equipment, or both, whose statement of benefits is approved after June 30, 2000, is entitled to a deduction from the assessed value of that equipment for the number of years determined by the designating body under subsection (h). Except as provided in subsections (f) and (g) and in section 2(i)(3) of this chapter, the amount of the deduction that an owner is entitled to for a particular year equals the product of:

(1) the assessed value of the new manufacturing equipment or new research and development equipment, or both, in the year that the equipment is installed; multiplied by

(2) the percentage prescribed in the table set forth in subsection (e).

(e) The percentage to be used in calculating the deduction under subsection (d) is as follows:

(1) For deductions allowed over a one (1) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd and thereafter	0%

(2) For deductions allowed over a two (2) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	50%
3rd and thereafter	0%

(3) For deductions allowed over a three (3) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	66%
3rd	33%
4th and thereafter	0%

(4) For deductions allowed over a four (4) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	75%
3rd	50%
4th	25%
5th and thereafter	0%

(5) For deductions allowed over a five (5) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	80%
3rd	60%
4th	40%
5th	20%
6th and thereafter	0%

(6) For deductions allowed over a six (6) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	25%
7th and thereafter	0%

(7) For deductions allowed over a seven (7) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	71%

4th	57%
5th	43%
6th	29%
7th	14%
8th and thereafter	0%

(8) For deductions allowed over an eight (8) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	75%
4th	63%
5th	50%
6th	38%
7th	25%
8th	13%
9th and thereafter	0%

(9) For deductions allowed over a nine (9) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	88%
3rd	77%
4th	66%
5th	55%
6th	44%
7th	33%
8th	22%
9th	11%
10th and thereafter	0%

(10) For deductions allowed over a ten (10) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	90%
3rd	80%
4th	70%
5th	60%
6th	50%
7th	40%
8th	30%
9th	20%
10th	10%
11th and thereafter	0%

(f) Notwithstanding subsections (d) and (e), a deduction under this section is not allowed in the first year the deduction is claimed for new manufacturing equipment or new research and development equipment, or both, to the extent that it would cause the assessed value of all of the personal property of the owner in the taxing district in which the equipment is located (excluding personal property that is assessed as construction in process) to be less than the assessed value of all of the personal property of the owner in that taxing district

(excluding personal property that is assessed as construction in process) in the immediately preceding year.

(g) If a deduction is not fully allowed under subsection (f) in the first year the deduction is claimed, then the percentages specified in subsection (d) or (e) apply in the subsequent years to the amount of deduction that was allowed in the first year.

(h) For an economic revitalization area designated before July 1, 2000, the designating body shall determine whether a property owner whose statement of benefits is approved after April 30, 1991, is entitled to a deduction for five (5) or ten (10) years. For an economic revitalization area designated after June 30, 2000, the designating body shall determine the number of years the deduction is allowed. However, the deduction may not be allowed for more than ten (10) years. This determination shall be made:

(1) as part of the resolution adopted under section 2.5 of this chapter; or

(2) by resolution adopted within sixty (60) days after receiving a copy of a property owner's certified deduction application from the state board of tax commissioners. A certified copy of the resolution shall be sent to the county auditor and the state board of tax commissioners.

A determination about the number of years the deduction is allowed that is made under subdivision (1) is final and may not be changed by following the procedure under subdivision (2).

(i) The owner of new manufacturing equipment that is directly used to dispose of hazardous waste is not entitled to the deduction provided by this section for a particular assessment year if during that assessment year the owner:

(1) is convicted of a violation under IC 13-7-13-3 (repealed), IC 13-7-13-4 (repealed), or IC 13-30-6; or

(2) is subject to an order or a consent decree with respect to property located in Indiana based on a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

[As amended by: P.L.4-2000, §6.]

IC 6-1.1-12.1-4.6 ---- Rehabilitation deduction: relocation

(a) A designating body may adopt a resolution to authorize a property owner to relocate new manufacturing equipment for which a deduction is being granted under this chapter. The resolution may provide that the new manufacturing equipment may only be relocated to:

(1) a new location within the same economic revitalization area; or

(2) a new location within a different economic revitalization area if the area is within the jurisdiction of the designating body.

(b) Before adopting a resolution under this section, the designating body shall conduct a public hearing on the proposed resolution. Notice of the public hearing shall be published in accordance with IC 5-3-1. In addition, the designating body shall notify each taxing unit within the original and the new economic revitalization area of the proposed resolution, including the date and time of the public hearing. If a resolution is adopted under this section, the designating body shall deliver a copy of the adopted resolution to the county auditor and the state board of tax commissioners within thirty (30) days after its adoption.

(c) New manufacturing equipment relocated under this section remains eligible for the assessed value deduction under this chapter. However, the same deduction percentage is to be applied as if the new manufacturing equipment had not been relocated.

[As added by: P.L.126-2000, §6.]

IC 6-1.1-12.1-4.7 ---- Rehabilitation deduction: limitation [Effective 3/1/2001 (retroactive)]

(a) Section 4.5(f) of this chapter does not apply to new manufacturing equipment located in a township that:

(1) has a population of more than three thousand five hundred (3,500) but less than four thousand three hundred (4,300); and

(2) is located in a county having a population of more than thirty-five thousand (35,000) but less than thirty-seven thousand (37,000);

if the total original cost of all new manufacturing equipment placed into service by the owner during the preceding sixty (60) months exceeds fifty million dollars ($50,000,000), and if the economic revitalization area in which the new manufacturing equipment was installed was approved by the designating body before September 1, 1994.

(b) Section 4.5(f) of this chapter does not apply to new manufacturing equipment located in a county having a population of more than thirty-one thousand five hundred (31,500) but less than thirty-two thousand (32,000) if:

(1) the total original cost of all new manufacturing equipment placed into service in the county by the owner exceeds five hundred million dollars ($500,000,000); and

(2) the economic revitalization area in which the new manufacturing equipment was installed was approved by the designating body before January 1, 2001.

(c) A deduction under section 4.5(d) of this chapter is not allowed with respect to new manufacturing equipment described in subsection (b) in the first year the deduction is claimed or in subsequent years as permitted by section 4.5(d) of this chapter to the extent the deduction would cause the assessed value of all real property and personal property of the owner in the taxing district to be less than the incremental net assessed value for that year.

(d) The following apply for purposes of subsection (c):

(1) A deduction under section 4.5(d) of this chapter shall be disallowed only with respect to new manufacturing equipment installed after March 1, 2000.

(2) "Incremental net assessed value" means the sum of:

(A) the net assessed value of real property and depreciable personal property from which property tax revenues are required to be held in trust and pledged for the benefit of the owners of bonds issued by the redevelopment commission of a county described in subsection (b) under resolutions adopted November 16, 1998, and July 13, 2000 (as amended November 27, 2000); plus

(B) fifty-four million four hundred eighty-one thousand seven hundred seventy dollars ($54,481,770).

(3) The assessed value of real property and personal property of the owner shall be determined after the deductions provided by sections 3 and 4.5 of this chapter.

(4) The personal property of the owner shall include inventory.

(5) The amount of deductions provided by section 4.5 of this chapter with respect to new manufacturing equipment that was installed on or before March 1, 2000, shall be increased from thirty-three and one-third percent (33 1/3%) of true tax value to one hundred percent (100%) of true tax value for assessment dates after February 28, 2001.

(e) A deduction not fully allowed under subsection (c) in the first year the deduction is claimed or in a subsequent year permitted by section 4.5 of this chapter shall be carried over and allowed as a deduction in succeeding years. A deduction that is carried over to a year but is not allowed in that year under this subsection shall be carried over and allowed as a deduction in succeeding years. The following apply for purposes of this subsection:

(1) A deduction that is carried over to a succeeding year is not allowed in that year to the extent that the deduction, together with:

(A) deductions otherwise allowed under section 3 of this chapter;

(B) deductions otherwise allowed under section 4.5 of this chapter; and

(C) other deductions carried over to the year under this subsection;

would cause the assessed value of all real property and personal property of the owner in the taxing district to be less than the incremental net assessed value for that year.

(2) Each time a deduction is carried over to a succeeding year, the deduction shall be reduced by the amount of the deduction that was allowed in the immediately preceding year.

(3) A deduction may not be carried over to a succeeding year under this subsection if such year is after the period specified in section 4.5(d) of this chapter or the period specified in a resolution adopted by the designating body under section 4.5(h) of this chapter.

[As amended by: P.L.205-2001, §1.]

IC 6-1.1-12.1-5 ------ Rehabilitation deduction: deduction application

(a) A property owner who desires to obtain the deduction provided by section 3 of this chapter must file a certified deduction application, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the property is located. Except as otherwise provided in subsection (b) or (e), the deduction application must be filed before May 10 of the year in which the addition to assessed valuation is made.

(b) If notice of the addition to assessed valuation or new assessment for any year is not given to the property owner before April 10 of that year, the deduction application required by this section may be filed not later than thirty (30) days after the date such a notice is mailed to the property owner at the address shown on the records of the township assessor.

(c) The deduction application required by this section must contain the following information:

(1) The name of the property owner.

(2) A description of the property for which a deduction is claimed in sufficient detail to afford identification.

(3) The assessed value of the improvements before rehabilitation.

(4) The increase in the assessed value of improvements resulting from the rehabilitation.

(5) The assessed value of the new structure in the case of redevelopment.

(6) The amount of the deduction claimed for the first year of the deduction.

(7) If the deduction application is for a deduction in a residentially distressed area, the assessed value of the improvement or new structure for which the deduction is claimed.

(d) A deduction application filed under subsection (a) or (b) is applicable for the year in which the addition to assessed value or assessment of a new structure is made and in the following years the deduction is allowed without any additional deduction application being filed. However, property owners who had an area designated an urban development area pursuant to a deduction application filed prior to January 1, 1979, are only entitled to a deduction for a five (5) year period. In addition, property owners who are entitled to a deduction under this chapter pursuant to a deduction application filed after December 31, 1978, and before January 1, 1986, are entitled to a deduction for a ten (10) year period.

(e) A property owner who desires to obtain the deduction provided by section 3 of this chapter but who has failed to file a deduction application within the dates prescribed in subsection (a) or (b) may file a deduction application between March 1 and May 10 of a subsequent year which shall be applicable for the year filed and the subsequent years without any additional deduction application being filed for the amounts of the deduction which would be applicable to such years pursuant to section 4 of this chapter if such a deduction application had been filed in accordance with subsection (a) or (b).

(f) On verification of the correctness of a deduction application by the assessor of the township in which the property is located, the county auditor shall act as follows:

(1) If a determination about the number of years the deduction is allowed has been made in the resolution adopted under section 2.5 of this chapter, the county auditor shall make the appropriate deduction.

(2) If a determination about the number of years a deduction is allowed has not been

made in the resolution adopted under section 2.5 of this chapter, the county auditor shall send a copy of the deduction application to the designating body. Upon receipt of the resolution stating the number of years the deduction will be allowed, the county auditor shall make the appropriate deduction.

(3) If the deduction application is for rehabilitation or redevelopment in a residentially distressed area, the county auditor shall make the appropriate deduction.

(g) The amount and period of the deduction provided for property by section 3 of this chapter are not affected by a change in the ownership of the property if the new owner of the property:

(1) continues to use the property in compliance with any standards established under section 2(g) of this chapter; and

(2) files an application in the manner provided by subsection (e).

(h) The township assessor shall include a notice of the deadlines for filing a deduction application under subsections (a) and (b) with each notice to a property owner of an addition to assessed value or of a new assessment.

[As amended by: P.L.4-2000, §7.]

IC 6-1.1-12.1-5.1 ---- Rehabilitation deduction: additional filing requirements; designation of information which is to be public record

(a) This subsection applies to:

(1) all deductions under section 3 of this chapter for property located in a residentially distressed area; and

(2) any other deductions for which a statement of benefits was approved under section 3 of this chapter before July 1, 1991.

In addition to the requirements of section 5(c) of this chapter, a deduction application filed under section 5 of this chapter must contain information showing the extent to which there has been compliance with the statement of benefits approved under section 3 of this chapter. Failure to comply with a statement of benefits approved before July 1, 1991, may not be a basis for rejecting a deduction application.

(b) This subsection applies to each deduction (other than a deduction for property located in a residentially distressed area) for which a statement of benefits was approved under section 3 of this chapter after June 30, 1991. In addition to the requirements of section 5(c) of this chapter, a property owner who files a deduction application under section 5 of this chapter must provide the county auditor and the designating body with information showing the extent to which there has been compliance with the statement of benefits approved under section 3 of this chapter. This information must be included in the deduction application and must also be updated within sixty (60) days after the end of each year in which the deduction is applicable.

(c) Notwithstanding IC 5-14-3 and IC 6-1.1-35-9, the following information is a public record if filed under this section:

(1) The name and address of the taxpayer.

(2) The location and description of the property for which the deduction was granted.

(3) Any information concerning the number of employees at the property for which the deduction was granted, including estimated totals that were provided as part of the statement of benefits.

(4) Any information concerning the total of the salaries paid to those employees, including estimated totals that were provided as part of the statement of benefits.

(5) Any information concerning the assessed value of the property, including estimates that were provided as part of the statement of benefits.

(d) The following information is confidential if filed under this section:

(1) Any information concerning the specific salaries paid to individual employees by the property owner.

(2) Any information concerning the cost of the property.

[As amended by: P.L.65-1993, §7.]

IC 6-1.1-12.1-5.5 ---- Rehabilitation deduction: application for new manufacturing equipment deduction; appeals [Repealed effective 1/1/2002]

(a) A person that desires to obtain the deduction provided by section 4.5 of this chapter must file a certified deduction application on forms prescribed by the state board of tax commissioners with:

(1) the auditor of the county in which the new manufacturing equipment or new research and development equipment, or both, is located; and

(2) the state board of tax commissioners.

A person that timely files a personal property return under IC 6-1.1-3-7(a) for the year in which the new manufacturing equipment or new research and development equipment, or both, is installed must file the application between March1 and May 15 of that year. A person that obtains a filing extension under IC 6-1.1-3-7(b) for the year in which the new manufacturing equipment or new research and development equipment, or both, is installed must file the application between March 1 and the extended due date for that year.

(b) The deduction application required by this section must contain the following information:

(1) The name of the owner of the new manufacturing equipment or new research and development equipment, or both.

(2) A description of the new manufacturing equipment or new research and development equipment, or both.

(3) Proof of the date the new manufacturing equipment or new research and development equipment, or both, was installed.

(4) The amount of the deduction claimed for the first year of the deduction.

(c) This subsection applies to a deduction application with respect to new manufacturing equipment or new research and development equipment, or both, for which a statement of benefits was initially approved after April 30, 1991. If a determination about the number of years the deduction is allowed has not been made in the resolution adopted under section 2.5 of this chapter, the county auditor shall send a copy of the deduction application to the designating body and the designating body shall adopt a resolution under section 4.5(h)(2) of this chapter.

(d) A deduction application must be filed under this section in the year in which the new manufacturing equipment or new research and development equipment, or both, is installed and in each of the immediately succeeding years the deduction is allowed.

(e) The state board of tax commissioners shall review and verify the correctness of each deduction application and shall notify the county auditor of the county in which the property is located that the deduction application is approved or denied or that the amount of the deduction is altered. Upon notification of approval of the deduction application or of alteration of the amount of the deduction, the county auditor shall make the deduction. The county auditor shall notify the county property tax assessment board of appeals of all deductions approved under this section.

(f) If the ownership of new manufacturing equipment or new research and development equipment, or both, changes, the deduction provided under section 4.5 of this chapter continues to apply to that equipment if the new owner:

(1) continues to use the equipment in compliance with any standards established under section 2(g) of this chapter; and

(2) files the deduction applications required by this section.

(g) The amount of the deduction is the percentage under section 4.5 of this chapter that would have applied if the ownership of the property had not changed multiplied by the assessed value of the equipment for the year the deduction is claimed by the new owner.

(h) If a person desires to initiate an appeal of the state board of tax commissioners' final determination, the person must do all of the following not more than forty-five (45) days after the state board of tax commissioners gives the person notice of the final determination:

(1) File a written notice with the state board of tax commissioners informing the board of the person's intention to appeal.

(2) File a complaint in the tax court.

(3) Serve the attorney general and the county auditor with a copy of the complaint.

[As amended by: P.L.198-2001, §39.]

IC 6-1.1-12.1-5.6 ---- Rehabilitation deduction: additional requirements for pre-7/1/91 approvals

(a) This subsection applies to a property owner whose statement of benefits was approved under section 4.5 of this chapter before July 1, 1991. In addition to the requirements of section 5.5(b) of this chapter, a deduction application filed under section 5.5 of this chapter must contain information showing the extent to which there has been compliance with the statement of benefits approved under section 4.5 of this chapter. Failure to comply with a statement of benefits approved before July 1, 1991, may not be a basis for rejecting a deduction application.

(b) This subsection applies to a property owner whose statement of benefits was approved under section 4.5 of this chapter after June 30, 1991. In addition to the requirements of section 5.5(b) of this chapter, a property owner who files a deduction application under section 5.5 of this chapter must provide the county auditor and the designating body with information showing the extent to which there has been compliance with the statement of benefits approved under section 4.5 of this chapter.

(c) Notwithstanding IC 5-14-3 and IC 6-1.1-35-9, the following information is a public record if filed under this section:

(1) The name and address of the taxpayer.

(2) The location and description of the new manufacturing equipment or new research and development equipment, or both, for which the deduction was granted.

(3) Any information concerning the number of employees at the facility where the new manufacturing equipment or new research and development equipment, or both, is located, including estimated totals that were provided as part of the statement of benefits.

(4) Any information concerning the total of the salaries paid to those employees, including estimated totals that were provided as part of the statement of benefits.

(5) Any information concerning the amount of solid waste or hazardous waste converted into energy or other useful products by the new manufacturing equipment.

(6) Any information concerning the assessed value of the new manufacturing equipment or new research and development equipment, or both, including estimates that were provided as part of the statement of benefits.

(d) The following information is confidential if filed under this section:

(1) Any information concerning the specific salaries paid to individual employees by the owner of the new manufacturing equipment or new research and development equipment, or both.

(2) Any information concerning the cost of the new manufacturing equipment or new research and development equipment, or both.

[As amended by: P.L.4-2000, §9.]

IC 6-1.1-12.1-5.8 ---- Rehabilitation deduction: conditions for waiver of statement of benefits

In lieu of providing the statement of benefits required by section 3 or 4.5 of this chapter and the additional information required by section 5.1 or 5.6 of this chapter, the designating body may, by resolution, waive the statement of benefits if the designating body finds that the purposes of this chapter are served by allowing the deduction and the property owner has, during the thirty-six (36) months preceding the first assessment date to which the waiver would apply, installed new manufacturing equipment or new research and development equipment, or both, or developed or rehabilitated property at a cost of at least ten million dollars ($10,000,000) as determined by the state board of tax commissioners.

[As amended by: P.L.4-2000, §10.]

IC 6-1.1-12.1-5.9 ---- Rehabilitation deduction: failure of compliance; termination of deduction; appeal

(a) This section does not apply to:

(1) a deduction under section 3 of this chapter for property located in a residentially distressed area; or

(2) any other deduction under section 3 or 4.5 of this chapter for which a statement of benefits was approved before July 1, 1991.

(b) Within forty-five (45) days after receipt of the information described in section 5.1 or 5.6 of this chapter, the designating body may determine whether the property owner has substantially complied with the statement of benefits approved under section 3 or 4.5 of this chapter. If the designating body determines that the property owner has not substantially complied with the statement of benefits and that the failure to substantially comply was not caused by factors beyond the control of the property owner (such as declines in demand for the property owner's products or services), the designating body shall mail a written notice to the property owner. The written notice must include the following provisions:

(1) An explanation of the reasons for the designating body's determination.

(2) The date, time, and place of a hearing to be conducted by the designating body for the purpose of further considering the property owner's compliance with the statement of benefits. The date of the hearing may not be more than thirty (30) days after the date on which the notice is mailed.

If a notice mailed to a property owner concerns a statement of benefits approved under section 4.5 of this chapter, the designating body shall also mail a copy of the notice to the state board of tax commissioners.

(c) On the date specified in the notice described in subsection (b)(2), the designating body shall conduct a hearing for the purpose of further considering the property owner's compliance with the statement of benefits. Based on the information presented at the hearing by the property owner and other interested parties, the designating body shall again determine whether the property owner has made reasonable efforts to substantially comply with the statement of benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner. If the designating body determines that the property owner has not made reasonable efforts to comply with the statement of benefits, the designating body shall adopt a resolution terminating the property owner's deduction under section 3 or 4.5 of this chapter. If the designating body adopts such a resolution, the deduction does not apply to the next installment of property taxes owed by the property owner or to any subsequent installment of property taxes.

(d) If the designating body adopts a resolution terminating a deduction under subsection (c), the designating body shall immediately mail a certified copy of the resolution to:

(1) the property owner;

(2) the county auditor; and

(3) the state board of tax commissioners if the deduction was granted under section 4.5 of this chapter.

The county auditor shall remove the deduction from the tax duplicate and shall notify the county treasurer of the termination of the deduction. If the designating body's resolution is adopted after the county treasurer has mailed the statement required by IC 6-1.1-22-8, the county treasurer shall immediately mail the property owner a revised statement that reflects the termination of the deduction.

(e) A property owner whose deduction is terminated by the designating body under this section may appeal the designating body's decision by filing a complaint in the office of the clerk of the circuit or superior court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner. An appeal under this subsection shall be promptly heard by the court without a jury and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal and may confirm the action of the designating body or sustain the appeal. The judgment of the court is final and conclusive unless an appeal is taken as in other civil actions.

(f) If an appeal under subsection (e) is pending, the taxes resulting from the termination of the deduction are not due until after the appeal is finally adjudicated and the termination of the deduction is finally determined.

[As added by: P.L.14-1991, §6.]

IC 6-1.1-12.1-6 ------ Rehabilitation deduction: limitations on receiving deduction

(a) A property owner may not receive a deduction under this chapter for repairs or improvements to real property if he receives a deduction under either IC 6-1.1-12-18 or IC 6-1.1-12-22 for those same repairs or improvements.

(b) A property owner may not receive a deduction under this chapter if the property owner receives a deduction under IC 6-1.1-12-28.5 for the same property.

[As amended by: P.L.25-1995, §23.]

IC 6-1.1-12.1-7 ------ Rehabilitation deduction: designation of historic property as economic development target

(a) After favorable recommendation by an economic development commission, the fiscal body of a city or town may by ordinance designate as an economic development target area a specific geographic territory that:

(1) has become undesirable or impossible for normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors that have impaired values or prevent a normal development of property or use of property;

(2) has been designated as a registered historic district under:

(A) the National Historic Preservation Act of 1966; or

(B) the jurisdiction of a preservation commission organized under:

(i) IC 36-7-11;

(ii) IC 36-7-11.1;

(iii) IC 36-7-11.2;

(iv) IC 36-7-11.3; or

(v) IC 14-3-3.2 (before its repeal); or

(3) encompasses buildings, structures, sites, or other facilities that are:

(A) listed on the national register of historic places established pursuant to 16 U.S.C. 470 et seq.;

(B) listed on the register of Indiana historic sites and historic structures established under IC 14-21-1; or

(C) determined to be eligible for listing on the Indiana register by the Indiana state historic preservation officer.

(b) The fiscal body of a city or town may designate a maximum of fifteen percent (15%) of the total geographic territory of the city or town to be in economic development target areas.

(c) Notwithstanding the repeal of IC 36-7-11.9-4 and IC 36-7-12-38, an economic development target area established by a city or town before July 1, 1987, continues in effect until it is modified or abolished by ordinance of the city or town fiscal body.

[As amended by: P.L.1-1995, §44.]

IC 6-1.1-12.1-8 ------ Rehabilitation deduction: annual newspaper publication of deductions

(a) Not later than December 31 of each year, the county auditor shall publish the following in a newspaper of general interest and readership and not one of limited subject matter:

(1) A list of the approved deduction applications that were filed under this chapter during that year. The list must contain the following:

(A) The name and address of each person approved for or receiving a deduction that was filed for during the year.

(B) The amount of each deduction that was filed for during the year.

(C) The number of years for which each deduction that was filed for during the year will be available.

(D) The total amount for all deductions that were filed for and granted during the year.

(2) The total amount of all deductions for real property that were in effect under section 3 of this chapter during the year.

(3) The total amount of all deductions for new manufacturing equipment or new research and development equipment, or both, that were in effect under section 4.5 of this chapter during the year.

(b) The county auditor shall file the information described in subsection (a)(2) and (a)(3) with the state board of tax commissioners not later than December 31 of each year.

[As amended by: P.L.4-2000, §11.]

IC 6-1.1-12.1-9 ------ Rehabilitation deduction: 12/31/2005 time limit

Notwithstanding any other provision of this chapter, a designating body may not approve a statement of benefits for a deduction under section 3 or 4.5 of this chapter after December 31, 2005.

[As amended by: P.L.25-1995, §24.]

IC 6-1.1-12.1-10 ----- Rehabilitation deduction: legalization of a specific town's activities

(a) This section applies to a town having a population of more than two thousand four hundred (2,400) but less than five thousand (5,000) that is located in a county having a population of more than twenty-five thousand (25,000) but less than twenty-nine thousand (29,000).

(b) Notwithstanding section 3 and section 4.5 of this chapter, the submission of a statement of benefits to a designating body subsequent to the installation of new manufacturing equipment and the initiation of the rehabilitation or redevelopment of real estate and the designating body's retroactive approval of that statement of benefits are legalized and validated for 1993 and subsequent assessment years, subject to the limitations set forth in section 5(e) of this chapter.

[As added by P.L.32-1994, §1.]

IC 6-1.1-12.1-11 ----- Rehabilitation deduction: quadrennial evaluation of program

On a quadrennial basis, the general assembly shall provide for an evaluation of the provisions of this chapter, giving first priority to using the Indiana economic development council established under IC 4-3-14-4. The evaluation must be a fiscal analysis, including an assessment of the effectiveness of the provisions of this chapter to:

(1) create new jobs;

(2) increase income; and

(3) increase the tax base;

in the jurisdiction of the designating body. The fiscal analysis may also consider impacts on tax burdens borne by various classes of property owners. The fiscal analysis may also include a review of the practices and experiences of other states or political subdivisions with laws similar to the provisions of this chapter. The president of the Indiana economic development council established under IC 4-3-14-4 or another person or entity designated by the general assembly shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives before December 1, 1999, and every fourth year thereafter.

[As added by P.L.25-1995, §25.]

IC 6-1.1-12.1-11.3 --- Rehabilitation deduction: waiver of noncompliance under certain circumstances

(a) This section applies only to the following requirements under section 3 of this chapter:

(1) Failure to provide the completed statement of benefits form to the designating body before the hearing required by section 2.5(c) of this chapter.

(2) Failure to submit the completed statement of benefits form to the designating body before the initiation of the redevelopment or rehabilitation or the installation of new manufacturing equipment or new research and development equipment, or both, for which the person desires to claim a deduction under this chapter.

(3) Failure to designate an area as an economic revitalization area before the initiation of the:

(A) redevelopment;

(B) installation of new manufacturing equipment or new research and development equipment, or both; or

(C) rehabilitation;

for which the person desires to claim a deduction under this chapter.

(4) Failure to make the required findings of fact before designating an area as an economic revitalization area or authorizing a deduction for new manufacturing equipment or new research and development equipment, or both, under section 2, 3, or 4.5 of this chapter.

(b) This section does not grant a designating body the authority to exempt a person from filing a statement of benefits or exempt a designating body from making findings of fact.

(c) A designating body may by resolution waive noncompliance described under subsection (a) under the terms and conditions specified in the resolution. Before adopting a waiver under this subsection, the designating body shall conduct a public hearing on the waiver.

[As amended by P.L.4-2000, §12.]

IC 6-1.1-12.1-12 ----- Rehabilitation deduction: repayment of deduction by property owner in certain cases

(a) A property owner that has received a deduction under section 3 or 4.5 of this chapter is subject to the provisions of this section if the designating body adopts a resolution incorporating the provisions of this section for the economic revitalization area in which the property owner is located.

(b) If:

(1) the property owner ceases operations at the facility for which the deduction was granted; and

(2) the designating body finds that the property owner obtained the deduction by intentionally providing false information concerning the property owner's plans to continue operations at the facility;

the property owner shall pay the amount determined under subsection (e) to the county treasurer.

(c) A property owner may appeal the designating body's decision under subsection (b) by filing a complaint in the office of the clerk of the circuit or superior court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner. An appeal under this subsection shall be promptly heard by the court without a jury and determined not more than thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal and may confirm the action of the designating body or sustain the appeal. The judgment of the court is a final determination that may be appealed in the same manner as other civil actions.

(d) If an appeal under subsection (c) is pending, the payment required by this section is not due until after the appeal is finally adjudicated and the property owner's liability for the payment is finally determined.

(e) The county auditor shall determine the amount to be paid by the property owner according to the following formula:

STEP ONE: For each year that the deduction was in effect, determine the additional amount of property taxes that would have been paid by the property owner if the deduction had not been in effect.

STEP TWO: Determine the sum of the STEP ONE amounts.

STEP THREE: Multiply the sum determined under STEP TWO by one and one-tenth (1.1).

(f) The county treasurer shall distribute money paid under this section on a pro rata basis to the general fund of each taxing unit that contains the property that was subject to the deduction. The amount to be distributed to the general fund of each taxing unit shall be determined by the county auditor according to the following formula:

STEP ONE: For each year that the deduction was in effect, determine the additional amount of property taxes that would have been paid by the property owner to the taxing unit if the deduction had not been in effect.

STEP TWO: Determine the sum of the STEP ONE amounts.

STEP THREE: Divide the STEP TWO sum by the sum determined under STEP TWO of subsection (e).

STEP FOUR: Multiply the amount paid by the property owner under subsection (e) by the STEP THREE quotient.

[As added by P.L.85-1995, §2.]

IC 6-1.1-42. BROWNFIELD REVITALIZATION ZONE TAX ABATEMENT

IC 6-1.1-42-1 --------- Brownfield revitalization zone tax abatement: brownfield defined

As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-2 --------- Brownfield revitalization zone tax abatement: designating body defined

As used in this chapter, "designating body" means the following:

(1) For an area located in an unincorporated area in a county that does not contain a consolidated city, the county fiscal body.

(2) For an area located in a city or town in a county that does not contain a consolidated city, the city or town fiscal body.

(3) For an area located in a county containing a consolidated city, the metropolitan development commission.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-3 --------- Brownfield revitalization zone tax abatement: remediation defined

As used in this chapter, "remediation" has the meaning set forth in IC 13-11-2-186.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-4 --------- Brownfield revitalization zone tax abatement: zone defined

As used in this chapter, "zone" means a brownfield revitalization zone established under this chapter.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-5 --------- Brownfield revitalization zone tax abatement: application for area designation as a brownfield revitalization zone

(a) A person may apply to a designating body to designate an area as a brownfield revitalization zone.

(b) An application under this section must:

(1) be submitted to the designating body before the initiation of a voluntary remediation under IC 13-25-5;

(2) include sufficient information for the designating body to declare the area a zone; and

(3) be in the form prescribed by the state board of tax commissioners.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-6 --------- Brownfield revitalization zone tax abatement: statement of public benefits of zone

Not later than the date that the designating body adopts a resolution under section 9 of this chapter, the applicant shall submit a statement of public benefits to the designating body. The statement of benefits must include the following information:

(1) A description of the proposed remediation and redevelopment.

(2) An estimate of the number of individuals who will be employed or whose employment will be retained by the person as a result of the remediation and redevelopment and an estimate of the annual salaries of these individuals.

(3) An estimate of the value of the remediation and redevelopment.

The statement of benefits may be incorporated in a designation application. A statement of benefits is a public record that may be inspected and copied under IC 5-14-3-3.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-7 --------- Brownfield revitalization zone tax abatement: application fee; standards

A designating body may, by resolution, do the following:

(1) Impose a fee for filing an application to designate an area as a zone or to approve a deduction. The fee may be sufficient to defray actual processing and administrative costs associated with the application.

(2) Establish general written standards for declaring an area as a zone. The written standards must be reasonably related to accomplishing the purposes of this chapter.

[As amended by: P.L.119-1999, §2.]

IC 6-1.1-42-8 --------- Brownfield revitalization zone tax abatement: identification of zone

If a designating body proposes to designate a zone, the designating body shall either:

(1) prepare maps and plats that identify the proposed brownfield revitalization zone; or

(2) prepare a simplified description of the boundaries of the brownfield revitalization zone by describing its location in relation to public ways, streams, or otherwise.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-9 --------- Brownfield revitalization zone tax abatement: adoption of resolution to declare the area a brownfield revitalization zone

After the submission of a statement of benefits under section 6 of this chapter and the compilation of the materials described in section 8 of this chapter, the designating body may adopt a resolution to declare the area a brownfield revitalization zone.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-10 ------- Brownfield revitalization zone tax abatement: publication and filing of zone resolution

A designating body that adopts a resolution under section 9 of this chapter, shall do the following:

(1) Publish notice of the adoption and substance of the resolution in accordance with IC 5-3-1.

(2) File the following information with each taxing unit that has authority to levy property taxes in the geographic area where the zone is located:

(A) A copy of the notice required by subdivision (1).

(B) A statement containing substantially the same information as a statement of benefits filed with the designating body under section 6 of this chapter.

The notice must state that a description of the affected area is available and can be inspected in the county assessor's office. The notice must also name a date when the designating body will receive and hear all remonstrances and objections from interested persons. The designating body shall file the information required by subdivision (2) with the officers of the taxing unit who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days before the date of the public hearing.

[As amended by: P.L.96-2000, §2.]

IC 6-1.1-42-11 ------- Brownfield revitalization zone tax abatement: public hearing on creation of zone

The designating body must review the statement of benefits required under section 6 of this chapter and conduct a public hearing on the creation of the zone.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-12 ------- Brownfield revitalization zone tax abatement: affirmative findings required for designation as a brownfield revitalization zone

(a) The designating body shall determine whether an area should be designated a brownfield revitalization zone.

(b) A designating body may designate an area as a brownfield revitalization zone only if the following findings are made in the affirmative:

(1) The applicant:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of the voluntary

remediation, as determined under the written standards adopted by the department of environmental management.

(2) The area described in section 8 of this chapter qualifies as a brownfield, as determined under the written standards adopted by the department of environmental management.

(3) The area described in section 8 of this chapter is substantially under-utilized or nonproductive without remediation.

(4) The applicant can successfully obtain a certificate of completion of a voluntary remediation for the area described in section 8 of this chapter under IC 13-25-5-16.

(5) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(6) The estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(7) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(8) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described remediation and redevelopment.

(9) The totality of benefits is sufficient to justify the establishment of a zone.

[As amended by: P.L.119-1999, §3.]

IC 6-1.1-42-13 ------- Brownfield revitalization zone tax abatement: final action on resolution; expiration of zone designation

(a) After considering the evidence, the designating body shall take final action determining whether the qualifications for a brownfield revitalization zone have been met and confirming, modifying and confirming, or rescinding the resolution. This determination is final except that an appeal may be taken and heard as provided under sections 14 and 15 of this chapter.

(b) The designation of an area as a brownfield revitalization zone expires on the earliest of the following:

(1) The date that the designating body determines that the applicant has failed to comply with the statement of benefits under section 30 of this chapter.

(2) The date that the designating body determines that the applicant has failed to make reasonable progress towards the completion of the remediation. A designating body may not make a determination under this subdivision before a date that is at least two (2) years after the date an area is designated as a brownfield revitalization zone.

(3) December 31 of the last year that the applicant is eligible for a deduction granted under section 24 of this chapter.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-14 ------- Brownfield revitalization zone tax abatement: appeal on remonstrance regarding zone

A person who filed a written remonstrance with the designating body before the adjournment of the public hearing required under section 11 of this chapter and who is aggrieved by the final action taken may, within ten (10) days after that final action is taken under section 13 of this chapter, initiate an appeal of that action by filing in the office of the clerk of the circuit or superior court a copy of the resolution adopted under section 9 of this chapter, any modifications made under section 13 of this chapter, and the person's remonstrance against the resolution, together with a bond conditioned to pay the costs of the appeal if the appeal

is determined against the person. The only ground of appeal that the court may hear is whether the proposed project will meet the qualifications for granting an assessed valuation deduction for the property under this chapter. The burden of proof is on the appellant.

[As amended by: P.L.119-1999, §4.]

IC 6-1.1-42-15 ------- Brownfield revitalization zone tax abatement: hearing on remonstrance regarding zone

An appeal under section 14 of this chapter shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal, and may confirm the final action of the designating body or sustain the appeal. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-16 ------- Brownfield revitalization zone tax abatement: additional procedures

The procedures described in sections 17 through 26 of this chapter may be combined with the procedures required under sections 5 through 15 of this chapter to designate an area as a zone.

[As amended by: P.L.2-1998, §24.]

IC 6-1.1-42-17 ------- Brownfield revitalization zone tax abatement: application for an assessed valuation deduction

(a) A person may apply for an assessed valuation deduction for:

(1) real property; and

(2) personal property, other than inventory (as defined in IC 6-1.1-3-11);

located in an area designated as a brownfield revitalization zone.

(b) An application for a deduction for an improvement to a brownfield revitalization zone or personal property located in a brownfield revitalization area must:

(1) be submitted to the designating body before the date that the improvement is initiated or, if the deduction is for personal property, the property is brought into the area;

(2) contain sufficient information for the designating body to approve the deduction; and

(3) be submitted in the form prescribed by the state board of tax commissioners.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-18 ------- Brownfield revitalization zone tax abatement: statement of benefits for the deduction

(a) A person that applies for an assessed valuation deduction shall submit a statement of benefits for the deduction to the designating body before the date specified in section 17 of this chapter.

(b) The statement of benefits must:

(1) describe the property that is the subject of the application;

(2) estimate the value of the property that is the subject of the application; and

(3) contain the information required for a statement of benefits described in section 6 of this chapter.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-19 ------- Brownfield revitalization zone tax abatement: adoption of resolution to approve a deduction

After the submission of a statement of benefits under section 18 of this chapter, the designating body may adopt a resolution to approve a deduction.

[As amended by: P.L.2-1998, §25.]

IC 6-1.1-42-20 ------- Brownfield revitalization zone tax abatement: publication and filing of notice on deduction

A designating body that adopts a resolution under section 19 of this chapter shall do the following:

(1) Publish notice of the adoption and substance of the resolution in accordance with IC 5-3-1.

(2) File the following information with each taxing unit that has authority to levy property taxes in the geographic area where the zone is located:

(A) A copy of the notice required by subdivision (1).

(B) A statement containing substantially the same information as a statement of benefits filed with the designating body under section 18 of this chapter.

The notice must state that a description of the affected area is available and can be inspected in the county assessor's office. The notice must also name a date when the designating body will receive and hear all remonstrances and objections from interested persons. The designating body shall file the information required by subdivision (2) with the officers of the taxing unit who are authorized to fix budgets, tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days before the date of the public hearing.

[As amended by: P.L.96-2000, §3.]

IC 6-1.1-42-21 ------- Brownfield revitalization zone tax abatement: public hearing on deduction

The designating body must review the statement of benefits required under section 18 of this chapter and conduct a public hearing on the proposed deduction.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-22 ------- Brownfield revitalization zone tax abatement: affirmative findings required for deduction

(a) The designating body shall determine whether to approve a deduction.

(b) A designating body may not grant a deduction for a facility described in IC 6-1.1-12.1-3(e).

(c) A property owner may not receive a deduction under this chapter for repairs or improvements to real property if the owner receives a deduction under either IC 6-1.1-12.1, IC 6-1.1-12-18, IC 6-1.1-12-22, or IC 6-1.1-12-28.5 for the same property.

(d) A designating body may approve a deduction only if the following findings are made in the affirmative:

(1) The applicant:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(2) The proposed improvement or property will be located in a zone.

(3) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(4) The estimate of the number of individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(5) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(6) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described remediation and redevelopment.

(7) The totality of benefits is sufficient to justify the deduction.

[As amended by: P.L.119-1999, §5.]

IC 6-1.1-42-23 ------- Brownfield revitalization zone tax abatement: powers with respect to deduction

With respect to property in a particular brownfield revitalization zone, the designating body may do the following:

(1) Limit the type of property that is eligible for a deduction within a brownfield revitalization zone to personal property or real property.

(2) Limit the dollar amount of the individual or aggregate deductions that will be allowed with respect to personal property.

(3) Limit the dollar amount of the deduction that will be allowed with respect to real property.

(4) Impose reasonable conditions for allowing a deduction for tangible property under this chapter. The conditions must have a reasonable relationship to the development objectives of the area in which the designating body has jurisdiction.

To exercise one (1) or more of these powers a designating body must include this fact in the resolution creating the brownfield revitalization zone that is finally passed under section 13 of this chapter.

[As amended by: P.L.119-1999, §6.]

IC 6-1.1-42-24 ------- Brownfield revitalization zone tax abatement: final action on deduction

(a) After considering the evidence, the designating body shall take final action determining whether the qualifications for deduction have been met and confirming, modifying and confirming, or rescinding the resolution. For each deduction granted by the designating body, the designating body shall state in the resolution granting the deduction whether the deduction is for three (3) six (6), or ten (10) years. This determination is final except that an appeal may be taken and heard as provided under sections 25 and 26 of this chapter.

(b) A determination to grant a deduction under this chapter may be made:

(1) as part of the resolution adopted under section 13 of this chapter; or

(2) by resolution adopted within sixty (60) days after receiving a copy of a property owner's certified deduction application from the county auditor. A certified copy of the resolution shall be sent to the county auditor.

(c) The grant allowing a brownfield revitalization zone deduction expires on the earliest of the following:

(1) The date that the designating body determines that the applicant has failed to make reasonable progress towards the completion of the remediation. A designating body may not make a determination under this subdivision before a date that is at least two (2) years after the date an area is designated as a brownfield revitalization zone.

(2) December 31 of the last year of the deduction.

(3) The date the zone expires.

(4) The date that the designating body determines that the applicant has failed to comply with the statement of benefits under section 30 of this chapter.

[As amended by: P.L.2-1998, §27.]

IC 6-1.1-42-25 ------- Brownfield revitalization zone tax abatement: appeal on remonstrance regarding deduction

A person who filed a written remonstrance with the designating body before the adjournment of the public hearing required in section 21 of this chapter and who is aggrieved by the final action taken may, within ten (10) days after that final action under section 24 of this chapter, initiate an appeal of that action by filing in the office of the clerk of the circuit or superior court a copy of the resolution adopted under section 9 of this chapter, any modifications made under section 24 of this chapter, and the person's remonstrance against the resolution, together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the person. The only ground of appeal that the court may hear is whether the proposed project will meet the qualifications for granting an assessed valuation deduction for the property under this chapter. The burden of proof is on the appellant.

[As amended by: P.L.119-1999, §7.]

IC 6-1.1-42-26 ------- Brownfield revitalization zone tax abatement: hearing on remonstrance regarding deduction

An appeal under section 25 of this chapter shall be promptly heard by the court without a jury. All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal, and may confirm the final action of the designating body or sustain the appeal. The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-27 ------- Brownfield revitalization zone tax abatement: deduction application

(a) A property owner who desires to obtain the deduction provided by section 24 of this chapter must file a certified deduction application, on forms prescribed by the state board of tax commissioners, with the auditor of the county in which the property is located. Except as otherwise provided in subsection (b) or (e), the deduction application must be filed before May 10 of the year in which the addition to assessed valuation is made.

(b) If notice of the addition to assessed valuation or new assessment for any year is not given to the property owner before April 10 of that year, the deduction application required by this section may be filed not later than thirty (30) days after the date such a notice is mailed to the property owner at the address shown on the records of the township assessor.

(c) The certified deduction application required by this section must contain the following information:

(1) The name of each owner of the property.

(2) A certificate of completion of a voluntary remediation under IC 13-25-5-16.

(3) Proof that each owner who is applying for the deduction:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(4) Proof that the deduction was approved by the appropriate designating body.

(5) A description of the property for which a deduction is claimed in sufficient detail to afford identification.

(6) The assessed value of the improvements before remediation and redevelopment.

(7) The increase in the assessed value of improvements resulting from remediation and redevelopment

(8) The amount of the deduction claimed for the first year of the deduction.

(d) A certified deduction application filed under subsection (a) or (b) is applicable for the year in which the addition to assessed value or assessment of property is made and each subsequent year to which the deduction applies under the resolution adopted under section 24 of this chapter.

(e) A property owner who desires to obtain the deduction provided by section 24 of this chapter but who has failed to file a deduction application within the dates prescribed in subsection (a) or (b) may file a deduction application between March 1 and May 10 of a subsequent year which is applicable for the year filed and the subsequent years without any additional certified deduction application being filed for the amounts of the deduction which would be applicable to such years under this chapter if such a deduction application had been filed in accordance with subsection (a) or (b).

(f) On verification of the correctness of a certified deduction application by the assessor of the township in which the property is located, the county auditor shall, if the property is covered by a resolution adopted under section 24 of this chapter, shall make the appropriate deduction.

(g) The amount and period of the deduction provided for property by section 24 of this chapter are not affected by a change in the ownership of the property if the new owner of the property:

(1) is a person that:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management;

(2) continues to use the property in compliance with any standards established under sections 7 and 23 of this chapter; and

(3) files an application in the manner provided by subsection (e).

(h) The township assessor shall include a notice of the deadlines for filing a deduction application under subsections (a) and (b) with each notice to a property owner of an addition to assessed value or of a new assessment.

[As amended by: P.L.119-1999, §8.]

IC 6-1.1-42-28 ------- Brownfield revitalization zone tax abatement: calulation of amount of deduction

(a) Subject to this section, the amount of the deduction which the property owner is entitled to receive under this chapter for a particular year equals the product of:

(1) the increase in the assessed value resulting from the remediation and redevelopment in the zone or the location of personal property in the zone; or both; multiplied by

(2) the percentage determined under subsection (b).

(b) The percentage to be used in calculating the deduction under subsection (a) is as follows:

(1) For deductions allowed over a three (3) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	66%
3rd	33%

(2) For deductions allowed over a six (6) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	17%

(3) For deductions allowed over a ten (10) year period:

YEAR OF DEDUCTION	PERCENTAGE
1st	100%
2nd	95%
3rd	80%
4th	65%
5th	50%
6th	40%
7th	30%
8th	20%
9th	10%
10th	5%

(c) The amount of the deduction determined under subsection (a) shall be adjusted in accordance with this subsection in the following circumstances:

(1) If a general reassessment of real property occurs within the particular period of the deduction, the amount determined under subsection (a)(1) shall be adjusted to reflect the percentage increase or decrease in assessed valuation that resulted from the general reassessment.

(2) If an appeal of an assessment is approved that results in a reduction of the assessed value of the redeveloped or rehabilitated property, the amount of any deduction shall be adjusted to reflect the percentage decrease that resulted from the appeal.

(3) The amount of the deduction may not exceed the limitations imposed by the designating body under section 23 of this chapter.

(4) The amount of the deduction must be proportionally reduced by the proportionate ownership of the property by a person that:

(A) has an ownership interest in an entity that contributed; or

(B) has contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

The state board of tax commissioners shall adopt rules under IC 4-22-2 to implement this subsection.

[As amended by: P.L.119-1997, §9.]

IC 6-1.1-42-29 ------- Brownfield revitalization zone tax abatement: information showing compliance with statement of benefits

A property owner who files a deduction application under section 27 of this chapter must provide the county auditor and the designating body with information showing the extent to which there has been compliance with the statement of benefits filed under sections 6 and 18 of this chapter.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-30 ------- Brownfield revitalization zone tax abatement: determination on compliance with statement of benefits; termination of deduction; appeal

(a) Within forty-five (45) days after receipt of the information described in section 29 of this chapter, the designating body may determine whether the property owner has substantially complied with the statement of benefits filed under sections 6 and 18 of this chapter.

(b) If the designating body determines that the property owner has not substantially complied with the statement of benefits and that the failure to substantially comply was not caused by factors beyond the control of the property owner (such as declines in demand for the property owner's products or services), the designating body shall mail a written notice to the property owner. The written notice must include the following provisions:

(1) An explanation of the reasons for the designating body's determination.

(2) The date, time, and place of a hearing to be conducted by the designating body for the purpose of further considering the property owner's compliance with the statement of benefits. The date of the hearing may not be more than thirty (30) days after the date on which the notice is mailed.

If a notice mailed to a property owner concerns a statement of benefits approved for personal property under section 24 of this chapter, the designating body shall also mail a copy of the notice to the state board of tax commissioners.

(c) On the date specified in the notice described in subsection (b)(2), the designating body shall conduct a hearing for the purpose of further considering the property owner's compliance with the statement of benefits. Based on the information presented at the hearing by the property owner and other interested parties, the designating body shall again determine whether the property owner has made reasonable efforts to substantially comply with the statement of benefits and whether any failure to substantially comply was caused by factors beyond the control of the property owner. If the designating body determines that the property owner has not made reasonable efforts to comply with the statement of benefits, the designating body shall adopt a resolution terminating the property owner's deduction under section 24 of this chapter. If the designating body adopts such a resolution, the deduction does not apply to the next installment of property taxes owed by the property owner or to any subsequent installment of property taxes.

(d) If the designating body adopts a resolution terminating a deduction under subsection (c), the designating body shall immediately mail a certified copy of the resolution to:

(1) the property owner;

(2) the county auditor; and

(3) the state board of tax commissioners if the deduction was granted for personal property under section 24 of this chapter.

The county auditor shall remove the deduction from the tax duplicate and shall notify the county treasurer of the termination of the deduction. If the designating body's resolution is adopted after the county treasurer has mailed the statement required by IC 6-1.1-22-8, the county treasurer shall immediately mail the property owner a revised statement that reflects the termination of the deduction.

(e) A property owner whose deduction is terminated by the designating body under this section may appeal the designating body's decision by filing a complaint in the office of the clerk of the circuit or superior court together with a bond conditioned to pay the costs of the appeal if the appeal is determined against the property owner. An appeal under this subsection shall be promptly heard by the court without a jury and determined within thirty (30) days after the time of the filing of the appeal. The court shall hear evidence on the appeal and may confirm the action of the designating body or sustain the appeal. The judgment of the court is final and conclusive unless an appeal is taken as in other civil actions.

(f) If an appeal under subsection (e) is pending, the taxes resulting from the termination of the deduction are not due until after the appeal is finally adjudicated and the termination of the deduction is finally determined.

[As amended by: P.L.119-1999, §10.]

IC 6-1.1-42-31 ------- Brownfield revitalization zone tax abatement: pubic documents and records

(a) A statement of benefits submitted to a designating body under this chapter is a public document.

(b) The following information is a public record if filed under section 29 of this chapter:

(1) The name and address of the taxpayer.

(2) The location and description of the new manufacturing equipment for which the deduction was granted.

(3) Any information concerning the number of employees at the facility where the new manufacturing equipment is located, including estimated totals that were provided as part of the statement of benefits.

(4) Any information concerning the total of the salaries paid to those employees, including estimated totals that were provided as part of the statement of benefits.

(5) Any information concerning the amount of solid waste or hazardous waste converted into energy or other useful products by the new manufacturing equipment.

(6) Any information concerning the assessed value of the new manufacturing equipment, including estimates that were provided as part of the statement of benefits.

(c) The following information is confidential if filed under section 29 of this chapter.

(1) Any information concerning the specific salaries paid to individual employees by the owner of the new manufacturing equipment.

(2) Any information concerning the cost of the new manufacturing equipment.

[As added by: P.L.59-1997, §1.]

IC 6-1.1-42-32 ------- Brownfield revitalization zone tax abatement: annual publication of information

(a) Each calendar year, the county auditor shall publish the following in a newspaper of general interest and readership and not one of limited subject matter:

(1) A list of the approved deduction applications that were filed under this chapter during that year. The list must contain the following:

(A) The name and address of each person approved for or receiving a deduction that was filed for during the year.

(B) The amount of each deduction that was filed for during the year.

(C) The years for which each deduction that was filed for during the year will be available.

(D) The total amount for all deductions that were filed for and granted during the year.

(2) The total amount of all deductions for real property that were in effect under section 24 of this chapter during the year.

(3) The total amount of all deductions for personal property that were in effect under section 24 of this chapter during the year.

(b) The county auditor shall file the information described in subsection (a)(2) and (a)(3) with the state board of tax commissioners each calendar year.

[As amended by: P.L.2-1998, §29.]

IC 6-1.1-42-33 ------- Brownfield revitalization zone tax abatement: waiver of noncompliance

(a) This section applies only to the following requirements under this chapter:

(1) Failure to provide the completed statement of benefits form to the designating body before the hearing required under this chapter.

(2) Failure to submit the completed statement of benefits form to the designating body before the initiation of the remediation and redevelopment or the location in the

zone of the property for which the person desires to claim a deduction under this chapter.

(3) Failure to designate an area as a brownfield revitalization zone before the initiation of the rehabilitation and redevelopment for which the person desires to claim a deduction under this chapter.

(4) Failure to make the required findings of fact before designating an area as a brownfield revitalization zone or authorizing a deduction.

(b) This section does not grant a designating body the authority to exempt a person from filing a statement of benefits or exempt a designating body from making findings of fact.

(c) A designating body may by resolution waive noncompliance described under subsection (a) under the terms and conditions specified in the resolution.

[As amended by: P.L.2-1998, §30.]

IC 6-2.1-3. EXEMPTIONS FROM GROSS INCOME TAX

IC 6-2.1-3-33 --------- Gross income of solid waste management districts and certain other entities exempt from gross income tax

Gross income received by:

(1) a conservancy district established under IC 14-33-20 or under IC 13-3-4 (before its repeal);

(2) a regional water, sewage, or solid waste district established under IC 13-26 or IC 13-3-2 (before its repeal);

(3) a nonprofit corporation formed solely for the purpose of supplying water to the public;

(4) a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); or

(5) a nonprofit corporation formed for the purpose of providing a combination of:

(A) water; and

(B) sewer and sewage service;

to the public;

is exempt from the gross income tax.

[As amended by: P.L.1-1996, §44.]

IC 6-2.1-4. DEDUCTIONS FROM GROSS INCOME TAX

IC 6-2.1-4-3 ---------- Deduction for resource recovery system

(a) For purposes of this section:

"Hazardous waste" has the meaning set forth in IC 13-11-2-99(a) and includes a waste determined to be a hazardous waste under IC 13-22-2-3(b).

"Resource recovery system" means tangible property directly used to dispose of solid waste or hazardous waste by converting it into energy or other useful products.

"Solid waste" has the meaning prescribed by IC 13-11-2-205(a) but does not include dead animals or any animal solid or semisolid wastes.

(b) If for federal income tax purposes a taxpayer is allowed a depreciation deduction for a particular taxable year with respect to a resource recovery system, and if the resource recovery system processes solid waste or hazardous waste, the taxpayer is entitled to a deduction from his gross income for that same taxable year. The amount of the deduction equals the total depreciation deductions that the taxpayer is allowed, with respect to the system, for that taxable year under Sections 167 and 179 of the Internal Revenue Code.

(c) Notwithstanding subsection (b), a taxpayer is not entitled to the deduction provided

by this section for a particular taxable year with respect to a resource recovery system that is directly used to dispose of hazardous waste if during that taxable year the taxpayer:

(1) is convicted of any violation under IC 13-7-13-3 (before its repeal), IC 13-7-13-4 (before its repeal), or IC 13-30-6; or

(2) is subject to an order or consent decree based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous wastes that had a major or moderate potential for harm.

[As amended by: P.L.1-1999, §15.]

IC 6-2.5-5. EXEMPT TRANSACTIONS OF A RETAIL MERCHANT

IC 6-2.5-5-16 --------- Certain transactions of solid waste management district and other political entities exempt from state sales (gross retail) tax

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

(1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); and

(2) predominantly uses the property, commodities, or service to perform its governmental functions.

[As amended by P.L.1-1996, §45.]

IC 6-3-2. IMPOSITION OF TAX AND DEDUCTIONS

IC 6-3-2-3.1 ---------- Income of solid waste management districts and certain other entities exempt from adjusted gross income tax

(a) Except as otherwise provided in subsection (b), income is not exempt from the adjusted gross income tax, or the supplemental net income tax, under section 2.8(1) of this chapter if the income is derived by the exempt organization from an unrelated trade or business, as defined in Section 513 of the Internal Revenue Code.

(b) This section does not apply to:

(1) the United States government;

(2) an agency or instrumentality of the United States government;

(3) this state;

(4) a state agency, as defined in IC 34-6-2-141;

(5) a political subdivision, as defined in IC 34-6-2-110; or

(6) a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal).

[As amended by: P.L.1-1998, §78.]

IC 6-3.1-23. VOLUNTARY REMEDIATION TAX CREDIT [EFFECTIVE 1/1/2002]

IC 6-3.1-23-1 --------- Voluntary remediation tax credit: "brownfield" defined [Effective 1/1/2002]

As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-2 --------- Voluntary remediation tax credit: "pass through entity" defined [Effective 1/1/2002]

As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-3 --------- Voluntary remediation tax credit: "qualified investment" defined [Effective 1/1/2002]

As used in this chapter, "qualified investment" means costs that:

(1) are incurred to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;

(2) may not be recovered by a taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; and

(3) are approved by the department of environmental management and the Indiana development finance authority under section 12 of this chapter.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-4 --------- Voluntary remediation tax credit: "state tax liability" defined [Effective 1/1/2002]

As used in this chapter, "state tax liability" means a taxpayer's total tax liability incurred under:

(1) IC 6-2.1 (the gross income tax);

(2) IC 6-2.5 (the state gross retail and use tax);

(3) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(4) IC 6-3-8 (the supplemental net income tax);

(5) IC 6-5-10 (the bank tax);

(6) IC 6-5-11 (the savings and loan association tax);

(7) IC 6-5.5 (the financial institutions tax); and

(8) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-5 --------- Voluntary remediation tax credit: requirements [Effective 1/1/2002]

(a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

(1) The taxpayer does the following:

(A) Makes a qualified investment in that taxable year.

(B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties.

(C) Submits a plan to the legislative body of the political subdivision in which the property is located to redevelop the property in a manner in which the legislative body determines to be in the best interest of the community.

(2) The legislative body of the political subdivision in which the property is located

adopts a resolution under section 7 of this chapter approving the credit.

(3) The department determines under section 15 of this chapter that the taxpayer's return claiming the credit is filed with the department before the maximum amount of credits allowed under this chapter is met.

(b) The redevelopment plan must include a statement of public benefits, which must include the following:

(1) A description of the proposed redevelopment.

(2) An estimate of the number of individuals who will be employed or housed in the new development and an estimate of the annual salaries of the employees.

(c) In determining whether the redevelopment is in the best interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:

(1) the development of low to moderate income housing;

(2) the development of green space;

(3) the development of high technology businesses; or

(4) the creation or retention of high paying jobs.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-6 --------- Voluntary remediation tax credit: amount allowed [Effective 1/1/2002]

The amount of the credit allowed under this chapter is equal to the lesser of:

(1) one hundred thousand dollars ($100,000); or

(2) ten percent (10%) multiplied by the qualified investment made by the taxpayer during the taxable year.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-7 --------- Voluntary remediation tax credit: approval [Effective 1/1/2002]

After the submission of a statement of benefits under section 5 of this chapter, the legislative body may adopt a resolution to approve a tax credit.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-8 --------- Voluntary remediation tax credit: notice [Effective 1/1/2002]

Before adopting a resolution under section 7 of this chapter, a legislative body must publish notice of the proposed resolution and the public hearing required under section 9 of this chapter in accordance with IC 5-3-1. The published notice must contain the substance of the proposed resolution.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-9 --------- Voluntary remediation tax credit: public hearing [Effective 1/1/2002]

Before adopting a resolution under section 7 of this chapter, the legislative body must review the statement of benefits required under section 5 of this chapter and conduct a public hearing on the proposed tax credit.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-10 ------- Voluntary remediation tax credit: findings required for approval of credit [Effective 1/1/2002]

(a) The legislative body shall determine whether to approve a tax credit allowed under this chapter.

(b) A legislative body may approve a credit only if the following findings are made in the affirmative:

(1) The taxpayer:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority.

(2) The proposed improvement or property will be located in a zone (as defined in IC 6-1.1-42-4).

(3) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(4) The estimate of the number of individuals who will be housed or employed or whose employment will be retained can be reasonably expected to result from the proposed remediation and redevelopment.

(5) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed remediation and redevelopment.

(6) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed remediation and redevelopment.

(7) The totality of benefits is sufficient to justify the credit.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-11 ------- Voluntary remediation tax credit: carryover [Effective 1/1/2002]

(a) If the amount determined under section 6 of this chapter in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over for not more than the immediately following five (5) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or a refund of any unused credit.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-12 ------- Voluntary remediation tax credit: predetermination as qualified investments [Effective 1/1/2002]

(a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) The department of environmental management and the Indiana development finance authority shall certify costs incurred in a voluntary remediation as a qualified investment to the extent that the costs:

(1) result from work performed in Indiana to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;

(2) may not be recovered by the taxpayer from another person after the taxpayer has made a good faith effort to recover the costs; and

(3) result in taxable income to any other Indiana taxpayer;

as determined under the standards adopted by the department of environmental management.

(d) Upon completion of a voluntary remediation that has been certified as a qualified investment under subsection (c), the taxpayer shall notify the department of environmental management and request certification of the completion of the voluntary remediation.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-13 ------- Voluntary remediation tax credit: claiming on tax return [Effective 1/1/2002]

(a) To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

(b) The taxpayer shall submit the following to the department of state revenue:

(1) The certification of the qualified investment by the department of environmental management and the Indiana development finance authority and the certification of the completion of the voluntary remediation by the department of environmental management.

(2) Proof of payment of the certified qualified investment.

(3) Proof of the legislative body's approval of the credit.

(4) Information that the department determines is necessary for the calculation of the credit provided by this chapter.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-14 ------- Voluntary remediation tax credit: procedure if pass through entity does not have state tax liability against which to apply credit [Effective 1/1/2002]

(a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, a partner, or a member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-15 ------- Voluntary remediation tax credit: general procedures [Effective 1/1/2002]

(a) The amount of tax credits allowed under this chapter may not exceed one million dollars ($1,000,000) in a state fiscal year unless the Indiana development finance authority determines under subsection (e) that money is available for additional tax credits in a particular state fiscal year. However, if the maximum amount of tax credits allowed under this subsection exceeds the amount available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5), the maximum amount of tax credits allowed under this subsection is reduced to the amount available.

(b) The department shall record the time of filing of each return claiming a credit under section 13 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in the chronological order in which the return is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, a return claiming the credit filed later in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the information required by section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits granted under this chapter for each state fiscal year to the Indiana development finance authority. The Indiana development finance authority shall transfer to the state general fund an amount equal to the total credits granted from the subaccount of the environmental remediation revolving loan fund (IC 13-19-5).

(e) At the end of each state fiscal year, the Indiana development finance authority may determine whether money is available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5) to provide tax credits in excess of the amount set forth in subsection (a) in the subsequent state fiscal year.

(f) Before December 31 of each year, the Indiana development finance authority may assess the demand for tax credits under this chapter and determine whether the need for other brownfield activities is greater than the need for tax credits. If the Indiana development finance authority determines that the need for other brownfield activities is greater than the need for tax credits, the authority may set aside up to three-fourths (3/4) of the amount of allowable tax credits for the subsequent state fiscal year and use it for other brownfield projects.

(g) Except as provided in subsection (h), the Indiana development finance authority may use money set aside under subsection (f) for any permissible purpose.

(h) Money specifically appropriated for tax credits may not be set aside for another use.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-16 ------- Voluntary remediation tax credit: tax credit not allowed for taxable year beginning after 12/31/03 [Effective 1/1/2002]

A tax credit may not be allowed under this chapter for a taxable year that begins after December 31, 2003. However, this section does not affect the ability of a taxpayer to carry forward the excess of a tax credit claimed for taxable years 2002 or 2003 under section 11 of this chapter.

[As added by: P.L.109-2001,§1]

IC 6-3.1-23-17 ------- Voluntary remediation tax credit: development finance authority may adopt nonrule guidelines [Effective 1/1/2002]

The Indiana development finance authority, after consulting with the department of environmental management and the budget agency and without complying with IC 4-22-2, may adopt guidelines to govern the administration of this chapter.

[As added by: P.L.109-2001,§1]

IC 6-3.5-1.1. COUNTY ADJUSTED GROSS INCOME TAX

IC 6-3.5-1.1-1 -------- County adjusted gross income tax: definitions

As used in this chapter:

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5(a), except that in the case of a county taxpayer who is not a resident of a county that has imposed the county adjusted gross income tax, the term includes only adjusted gross income derived from his principal place of business or employment.

"Civil taxing unit" means any entity having the power to impose ad valorem property taxes except a school corporation. The term does not include a solid waste management district that is not entitled to a distribution under section 1.3 of this chapter. However, in the case of a consolidated city, the term "civil taxing unit" includes the consolidated city and all special taxing districts, all special service districts, and all entities whose budgets and property tax levies are subject to review under IC 36-3-6-9.

"County council" includes the city-county council of a consolidated city.

"County taxpayer" as it relates to a county for a year means any individual:

(1) who resides in that county on the date specified in section 16 of this chapter; or

(2) who maintains his principal place of business or employment in that county on the date specified in section 16 of this chapter and who does not on that same date reside in another county in which the county adjusted gross income tax, the county option income tax, or the county economic development income tax is in effect.

"Department" refers to the Indiana department of state revenue.

"Nonresident county taxpayer" as it relates to a county for a year means any county taxpayer for that county for that year who is not a resident county taxpayer of that county for that year.

"Resident county taxpayer" as it relates to a county for a year means any county taxpayer who resides in that county on the date specified in section 16 of this chapter.

"School corporation" means any public school corporation established under Indiana law.

[As amended by: P.L.96-1995, §1.]

IC 6-3.5-1.1-1.3 ----- County adjusted gross income tax: limitation on distribution to solid waste management district

(a) This section applies to a county solid waste management district (as defined in IC 13-11-2-47) or a joint solid waste management district (as defined in IC 13-11-2-113).

(b) A district may not receive a distribution under this chapter unless a majority of the members of each of the county fiscal bodies of the counties within the district passes a resolution approving the distribution.

(c) A resolution passed by a county fiscal body under subsection (b) may:

(1) expire on a date specified in the resolution; or

(2) remain in effect until the county fiscal body revokes or rescinds the resolution.

[As amended by: P.L.70-2001, §1.]

IC 6-3.5-6. COUNTY OPTION TAX

IC 6-3.5-6-1 ---------- County option tax: definitions

As used in this chapter:

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5. However, in the case of a county taxpayer who is not treated as a resident county taxpayer of a county, the term includes only adjusted gross income derived from his principal place of business or employment.

"Civil taxing unit" means any entity, except a school corporation, that has the power to impose ad valorem property taxes. The term does not include a solid waste management district that is not entitled to a distribution under section 1.3 of this chapter. However, in the case of a county in which a consolidated city is located, the consolidated city, the county, all special taxing districts, special service districts, included towns (as defined in IC 36-3-1-7), and all other political subdivisions except townships, excluded cities (as defined in IC 36-3-1-7), and school corporations shall be deemed to comprise one (1) civil taxing unit whose fiscal body is the fiscal body of the consolidated city.

"County income tax council" means a council established by section 2 of this chapter.

"County taxpayer", as it relates to a particular county, means any individual:

(1) who resides in that county on the date specified in section 20 of this chapter; or

(2) who maintains his principal place of business or employment in that county on the date specified in section 20 of this chapter and who does not reside on that same date in another county in which the county option income tax, the county adjusted income tax, or the county economic development income tax is in effect.

"Department" refers to the Indiana department of state revenue.

"Fiscal body" has the same definition that the term is given in IC 36-1-2-6.

"Resident county taxpayer", as it relates to a particular county, means any county taxpayer who resides in that county on the date specified in section 20 of this chapter.

"School corporation" has the same definition that the term is given in IC 6-1.1-1-16.

[As amended by: P.L.96-1995, §3.]

IC 6-3.5-6-1.3 -------- County option tax: limitation on distribution to solid waste management district

(a) This section applies to a county solid waste management district (as defined in IC 13-11-2-47) or a joint solid waste management district (as defined in IC 13-11-2-113).

(b) A district may not receive a distribution under this chapter unless a majority of the members of each of the county fiscal bodies of the counties within the district passes a resolution approving the distribution.

(c) A resolution passed by a county fiscal body under subsection (b) may:

(1) expire on a date specified in the resolution; or

(2) remain in effect until the county fiscal body revokes or rescinds the resolution.

[As amended by: P.L.70-2001, §2.]

IC 6-6-6.6. HAZARDOUS WASTE DISPOSAL TAX

IC 6-6-6.6-1 ---------- Hazardous waste disposal tax: definitions

For the purposes of this chapter:

"Department" means the department of state revenue.

"Disposal" means all forms of disposal in or on the land, including underground injection.

"Disposal facility" means a site where hazardous wastes are disposed of in or on the land, including a site associated with, within, or adjacent to facilities generating the waste.

"Hazardous substance" has the meaning set forth in IC 13-11-2-98.

"Hazardous waste" has the meaning set forth in IC 13-11-2-99(a) and includes any waste that:

(1) meets the definition in IC 13-11-2-99(a);

(2) is determined to be hazardous under the criteria developed under IC 13-22-2-3(a); or

(3) is included on the list compiled and maintained by the solid waste management board under IC 13-22-2-3(b).

"Remedial action" has the meaning set forth in IC 13-11-2-185.

"Removal" has the meaning set forth in IC 13-11-2-187.

"Taxable hazardous waste" means:

(1) any waste determined to be a hazardous waste under IC 13-22-2-3 and not excluded under IC 13-22-2-3(b) or IC 13-22-2-3(d); and

(2) wastes that are disposed of by underground injection that would constitute hazardous wastes under IC 13-22-2-3 if they were not included in discharges that are subject to permits under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1342).

Taxable hazardous waste does not include natural agricultural waste.

"Ton" means a short ton.

[As amended by: P.L.1-1996, §52.]

IC 6-6-6.6-2 ---------- Hazardous waste disposal tax: imposition of tax

(a) A tax is imposed on the disposal of taxable hazardous waste in a disposal facility in Indiana. Except as provided in subsection (b) the amount of tax for each ton of taxable hazardous waste that is disposed of in a disposal facility is $11.50 per ton

If a taxable hazardous waste is mixed with or dissolved or suspended in water or another liquid at the time of its disposal, the entire mixture, solution, or suspension disposed of is taxable hazardous waste for purposes of assessing the tax. However, the maximum liability of a taxpayer for the disposal of taxable hazardous wastes by underground injection during a calendar year shall be twenty-five thousand dollars ($25,000). The operator of the disposal facility in which taxable hazardous waste is disposed of shall be liable for the tax imposed by this chapter. The tax imposed by this chapter does not apply to the treatment or storage of taxable hazardous waste in a disposal facility.

(b) The amount of tax for each ton of taxable hazardous waste that is generated outside of Indiana and disposed of in a disposal facility in Indiana is the greater of:

(1) the amount of tax prescribed by subsection (a); or

(2) the amount of the tax or fee imposed on out-of-state hazardous waste by the state from which the taxable hazardous waste originated.

(c) The tax imposed under this section shall be based on the total tonnage of taxable hazardous waste disposed of at a disposal facility.

(d) A person subject to the levy imposed by this section shall pay the tax quarterly and file quarterly returns with the department in the manner and at the times prescribed by the department.

(e) The tax established by this chapter is a listed tax under IC 6-8.1.

[As amended by: P.L.28-1997, §23.]

IC 6-6-6.6-3 ---------- Hazardous waste disposal tax: distribution and uses of tax

(a) Seventy-five percent (75%) of the revenue produced by the levy imposed under section 2 of this chapter shall be deposited in the hazardous substances response trust fund established under IC 13-25-4-1 and twenty-five percent (25%) of the revenue shall be paid over to the county in which the disposal facility is located.

(b) Except as provided in subsection (e), the revenue paid over to the county under subsection (a) shall be deposited in a separate fund established by the county for the purposes of the following:

(1) Establishing monitoring wells on land near the site of the disposal facility.

(2) Analyzing samples from the monitoring wells established under subdivision (1).

(3) Conducting other types of testing and surveillance for hazardous waste contamination of land near the disposal facility.

(4) Providing training for county and local public health and public safety officers in the proper procedures for dealing with emergencies involving hazardous substances or hazardous waste.

(5) Providing special clothing and equipment needed by county and local public health and public safety officers for dealing with emergencies involving hazardous substances or hazardous waste.

(6) Funding research on alternatives to land disposal as a means of eliminating hazardous waste.

(7) Paying the cost of hazardous waste, hazardous substance, or solid waste removal and remedial action at a site located within the county.

(8) Meeting the county's requirements under IC 13-21 for the planning and implementation of a solid waste management district plan.

(9) Paying the costs associated with the construction or rehabilitation of a facility used for training described in subdivision (4).

(10) Paying the costs associated with any other project that has identifiable environmental benefits.

(c) The county fund established under subsection (b) shall be administered by the county treasurer, and the expenses of administering the fund shall be paid from money in the fund. Money in the fund not currently needed to meet the obligations of the fund may be invested in the same manner as other public funds may be invested. Interest that accrues from these

investments shall be deposited in the fund. Money in the fund at the end of a particular fiscal year does not revert to the county general fund.

(d) No money in the county fund established under subsection (b) shall be used for activities authorized in subsection (b)(8) until the purposes listed in subsection (b)(1) through (b)(7) have been fulfilled.

(e) Subsections (b)(9) and (b)(10) of this section do not apply to a county having a population of more than 300,000 but less than 400,000.

[As amended by: P.L.101-2001, §1.]

IC 6-6-10. LOCAL EMERGENCY PLANNING AND RIGHT TO KNOW FUND

IC 6-6-10-1 ---------- Local emergency planning: SARA defined

As used in this chapter, "SARA" refers to the Superfund Amendments and Reauthorization Act of 1986 (P.L.99-499).

[As added by: P.L.70-1988, §1.]

IC 6-6-10-2 ---------- Local emergency planning: emergency and hazardous chemical inventory form defined

As used in this chapter, "emergency and hazardous chemical inventory form" has the meaning set forth in 42 U.S.C. 11022.

[As added by: P.L.70-1988, §1.]

IC 6-6-10-2.2 --------- Local emergency planning: emergency response commission defined

As used in this chapter, "emergency response commission" refers to the state emergency response commission appointed by the governor in compliance with 42 U.S.C. 11001(a).

[As added by: P.L.61-1990, §1.]

IC 6-6-10-3 ---------- Local emergency planning: facility defined

As used in this chapter, "facility" has the meaning set forth in 42 U.S.C. 11049(4).

[As added by: P.L.70-1988, §1.]

IC 6-6-10-4 ---------- Local emergency planning: hazardous chemical defined

As used in this chapter, "hazardous chemical" has the meaning set forth in 42 U.S.C. 11022(c).

[As added by: P.L.70-1988, §1.]

IC 6-6-10-4.2 --------- Local emergency planning: local emergency planning committee defined

As used in this chapter, "local emergency planning committee" refers to a local emergency planning committee of a county appointed by the emergency response commission in compliance with 42 U.S.C. 11001(a).

[As added by: P.L.61-1990, §2.]

IC 6-6-10-5 ---------- Local emergency planning: local emergency planning and right to know fund established

The local emergency planning and right to know fund is established for the purpose of providing each county with funds to help implement Title III of SARA (42 U.S.C. 11001 et seq.). The department of state revenue shall administer the fund. The fund consists of:

(1) revenue produced by the fee imposed under section 6 of this chapter; and

(2) accrued interest and other investment earnings of the fund.

[As added by: P.L.70-1988, §1.]

IC 6-6-10-6 ---------- Local emergency planning: computation of fee required

(a) Each year a fee is imposed on a facility that must submit an emergency and hazardous chemical inventory form. The amount of the fee is as follows:

(1) For a facility in which at least one million (1,000,000) pounds of any hazardous chemical was present at one (1) time during the year preceding the year in which the fee is imposed, a fee of two hundred dollars ($200).

(2) For a facility in which, in the year preceding the year in which the fee is imposed, one (1) or more hazardous chemicals were present in amounts exceeding the threshold quantities established under 42 U.S.C. 11022(b), but the total amount of any hazardous chemical present did not at any one (1) time equal or exceed one million (1,000,000) pounds, a fee of one hundred dollars ($100).

(3) For a facility that contains underground storage tanks (as defined in IC 13-11-2-241) and was subject to the reporting requirement in 42 U.S.C. 6991a(a), but in which, in the year preceding the year in which the fee is imposed, no hazardous chemicals were present in amounts exceeding the threshold quantities established under 42 U.S.C. 11022(b), (other than substances stored in underground storage tanks that must be reported under 42 U.S.C. 6991a(a)), a fee of fifty dollars ($50).

(b) A facility subject to the fee imposed by this section shall file annual returns with the department of state revenue in a manner and at a time provided by the department of state revenue.

[As amended by: P.L.1-1996, §54.]

IC 6-6-10-7 ---------- Local emergency planning: distribution of money in the emergency planning and right to know fund

(a) Before July 1 of each year, the department of state revenue shall distribute the money in the emergency planning and right to know fund as follows:

(1) Ten percent (10%) allocated to the emergency response commission and administered by the state emergency management agency to be used to enhance communication among local emergency planning committees and between local emergency planning committees and the emergency response commission in order to strengthen joint hazardous material incident response capabilities. Money received as an allocation under this subdivision does not revert to the state general fund at the end of a state fiscal year.

(2) The distribution to the hazardous substance response fund established by IC 13-25-4-1 that is authorized for the year by the general assembly.

(3) A distribution of the remaining money as follows:

(A) To each county, two thousand five hundred dollars ($2,500).

(B) To each county, an additional distribution in an amount determined in STEP TWO of the following formula:

STEP ONE: Divide the amount available for distribution by the number of annual returns filed under section 6(b) of this chapter in the calendar year preceding the distribution.

STEP TWO: Multiply the quotient determined in STEP ONE by the number of facilities located in each county.

The department of state revenue may make a distribution to a county under this subdivision only after receiving notice from the emergency response commission that the local emergency planning committee for the county has met the requirements of IC 13-25-1-6(b).

(b) The revenue distributed to the county under this section shall be deposited in a separate fund established by the county for the purpose of:

(1) preparing and updating a comprehensive emergency response plan required under 42 U.S.C. 11003 for the county or emergency planning district;

(2) establishing and implementing procedures for receiving and processing requests

from the public for information about hazardous chemicals under Title III of SARA (42 U.S.C. 11001 et seq.);

(3) training for emergency response planning, information management, and hazardous materials incident response;

(4) equipping a hazardous materials response team that provides at least a district wide emergency planning response if the equipment purchased is consistent with current training levels of the response team members;

(5) purchasing communication equipment for a local emergency planning committee's administrative use;

(6) paying an optional stipend to local emergency planning committee members who attend regularly scheduled meetings at which a quorum is present in an amount:

(A) determined by a majority of the local emergency planning committee membership; and

(B) that is not more than twenty dollars ($20) per member per meeting; and

(7) paying for Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the Indiana emergency response commission.

However, revenue distributed to a county under this section may be used for the purpose set forth in subdivisions (3) through (7) only if the local emergency planning committee appointed for the county has prepared and submitted to the emergency response commission an emergency plan that meets the requirements of 42 U.S.C. 11003(a) and has received approval for the training programs from the emergency response commission.

(c) The fund established under subsection (b) shall be administered by the county executive. The expenses of administering the fund shall be paid from money in the fund. Money in the fund not currently needed to meet the obligations of the fund may be invested in the same manner as other public funds. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of the fiscal year remains in the fund and does not revert to any other fund.

(d) Money shall be appropriated by a county fiscal body (as defined in IC 36-1-2-6) from a fund established under subsection (b) upon the receipt by the county fiscal body of the local emergency planning committee's spending plan. The spending plan must:

(1) have been approved by a majority of the members of the local emergency planning committee; and

(2) conform with the provisions of this chapter.

The county fiscal body may not appropriate money from the fund established under subsection (b) for any person or purpose other than the local emergency planning committee.

(e) All equipment, apparatus, and supplies purchased with money from a fund established under subsection (b) remains under the direction and control of the local emergency planning committee.

[As amended by: P.L.66-1997, §1.]

IC 6-6-10-8 ---------- Local emergency planning: annual reports

Each year, a local emergency planning committee shall submit to the emergency response commission a report that describes the expenditures of the local emergency planning committee in the preceding year that were paid for with money distributed under section 7 of this chapter.

[As added by: P.L.101-1995, §2.]

IC 6-6-10-9 ---------- Local emergency planning: grounds to withhold local funding

The emergency response commission may withhold a local emergency planning committee's funding for failure to provide annually to the commission one (1) of the following:

(1) The report required under section 8 of this chapter.

(2) Proof of published legal notice required under SARA.

(3) An updated version of the local emergency planning committee's emergency preparedness plan as required under SARA.

(4) A copy of the current bylaws of the local emergency planning committee as required by SARA.

(5) Evidence of an exercise of the response plan required under SARA.

(6) A roster of the current membership of the local emergency planning committee as required under IC 13-25-1-6(b)(2).

(7) Minutes of the local emergency planning committee meetings conducted at least two (2) times, on separate days, every six (6) months as required under IC 13-25-1-6(b)(3).

[As amended by: P.L.92-2001, §1.]

IC 6-8.1-1. TAX ADMINISTRATION: DEFINITIONS AND APPLICABILITY

IC 6-8.1-1-1 ---------- Listed taxes defined

"Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the municipal option income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the bank tax (IC 6-5-10); the savings and loan association tax (IC 6-5-11); the production credit association tax (IC 6-5-12); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.

[As amended by: P.L.151-2001, §7.]

TITLE 10. STATUTES CONCERNING EMERGENCY MANAGEMENT THAT ARE RELEVANT TO IDEM

IC 10-8-3. TRANSPORTATION OF HIGH LEVEL RADIOACTIVE WASTE

IC 10-8-3-1 ---------- Transportation of high level radioactive waste: applicability

(a) This chapter applies to high level radioactive waste transported to or from facilities sited, constructed, or operated in accordance with the federal Nuclear Waste Policy Act of 1982.

(b) This chapter does not apply to radioactive materials shipped by or for the federal government for:

(1) military;

(2) national security; or

(3) national defense;

purposes.

[As added by: P.L.143-1999, §1.]

IC 10-8-3-2 ---------- Transportation of high level radioactive waste: definitions

As used in this chapter, "high level radioactive waste" means:

(1) irradiated reactor fuel;

(2) liquid wastes resulting from the operation of a first cycle solvent extraction system, or its equivalent, and the concentrated wastes from a subsequent extraction cycle, or its equivalent, in a facility for reprocessing irradiated reactor fuel; and

(3) solids into which liquid wastes described in subdivision (1) have been converted.

[As added by: P.L.143-1999, §1.]

IC 10-8-3-3 ---------- Transportation of high level radioactive waste: notice and fee required

(a) Before a person may transport high level radioactive waste in Indiana, the person who is responsible for the shipment must submit the following to the director:

(1) A notice that includes:

(A) the highway or railway route, date, and time of the shipment of high level radioactive waste; and

(B) other information required under 10 CFR 71.5(a) and 10 CFR 73.37(f).

(2) A transportation fee of one thousand dollars ($1,000) for each total shipment of nuclear waste.

(b) The director shall deposit fees collected under this section in the nuclear response fund established by section 6 of this chapter.

[As added by: P.L.143-1999, §1.]

IC 10-8-3-4 ---------- Transportation of high level radioactive waste: emergency response plan

(a) The director shall consult with:

(1) the state health commissioner of the state department of health;

(2) the commissioner of the Indiana department of transportation;

(3) the commissioner of the department of environmental management;

(4) the director of the department of natural resources;

(5) the superintendent of the state police department;

(6) representatives of the:

(A) United States Nuclear Regulatory Commission;

(B) Federal Emergency Management Agency;

(C) United States Department of Energy; and

(D) United States Department of Transportation; and

(7) a representative of a local emergency management agency designated by the director;

to prepare a plan for emergency response to a high level radioactive waste transportation accident in Indiana. The plan must include provisions for evacuation, containment, and cleanup and must designate the role of each state or local government agency involved in the emergency response plan.

(b) The director shall report to the general assembly each year on the:

(1) status of the plan prepared under subsection (a); and

(2) ability of the state to respond adequately to a high level radioactive waste transportation accident in Indiana.

[As added by: P.L.143-1999, §1.]

IC 10-8-3-5 ---------- Transportation of high level radioactive waste: highway and railway routes

(a) Under 49 CFR Part 177, the director may require preferred highway routes for transporting high level radioactive waste in Indiana if the director determines under United States Department of Transportation "Guidelines for Selecting Preferred Highway Routes for Large Quantity Shipments of Radioactive Materials" that alternative routes are safer than proposed routes.

(b) The director shall:

(1) annually review federally approved highway and railway routes for transporting high level radioactive waste in Indiana; and

(2) select new state designated routes in accordance with

49 CFR Part 177 if safety considerations indicate the alternate routes would be preferable.

(c) Before the director may require alternative routes under subsection (a) or select new state designated routes under subsection (b), the director must do the following:

(1) Consult with all of the persons described in section 4(a) of this chapter.

(2) Conduct or engage in substantial consultation with the affected local county authorities.

(3) Notify the:

(A) state health commissioner of the state department of health;

(B) commissioner of the department of environmental management;

(C) superintendent of the state police department; and

(D) local emergency management agency and applicable local fire and law enforcement agencies in each affected county;

of the director's final decision concerning an alternative route or a new state designated route before the date upon which the alternative route or new state designated route takes effect.

(4) If the director wishes to change the route of a railway shipment of high level radioactive waste, the director must notify the United States Department of Energy and the appropriate rail carrier of any changes the director feels should be made to the route.

(d) The state does not incur any liability by requiring alternate routes to be used as provided under this section.

[As added by: P.L.143-1999, §1.]

IC 10-8-3-6 ---------- Transportation of high level radioactive waste: nuclear response fund established

(a) The nuclear response fund is established to provide appropriate education, training, and equipment to local emergency responders in counties that will be affected by the transportation of high level radioactive waste under this chapter.

(b) Sources of money for the fund consist of transportation fees deposited under section 3(b) of this chapter.

(c) The state emergency management agency shall administer the fund. Money in the fund is annually appropriated to the state emergency response commission to be used for purposes described in subsection (a).

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

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

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

[As added by: P.L.143-1999, §1.]

IC 10-8-3-7 ---------- Transportation of high level radioactive waste: limitations on disclosure

This chapter does not require the disclosure of defense information or restricted data (as defined in the federal Atomic Energy Act of 1954 (42 U.S.C. 2014)).

[As added by: P.L.143-1999, §1.]

IC 10-8-3-8 ---------- Transportation of high level radioactive waste: SEMA may adopt rules

The state emergency management agency may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.143-1999, §1.]

TITLE 13. ENVIRONMENT
IC 13-11. DEFINITIONS

IC 13-11-1. GENERAL PROVISIONS

IC 13-11-1-1 ---------- General provisions: applicability of IC 13-11 definitions

Except as otherwise provided, the definitions in this article apply throughout this title.

[As added by: P.L.1-1996, §1.]

IC 13-11-1-2 ---------- General provisions: applicability of IC 36-1-2 definitions

The definitions in IC 36-1-2 apply to the following:

(1) IC 13-20-3.

(2) IC 13-20-22.

(3) IC 13-21.

[As added by: P.L.1-1996, §1.]

IC 13-11-1-3 ---------- General provisions: nonapplicability of IC 13-11 definitions

Except as otherwise provided, the definitions in this article do not apply to the following:

(1) IC 13-29-1.

(2) IC 13-29-2.

[As added by: P.L.1-1996, §1.]

IC 13-11-2. DEFINITIONS

IC 13-11-2-0.5 ------- Definitions: abatement

(a) "Abatement", for purposes of IC 13-17-14, means any measure or set of measures designed to permanently eliminate lead-based paint hazards. The term includes the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

[As added by: P.L.123-1997, §1.]

IC 13-11-2-1 ---------- Definitions: active area

"Active area", for purposes of IC 13-20-10, means:

(1) the raw compostable matter storage area;

(2) the composting matter area;

(3) the compost curing area; or

(4) the compost storage area;

of a composting facility for vegetative matter.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-1.5 ------- Definitions: acute hazardous waste [Effective 1/1/2002]

"Acute hazardous waste", for purposes of IC 13-22-4-3.1, has the meaning set forth in 40 CFR Part 261.

[As amended by: P.L.1-2001, §10.]

IC 13-11-2-2 ---------- Definitions: administrator

"Administrator" refers to the administrator of the United States Environmental Protection Agency.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-3 ---------- Definitions: air contaminant

"Air contaminant", for purposes of air pollution control laws, means:

(1) dust;

(2) fumes;

(3) gas;

(4) mist;

(5) smoke;

(6) vapor; or

(7) any combination of the items described in subdivisions (1) through (6).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-4 ---------- Definitions: air contaminant source

(a) "Air contaminant source", for purposes of air pollution control laws, means all sources of emission of air contaminants, whether privately or publicly owned or operated.

(b) The term includes the following:

(1) All types of business, commercial and industrial plants, works, shops, stores, heating plants, powerplants, and power stations.

(2) Buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings.

(3) Automobiles, trucks, tractors, buses, and other motor vehicles.

(4) Garages.

(5) Vending and service locations and stations and railroad locomotives.

(6) Ships, boats, and other watercraft.

(7) Portable fuel-burning equipment.

(8) Incinerators of all types, indoor and outdoor.

(9) Refuse dumps and piles.

(10) All stack and other chimney outlets from any of the items described in subdivisions (1) through (9).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-5 ---------- Definitions: air pollution

"Air pollution", for purposes of air pollution control laws and environmental management laws, means the presence in or the threatened discharge into the atmosphere of one (1) or more contaminants in sufficient quantities and of the characteristics and duration that:

(1) is injurious to or threatens to be injurious to human health, plant or animal life, or property; or

(2) interferes unreasonably with the enjoyment of life or property.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-6 ---------- Definitions: air pollution control laws

"Air pollution control laws" refers to IC 13-17, except for the following:

(1) IC 13-17-3-15.

(2) IC 13-17-7.

(3) IC 13-17-8-10.

(4) IC 13-17-9.

(5) IC 13-17-10.

(6) IC 13-17-11.

(7) IC 13-17-13.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-7 ---------- Definitions: alternative PCB technology

"Alternative PCB technology", for purposes of IC 13-17-10, means a technology for the treatment and disposal of PCB that presents:

(1) an actual; or

(2) a potential;

alternative to incineration.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-7.5 ------- Definitions: antique

"Antique", for purposes of IC 13-20-17.5, refers to a product manufactured before 1980.

[As added by: P.L.255-2001, §1.]

IC 13-11-2-8 ---------- Definitions: applicant

(a) "Applicant", for purposes of IC 13-19-4, means an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) receives, for commercial purposes, solid or hazardous waste generated offsite for storage, treatment, processing, or disposal; and

(2) applies for the issuance, renewal, transfer, or major modification of a permit described in IC 13-15-1-3 other than a post-closure permit or an emergency permit.

(b) "Applicant", for purposes of IC 13-20-2, means an individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

(c) For purposes of subsection (a), "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) generates solid or hazardous waste; and

(2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:

(A) owned by the individual, corporation, partnership, or business association; and

(B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-9 ---------- Definitions: application

"Application", for purposes of IC 13-15-4 and IC 13-15-12, means an application for a:

(1) permit; or

(2) determination related to a permit;

that is described in IC 13-15-4-1.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-10 -------- Definitions: asbestos

"Asbestos", for purposes of IC 13-17-6, means an asbestiform variety of the following:

(1) Chrysotile (serpentine).

(2) Crocidolite (riebeckite).

(3) Amosite (cummingtonite-grunerite).

(4) Anthophyllite.

(5) Tremolite.

(6) Actinolite.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-11 -------- Definitions: asbestos containing material

(a) "Asbestos containing material", for purposes of IC 13-17-6, means material that contains more than one percent (1%) asbestos by area and that:

(1) is friable; or

(2) has a reasonable probability of becoming friable in the course of ordinary or anticipated use of the building containing the material.

(b) The term does not include asbestos containing resilient floor covering materials, including:

(1) sheet vinyl flooring;

(2) resilient tile; and

(3) associated adhesives;

unless the materials are sanded, beadblasted, or mechanically pulverized so that visible asbestos emissions are discharged.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-12 -------- Definitions: asbestos contractor

"Asbestos contractor", for purposes of IC 13-17-6, means an individual, a partnership, a corporation, a sole proprietorship, an unincorporated association, a franchise, an enterprise, or any other entity that enters into one (1) or more contracts providing for the individual or entity to engage in the inspection, management, or abatement of asbestos containing material for compensation.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-13 -------- Definitions: asbestos project

"Asbestos project", for purposes of IC 13-17-6, means an activity involving the:

(1) abatement;

(2) removal;

(3) renovation;

(4) enclosure;

(5) repair; or

(6) encapsulation;

of asbestos containing material.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-14 -------- Definitions: assistance

"Assistance", for purposes of IC 13-14-10-3, means supplies, materials, services, and equipment to:

(1) prevent the discharge of any contaminant; or

(2) control, contain, isolate, neutralize, remove, store, or dispose of any contaminant already discharged into or on the air, land, or waters of Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-15 -------- Definitions: assistant commissioner

"Assistant commissioner", for purposes of IC 13-27, refers to the individual appointed by the commissioner under IC 13-27-2-2 to the highest position in the division of pollution prevention.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-16 -------- Definitions: authority

(a) "Authority", for purposes of IC 13-22-10, refers to the Indiana hazardous waste facility site approval authority.

(b) "Authority", for purposes of IC 13-19-5, refers to the Indiana development finance authority created under IC 4-4-11.

[As amended by P.L.14-2001, §1.]

IC 13-11-2-17 -------- Definitions: board

(a) "Board", except as provided in subsections (b) through (j), refers to:

(1) the air pollution control board;

(2) the water pollution control board; or

(3) the solid waste management board.

(b) "Board", for purposes of IC 13-13-6, refers to the northwest Indiana advisory board.

(c) "Board", for purposes of IC 13-17, refers to the air pollution control board.

(d) "Board", for purposes of IC 13-18, refers to the water pollution control board.

(e) "Board", for purposes of:

(1) IC 13-19;

(2) IC 13-20, except IC 13-20-18;

(3) IC 13-22;

(4) IC 13-23, except IC 13-23-11;

(5) IC 13-24; and

(6) IC 13-25;

refers to the solid waste management board.

(f) "Board", for purposes of IC 13-20-18, refers to the board of managers of the Indiana

institute on recycling.

(g) "Board", for purposes of IC 13-21, refers to the board of directors of a solid waste management district.

(h) "Board", for purposes of IC 13-23-11, refers to the underground storage tank financial assurance board.

(i) "Board", for purposes of IC 13-26, refers to the board of trustees of a regional water, sewage, or solid waste district.

(j) "Board", for purposes of IC 13-27 and IC 13-27.5, refers to the clean manufacturing technology board.

[As amended by: P.L.124-1997, §1.]

IC 13-11-2-18 -------- Definitions: boards

"Boards" refers to all of the following:

(1) The air pollution control board.

(2) The water pollution control board.

(3) The solid waste management board.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-19 -------- Definitions: broker

"Broker", for purposes of IC 13-20-4 and IC 13-20-6, means a person who is in the business of making arrangements for the transportation of municipal waste that was generated by another person.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-19.3 ------ Definitions: brownfield

"Brownfield" means an industrial or a commercial parcel of real estate:

(1) that:

(A) is abandoned or inactive; or

(B) may not be operated at its appropriate use; and

(2) on which expansion or redevelopment is complicated;

because of the actual or perceived presence of a hazardous substance or petroleum released into the surface or subsurface soil or groundwater that poses a risk to human health and the environment.

[As added by: P.L.59-1997, §3.]

IC 13-11-2-19.5 ------ Definitions: budget agency

"Budget agency" refers to the budget agency created under IC 4-12-1-3.

[As added by: P.L.59-1997, §4.]

IC 13-11-2-20 -------- Definitions: business

"Business", for purposes of IC 13-27, means a person that carries on a business or commercial operation in Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-21 -------- Definitions: business organization

"Business organization", for purposes of IC 13-27, means an organization whose members include businesses.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-22 -------- Definitions: byproduct material

"Byproduct material", for purposes of IC 13-22-10, has the meaning set forth in section 11e. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)), as in effect on January 1, 1987.

[As amended by P.L.124-1996, §4.]

IC 13-11-2-23 -------- Definitions: care

"Care", for purposes of IC 13-29-1, means the continued observation of a facility after closure for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-24 -------- Definitions: CERCLA

"CERCLA", for purposes of IC 13-25-4, refers to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.), as in effect on January 1, 1987.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-25 -------- Definitions: chemical munition

"Chemical munition", for purposes of IC 13-22-3-10, means any of the following:

(1) GA (Ethyl-N, N-dimethyl

phosphoramidocyanidate).

(2) GB (Isopropyl methyl phosphonoflouridate).

(3) H, HD (Bis(2-chloroethyl) sulfide).

(4) HT (Sixty percent (60%) HD and forty percent (40%) T (Bis[2(2-chloroethylthio)ethyl]ester)).

(5) L (Dichloro(2-chlorovinyl)arsine).

(6) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phosphonothiolate).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-25.5 ------ Definitions: child-occupied facility

"Child-occupied facility", for purposes of lead-based paint activities and IC 13-17-14, means a building or a portion of a building that:

(1) was constructed before 1978;

(2) does not qualify as target housing (as defined in section 229.5 of this chapter); and

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

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

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

(C) The child's combined annual visits during a calendar year total at least sixty (60) hours.

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

[As added by: P.L.123-1997, §2.]

IC 13-11-2-25.7 ------ Definitions: claimant

"Claimant", as used in IC 13-23-8 and IC 13-23-9, refers to a person that submits a claim under IC 13-23-8-1.

[As added by: P.L.14-2001, §2.]

IC 13-11-2-26 -------- Definitions: class 2 modification

"Class 2 modification", for purposes of IC 13-22-12, refers to the modification classification system described under 40 CFR 270.42.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-27 -------- Definitions: class 3 modification

"Class 3 modification", for purposes of IC 13-22-12, refers to the modification classification system described under 40 CFR 270.42.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-27.6 ------ Definitions: clean manufacturing

(a) "Clean manufacturing", for purposes of IC 13-12, IC 13-27, and IC 13-27.5, means the employment by a manufacturer of a practice that:

(1) reduces the manufacturing use of toxic materials; or

(2) reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the:

(A) recycling;

(B) release;

(C) handling;

(D) storage;

(E) transport;

(F) treatment; or

(G) disposal;

of the waste.

(b) The term includes changes in production technology, materials, processes, operations, or procedures.

(c) The term does not include the following:

(1) A practice that is applied to an environmental waste after the waste:

(A) is generated or comes into existence; or

(B) exits a production unit or operation.

(2) Waste burning in:

(A) industrial furnaces;

(B) boilers;

(C) smelters; or

(D) cement kilns;

for purposes of energy recovery.

(3) Waste shifting.

(4) Offsite recycling.

(5) Onsite recycling, including the following:

(A) Inprocess recycling.

(B) Inline recycling.

(C) Out-of-process recycling.

(D) Closed loop recycling.

(E) Any other onsite recycling method.

(6) Any other method of end-of-pipe management of environmental wastes, including the following:

(A) Waste exchange.

(B) The incorporation or embedding of regulated environmental wastes into products or byproducts.

[As added by: P.L.124-1997, §2.]

IC 13-11-2-29 -------- Definitions: clean water act

"Clean Water Act", for purposes of IC 13-18-13, refers to:

(1) 33 U.S.C. 1251 et seq.; and

(2) regulations adopted under 33 U.S.C. 1251 et seq.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-30 -------- Definitions: cleaning

"Cleaning", for purposes of IC 13-18-12, means:

(1) removal of wastewater from sewage disposal systems; and

(2) other actions incidental to that removal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-31 -------- Definitions: coal mine permit

"Coal mine permit", for purposes of IC 13-18-20, refers to a National Pollutant Discharge Elimination System (NPDES) permit that involves the area on or beneath land used or distributed in activity related to the extraction, removal, or recovery of coal from natural deposits of coal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-31.3 ------ Definitions: combined sewage

"Combined sewage", for purposes of sections 31.4 and 31.6 of this chapter and IC 13-18, refers to a combination of wastewater (including domestic, commercial, or industrial wastewater) and storm water transported in a combined sewer or combined sewer system.

[As added by: P.L.140-2000, §1.]

IC 13-11-2-31.4 ------ Definitions: combined sewer

"Combined sewer", for purposes of sections 31.3, 31.6, and 120.5 of this chapter and IC 13-18, means a sewer that is designed, constructed, and used to receive and transport combined sewage.

[As added by: P.L.140-2000, §2.]

IC 13-11-2-31.5 ------ Definitions: combined sewer operational plan

"Combined sewer operational plan", for purposes of IC 13-18, means a plan that contains the minimum technology controls applicable to, and requirements for operation and maintenance of, a combined sewer system:

(1) before;

(2) during; and

(3) upon the completion of;

the implementation of a long term control plan.

[As added by: P.L.140-2000, §3.]

IC 13-11-2-31.6 ------ Definitions: combined sewer system

"Combined sewer system", for purposes of sections 31.3, 31.5, 43.5, 85.7, and 120.5 of this chapter and IC 13-18, means a system of combined sewers that:

(1) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and

(2) may contain one (1) or more overflow points that discharge combined sewage entering the publicly owned wastewater treatment plant when the hydraulic ca-

pacity of the system or part of the system is exceeded as a result of a wet weather event.

[As added by: P.L.140-2000, §4.]

IC 13-11-2-32 -------- Definitions: commercial hazardous waste facility

"Commercial hazardous waste facility", for purposes of IC 13-22-10, means a plant, structure, or site at which hazardous waste, generated by:

(1) a person other than the owner or operator of the plant, structure, or site; or

(2) the owner or operator of the plant, structure, or site as a result of treatment or storage of wastes generated by persons other than the owner or operator;

is received for treatment, storage, or disposal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-33 -------- Definitions: commercial low level radioactive waste facility

"Commercial low level radioactive waste facility", for purposes of IC 13-22-10, means a plant, structure, or site at which low level radioactive waste, generated by:

(1) a person other than the owner or operator of the plant, structure, or site; or

(2) the owner or operator of the plant, structure, or site as a result of treatment or storage of low level radioactive wastes generated by persons other than the owner or operator;

is received for treatment, storage, or disposal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-34 -------- Definitions: commission

(a) "Commission", for purposes of IC 13-25-1 and IC 13-25-2, refers to the Indiana emergency response commission.

(b) "Commission", for purposes of IC 13-29-1, means the Midwest Interstate Low-Level Radioactive Waste Commission.

(c) "Commission", for purposes of IC 13-29-2-2 through IC 13-29-2-7, refers to the Ohio River Valley Water Sanitation Commission.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-35 -------- Definitions: commissioner

(a) "Commissioner", except as provided in subsection (b), refers to the commissioner of the department of environmental management.

(b) "Commissioner", for purposes of IC 13-29-2-2 through IC 13-29-2-7, means a member of the Ohio River Valley Water Sanitation Commission.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-36 -------- Definitions: compact

"Compact", for purposes of IC 13-29-2-2 through IC 13-29-2-7, refers to the Ohio River Valley Water Sanitation Compact.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-37 -------- Definitions: compost

"Compost", for purposes of IC 13-20-10, means the product:

(1) produced by the process of composting vegetative matter and other types of organic material; and

(2) that may be used:

(A) as a soil conditioner;

(B) as a cover material for a solid waste landfill; or

(C) for another use approved by the department.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-38 -------- Definitions: composting

(a) "Composting", for purposes of IC 13-20-9 and IC 13-20-10, means the biological treatment process by which microorganisms decompose the organic component of vegetative matter and other types of organic material.

(b) "Composting", for purposes of IC 13-21, means an aerobic degradation process by which plant and other organic wastes decompose under controlled conditions to produce a usable product.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-38.5 ------ Definitions: conditionally exempt small quantity generator waste

"Conditionally exempt small quantity generator waste", for purposes of IC 13-20-20 and IC 13-25-4, means waste generated by a conditionally exempt small quantity generator (as defined in 40 CFR 261.5).

[As added by: P.L.237-1999, §1.]

IC 13-11-2-39 -------- Definitions: confined feeding

(a) "Confined feeding", for purposes of IC 13-18-10, means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where:

(1) animals are confined, fed, and maintained for at least forty-five (45) days during any twelve (12) month period; and

(2) ground cover or vegetation is not sustained over at least fifty percent (50%) of the animal confinement area.

(b) The term does not include the following:

(1) A livestock market:

(A) where animals are assembled from at least two (2) sources to be publicly auctioned or privately sold on a commission basis; and

(B) that is under state or federal supervision.

(2) A livestock sale barn or auction market where animals are kept for not more than ten (10) days.

[As amended by: P.L.125-1997, §1.]

IC 13-11-2-40 -------- Definitions: confined feeding operation

"Confined feeding operation", for purposes of IC 13-18-10, means:

(1) any confined feeding of:

(A) at least three hundred (300) cattle;

(B) at least six hundred (600) swine or sheep; and

(C) at least thirty thousand (30,000) fowl;

(2) any animal feeding operation electing to be subject to IC 13-18-10; or

(3) any animal feeding operation that is causing a violation of:

(A) water pollution control laws;

(B) any rules of the water pollution control board; or

(C) IC 13-18-10.

A determination by the department under this subdivision is appealable under IC 4-21.5.

[As amended by: P.L.125-1997, §2.]

IC 13-11-2-40.8 ------ Definitions: construction

"Construction", for purposes of IC 13-18-10, means the fabrication, erection, or installation of a facility or manure control equipment at the location where the facility or manure control equipment is intended to be used. The term does not include the following:

(1) The dismantling of existing equipment and control devices.

(2) The ordering of equipment and control devices.

(3) Offsite fabrication.

(4) Site preparation.

[As added by: P.L.125-1997, §3.]

IC 13-11-2-41 -------- Definitions: construction\demolition waste

(a) "Construction\demolition waste", for purposes of IC 13-20-21, means:

(1) bricks;

(2) concrete;

(3) stone;

(4) glass;

(5) wallboard;

(6) lumber;

(7) roofing materials; and

(8) any other items;

affixed to a structure that is being constructed or demolished and being disposed of at a waste disposal facility.

(b) The term includes the following:

(1) Plumbing fixtures.

(2) Wiring.

(3) Nonasbestos insulation.

(4) Other items approved by the department.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-42 -------- Definitions: contaminant

"Contaminant", for purposes of environmental management laws, means any solid, semisolid, liquid, or gaseous matter, or any odor, radioactive material, pollutant (as defined by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect on January 1, 1989), hazardous waste (as defined in the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as in effect on January 1, 1989), any constituent of a hazardous waste, or any combination of the items described in this section, from whatever source, that:

(1) is injurious to human health, plant or animal life, or property;

(2) interferes unreasonably with the enjoyment of life or property; or

(3) otherwise violates:

(A) environmental management laws; or

(B) rules adopted under environmental management laws.

[As amended by: P.L.2-1998, §44.]

IC 13-11-2-43 -------- Definitions: contamination

"Contamination", for purposes of IC 13-18-17, refers to the presence in groundwater of at least one (1) contaminant in a quantity or concentration that:

(1) is injurious to human health, plant or animal life, or property;

(2) interferes unreasonably with the enjoyment of life or property; or

(3) otherwise violates:

(A) environmental management laws; or

(B) rules adopted under environmental management laws.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-43.5 ------ Definitions: control alternative

"Control alternative", for purposes of IC 13-18, means any of the following measures, or any combination of the following measures, for the control of wet weather flows in a combined sewer system:

(1) Source controls.

(2) Collection system controls.

(3) Storage technologies.

(4) Treatment technologies.

[As added by: P.L.140-2000, §5.]

IC 13-11-2-44 -------- Definitions: cost

"Cost", for purposes of IC 13-21 and as applied to a facility or any part of a facility, includes the following:

(1) The cost of construction, modification, decommissioning, disposal, or acquisition of the facility or any part of the facility.

(2) Financing charges.

(3) Interest before and during construction and for a reasonable period after the construction as determined by the board of directors.

(4) The cost of funding reserves to secure the payment of principal and interest on bonds issued by the district.

(5) The cost of funding an operation and maintenance reserve fund.

(6) The cost of funding a major repair or replacement fund.

(7) Legal and underwriting expenses.

(8) Municipal bond insurance premiums.

(9) The cost of plans, specifications, surveys, and estimates of costs and revenues.

(10) Other expenses necessary or incidental to determining the feasibility or practicability of constructing the facility.

(11) Administrative expense.

(12) Other expenses necessary or incidental to the construction, modification, or acquisition of the facility, the financing of the construction, modification, or acquisition of the facility, and the placing of the facility in operation.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-45 -------- Definitions: cost of the works

"Cost of the works", for purposes of IC 13-26, includes the following:

(1) The cost of acquisition or construction of the works.

(2) The cost of all property, rights, easements, and franchises that are necessary or convenient.

(3) Interest upon bonds before and during construction or acquisition and for a period not exceeding twenty-four (24) months after completion of construction or acquisition of the improvements last mentioned.

(4) Engineering and legal expenses, expenses for estimates of cost and of revenues, and expenses for plans, specifications, and surveys.

(5) Other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expenses, and other expenses necessary or incident to the financing and construction or acquisition of the works, placing the works in operation, and the performance of the thing required or permitted by this

chapter in connection with the works.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-46 -------- Definitions: council

"Council", for purposes of IC 13-21-2, refers to the solid waste planning advisory council.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-47 -------- Definitions: county solid waste management district

"County solid waste management district" or "county district", for purposes of IC 13-21, refers to a solid waste management district that consists of only one (1) county.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-48 -------- Definitions: creditor

"Creditor", for purposes of IC 13-25-4-8, means, with respect to a facility, a person who:

(1) has extended credit to an owner or operator of the facility;

(2) has an interest in the facility to secure an extension of credit; or

(3) has acquired title or a right to title to the facility:

(A) upon default;

(B) at foreclosure; or

(C) in lieu of foreclosure as a result of an extension of credit secured by an interest in the facility, unless the extension of credit was solely for the purpose of avoiding environmental liability.

[As amended by: P.L.90-1998, §1.]

IC 13-11-2-49 -------- Definitions: damage

"Damage", for purposes of IC 13-24-2, means damage of any kind for which liability may exist under Indiana law:

(1) resulting from;

(2) arising out of; or

(3) related to;

the discharge or threatened discharge of oil.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-50 -------- Definitions: decommissioning

(a)"Decommissioning", for purposes of IC 13-23, means the removal or closure of an underground storage tank.

(b) "Decommissioning", for purposes of IC 13-29-1, means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.
[As amended by P.L.67-1996, §3.]

IC 13-11-2-50.5 ------ Definitions: degradation

"Degradation", for purposes of IC 13-18-3, means, with respect to a National Pollutant Discharge Elimination System permit, the following:

(1) With respect to an outstanding national resource water, any new or increased discharge of a pollutant or a pollutant parameter, except for a short term, temporary increase.

(2) With respect to an outstanding state resource water or an exceptional use water, any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or pollutant parameter, unless:

(A) the activity causing the increased discharge:

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b); or

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

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b).

[As amended by: P.L.1-2001, §11.]

IC 13-11-2-51 -------- Definitions: department

"Department" refers to the department of environmental management.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-52 -------- Definitions: department enforcement action

"Department enforcement action", for purposes of IC 13-14-6, means an action of the department commenced under IC 13-30-3-3.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-53 -------- Definitions: developer

"Developer", for purposes of IC 13-21, means a person that:

(1) proposes to enter into or has entered into a financing agreement with the district for financing a facility; and

(2) proposes to enter into or has entered into a separate agreement with some other person for the use and operation of the financed facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-54 -------- Definitions: director

"Director", for purposes of IC 13-27.5, refers to the director of the Indiana clean manufacturing technology and safe materials institute.

[As amended by: P.L.124-1997, §3.]

IC 13-11-2-55 -------- Definitions: discharge

"Discharge", for purposes of IC 13-24-2, means any emission or spill, other than natural seepage, that is intentional or unintentional. The term includes any of the following:

(1) Spilling.

(2) Leaking.

(3) Pumping.

(4) Pouring.

(5) Emitting.

(6) Emptying.

(7) Dumping.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-56 -------- Definitions: disclosure document

"Disclosure document", for purposes of IC 13-25-3, means a document that sets forth certain information about a property that is to be transferred.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-57 -------- Definitions: disposal

(a) "Disposal", for purposes of environmental management laws, means the:

(1) discharge;

(2) deposit;

(3) injection;

(4) spilling;

(5) leaking; or

(6) placing;

of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.

(b) "Disposal", for purposes of IC 13-29-1, means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-57.1 ------ Definitions: disposal fee

"Disposal fee", for purposes of IC 13-20-23, means a fee levied on the disposal of municipal waste in exchange for permission to construct or operate a landfill under a host agreement.

[As added by: P.L.133-1998, §2.]

IC 13-11-2-58 -------- Definitions: district

(a) "District", for purposes of of IC 13-20-17.5, IC 13-20-20, IC 13-21, and IC 13-20-22, refers to:

(1) a county solid waste management district; or

(2) a joint solid waste management district;

established under IC 13-21-3-1 or IC 13-9.5-2-1 (before its repeal).

(b) "District", for purposes of IC 13-26, refers to a regional water, sewage, or solid waste district established under:

(1) IC 13-26;

(2) IC 13-3-2 (before its repeal on July 1, 1996); or

(3) IC 19-3-1.1 (before its repeal on April 1, 1980).

[As amended by: P.L.225-2001, §2.]

IC 13-11-2-59 -------- Definitions: district plan

"District plan", for purposes of IC 13-21, refers to a district solid waste management plan adopted or amended under IC 13-21-5 or IC 13-9.5-4 (before its repeal).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-60 -------- Definitions: division

"Division", for purposes of IC 13-27, refers to the division of pollution prevention.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-61.5 ------ Definitions: elevated blood lead level (EBL)

"Elevated blood lead level (EBL)", for purposes of IC 13-17-14, means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of twenty (20) micrograms of lead per deciliter of whole blood for one (1) venous test or of fifteen (15) to nineteen (19) micrograms of lead per deciliter of whole blood in two (2) consecutive tests taken three (3) to four (4) months apart.

[As added by: P.L.123-1997, §3.]

IC 13-11-2-62 -------- Definitions: eligible entity

"Eligible entity", for purposes of IC 13-26, means a county, city, town, township, conservancy district, or other municipal corporation.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-63 -------- Definitions: eligible state

"Eligible state", for purposes of IC 13-29-1, means a state qualified to be a party state to the Midwest Interstate Compact on Low-Level Radioactive Waste as provided in Article VIII of the compact.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-64 -------- Definitions: emergency

"Emergency", for purposes of IC 13-20-9-4, means the occurrence of widespread or severe damage or loss of property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, drought, or explosion.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-65 -------- Definitions: emergency action

"Emergency action", for purposes of IC 13-25-6, means any action taken at or near the scene of a hazardous materials emergency to prevent or minimize harm to:

(1) human health;

(2) property; or

(3) the environment;

from the uncontrolled release of a hazardous material.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-66 -------- Definitions: emergency response agency

"Emergency response agency", for purposes of IC 13-25-6, means:

(1) the state police;

(2) the environmental response branch of the department;

(3) a police department established under IC 36-8-2-2;

(4) a fire department established under IC 36-8-2-3;

(5) any agency of a governmental entity, or any combination of agencies of governmental entities, that provides:

(A) firefighting services;

(B) emergency rescue services; or

(C) emergency medical services; or

(6) any other agency of a governmental entity that provides manpower, equipment, or supplies at the scene of a hazardous materials emergency.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-66.5 ------ Definitions: encapsulant

"Encapsulant", for purposes of IC 13-17-14, means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

[As added by: P.L.123-1997, §4.]

IC 13-11-2-66.7 ------ Definitions: encapsulation

"Encapsulation", for purposes of IC 13-17-14, means the application of an encapsulant.

[As added by: P.L.123-1997, §5.]

IC 13-11-2-67 -------- Definitions: enforcement action

"Enforcement action", for purposes of IC 13-20-13 and IC 13-20-14, means:

(1) a written notice of a violation or a commissioner's order issued under IC 13-30-3;

(2) a letter identifying a violation; or

(3) a court proceeding initiated by the:

(A) department;

(B) department of fire and building services;

(C) state; or

(D) federal government;

under an environmental protection law or other law concerning public health, safety, or the environment.

(b) "Enforcement action", for purposes of IC 13-25-5, means:

(1) a written notice of violation issued under IC 13-30-3-3, IC 13-30-3-4, or IC 13-7-11-2 (before its repeal) that requires or involves the removal or remediation of petroleum or a hazardous substance;

(2) another written notice that requires the removal or remediation of petroleum or a hazardous substance and that is:

(A) issued under:

(i) IC 4-21.5-3-6;

(ii) IC 4-21.5-3-8; or

(iii) IC 4-21.5-4; or

(B) substantially equivalent to a special notice letter issued under 42 U.S.C. 9622(e); or

(3) a similar notice issued by the federal government.

[As amended by: P.L.93-1998, §1.]

IC 13-11-2-68 -------- Definitions: environmental audit

"Environmental audit", for purposes of IC 13-28-4, means a voluntary, an internal, and a comprehensive evaluation of:

(1) a facility or an activity at a facility regulated under:

(A) this title;

(B) a rule or standard adopted under this title;

(C) any determination, permit, or order made or issued by the commissioner under this title; or

(D) federal law; or

(2) management systems related to a facility or an activity;

that is designed to identify and prevent noncompliance with laws and improve compliance with laws, and that is conducted by an owner or operator of a facility or is an activity by an employee of the owner or operator or by an independent contractor.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-69 -------- Definitions: environmental audit report

"Environmental audit report", for purposes of IC 13-28-4, means a set of documents prepared as a result of an environmental audit and labeled "Environmental Audit Report; Privileged Document" that:

(1) includes:

(A) field notes;

(B) records of observations;

(C) findings;

(D) opinions;
(E) suggestions;
(F) conclusions;
(G) drafts;
(H) memoranda;
(I) drawings;
(J) photographs;
(K) computer generated or electronically recorded information;
(L) maps;
(M) charts;
(N) graphs; and
(O) surveys;

collected or developed for the primary purpose of preparing an environmental audit; and

(2) includes, when completed, the following three (3) components:
(A) An audit report prepared by the auditor that includes the following:
(i) The scope of the audit.
(ii) The information gained in the audit.
(iii) Conclusions and recommendations.
(iv) Exhibits and appendices.
(B) Memoranda and documents:
(i) analyzing a part of or all of the audit report; and
(ii) discussing implementation issues.
(C) An implementation plan that addresses the following:
(i) Correcting past noncompliance.
(ii) Improving current compliance.
(iii) Preventing future noncompliance.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-70 -------- Definitions: environmental defect

(a) "Environmental defect", for purposes of IC 13-25-3, means an environmentally related commission, omission, activity, or condition that meets at least one (1) of the following conditions:

(1) Constitutes a material violation of an environmental:
(A) statute;
(B) regulation; or
(C) ordinance.
(2) Would require remedial activity under an environmental:
(A) statute;
(B) regulation; or
(C) ordinance.
(3) Presents a substantial endangerment to at least one (1) of the following:
(A) The public health.
(B) The public welfare.
(C) The environment.
(4) Would have a material, adverse effect on the market value of the property or of an abutting property.

(5) Would prevent or materially interfere with another party's ability to obtain a permit or license that is required under an environmental:

(A) statute;

(B) regulation; or

(C) ordinance;

to operate the property or a facility or process on the property.

(b) The term does not include a condition that is the subject of a voluntary remediation that received a certificate of completion from the department under IC 13-25-5-16.

[As amended by: P.L.59-1997, §5.]

IC 13-11-2-70.3 ------ Definitions: environmental legal action

"Environmental legal action", for purposes of IC 13-30-9, means any legal action brought to recover reasonable costs associated with a removal or remedial action involving a hazardous substance or petroleum released into the surface or subsurface soil or groundwater that poses a risk to human health and the environment.

[As added by: P.L.59-1997, §6.]

IC 13-11-2-71 -------- Definitions: environmental management laws

"Environmental management laws" refers to the following:

(1) IC 13-12-2 and IC 13-12-3.

(2) IC 13-13.

(3) IC 13-14.

(4) IC 13-15.

(5) IC 13-16.

(6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.

(7) IC 13-18-12 and IC 13-18-15 through IC 13-18-20.

(8) IC 13-19-1 and IC 13-19-4.

(9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, and IC 13-20-18 through IC 13-20-21.

(10) IC 13-22.

(11) IC 13-23.

(12) IC 13-24.

(13) IC 13-25-1 through IC 13-25-5.

(14) IC 13-30, except IC 13-30-1.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-72 -------- Definitions: environmental wastes

"Environmental wastes", for purposes of IC 13-27 and IC 13-27.5, means all environmental pollutants, wastes, discharges, and emissions, regardless of:

(1) whether or how they are regulated; and

(2) whether they are released to the general environment or the workplace environment.

[As amended by: P.L.124-1997, §4.]

IC 13-11-2-72.5 ------ Definitions: exceptional use water

"Exceptional use water", for purposes of section 50.5 of this chapter and IC 13-18-3, means any water designated as an exceptional use water by the water pollution control board, regardless of when the designation occurred.

[As amended by: P.L.1-2001, §12.]

IC 13-11-2-73 -------- Definitions: excess liability fund

"Excess liability fund", for purposes of IC 13-23, refers to the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

[As amended by P.L.9-1996, §3.]

IC 13-11-2-74 -------- Definitions: executive

"Executive" means the:

(1) board of commissioners of a county not having a consolidated city;

(2) mayor of the consolidated city, for a county having a consolidated city;

(3) mayor of a city; or

(4) president of the town council of a town.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-75 -------- Definitions: exposure assessment

"Exposure assessment", for purposes of IC 13-23, means an assessment to determine the extent of exposure, or potential for exposure, of individuals to any regulated substance from a release from an underground storage tank based on factors such as the following:

(1) The nature and extent of contamination and the existence of or potential for pathways of human exposure, including ground or surface water contamination, air emissions, and food chain contamination.

(2) The size of the community within the likely pathway of exposure.

(3) The comparison of expected human exposure levels to the short term and long term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for those contaminants.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-76 -------- Definitions: extremely hazardous substance

"Extremely hazardous substance", for purposes of IC 13-25-2, has the meaning set forth in 42 U.S.C. 11049.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-77 -------- Definitions: facility

(a) "Facility", for purposes of IC 13-15-1-3, means a structure or an area of land used for the disposal, treatment, storage, recovery, processing, or transferring of solid waste, hazardous waste, or atomic radiation. The term includes the following:

(1) A hazardous waste facility.

(2) An incinerator.

(3) A solid waste landfill.

(4) A transfer station.

(b) "Facility", for purposes of IC 13-17-7, means a single structure, piece of equipment, installation, or operation that:

(1) emits; or

(2) has the potential to emit;

a regulated air pollutant.

(c) "Facility", for purposes of IC 13-18-5, means a building, a structure, equipment, or other stationary item that is located on:

(1) a single site; or

(2) contiguous or adjacent sites that are owned by, operated by, or under common control of the same person.

(d) "Facility", for purposes of IC 13-21, means a facility, a plant, a works, a system, a building, a structure, an improvement, machinery, equipment, a fixture, or other real or

personal property of any nature that is to be used, occupied, or employed for the collection, storage, separation, processing, recovery, treatment, marketing, transfer, or disposal of solid waste.

(e) "Facility", for purposes of IC 13-25-2, means all buildings, equipment, structures, and other stationary items that are:

(1) located on a single site or on contiguous or adjacent sites; and

(2) owned or operated by:

(A) the same person; or

(B) any person that controls, is controlled by, or is under common control with the same person.

For purposes of IC 13-25-2-6, the term includes motor vehicles, rolling stock, and aircraft.

(f) "Facility", for purposes of IC 13-29-1, means a parcel of land or site, together with the structures, equipment, and improvements on or appurtenant to the land or site, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-78 -------- Definitions: federal permit

"Federal permit", for purposes of IC 13-18-20, refers to a NPDES permit issued to a federally owned facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-79 -------- Definitions: federal water pollution control act

"Federal Water Pollution Control Act", for purposes of:

(1) IC 13-13-5 and IC 13-18-2-1; and

(2) environmental management laws;

refers to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the federal Water Quality Act of 1987, P.L.100-4.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-80 -------- Definitions: FESOP

"FESOP", for purposes of IC 13-17-7, means a federally enforceable state operating permit issued to a source that would require a Title V operating permit but due to a federally enforceable operating restriction has potential emissions less than the amount that would require a Title V operating permit.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-81 -------- Definitions: fiduciary

(a) "Fiduciary", for purposes of IC 13-23-13:

(1) means a person acting for the benefit of another party as a bona fide:

(A) trustee;

(B) executor;

(C) administrator;

(D) custodian;

(E) guardian of estates or guardian ad litem;

(F) receiver;

(G) conservator;

(H) committee of estates of incapacitated persons;

(I) personal representative;

(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certifi-

cates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or

(B) a person that acquires ownership or control of an underground storage tank with the objective purpose of avoiding liability of the person or another person.

(b) "Fiduciary", for purposes of IC 13-24-1:

(1) means a person acting for the benefit of another party as a bona fide:

(A) trustee;

(B) executor;

(C) administrator;

(D) custodian;

(E) guardian of estates or guardian ad litem;

(F) receiver;

(G) conservator;

(H) committee of estates of incapacitated persons;

(I) personal representative;

(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or

(B) a person that acquires ownership or control of a petroleum facility with the purpose of avoiding liability of the person or of another person.

(c) "Fiduciary", for purposes of IC 13-25-4:

(1) means a person acting for the benefit of another party as a bona fide:

(A) trustee;

(B) executor;

(C) administrator;

(D) custodian;

(E) guardian of estates or guardian ad litem;

(F) receiver;

(G) conservator;

(H) committee of estates of incapacitated persons;

(I) personal representative;

(J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

(A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or

(B) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of another person.

[As amended by: P.L.90-1998, §2.]

IC 13-11-2-81.5 ------ Definitions: fiduciary capacity

(a) "Fiduciary capacity", for purposes of IC 13-23-13, means the capacity of a person in holding title to an underground storage tank pursuant to the exercise of the responsibilities of the person as a fiduciary.

(b) "Fiduciary capacity", for purposes of IC 13-24-1, means the capacity of a person in holding title to a petroleum facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(c) "Fiduciary capacity", for purposes of IC 13-25-4, means the capacity of a person in holding title to a vessel or facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

[As added by: P.L.90-1998, §3.]

IC 13-11-2-82 -------- Definitions: final disposal facility

(a) "Final disposal facility", for purposes of IC 13-20-3, IC 13-20-5, IC 13-20-22, and IC 13-21, means any of the following:

(1) A landfill.

(2) An incinerator.

(3) A waste-to-energy facility.

(b) The term does not include a transfer station.

[As amended by: P.L.2-1998, §45.]

IC 13-11-2-83 -------- Definitions: financial assistance agreement

(a) "Financial assistance agreement", for purposes of IC 13-18-13, refers to an agreement between:

(1) the budget agency; and

(2) a political subdivision;

establishing the terms and conditions of a loan or other financial assistance, including forgiveness of principal if allowed under federal law, by the state to the political subdivision.

(b) "Financial assistance agreement", for purposes of IC 13-19-5, means an agreement between the authority and a political subdivision that:

(1) is approved by the budget agency; and

(2) establishes the terms and conditions of a loan or other financial assistance by the state to the political subdivision.

(c) "Financial assistance agreement", for purposes of IC 13-18-21, refers to an agreement between:

(1) the budget agency; and

(2) a participant;

establishing the terms and conditions of a loan or other financial assistance, including forgiveness of principal if allowed under federal law, by the state to the participant.

[As amended by: P.L.132-1999, §4.]

IC 13-11-2-84 -------- Definitions: financial assurance board

"Financial assurance board", for purposes of IC 13-23, refers to the underground petroleum storage tank financial assurance board.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-85 -------- Definitions: financing agreement

"Financing agreement", for purposes of IC 13-21, includes an agreement between a district and a developer, between a developer and a user, or among a district, developer, and user concerning:

(1) payments to the district under the agreement; and

(2) any of the following:

(A) The financing of facilities.

(B) The title to facilities.

(C) The possession of facilities.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-85.5 ------ Definitions: financial or administrative function

"Financial or administrative function", for purposes of sections 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8.2, includes a function such as that of a:

(1) credit manager;

(2) accounts payable officer;

(3) accounts receivable officer;

(4) personnel manager;

(5) comptroller; or

(6) chief financial officer or a similar function.

[As added by: P.L.90-1998, §4.]

IC 13-11-2-85.7 ------ Definitions: first flush

"First flush", for purposes of IC 13-18, means the transport of solids in a combined sewer system that:

(1) have settled in pipes during periods between wet weather events; and

(2) have washed off of impermeable surfaces such as streets and parking lots during the beginning of a wet weather event.

[As added by: P.P.140-2000, §8.]

IC 13-11-2-86 -------- Definitions: fiscal body

"Fiscal body" means:

(1) the county council, for a county not having a consolidated city;

(2) the city-county council of a consolidated city and county;

(3) the common council of a city;

(4) the town council of a town;

(5) the township board of a township; or

(6) the board of directors of a conservancy district.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-87 -------- Definitions: fund

(a) "Fund", for purposes of IC 13-14-12, refers to the environmental management special fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[As amended by: P.L.14-2001, §3.]

IC 13-11-2-88 -------- Definitions: garbage

"Garbage", for purposes of environmental management laws, means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the:

(1) processing;

(2) handling;

(3) preparation;

(4) cooking;

(5) serving; or

(6) consumption;

of food or food materials.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-89 -------- Definitions: generator

(a) "Generator", for purposes of IC 13-22-12, means a person that, during the preceding year, generated hazardous waste in quantities greater than:

(1) one thousand (1,000) kilograms of hazardous waste; or

(2) one (1) kilogram of acutely toxic waste in any month.

(b) "Generator", for purposes of IC 13-29-1, means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity and who, to the extent required by law, is licensed by the United States Nuclear Regulatory Commission or a party state to produce or possess such waste. The term does not include a person who provides a service by arranging for the collection, transportation, treatment, storage, or disposal of wastes generated outside the region.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-90 -------- Definitions: governmental entity

"Governmental entity", for purposes of IC 13-25-6, means the state or a political subdivision.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-91 -------- Definitions: grantee

"Grantee", for purposes of IC 13-20-20, means a person that receives a grant under IC 13-20-20.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-92 -------- Definitions: groundwater monitoring well

"Groundwater monitoring well", for purposes of IC 13-20-21 and IC 13-22-12, means a device required by a permit condition or applicable rule to monitor the quality of groundwater during a twelve (12) month period.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-93 -------- Definitions: guarantor

(a) "Guarantor", for purposes of IC 13-22-8, means a person, other than the owner or operator of a hazardous waste facility, who provides evidence of financial responsibility for the owner or operator under IC 13-22-8.

(b) "Guarantor", for purposes of IC 13-23-4-6, means any person, other than the owner or operator of an underground storage tank, who provides evidence of financial responsibility for an owner or operator under:

(1) IC 13-23-4-1 or IC 13-23-4-2; and

(2) the rules adopted under IC 13-23-1-2(c)(6).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-94 -------- Definitions: hazardous chemical

"Hazardous chemical", for purposes of IC 13-25-2, has the meaning set forth in 42 U.S.C. 11021(e).
[As added by: P.L.1-1996, §1.]

IC 13-11-2-95 -------- Definitions: hazardous household product

"Hazardous household product", for purposes of IC 13-20-20, means a household product that:

(1) may cause serious injury or death when introduced into or upon the body of a living human because the product is:

(A) a poison;
(B) toxic;
(C) corrosive;
(D) an irritant;
(E) flammable; or
(F) radioactive; or

(2) generates pressure through:
(A) decomposition;
(B) heat; or
(C) other means;

during a customary or reasonably anticipated handling or use.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-96 -------- Definitions: hazardous material

(a) "Hazardous material", for purposes of IC 13-18-5, means any of the following:

(1) A hazardous chemical (as defined in 42 U.S.C. 11021(e), as in effect on January 1, 1990).

(2) A hazardous waste.

(3) A hazardous substance (as defined in 42 U.S.C. 9601(14), as in effect on January 1, 1990).

(4) A substance that is on the list of extremely hazardous substances published by the Administrator of the United States Environmental Protection Agency under 42 U.S.C. 11002(a)(2).

(5) A material that is identified by the water pollution control board as potentially harmful to surface water or groundwater if accidentally released from a storage or handling facility.

(b) "Hazardous material", for purposes of IC 13-25-6, means a material or waste that has been determined to be hazardous or potentially hazardous to human health, to property, or to the environment by:

(1) the United States:
(A) Environmental Protection Agency;
(B) Nuclear Regulatory Commission;
(C) Department of Transportation; or
(D) Occupational Safety and Health Administration; or

(2) the solid waste management board.

The term includes all of the hazardous materials identified in 49 CFR 172.101.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-97 -------- Definitions: hazardous materials emergency

"Hazardous materials emergency", for purposes of IC 13-25-6, means an occurrence that:

(1) involves the uncontrolled release or imminent uncontrolled release of a hazardous material into the environment; and

(2) creates the possibility of harm to:
(A) human health;
(B) property; or
(C) the environment.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-98 -------- Definitions: hazardous substance

"Hazardous substance", for purposes of:

(1) IC 13-19-5;

(2) IC 13-25-4; and

(3) IC 13-25-5;

has the meaning set forth in Section 101 of CERCLA (42 U.S.C. 9601). The term includes any substance that the solid waste management board determines to be hazardous under environmental management laws.

[As amended by: P.L.59-1997, §9.]

IC 13-11-2-99 -------- Definitions: hazardous waste

(a) "Hazardous waste", for purposes of section 96(a) of this chapter, IC 13-19, and environmental management laws, means a solid waste or combination of solid wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(1) cause or significantly contribute to an increase in:

(A) mortality;

(B) serious irreversible illness; or

(C) incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to:

(A) human health; or

(B) the environment;

when improperly treated, stored, transported, disposed of, or otherwise managed.

(b) "Hazardous waste", for purposes of IC 13-22-10, includes a waste determined to be a hazardous waste under IC 13-22-2-3(b).

(c) "Hazardous waste", for purposes of IC 13-22-11, has the meaning set forth in the federal Resource Conservation and Recovery Act (42 U.S.C. 6903(5)), as in effect January 1, 1989.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-100 ------ Definitions: hazardous waste facility

"Hazardous waste facility", for purposes of environmental management laws, means a plant or site where hazardous waste is subjected to treatment, storage, or disposal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-101 ------ Definitions: hazardous waste landfill

"Hazardous waste landfill", for purposes of IC 13-22-9, means a hazardous waste disposal facility at which hazardous waste is deposited on or beneath the surface of the ground as an intended place of final location.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-102 ------ Definitions: high level radioactive waste

"High level radioactive waste", for purposes of IC 13-22-10, has the meaning set forth in Section 2 of the federal Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101), as in effect on January 1, 1987.

[As amended by P.L.124-1996, §5.]

IC 13-11-2-102.6 ---- Definitions: host agreement

"Host agreement", for purposes of IC 13-20-23, means a valid and enforceable agreement entered into between a county and another person for the payment of a disposal fee in exchange for the county's permission to construct or operate a landfill.

[As added by: P.L.133-1998, §3.]

IC 13-11-2-103 ------ Definitions: host state

"Host state", for purposes of IC 13-29-1, means any state which is designated by the Midwest Interstate Low-Level Radioactive Waste Commission to host a regional facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-104 ------ Definitions: household hazardous waste

"Household hazardous waste", for purposes of IC 13-20-20 and IC 13-21, means hazardous waste generated by households.

[As amended by: P.L.237-1999, §2.]

IC 13-11-2-105 ------ Definitions: incidental concentrations of PCB

"Incidental concentrations of PCB", for purposes of IC 13-20-15-3, means concentrations of PCB that are beyond the control of the person and that are not the result of the person:

(1) exposing the:
  (A) item;
  (B) product; or
  (C) material;
  to concentrations of PCB;

(2) failing to take reasonable measures to rid the:
  (A) item;
  (B) product; or
  (C) material;
  of concentrations of PCB; or

(3) failing to use a reasonable substitute for the:
  (A) item;
  (B) product; or
  (C) material;
  for which the exemption is sought.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-106 ------ Definitions: incinerator

"Incinerator", for purposes of IC 13-21 and environmental management laws, means an engineered apparatus designed for the burning of solid waste under the effect of controls on the following:

(1) Temperature.

(2) Retention time.

(3) Air.

(4) Other combustion factors.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-107 ------ Definitions: includes

"Includes" means includes but is not limited to.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-108 ------ Definitions: industrial permit

"Industrial permit", for purposes of IC 13-14-8-11.6 and IC 13-18-20, refers to a National Pollutant Discharge Elimination System (NPDES) permit other than a permit issued to any of the following:

(1) a municipal facility;

(2) a state facility;

(3) a federal facility;

(4) a semipublic facility;

(5) a public water supply facility; or

(6) a facility for storm water discharge.

[As amended by: P.L.72-1999, §1.]

IC 13-11-2-109 ------ Definitions: industrial pretreatment permit

"Industrial pretreatment permit", for purposes of IC 13-18-20, refers to a permit issued by the state to an industry discharging to a publicly owned treatment works that:

(1) meets the criteria in 327 IAC 5-13-2(f); and

(2) has been approved by the commissioner in accordance with 327 IAC 5-13-4.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-110 ------- Definitions: institute

(a) "Institute", for purposes of IC 13-20-18, refers to the Indiana institute on recycling.

(b) "Institute", for purposes of IC 13-27 and IC 13-27.5, refers to the Indiana clean manufacturing technology and safe materials institute.

[As amended by: P.L.124-1997, §5.]

IC 13-11-2-111 ------- Definitions: intentionally introduced

"Intentionally introduced", for purposes of IC 13-20-17, means any time that mercury is present in a battery, unless the mercury is only incidentally present in other materials in the battery.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-112 ------- Definitions: interstate agency

"Interstate agency", for purposes of IC 13-18-2, means an agency of at least two (2) states having powers or duties pertaining to the abatement of water pollution.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-113 ------- Definitions: joint solid waste management district

"Joint solid waste management district" or "joint district", for purposes of IC 13-21, refers to a solid waste management district that consists of at least two (2) counties.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-113.5 ---- Definitions: knee of the curve

"Knee of the curve", for purposes of IC 13-18, means the point where the incremental change in the cost of the control alternative per change in performance of the control alternative changes most rapidly.

[As added by: P.L.140-2000, §9.]

IC 13-11-2-114 ------- Definitions: land application

"Land application", for purposes of IC 13-18-12, means the disposal of wastewater by burial or incorporation into the soil.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-114.2 ---- Definitions: land application operation

"Land application operation", for purposes of IC 13-19-3, means an operation in which sludge, waste products, or wastewater generated by industrial, municipal, or semipublic facilities are disposed of by application upon or incorporation into the soil. The term does not include the operation of a landfill or an open dump.

[As added by: P.L.30-1999, §1.]

IC 13-11-2-115 ------- Definitions: land disposal

"Land disposal", for purposes of IC 13-22-12, includes the following:

(1) Interim status and permitted hazardous waste landfills.

(2) Interim status and permitted hazardous waste surface impoundments.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-116 ------- Definitions: landfill [Version 1]

(a) "Landfill", for purposes of IC 13-20-2, means a solid waste disposal facility at which solid waste is deposited on or beneath the surface of the ground as an intended place of final location.

(b) "Landfill", for purposes of IC 13-20-11 and IC 13-20-23, means a facility operated under a permit issued under IC 13-15-3 or IC 13-7-10 (before its repeal) at which solid waste is disposed of by placement on or under the surface of the ground.

(c) "Landfill", for purposes of IC 13-11-2-82 and IC 13-21, means a solid waste management disposal facility at which solid waste is deposited on or in the ground as an intended place of final location. The term does not include the following:

(1) A site that is devoted solely to receiving one (1) or more of the following:

(A) Fill dirt.

(B) Vegetative matter subject to disposal as a result of:

(i) landscaping;

(ii) yard maintenance;

(iii) land clearing; or

(iv) any combination of activities referred to in this clause.

(2) A facility receiving waste that is regulated under the following:

(A) IC 13-22-1 through IC 13-22-8.

(B) IC 13-22-13 through IC 13-22-14.

[As amended by: P.L.133-1998, §4.]

IC 13-11-2-116 ------- Definitions: landfill [Version 2]

(a) "Landfill", for purposes of IC 13-20-2, means a solid waste disposal facility at which solid waste is deposited on or beneath the surface of the ground as an intended place of final location.

(b) "Landfill", for purposes of section 114.2 of this chapter and IC 13-20-11, means a facility operated under a permit issued under IC 13-15-3 or IC 13-7-10 (before its repeal) at which solid waste is disposed of by placement on or under the surface of the ground.

(c) "Landfill", for purposes of section 82 of this chapter and IC 13-21, means a solid waste management disposal facility at which solid waste is deposited on or in the ground as an intended place of final location.

The term does not include the following:

(1) A site that is devoted solely to receiving one (1) or more of the following:

(A) Fill dirt.

(B) Vegetative matter subject to disposal as a result of:

(i) landscaping;

(ii) yard maintenance;

(iii) land clearing; or

(iv) any combination of activities referred to in this clause.

(2) A facility receiving waste that is regulated under the following:

(A) IC 13-22-1 through IC 13-22-8.

(B) IC 13-22-13 through IC 13-22-14.

[As amended by: P.L.14-2000, §34.]

IC 13-11-2-117 ------- Definitions: land trust

"Land trust", for purposes of IC 13-25-3, means a trust that is established under terms providing that:

(1) the trustee holds legal or equitable title to property;

(2) the beneficiary has the power to manage the trust property, including the power to direct the trustee to sell the property; and

(3) the trustee may sell the trust property:

(A) only at the direction of the beneficiary or other person; or

(B) after a time stipulated in the terms of the trust.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-118 ------- Definitions: lead acid battery

"Lead acid battery", for purposes of IC 13-20-16, means a battery that:

(1) contains lead and sulfuric acid; and

(2) has a nominal voltage of at least six (6) volts.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-118.3 ---- Definitions: lead-based paint

"Lead-based paint", for purposes of IC 13-17-14, means paint or another surface coating that contains lead in an amount equal to or more than one (1) milligram per square centimeter, or in the amount of more than one-half percent (0.5%) by weight.

[As added by: P.L.123-1997, §7.]

IC 13-11-2-118.5 ---- Definitions: lead-based paint activities

"Lead-based paint activities", for purposes of IC 13-17-14, means the inspection, risk assessment, and abatement of lead-based paint in target housing and child-occupied facilities. The term includes project design and supervision.

[As added by: P.L.123-1997, §8.]

IC 13-11-2-119 ------- Definitions: lender

"Lender", for purposes of IC 13-23-13, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires an underground storage tank as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(b) "Lender", for purposes of IC 13-24-1, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires a petroleum facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(c) "Lender", for purposes of IC 13-25-3, means a person that provides loans secured by:

(1) an interest in property; or

(2) an assignment of beneficial interest in a land trust.

(d) "Lender", for purposes of IC 13-25-4, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;

a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;

to a nonaffiliated person.

(8) A person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

[As amended by: P.L.90-1998, §5.]

IC 13-11-2-120 ------ Definitions: local emergency planning committee

"Local emergency planning committee", for purposes of IC 13-25-1, refers to a committee established under Title III of SARA for a local emergency planning district.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-120.5 ---- Definitions: long term control plan

"Long term control plan", for purposes of section 31.5 of this chapter and IC 13-18, means a plan that:

(1) is consistent with the federal Combined Sewer Overflow Control Policy (59 Fed. Reg. 18688);

(2) is developed in accordance with the recommendations set forth in Combined Sewer Overflows Guidance for Long-Term Control Plan (EPA 832B95002);

(3) describes changes and improvements to be made to a combined sewer system or to a publicly owned wastewater treatment plant for the purpose of meeting the requirements of the federal Clean Water Act and state law;

(4) is developed with public participation using a process that is designed to promote active involvement by the affected public, through opportunities to provide in the decision making to select long term control alternatives:

(A) information;

(B) opinions; and

(C) comments;

(5) is submitted to the department for approval; and

(6) does the following:

(A) Uses characterization, monitoring, and modeling of the combined sewer system to determine:

(i) the response of the combined sewer system to various precipitation events;

(ii) the characteristics of overflows from the combined sewer system; and

(iii) the water quality impacts that result from overflows from the combined sewer system.

(B) Considers the impact of combined sewer overflows on sensitive areas and gives highest priority to controlling overflows in those areas.

(C) Contains an evaluation of a reasonable range of control alternatives, taking into account expected and projected future growth.

(D) Contains cost and performance analyses of the control alternatives evaluated.

(E) Maximizes treatment of wet weather flows at a publicly owned treatment works (POTW) treatment plant.

(F) Contains a practicable implementation schedule for the selected control alternative.

(G) Contains a post-construction compliance monitoring program adequate to ascertain:

(i) the effectiveness of the selected control alternative; and

(ii) the extent to which water quality standards have been attained.

[As added by: P.L.140-2000, §10.]

IC 13-11-2-121 ------ Definitions: low level radioactive waste

(a) "Low level radioactive waste", for purposes of IC 13-22-10, means radioactive material that:

(1) is not:

(A) high level radioactive waste;

(B) spent nuclear fuel; or

(C) byproduct material; and

(2) is classified by the United States Nuclear Regulatory Commission, in accordance with law, as low level radioactive waste.

(b) "Low-level radioactive waste" or "waste", for purposes of IC 13-29-1, means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act of 1954.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-122 ------ Definitions: major modification

"Major modification", for purposes of IC 13-15-4, when applied to a solid waste permit, means any change in a permitted solid waste facility that would:

(1) increase the facility's permitted capacity to process or dispose of solid waste by the lesser of:

(A) more than ten percent (10%); or

(B) five hundred thousand (500,000) cubic yards; or

(2) change the permitted footprint of the landfill by more than one (1) acre.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-123 ------ Definitions: major permit

"Major permit", for purposes of IC 13-18-20, refers to a NPDES permit:

(1) as classified by the Region V Regional Administrator of the United States Environmental Protection Agency and the commissioner; and

(2) as set forth in the Major Dischargers List developed by the United States Environmental Protection Agency and the department in the "National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Indiana and EPA Region V" dated July 22, 1977.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-124 ------ Definitions: management plan

"Management plan", for purposes of IC 13-29-1, means the plan adopted by the commission for the storage, transportation, treatment, and disposal of waste within the region.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-125 ------ Definitions: manifest

"Manifest", for purposes of environmental management laws except IC 13-20-4-7, means the form used for identifying the:

(1) quantity;

(2) composition; and

(3) origin, routing, and destination;

of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-126 ------ Definitions: manufacturer

(a) "Manufacturer", for purposes of IC 13-20-16, means a person who is engaged in the business of making lead acid batteries:

(1) in Indiana; or

(2) for sale in Indiana.

(b) "Manufacturer", for purposes of IC 13-27.5, means a manufacturer in Indiana operating under standard industrial classification codes twenty (20) through thirty-nine (39) in the Standard Industrial Classification Manual of the United States Office of Management and Budget.

(c) "Manufacturer", for purposes of IC 13-20-17.5, means any individual, corporation, limited liability company, partnership, trust, estate, or unincorporated association that:

(1) produces in the United States a mercury-added product that does not consist of multiple components produced by separate entities;

(2) is the last entity to produce or assemble in the United States a mercury-added product that consists of multiple components produced by separate entities; or

(3) domestically distributes a mercury-added product produced in a foreign country.

[As amended by: P.L.225-2001, §3.]

IC 13-11-2-127 ------ Definitions: mass balance calculation

"Mass balance calculation", for purposes of IC 13-27 and IC 13-27.5, means a determination of the annual quantities of each toxic material that is:

(1) transported to;

(2) produced at;

(3) used at;

(4) accumulated or stored at;

(5) released from; or

(6) transported from;

a business or manufacturing facility as a waste or pollutant, as a commercial product or byproduct, in a commercial product or byproduct, or as a component of a commercial product or byproduct, based upon an analysis of each process or operation at the business or manufacturing facility.

[As amended by: P.L.124-1997, §7.]

IC 13-11-2-128 ------ Definitions: material safety data sheet

"Material safety data sheet", for purposes of of IC 13-20-17.5 and IC 13-25-2, has the meaning set forth in 42 U.S.C. 11049.

[As amended by: P.L.225-2001, §4.]

IC 13-11-2-128.3 ---- Definitions: mercury-added novelty

"Mercury-added novelty", for purposes of IC 13-20-17.5, means a mercury-added product intended mainly for personal or household enjoyment or adornment, including:

(1) items intended for use as practical jokes;

(2) figurines;

(3) adornments;

(4) toys;

(5) games;

(6) cards;

(7) ornaments;

(8) yard statues and figurines;

(9) candles;

(10) jewelry;

(11) holiday decorations; and

(12) footwear and other items of apparel.

[As added by: P.L.225-2001, §5.]

IC 13-11-2-128.5 ---- Definitions: mercury-added product

(a) "Mercury-added product", for purposes of this chapter and IC 13-20-17.5, means:

(1) a product that contains:

(A) elemental mercury;

(B) metallic mercury in an alloy;

(C) inorganic mercury salt; or

(D) organic mercury;

intentionally added by the manufacturer in order to provide a specific characteristic, appearance, or quality to the product or to perform a specific beneficial function for the product; or

(2) a product with a component that meets the criteria of subdivision (1).

(b) "Mercury-added product" does not include:

(1) a product in which mercury is a residue from the intentional use of mercury in the manufacturing process, if the mercury residue does not:

(A) provide a specific characteristic, appearance, or quality to the product; or

(B) perform a specific beneficial function for the product;

or

(2) a mercury commodity.

[As added by: P.L.225-2001, §6.]

IC 13-11-2-128.6 ---- Definitions: mercury commodity

"Mercury commodity", for purposes of this chapter and IC 13-20-17.5, means a product that consists of only mercury and its container (such as a container of mercury that is opened and from which mercury is put into a mercury-added product) if the mercury is not performing a specific beneficial function for the product.

[As added by: P.L.225-2001, §7.]

IC 13-11-2-128.7 ---- Definitions: mercury fever thermometer

"Mercury fever thermometer", for purposes of IC 13-20-17.5, means a mercury-added product that:

(1) is a thermometer or another medical or scientific instrument; and

(2) is used for measuring body temperature.

[As added by: P.L.225-2001, §8.]

IC 13-11-2-129 ------ Definitions: MGD

"MGD" refers to millions of gallons per day.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-130 ------ Definitions: minor permit

"Minor permit", for purposes of IC 13-18-20, refers to a NPDES permit that is not a major permit.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-131 ------ Definitions: multimedia

"Multimedia", for purposes of IC 13-27 and IC 13-27.5, refers to:

(1) air;

(2) water;

(3) land; and

(4) workplace environmental;

media into which pollutants and wastes are emitted, released, discharged, or disposed.
[As amended by: P.L.124-1997, §8.]

IC 13-11-2-132 ------ Definitions: municipal permit

"Municipal permit", for purposes of IC 13-18-20, refers to a NPDES permit issued to any of the following:

(1) A publicly owned treatment works (as defined in 33 U.S.C. 1292(2)) that is not state owned.

(2) A conservancy district (as defined in IC 14-8-2-72(3)).

(3) A regional water, sewage, and solid waste district.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-133 ------ Definitions: municipal waste

(a) "Municipal waste", for purposes of:

(1) IC 13-20-4;

(2) IC 13-20-6;

(3) IC 13-20-21;

(4) IC 13-20-23;

(5) IC 13-22-1 through IC 13-22-8; and

(6) IC 13-22-13 through IC 13-22-14;

means any garbage, refuse, industrial lunchroom or office waste, and other similar material resulting from the operation of residential, municipal, commercial, or institutional establishments and community activities.

(b) The term does not include the following:

(1) Hazardous waste regulated under:

(A) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or

(B) the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as in effect on January 1, 1990.

(2) Infectious waste (as defined in IC 16-41-16-4).

(3) Wastes that result from the combustion of coal and that are referred to in IC 13-19-3-3.

(4) Materials that are being transported to a facility for reprocessing or reuse.

(c) As used in subsection (b)(4), "reprocessing or reuse" does not include either of the following:

(1) Incineration.

(2) Placement in a landfill.

[As amended by: P.L.218-2001, §1.]

IC 13-11-2-134 ------ Definitions: municipal waste collection and transportation vehicle

(a) "Municipal waste collection and transportation vehicle", for purposes of IC 13-20-4, means a truck or railroad car used to transport municipal waste from a solid waste generator or a solid waste processing facility to a:

(1) solid waste processing facility in Indiana; or

(2) solid waste disposal facility in Indiana.

(b) The term does not include a vehicle that is:

(1) used to transport municipal waste from a residence if the vehicle is:

(A) owned;

(B) leased; or

(C) operated;

by an individual who lives in the residence; or

(2) not used for commercial solid waste transportation.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-135 ------ Definitions: municipality

"Municipality" means a city or town.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-136 ------ Definitions: national contingency plan

"National contingency plan", for purposes of IC 13-25-4, refers to the plan that:

(1) was established and is revised by the President of the United States; and

(2) includes the national hazardous substance response plan that is required under Section 105 of CERCLA (42 U.S.C. 9605) and published in 40 CFR 300.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-137 ------ Definitions: natural resources

"Natural resources", for purposes of IC 13-25-4, means:

(1) land;

(2) fish;

(3) wildlife;

(4) biota;

(5) air;

(6) water;

(7) ground water;

(8) drinking water supplies; and

(9) other similar resources;

belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by, the state.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-138 ------ Definitions: navigable waters

"Navigable waters", for purposes of IC 13-24-2, means waters of the United States (as defined in the federal Clean Water Act (33 U.S.C. 1362(7))).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-139 ------ Definitions: net revenues

"Net revenues", for purposes of IC 13-21, means:

(1) the amount of revenues received by a county or joint solid waste management district from the operation and ownership of facilities; less

(2) the reasonable expenses of the:

(A) operation;

(B) repair; and

(C) maintenance;

of the facilities.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-140 ------ Definitions: new tire

(a) "New tire", for purposes of IC 13-20-13 and IC 13-20-14, means a tire that has never been mounted on a wheel of a vehicle.

(b) For purposes of IC 13-20-13, the term does not include a retreaded tire.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-141 ------ Definitions: noncontact cooling water

"Noncontact cooling water", for purposes of IC 13-18-20, means cooling water:

(1) that is discharged to waters of Indiana;

(2) that is used for the sole purpose of removing unwanted heat from a process, generally through a heat exchanger; and

(3) that does not otherwise come into contact with a production process or any raw material or manufactured product.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-142 ------ Definitions: nonoperational storage tank

"Nonoperational storage tank", for purposes of IC 13-23, means an underground storage tank:

(1) in which regulated substances are not deposited; or

(2) from which regulated substances are not dispensed;

after November 8, 1984.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-142.6 ---- Definitions: mercury-added novelty

"Non-public school", for purposes of IC 13-20-17.5, has the meaning set forth in IC 20-10.1-1-3.

[As added by: P.L.225-2001, §9.]

IC 13-11-2-143 ------ Definitions: non-public school

(a) "Office", for purposes of IC 13-22-11, refers to the division of pollution prevention and technical assistance established by IC 13-27-2-1.

(b) "Office", for purposes of IC 13-28, refers to the office of voluntary compliance.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-144 ------ Definitions: oil

(a) "Oil", for purposes of IC 13-24-2, means oil of any kind or in any form.

(b) The term includes the following:

(1) Petroleum.

(2) Fuel oil.

(3) Sludge.

(4) Oil refuse.

(5) Oil mixed with wastes other than dredged spoil.

(c) The term does not include petroleum, including crude oil or any fraction of crude oil, that is:

(1) specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of Section 101(14) of; and

(2) subject to;

the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), as in effect January 1, 1995.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-145 ------ Definitions: open burning

"Open burning", for purposes of environmental management laws, means the combustion of any matter in the open or in an open dump.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-146 ------ Definitions: open dump

"Open dump", for purposes of environmental management laws, means the consolidation of solid waste from one (1) or more sources or the disposal of solid waste at a single disposal site that:

(1) does not fulfill the requirements of a sanitary landfill or other land disposal method as prescribed by law or regulations; and

(2) is established and maintained:

(A) without cover; and

(B) without regard to the possibilities of contamination of surface or subsurface water resources.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-147 ------ Definitions: open dumping

"Open dumping", for purposes of environmental management laws, means the act of disposing of solid waste at an open dump.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-147.5 ---- Definitions: operational function

"Operational function", for purposes of sections 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8.2, includes a function such as that of:

(1) a facility manager;

(2) a plant manager;

(3) an operations manager;

(4) a chief operating officer; or

(5) a chief executive officer.

[As added by: P.L.90-1998, §6.]

IC 13-11-2-148 ------ Definitions: operator

(a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.

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

(1) a water treatment plant;

(2) a wastewater treatment plant; or

(3) a water distribution system.

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

(1) A broker.

(2) A person who manages the activities of a transfer station that receives municipal waste.

(3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in subsection (e), means a person:

(1) in control of; or

(2) having responsibility for;

the daily operation of an underground storage tank.

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

(1) A person who:

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

(B) is otherwise not engaged in the:

(i) production;

(ii) refining; and

(iii) marketing;

of regulated substances; and

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

(2) A person who:

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

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

(C) is engaged only in:

(i) filling;

(ii) gauging; or

(iii) filling and gauging;

the product level in the course of delivering fuel to an underground storage tank.

[As amended by: P.L.212-1999, §3.]

IC 13-11-2-149 ------ Definitions: outfall

"Outfall", for purposes of IC 13-18-4-8, means the point of discharge from a point source.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-149.5 ---- Definitions: outstanding national resource water

"Outstanding national resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

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

(A) federal or state law;

(B) presidential or secretarial action;

(C) international treaty; or

(D) interstate compact;

(2) having exceptional recreational significance;

(3) having exceptional ecological significance;

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

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

[As amended by: P.L.1-2001, §13.]

IC 13-11-2-149.6 ---- Definitions: outstanding state resource water

"Outstanding state resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means any water designated as such by the water pollution control board regardless of when the designation occurred or occurs. Waters that may be considered for designation as outstanding state resource waters include water bodies that have unique or special ecological, recreational, or aesthetic significance.

[As amended by: P.L.1-2001, §14.]

IC 13-11-2-150 ------ Definitions: owner

(a) "Owner", for purposes of IC 13-23 except as provided in subsection (b), means:

(1) for an underground storage tank that was:

(A) in use on November 8, 1984; or

(B) brought into use after November 8, 1984;

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

(2) for an underground storage tank that is:

(A) in use before November 8, 1984; but

(B) no longer in use on November 8, 1984;

a person who owned the tank immediately before the discontinuation of the tank's use.

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

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-151 ------ Definitions: owner or operator

(a) "Owner or operator", for purposes of IC 13-24-1, means the following:

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

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

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency;

(D) abandonment; or

(E) a similar means;

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

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

(1) bankruptcy;

(2) tax delinquency;

(3) abandonment; or

(4) other circumstances in which the government unit involuntarily acquired title because of the unit's function as sovereign.

(c) The term includes a unit of federal, state, or local government that causes or contrib-

utes to the release or threatened release of a substance. The unit of federal, state, or local government is subject to IC 13-24-1:

(1) in the same manner; and

(2) to the same extent;

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

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

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

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of petroleum; and

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

[As amended by: P.L.90-1998, §8.]

IC 13-11-2-151.1 ---- Definitions: participant

"Participant", for purposes of this chapter and IC 13-18-21, means:

(1) a political subdivision; or

(2) any other owner or operator of a public water system.

[As added by: P.L.132-1999, §6.]

IC 13-11-2-151.2 ---- Definitions: participate in management

(a) "Participate in management", for purposes of IC 13-23-13, means actually participating in the management or operational affairs of an underground storage tank.

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, underground storage operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in an underground storage tank.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of an underground storage tank.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the underground storage tank prior to, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of an underground storage tank.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S.C. 9607(d)) or under the direction of an on-scene coordinator appointed under the

National Contingency Plan, unless the person conducting the response action assumes or manifests 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.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased underground storage tank and does not during the lease term control the daily operations or maintenance of the underground storage tank; or

(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

[As added by: P.L.90-1998, §9.]

IC 13-11-2-151.3 ---- Definitions: participate in management

(a) "Participate in management", for purposes of IC 13-24-1, means actually participating in the management or operational affairs of a petroleum facility.

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, petroleum facility operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in a petroleum facility.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of a petroleum facility.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of petroleum in connection with the petroleum facility prior to, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of a petroleum facility.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S.C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the petroleum facility, 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 petroleum facility other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased petroleum facility and does not during the lease term control the daily operations or maintenance of the petroleum facility; or

(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

[As added by: P.L.90-1998, §10.]

IC 13-11-2-151.4 ---- Definitions: participate in management

(a) "Participate in management", for purposes of IC 13-25-4, means actually participating in the management or operational affairs of a vessel or facility.

(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, vessel or facility operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in a vessel or facility.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of a vessel or facility.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility before, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of a vessel or facility.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S.C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the vessel or facility, 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 vessel or facility other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease finance transaction:

(1) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

(2) that conforms with regulations issued by:

(A) the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in Section 3 of the Federal Deposit Insurance

Act, 12 U.S.C. 1813); or

(B) the National Credit Union Administration Board.

[As added by: P.L.90-1998, §11.]

IC 13-11-2-152 ------ Definitions: parties

(a) "Parties", for purposes of IC 13-25-3, refers to the parties to a transfer of property, which include the following:

(1) The transferor.

(2) The transferee.

(3) Each lender involved in the transfer.

(b) The term includes a person who intends to participate in a transfer of property as:

(1) a transferor;

(2) a transferee; or

(3) a lender.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-153 ------ Definitions: party

"Party", for purposes of IC 13-25-4-23, means a person that:

(1) is potentially a responsible person; and

(2) enters into an agreement with the commissioner under IC 13-25-4-23 or IC 13-7-8.7-11 (before its repeal).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-154 ------ Definitions: party state

"Party state", for purposes of IC 13-29-1, means any eligible state which enacts the compact into law.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-155 ------ Definitions: PCB

(a) "PCB", for purposes of:

(1) IC 13-17-10;

(2) IC 13-20-15; and

(3) IC 13-22;

means the class of organic compounds known as polychlorinated biphenyls or terphenyls.

(b) The term includes any of several compounds produced by replacing at least two (2) hydrogen atoms on the biphenyl or terphenyl molecule with chlorine.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-156 ------ Definitions: pending

"Pending", for purposes of IC 13-17-7, means not completed as of January 1, 1994.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-157 ------ Definitions: permit

(a) "Permit", for purposes of IC 13-15-4, means:

(1) a permit;

(2) a license;

(3) a registration;

(4) a certificate; or

(5) other type of authorization required before construction or operation;

that may be issued by the commissioner under pollution control laws or environmental management laws.

(b) As used in IC 13-15-4-11 through IC 13-15-4-17, the term includes:

(1) a permit; or

(2) a determination related to a permit;

that is described in IC 13-15-4-1.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-158 ------ Definitions: person

(a) "Person", for purposes of:

(1) IC 13-21;

(2) air pollution control laws;

(3) water pollution control laws; and

(4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state agency, a contractor, or any other legal entity.

(b) "Person", for purposes of:

(1) IC 13-18-10; and

(2) IC 13-20-17;

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a political subdivision, a state agency, or other legal entity, or their legal representative, agent, or assigns.

(c) "Person", for purposes of:

(1) IC 13-20-13;

(2) IC 13-20-14;

(3) IC 13-20-16; and

(4) IC 13-25-6;

means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.

(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

(e) "Person", for purposes of IC 13-20-17.5 and IC 13-25-3, means an individual, a corporation, a limited liability company, a partnership, a trust, an estate, or an unincorporated association.

(f) "Person", for purposes of IC 13-26, means an individual, a firm, a partnership, an association, a limited liability company, or a corporation other than an eligible entity.

(g) "Person", for purposes of IC 13-29-1, means any individual, corporation, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, business enterprise, or legal entity.

(h) "Person", for purposes of:

(1) IC 13-30-6-6;

(2) IC 13-30-6-7; and

(3) IC 13-30-8-1;

has the meaning set forth in IC 35-41-1.

[As amended by: P.L.225-2001, §10.]

IC 13-11-2-159 ------ Definitions: pesticide

"Pesticide", for purposes of IC 13-25-6, includes a substance or a combination of substances commercially produced for use as:

(1) an insecticide;

(2) a rodenticide; or

(3) a nematodicide.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-160 ------ Definitions: petroleum

"Petroleum", for purposes of:

(1) IC 13-23;

(2) IC 13-24-1; and

(3) IC 13-25-5;

includes petroleum and crude oil or any part of petroleum or crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60°F)) and fourteen and seven-tenths (14.7) pounds per square inch absolute).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-161 ------ Definitions: petroleum facility

(a) "Petroleum facility", for purposes of IC 13-24-1, means any of the following:

(1) A building.

(2) A structure.

(3) An installation.

(4) A piece of equipment.

(5) A pipe, including a pipe that runs into a sewer or publicly owned treatment facility.

(6) A well.

(7) A pit.

(8) A pond.

(9) A lagoon.

(10) An impoundment.

(11) A ditch.

(12) A landfill.

(13) A storage container.

(14) A motor vehicle.

(15) Rolling stock.

(16) Aircraft.

(17) A site or an area on which petroleum has been:

(A) deposited;

(B) stored;

(C) disposed of;

(D) placed; or

(E) located.

(b) The term does not include the following:

(1) A consumer product in consumer use.

(2) An underground storage tank.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-162 ------ Definitions: petroleum marketer

"Petroleum marketer", for purposes of IC 13-23-4-3, means a person that is engaged in the business of selling petroleum products at retail.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-163 ------ Definitions: petroleum trust fund

"Petroleum trust fund", for purposes of IC 13-23, refers to the underground petroleum storage tank trust fund established by IC 13-23-6-1.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-164 ------ Definitions: political subdivision

(a) "Political subdivision", for purposes of IC 13-18-13, means:

(1) a political subdivision (as defined in IC 36-1-2);

(2) a regional water, sewage, or solid waste district organized under:

(A) IC 13-26; or

(B) IC 13-3-2 (before its repeal July 1, 1996); or

(3) a local public improvement bond bank organized under IC 5-1.4.

(b) "Political subdivision", for purposes of IC 13-18-21, means:

(1) a political subdivision (as defined in IC 36-1-2);

(2) a regional water, sewage, or solid waste district organized under:

(A) IC 13-26; or

(B) IC 13-3-2 (before its repeal July 1, 1996);

(3) a local public improvement bond bank organized under IC 5-1.4;

(4) a qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125; or

(5) a conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).

(c) "Political subdivision", for purposes of IC 13-19-5, has the meaning set forth in IC 36-1-2-13 and includes a redevelopment district under IC 36-7-14 or IC 36-7-15.1.

[As amended by: P.L.253(ss)-1997, §14.]

IC 13-11-2-165 ------ Definitions: pollution control laws

"Pollution control laws" refers to the following:

(1) IC 13-12-4 and IC 13-12-5.

(2) IC 13-17, except for the following:

(A) IC 13-17-3-15.

(B) IC 13-17-7.

(C) IC 13-17-8-10.

(D) IC 13-17-10.

(E) IC 13-17-11.

(F) IC 13-17-13.

(3) IC 13-18, except for the following:

(A) IC 13-18-12 and IC 13-18-13.

(B) IC 13-18-15 through IC 13-18-20.

(4) IC 13-19-2 and IC 13-19-3.

(5) IC 13-20-16 and IC 13-20-17.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-166 ------ Definitions: pollution prevention

"Pollution prevention", for purposes of this title, means pollution prevention as defined by the United States Environmental Protection Agency under:

(1) the federal Pollution Prevention Act (42 U.S.C. 13101 et seq.); and

(2) the United States Environmental Protection Agency pollution prevention policy statement (June 15, 1993), as amended.

[As amended by: P.L.2-1998, §47.]

IC 13-11-2-167 ------ Definitions: portable sanitary unit

"Portable sanitary unit", for purposes of IC 13-18-12, includes the following:

(1) Portable toilets.

(2) Mobile restrooms.

(3) Similar devices or equipment of a portable nature containing sanitary facilities for temporary or short term use.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-168 ------ Definitions: potential emissions

"Potential emissions", for purposes of IC 13-17-7, means emissions calculated:

(1) before:

(A) the installation of air pollution control equipment; and

(B) the application of any applicable state or federal:

(i) rule;

(ii) regulation; or

(iii) statute;

that establishes emission limitations or standards; and

(2) after consideration of any physical or operational limitation on the capacity of a facility or source.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-169 ------ Definitions: ppm

"Ppm" means parts per million.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-170 ------ Definitions: prior environmental law

"Prior environmental law", for purposes of IC 13-12-1, refers to the statutes that are repealed or amended in the recodification act of the 1996 regular session of the general assembly as the statutes existed before the effective date of the applicable or corresponding provision of the recodification act of the 1996 regular session of the general assembly.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-171 ------ Definitions: processing

"Processing", for purposes of IC 13-21, means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate any of the following:

(1) The transportation of solid waste.

(2) The disposal of solid waste.

(3) The recovery of solid waste for reuse or sale.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-172 ------ Definitions: program

(a) "Program", for purposes of IC 13-18-13, refers to the wastewater revolving loan program established by IC 13-18-13-1.

(b) "Program", for purposes of IC 13-18-21, refers to the drinking water revolving loan program established by IC 13-18-21-1. The term does not include the supplemental program.

(c) "Program", for purposes of IC 13-19-5, refers to the environmental remediation revolving loan program established by IC 13-19-5-1.

(d) "Program", for purposes of IC 13-23, refers to an underground storage tank release:

(1) detection;

(2) prevention; and

(3) correction;

program created in accordance with the requirements of IC 13-23 or IC 13-7-20 (before its repeal).

[As amended by: P.L.132-1999, §7.]

IC 13-11-2-173 ------ Definitions: project

"Project", for purposes of IC 13-20-20, refers to a household hazardous waste collection and disposal project.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-174 ------ Definitions: property

(a) "Property", for purposes of IC 13-25-3, means a specific and an identifiable parcel of real property, that:

(1) contains one (1) or more facilities that are subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022);

(2) is the site of one (1) or more underground storage tanks for which notification is required under:

(A) 42 U.S.C. 6991a; and

(B) IC 13-23-1-2(c)(8)(A); or

(3) is listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616).

(b) The term does not include property that has been subject to bonding or other financial assurances released by the appropriate governmental agency after compliance with applicable state laws.

[As amended by: P.L.127-1997, §1.]

IC 13-11-2-175 ------ Definitions: property owner

"Property owner", for purposes of IC 13-14-5 and IC 13-30-7, means:

(1) the person who owns the property or operates a regulated activity on the property; or

(2) an agent of the person who owns the property or operates a regulated activity on the property.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-176 ------ Definitions: public notice

"Public notice", for purposes of IC 13-21, means the following:

(1) For a county or a county solid waste management district, a notice published by the district board of directors in accordance with IC 5-3-1, following procedures applicable to a county.

(2) For a joint solid waste management district, a notice published by the board of directors in each county in the district in accordance with IC 5-3-1, following procedures applicable to a county.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-176.5 ---- Definitions: public school

"Public school", for purposes of IC 13-20-17.5, has the meaning set forth in IC 20-10.1-1-2.

[As added by: P.L.225-2001, §11.]

IC 13-11-2-177 ------ Definitions: public water supply

"Public water supply", for purposes of environmental management laws, means any wells, reservoirs, lakes, rivers, sources of supply, pumps, mains, pipes, facilities, and structures through which water is:

(1) obtained;

(2) treated as required; and

(3) provided to the public through a water distribution system that:

(A) serves at least twenty-five (25) persons per day for:

(i) drinking;

(ii) domestic use; or

(iii) other;

purposes, including state owned facilities; or

(B) has at least fifteen (15) service connections.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-177.3 ---- Definitions: public water system

"Public water system", for purposes of this chapter and IC 13-18-21, has the meaning set forth in 42 U.S.C. 300f.

[As amended by: P.L.14-2000, §35.]

IC 13-11-2-177.5 ---- Definitions: publicly owned treatment works

"Publicly owned treatment works", for purposes of IC 13-18-3, has the meaning set forth in 327 IAC 5-1.5-48.

[As added by: P.L.112-2000, §1.]

IC 13-11-2-178 ------ Definitions: railroad car

"Railroad car", for purposes of section 134 of this chapter, means a vehicle that can be used for the transportation of municipal waste on a railroad.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-179 ------ Definitions: recovery

"Recovery", for purposes of environmental management laws, means obtaining materials or energy for commercial or industrial use from solid waste or hazardous waste.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-180 ------ Definitions: recycling

"Recycling", for purposes of IC 13-20-17.5 and IC 13-21, means a process by which materials that would otherwise become solid waste are:

(1) collected;

(2) separated or processed; and

(3) converted into materials or products for reuse or sale.

[As amended by: P.L.225-2001, §12.]

IC 13-11-2-181 ------ Definitions: region

"Region", for purposes of IC 13-29-1, means the area of the party states.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-182 ------ Definitions: regional facility

"Regional facility", for purposes of IC 13-29-1, means a facility which is located within the region and which is established by a party state pursuant to designation of that state as a host state by the Commission.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-183 ------ Definitions: regulated substance

"Regulated substance", for purposes of IC 13-23, includes the following:

(1) Any substance defined in section 98 of this chapter as a hazardous substance, but excluding any substance regulated as a hazardous waste under:

(A) Subtitle C of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6921 through 6939(a)); or

(B) IC 13-22-2-3.

(2) Petroleum.

(3) Any other substance designated by rules adopted by the solid waste management board under IC 13-23-1-2.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-184 ------ Definitions: release

(a) "Release", for purposes of IC 13-23, means any:

(1) spilling;

(2) leaking;

(3) emitting;

(4) discharging;

(5) escaping;

(6) leaching; or

(7) disposing;

from an underground storage tank into ground water, surface water, subsurface soils, or surface soils.

(b) "Release", for purposes of IC 13-24-1, means:

(1) a spill;

(2) a leak;

(3) an emission;

(4) a discharge;

(5) an escape;

(6) a leaching; or

(7) a disposing;

of petroleum into ground water, surface water, subsurface soils, or surface soils. The term does not include the release of petroleum into land used by a scrap metal processor (as defined in IC 9-13-2-162) or farmer, unless the commissioner determines that the release of the petroleum is adverse to human health.

(c) "Release", for purposes of IC 13-25-2, means any:

(1) spilling;
(2) leaking;
(3) pumping;
(4) pouring;
(5) emitting;
(6) emptying;
(7) discharging;
(8) injecting;
(9) escaping;
(10) leaching;
(11) dumping; or
(12) disposing;

into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical. The term includes the abandonment or discarding of barrels, containers, and other closed receptacles.

(d) "Release", for purposes of IC 13-25-4, means any:

(1) spilling;
(2) leaking;
(3) pumping;
(4) pouring;
(5) emitting;
(6) emptying;
(7) discharging;
(8) injecting;
(9) escaping;
(10) leaching;
(11) dumping; or
(12) disposing;

into the environment. The term includes the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance.

(e) "Release", for purposes of IC 13-25-5, means any:

(1) spilling;
(2) leaking;
(3) pumping;
(4) pouring;
(5) emitting;
(6) emptying;
(7) discharging;
(8) injecting;
(9) escaping;
(10) leaching;
(11) dumping; or
(12) disposing;

into the environment. The term includes the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-185 ------ Definitions: remedial action

(a) "Remedial action", for purposes of IC 13-25-4, means actions consistent with a permanent remedy taken instead of or in addition to removal actions if a release or threatened release of a hazardous substance into the environment occurs to prevent or minimize the release of hazardous substances so that the hazardous substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(b) The term includes actions necessary to:

(1) monitor;

(2) assess; or

(3) evaluate;

the continuing effectiveness of other response actions.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-186 ------ Definitions: remediation

"Remediation", for purposes of IC 13-19-5 and IC 13-25-5, means any of the following:

(1) Actions necessary to:

(A) prevent;

(B) minimize; or

(C) mitigate;

damages to the public health or welfare or to the environment that may otherwise result from a release or threat of a release.

(2) Actions consistent with a permanent remedy taken instead of or in addition to removal actions if a release or threatened release of a hazardous substance or petroleum into the environment occurs to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment.

(3) The cleanup or removal of released hazardous substances or petroleum from the environment.

[As amended by: P.L.59-1997, §12.]

IC 13-11-2-187 ------ Definitions: removal

"Removal", for purposes of IC 13-25-4, means any of the following:

(1) The cleanup or removal of released hazardous substances from the environment.

(2) Actions necessary to be taken if the threat of release of hazardous substances into the environment occurs.

(3) Actions necessary to monitor, assess, and evaluate:

(A) the release or threat of release of hazardous substances; or

(B) the continuing effectiveness of other response actions.

(4) The disposal of removed material.

(5) Actions necessary to prevent, minimize, or mitigate damage to:

(A) the public health or welfare; or

(B) the environment;

that may otherwise result from a release or threat of release.

(6) The extension of a municipal water or sewer service to a residence or an industry to:

(A) prevent;

(B) minimize; or

(C) mitigate;

damage to public health that may result from a release or threat of release.

[As amended by P.L.124-1996, §6.]

IC 13-11-2-188 ------ Definitions: removal costs

"Removal costs", for purposes of IC 13-24-2, includes all of the following:

(1) Costs to:

(A) prevent;

(B) minimize; or

(C) mitigate;

oil pollution from an oil discharge.

(2) Other costs necessary to:

(A) minimize; or

(B) mitigate;

damage to public health or welfare related to an oil discharge.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-189 ------ Definitions: response

(a) "Response", for purposes of IC 13-25-4, means removal and remedial action.

(b) The term includes enforcement activities related to removal and remedial action.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-190 ------ Definitions: response assistance

"Response assistance", for purposes of IC 13-24-2, means services, care, assistance, or advice provided:

(1) consistent with the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(d)); or

(2) at the direction of the commissioner or the federal on-scene coordinator;

in response to a discharge or a threatened discharge of oil into or on the navigable waters of Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-191 ------ Definitions: responsible party

(a) "Responsible party", for purposes of IC 13-19-4, means:

(1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an applicant; or

(2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the applicant.

(b) "Responsible party", for purposes of IC 13-20-6, means:

(1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an operator; or

(2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the operator.

(c) "Responsible party", for purposes of IC 13-24-2, has the meaning set forth in Section 1001 of the federal Oil Pollution Act of 1990 (33 U.S.C. 2701).

(d) "Responsible party", for purposes of IC 13-25-6, means a person:

(1) who:

(A) owns hazardous material that is involved in a hazardous materials emergency; or

(B) owns a container or owns or operates a vehicle that contains hazardous material that is involved in a hazardous materials emergency; and

(2) who:

(A) causes; or

(B) substantially contributes to the cause of;

the hazardous materials emergency.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-192 ------ Definitions: responsible person

(a) "Responsible person", for purposes of IC 13-24-1, means a person who has caused a release at a petroleum facility.

(b) "Responsible person", for purposes of IC 13-25-4, means a person that is:

(1) liable to:

(A) the United States government;

(B) the state; or

(C) any other person;

under Section 107 of CERCLA (42 U.S.C. 9607); or

(2) liable to the state under IC 13-25-4-8.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-193 ------ Definitions: restricted waste

"Restricted waste", for purposes of IC 13-20-21, means waste disposed of at a restricted waste site (as defined in 329 IAC 10-2.5-1(b)(57)).

[As amended by: P.L.218-2001, §2.]

IC 13-11-2-193.5 ---- Definitions: restrictive covenant

"Restrictive covenant", for purposes of IC 13-14-2-6, means, with respect to land, any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation that:

(1) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;

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

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

(4) explains how it can be modified or terminated.

[As added by: P.L.61-2001, §2.]

IC 13-11-2-194 ------ Definitions: retailer

(a) "Retailer", for purposes of IC 13-20-14, means a person engaged in the business of selling new tires at retail in Indiana.

(b) "Retailer", for purposes of IC 13-20-16, means a person engaged in the business of selling lead acid batteries at retail in Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-195 ------ Definitions: revenues

(a) "Revenues", for purposes of IC 13-21, means the amounts received by a county or joint solid waste management district from the operation or ownership of facilities.

(b) The term does not include amounts derived from the levy of taxes or from fees under IC 13-21-13.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-196 ------ Definitions: SARA

"SARA", for purposes of IC 13-25-1, refers to Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L.99-499).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-197 ------ Definitions: secondary containment structure

"Secondary containment structure", for purposes of IC 13-18-5, means a structure or a part of a structure that prevents or impedes a hazardous material that is released accidentally from entering surface water or groundwater.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-197.5 ---- Definitions: secondary material

"Secondary material", for purposes of IC 13-22-11.5, means a solid, liquid, or contained gaseous form of a byproduct, spent material, sludge, discarded commercial chemical product, or scrap metal that may be incorporated into a manufacturing or an industrial process, except reclamation, to make a product.

[As amended by: P.L.128-1997, §1.]

IC 13-11-2-197.7 ---- Definitions: security interest

"Security interest", for purposes of sections 119, 148, 151.2, 151.3, and 151.4 of this chapter, IC 13-23-13-14, IC 13-24-1-10, and IC 13-25-4-8.2, includes:

(1) a right under a:
- (A) mortgage;
- (B) deed of trust;
- (C) assignment;
- (D) judgment lien;
- (E) pledge;
- (F) security agreement;
- (G) factoring agreement; or
- (H) lease; and

(2) any other right accruing to a person to secure:
- (A) the repayment of money;
- (B) the performance of a duty; or
- (C) any other obligation;

by a nonaffiliated person.

[As added by: P.L.90-1998, §12.]

IC 13-11-2-198 ------ Definitions: self insurance

"Self insurance", for purposes of IC 13-22-9, means the practice of meeting expenses when those expenses are incurred with financial resources that:

(1) were previously set aside for the purpose of meeting those expenses; or

(2) are not committed to another purpose;

rather than through a trust fund, a surety bond, a letter of credit, or an insurance policy.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-199 ------ Definitions: semipublic permit

"Semipublic permit", for purposes of IC 13-18-20, refers to a NPDES permit issued to a privately owned treatment works (as defined in 33 U.S.C. 1292(2)).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-199.5 ---- Definitions: septic tank soil absorption system

"Septic tank soil absorption system", for purposes of IC 13-26-5-2.5, means pipes laid in a system of trenches or elevated beds, into which the effluent from the septic tank is discharged for soil absorption, or similar structures.

[As added by: P.L.193-2001, §1.]

IC 13-11-2-200 ------ Definitions: sewage

"Sewage", for purposes of environmental management laws, means all refuse, human excreta, garbage, waste or waste products, or any combination of these substances that:

(1) is potentially capable of contaminating the environment; and

(2) may be collected and carried off in a pipe, ditch, or channel.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-201 ------ Definitions: sewage disposal system

"Sewage disposal system", for purposes of IC 13-18-12, means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:

(1) store;

(2) treat;

(3) make inoffensive; or

(4) dispose of;

human excrement or liquid carrying wastes of a domestic nature.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-202 ------ Definitions: sewage works

"Sewage works", for purposes of environmental management laws, means, individually or collectively, those constructions or devices used for any of the following:

(1) Collecting, pumping, treating, and disposing of sewage.

(2) The recovery of byproducts from sewage.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-203 ------ Definitions: site

(a) "Site", for purposes of IC 13-25-5, means a parcel of real property for which an application has been submitted under IC 13-25-5-2.

(b) "Site", for purposes of IC 13-29-1, means the geographic location of a facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-204 ------ Definitions: small business petroleum marketer

"Small business petroleum marketer", for purposes of IC 13-23-4-3, means a petroleum marketer that owns or operates not more than twelve (12) underground storage tanks.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-205 ------ Definitions: solid waste

(a) "Solid waste", for purposes of IC 13-19, IC 13-21, IC 13-20-22, and environmental management laws, except as provided in subsection (b), means any garbage, refuse, sludge from a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or

contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities. The term does not include:

(1) solid or dissolved material in:

(A) domestic sewage; or

(B) irrigation return flows or industrial discharges;

that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act Amendments (33 U.S.C. 1342);

(2) source, special nuclear, or byproduct material (as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.));

(3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or

(4) vegetative matter at composting facilities registered under IC 13-20-10.

(b) "Solid waste", for purposes of IC 13-20-5, IC 13-20-22, and IC 13-21, does not include the following:

(1) A waste that is regulated under the following:

(A) IC 13-22-1 through IC 13-22-8.

(B) IC 13-22-13 through IC 13-22-14.

(2) An infectious waste (as defined in IC 16-41-16-4) that is disposed of at an incinerator permitted under rules adopted by the solid waste management board to dispose of infectious waste.

(c) "Solid waste", for purposes of IC 13-26, means all putrescible and nonputrescible solid and semisolid wastes, except human excreta. The term includes garbage, rubbish, ashes, street cleanings, dead animals, offal, and solid commercial, industrial, and institutional wastes.

[As amended by: P.L.2-1997, §39.]

IC 13-11-2-206 ------ Definitions: solid waste disposal facility

"Solid waste disposal facility", for purposes of IC 13-19-3-8, IC 13-20-4, and IC 13-20-6, means a facility at which solid waste is:

(1) deposited on or beneath the surface of the ground as an intended place of final location; or

(2) incinerated.

[As amended by: P.L.218-2001, §3.]

IC 13-11-2-207 ------ Definitions: solid waste hauler

"Solid waste hauler" or "hauler", for purposes of IC 13-21, means a person who operates a vehicle in which solid waste is transported to:

(1) a transfer station for further transport to a final disposal facility; or

(2) a final disposal facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-208 ------ Definitions: solid waste landfill

"Solid waste landfill", for purposes of IC 13-20-9, IC 13-20-21-6, and IC 13-22-9, means a solid waste disposal facility at which solid waste is deposited on or beneath the surface of the ground as an intended place of final location.

[As amended by: P.L.218-2001, §4.]

IC 13-11-2-209 ------ Definitions: solid waste management

"Solid waste management", for purposes of IC 13-21 and environmental management laws, means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-210 ------ Definitions: solid waste management facility

"Solid waste management facility", for purposes of IC 13-20-1, does not include a hazardous waste facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-211 ------- Definitions: solid waste management unit

"Solid waste management unit", for purposes of environmental management laws, means a discernible unit at a hazardous waste facility from which hazardous waste or constituents of hazardous waste might migrate, irrespective of whether the unit was intended for the management of solid or hazardous wastes. The term includes containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, and underground injection wells.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-212 ------ Definitions: solid waste processing facility

(a) "Solid waste processing facility", for purposes of IC 13-19-3-8, IC 13-20-4, and IC 13-20-6, means a facility at which at least one (1) of the following is located:

(1) A solid waste incinerator.

(2) A transfer station.

(3) A solid waste baler.

(4) A solid waste shredder.

(5) A resource recovery system.

(6) A composting facility.

(7) A garbage grinding system.

(b) The term does not include a facility or operation that generates solid waste.

[As amended by: P.L.218-2001, §5.]

IC 13-11-2-213 ------ Definitions: source

"Source", for purposes of IC 13-17-7, means an aggregation of one (1) or more facilities that are:

(1) located on:

(A) one (1) piece of property; or

(B) contiguous or adjacent properties; and

(2) owned, operated, or controlled by the same person.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-214 ------ Definitions: source reduction

"Source reduction", for purposes of IC 13-17-7 and IC 13-21, means a reduction in the amount of solid waste generated that is achieved through actions affecting the source of the solid waste.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-216 ------ Definitions: spent nuclear fuel

"Spent nuclear fuel", for purposes of IC 13-22-10, has the meaning set forth in Section 2 of the federal Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101), as in effect on January 1, 1987.

[As amended by P.L.124-1996, §7.]

IC 13-11-2-219 ------ Definitions: state

"State", for purposes of IC 13-29-1, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any other territorial possession of the United States.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-220 ------ Definitions: state permit

"State permit", for purposes of IC 13-18-20, refers to a NPDES permit issued to a state owned facility.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-221 ------ Definitions: state plan

"State plan", for purposes of IC 13-21, refers to the state solid waste management plan adopted under IC 13-21-1-1.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-222 ------ Definitions: stone quarry permit

"Stone quarry permit", for purposes of IC 13-18-20, refers to a NPDES permit that involves the area on or beneath land used or distributed in activity related to the extraction, removal, or recovery of:

(1) sand;

(2) gravel;

(3) dimension stone; or

(4) crushed stone;

from natural deposits.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-223 ------ Definitions: storage

(a) "Storage", for purposes of environmental management laws and when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

(b) "Storage", for purposes of IC 13-22-10, means:

(1) the containment of hazardous waste requiring a permit under rules adopted under IC 13-22-2-4; or

(2) the containment of low level radioactive waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the low level radioactive waste.

(c) "Storage", for purposes of IC 13-22-12, includes:

(1) interim status; and

(2) permitted;

hazardous waste storage.

(d) "Storage", for purposes of IC 13-29-1, means the temporary holding of waste for treatment or disposal.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-223.5 ---- Definitions: storm water management program

"Storm water management program", for purposes of IC 13-18-21, means a program that is consistent with the requirements in:

(1) 40 CFR 122.26(d)(2)(iv) for a proposed management program; or

(2) 40 CFR 122.34 for a storm water management program.

[As added by: P.L.55-2001, §1.]

IC 13-11-2-224 ------ Definitions: stormwater permit

"Stormwater permit", for purposes of IC 13-18-20, refers to a permit issued to a facility regulated under 327 IAC 15-5 or 327 IAC 15-6.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-225 ------ Definitions: substance

"Substance", for purposes of IC 13-25-2, refers to a substance on the list described in 42 U.S.C. 11002(a)(2).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-226 ------ Definitions: supplemental fund

"Supplemental fund", for purposes of IC 13-18-13 and IC 13-18-21, refers to the supplemental drinking water and wastewater assistance fund established by IC 13-18-21-22.

[As amended by: P.L.132-1999, §9.]

IC 13-11-2-227 ------ Definitions: supplemental program

"Supplemental program", for purposes of IC 13-18-13 and IC 13-18-21, refers to the supplemental drinking water and wastewater assistance program established by IC 13-18-21-21.

[As amended by: P.L.132-1999, §10.]

IC 13-11-2-228 ------ Definitions: tank

"Tank", for purposes of IC 13-18-12, means any container that is placed on a vehicle to transport wastewater removed from a sewage disposal system.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-229.5 ---- Definitions: target housing

"Target housing", for purposes of lead-based paint activities and IC 13-17-14, means housing constructed before January 1, 1978. The term does not include the following:

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

(2) A building without a bedroom.

[As added by: P.L.123-1997, §10.]

IC 13-11-2-230 ------ Definitions: task force

"Task force", for purposes of IC 13-18-17, refers to the interagency groundwater task force.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-231 ------ Definitions: tire

(a) "Tire", for purposes of:

(1) IC 13-20-13, except as provided in subsection (b); and

(2) IC 13-20-14;

means a continuous solid or pneumatic rubber covering that is designed to encircle a wheel of a motor vehicle (as defined in IC 9-13-2-105(a)).

(b) "Tire", for purposes of IC 13-20-13-7, means a continuous solid or pneumatic rubber covering that is designed to encircle a wheel of a vehicle.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-232 ------ Definitions: title V operating permit

"Title V operating permit", for purposes of IC 13-17-7, means a permit required by 42 U.S.C. 7661a.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-233 ------ Definitions: toxic material

"Toxic material", for purposes of IC 13-27 and IC 13-27.5, means any of the following:

(1) A chemical substance in a gaseous, liquid, or solid state that meets the definition of

hazardous substance in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601(14)).

(2) A mixture of substances described in subdivision (1).

(3) An element, a substance, a compound, or a mixture designated by the commissioner as a toxic or hazardous substance.

(4) A mixture of substances containing a substance described in subdivision (1).

[As amended by: P.L.124-1997, §10.]

IC 13-11-2-234 ------ Definitions: transfer

(a) "Transfer", for purposes of IC 13-25-3, means a conveyance of an interest in property by any of the following:

(1) A deed or other instrument of conveyance of fee title to property.

(2) A lease whose term, if all options were exercised, would be more than forty (40) years.

(3) An assignment of more than twenty-five percent (25%) of the beneficial interest in a land trust.

(4) A collateral assignment of a beneficial interest in a land trust.

(5) An installment contract for the sale of property.

(6) A mortgage or trust deed.

(7) A lease of any duration that includes an option to purchase.

(b) The term does not include a conveyance of an interest in property by any of the following:

(1) A deed or trust document that, without additional consideration:

(A) confirms;

(B) corrects;

(C) modifies; or

(D) supplements;

a deed or trust document that was previously recorded.

(2) A deed or trust document that, without additional consideration, changes title to property without changing beneficial interest.

(3) A tax deed or a deed from a county transferring property the county received under IC 6-1.1-25-5.5.

(4) An instrument of release of an interest in property that is security for a debt or other obligation.

(5) A deed of partition.

(6) A conveyance occurring as a result of the foreclosure of a mortgage or other lien on real property.

(7) An easement.

(8) A conveyance of an interest in minerals, gas, or oil, including a lease.

(9) A conveyance by operation of law upon the death of a joint tenant with right of survivorship.

(10) An inheritance or devise.

(11) A deed in lieu of foreclosure.

(12) A Uniform Commercial Code sale or other foreclosure of a collateral assignment of a beneficial interest in a land trust.

(13) A deed that conveys fee title under an installment contract for the sale of property.

(14) A deed that conveys fee title under an exercise of an option to purchase contained in a lease of property.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-235 ------ Definitions: transfer station

(a) "Transfer station", for purposes of:

(1) IC 13-21; and

(2) environmental management laws, except as provided in subsection (c);

means a facility where solid waste is transferred from a vehicle or a container to another vehicle or container for transportation.

(b) The term does not include a facility:

(1) where the solid waste that is transferred has been generated by the facility or a recycling facility; or

(2) where:

(A) infectious waste (as defined in IC 16-41-16-4) is transferred directly between two (2) vehicles;

(B) infectious waste is packaged in compliance with 410 IAC 1-3-24; and

(C) packages of infectious waste are not opened at any time during the transfer.

(c) "Transfer station", for purposes of IC 13-22-9, means a facility for the:

(1) acceptance;

(2) holding; and

(3) loading;

of solid waste into a vehicle for movement to a facility for processing, recycling, or disposal. The term does not include collection containers for solid waste.

[As amended by: P.L.128-1997, §2.]

IC 13-11-2-236 ------ Definitions: transferee

(a) "Transferee", for purposes of IC 13-25-3, means any of the following:

(1) A buyer, mortgagee, grantee, or lessee of real property.

(2) An assignee of an interest of more than twenty-five percent (25%) in a land trust.

(3) For a transfer to the trustee of a land trust, the owners of the beneficial interest of the land trust.

(b) The term includes a prospective transferee.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-237 ------ Definitions: transferor

(a) "Transferor", for purposes of IC 13-25-3, means any of the following:

(1) A seller, grantor, mortgagor, or lessor of real property.

(2) An assignor of an interest of more than twenty-five percent (25%) in a land trust.

(3) For a transfer by the trustee of a land trust, the owner of the beneficial interest of the land trust.

(b) The term includes a prospective transferor.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-237.5 ---- Definitions: transient noncommunity water system

"Transient noncommunity water system", for purposes of IC 13-18-11, means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

[As amended by: P.L.1-2001, §15.]

IC 13-11-2-238 ------ Definitions: transporter

"Transporter", for purposes of IC 13-20-4 and IC 13-20-6, means a person who is in the business of transporting municipal waste.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-239 ------ Definitions: treatment

(a) "Treatment", for purposes of environmental management laws, when used in connection with a waste that is determined to be hazardous waste under IC 13-22-2-3, means any method, technique, or process designed to change the physical, chemical, or biological character or composition of the waste so as to:

(1) neutralize the waste;

(2) make the waste:

(A) nonhazardous or less hazardous;

(B) safer to transport, store, or dispose of;

(C) amenable to recovery or storage; or

(D) reduced in volume; or

(3) recover energy or material resources from the waste.

(b) "Treatment", for purposes of IC 13-22-12, includes:

(1) interim status; and

(2) permitted;

hazardous waste treatment.

(c) "Treatment", for purposes of IC 13-29-1, means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-240 ------ Definitions: underground petroleum storage tank

"Underground petroleum storage tank", for purposes of IC 13-23, means an underground storage tank that is in operation after December 31, 1973.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-241 ------ Definitions: underground storage tank

(a) "Underground storage tank", for purposes of section 161 of this chapter and IC 13-23, means one (1) tank or a combination of tanks, including underground pipes connected to the tank or combination of tanks:

(1) that is used to contain an accumulation of regulated substances; and

(2) the volume of which, including the volume of the underground connected pipes, is at least ten percent (10%) beneath the surface of the ground.

(b) The term does not include any of the following:

(1) A farm or residential tank with a capacity of not more than one thousand one hundred (1,100) gallons that is used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises on which the tank is stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, that:

(A) is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.);

(B) is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 et seq.); or

(C) is an intrastate pipeline facility regulated under state laws comparable to the laws identified in clauses (A) through (B).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A stormwater or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area such as:

(A) a basement;

(B) a cellar;

(C) a mineworking;

(D) a drift;

(E) a shaft; or

(F) a tunnel;

if the storage tank is situated upon or above the surface of the floor.

(10) Any other tank exempted by a rule adopted by the solid waste management board in accordance with regulations adopted by the Administrator of the United States Environmental Protection Agency.

(11) A pipe connected to a tank described in subdivisions (1) through (10).

[As added by: P.L.1-1996, §1.]

IC 13-11-2-242 ------ Definitions: unit

"Unit", for purposes of:

(1) section 148(c) of this chapter;

(2) IC 13-20-17.5;

(3) IC 13-20-20; and

(4) IC 13-23;

has the meaning set forth in IC 36-1-2-23.

[As amended by: P.L.225-2001, §13.]

IC 13-11-2-242.3 ---- Definitions: upset

"Upset", for purposes of IC 13-18-12-8, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee, and does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

[As added by: P.L.112-2000, §2.]

IC 13-11-2-242.5 ---- Definitions: use attainability analysis

"Use attainability analysis", for purposes of IC 13-18, refers to a structured scientific assessment of the physical, chemical, biological, and economic factors affecting the attainment of a designated use as provided in 40 CFR 131.3(g).

[As added by: P.L.140-2000, §13.]

IC 13-11-2-243 ------ Definitions: used oil

"Used oil", for purposes of IC 13-21-5-14 and environmental management laws, means a petroleum based or synthetic oil that has been used. The term includes oil that has been used for the following purposes:

(1) Lubricant for engines, turbines, or gears.

(2) Hydraulic fluid, including transmission fluid.

(3) Metal working fluid, including cutting, grinding, machining, rolling, stamping, quenching, and coating oil.

(4) Insulating fluid or coolants.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-244 ------ Definitions: user

"User", for purposes of IC 13-21 and environmental management laws, means a person that has entered into a financing agreement with:

(1) a county solid waste management district or joint solid waste management district; or

(2) a developer;

in contemplation of the user's use and operation of the facilities referred to in the agreement.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-244.5 ---- Definitions: utilize

"Utilize", for purposes of IC 13-22-11.5, means to legitimately incorporate a secondary material into an industrial or manufacturing process to make a usable product without intervening reclamation or recovery, and includes any necessary transportation directly between the generator and user or storage by the generator or user of the secondary material, but which must occur without speculative accumulation or in a manner that constitutes disposal.

[As amended by: P.L.128-1997, §3.]

IC 13-11-2-245 ------ Definitions: vehicle

(a) "Vehicle", for purposes of IC 13-17-5, refers to a vehicle required to be registered with the bureau of motor vehicles and required to have brakes. The term does not include the following:

(1) Farm tractors.

(2) Implements of husbandry.

(3) Farm tractors used in transportation.

(4) Mobile homes (house trailers).

(5) Trailers weighing not more than three thousand (3,000) pounds.

(6) Antique motor vehicles.

(b) "Vehicle", for purposes of IC 13-18-12, means a device used to transport a tank.

(c) "Vehicle", for purposes of IC 13-20-4, refers to a municipal waste collection and transportation vehicle.

(d) "Vehicle", for purposes of IC 13-20-13-7, means a motor vehicle and types of equipment, machinery, implements, or other devices used in transportation, manufacturing, agriculture, construction, or mining. The term does not include the following:

(1) A lawn and garden tractor that is propelled by a motor of not more than twenty (20) horsepower.

(2) A semitrailer.

(e) "Vehicle", for purposes of IC 13-20-14, has the meaning set forth in IC 9-13-2-196.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-246 ------ Definitions: waste exchange

"Waste exchange", for purposes of IC 13-27 and IC 13-27.5, means a method of end-of-pipe management of environmental wastes that involves the transfer of environmental wastes between:

(1) businesses;

(2) manufacturers; or

(3) facilities owned by the same business or manufacturer;

for recovery or to serve a productive purpose.
[As amended by: P.L.124-1997, §11.]

IC 13-11-2-247 ------ Definitions: waste management

"Waste management", for purposes of IC 13-29-1, means the storage, transportation, treatment, or disposal of waste.
[As added by: P.L.1-1996, §1.]

IC 13-11-2-247.5 ---- Definitions: waste management services

"Waste management services", for purposes of IC 13-21, means:

(1) the collection, storage, separation, recovery, recycling, marketing, transfer, disposal, transportation, and processing of solid waste or recyclable materials, including the use of facilities incidental to these activities; and

(2) the operation of facilities described in subdivision (1).

[As amended by P.L.45-1997, §6.]

IC 13-11-2-248 ------ Definitions: waste minimization

"Waste minimization", for purposes of environmental management laws, means a process that leads to:

(1) preventing the creation of waste; or

(2) a diminution in the volume of waste being generated.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-249 ------ Definitions: waste reduction

(a) "Waste reduction", for purposes of environmental management laws except as provided in subsection (b), means a process that leads to the prevention of the creation of waste.

(b) "Waste reduction", for purposes of IC 13-22-11, means the use of one (1) or more industrial practices that reduce, eliminate, or avoid the generation of hazardous waste to reduce risks to human health and to the environment. The term does not include the following:

(1) Recycling of a hazardous waste, except for recycling that is an integral part of the industrial operation that generated the hazardous waste.

(2) An act that concentrates a hazardous waste to reduce the volume of the hazardous waste.

(3) A dilution of a hazardous waste to reduce the hazardous characteristics of the hazardous waste.

(4) A treatment of a hazardous waste after the hazardous waste is generated, such as by incineration.

(5) Any other action involving a hazardous waste, unless the action is taken:

(A) as part of the industrial operation that generates the hazardous waste;

(B) at the place where the hazardous waste is generated; and

(C) at the time that the hazardous waste is generated.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-249.5 ---- Definitions: waste shifting

"Waste shifting", for purposes of IC 13-27.5, means the transfer of an environmental waste from one (1) environmental medium to:

(1) another environmental medium;

(2) the workplace environment; or

(3) a product.

[As added by: P.L.124-1997, §12.]

IC 13-11-2-250 ------ Definitions: waste tire

"Waste tire", for purposes of IC 13-20-13 and IC 13-20-14, means a tire that is not suitable for the tire's original purpose.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-250.5 ---- Definitions: waste tire processing operation

"Waste tire processing operation", for purposes of IC 13-20-13, means an operation that processes waste tires by cutting, shredding, or grinding. The term does not include a retail operation that cuts or shreds waste tires generated by the retail operation.

[As added by: P.L.93-1998, §2.]

IC 13-11-2-251 ------ Definitions: waste tire storage site

"Waste tire storage site", for purposes of IC 13-20-13 and IC 13-20-14, means:

(1) a site at which at least one thousand (1,000) waste tires are accumulated outdoors or within a structure that is not completely enclosed; or

(2) a site at which at least two thousand (2,000) waste tires are accumulated indoors within a completely enclosed structure.

[As amended by: P.L.93-1998, §3.]

IC 13-11-2-252 ------ Definitions: waste tire transporter

"Waste tire transporter", for purposes of IC 13-20-14, means a person who engages in the business of:

(1) accepting waste tires from retailers; and

(2) transporting the waste tires to one (1) or more other locations.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-253 ------ Definitions: waste-to-energy facility

"Waste-to-energy facility", for purposes of IC 13-20 and IC 13-21, means a facility at which solid waste is converted into energy or another useful product by incineration.

[As amended by: P.L.138-2000, §4.]

IC 13-11-2-254 ------ Definitions: waste transfer activities

"Waste transfer activities", for purposes of IC 13-20-6, means the participation by:

(1) a broker or a transporter who is:

(A) a resident of Indiana; or

(B) not a resident of Indiana; or

(2) a transfer station that receives municipal waste located:

(A) inside Indiana; or

(B) outside Indiana;

in the collection or transportation of municipal waste for disposal or incineration in Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-255 ------ Definitions: waste treatment facilities

"Waste treatment facilities", for purposes of IC 13-18-10, means the system of:

(1) treatment works;

(2) control facilities;

(3) equipment; and

(4) other facilities and appurtenances;

installed to treat, control, or dispose of runoff, waste, and manure.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-256 ------ Definitions: wastewater

"Wastewater", for purposes of IC 13-18-12 and IC 13-20-17.5, means the following:

(1) Human excreta, water, scum, sludge, and sewage from sewage disposal systems, retained contents of wastewater holding tanks, or portable sanitary units.

(2) Grease, fats, and retained wastes from grease traps or interceptors.

(3) Wastes carried in liquid from ordinary living processes.

(4) Incidental or accidental seepage from sewage disposal systems.

[As amended by: P.L.225-2001, §14.]

IC 13-11-2-257 ------ Definitions: wastewater management

"Wastewater management", for purposes of IC 13-18-12, includes the following:

(1) The cleaning of sewage disposal systems.

(2) The transportation, storage, treatment, or disposal of wastewater.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-258 ------ Definitions: wastewater treatment plant

"Wastewater treatment plant", for purposes of IC 13-18-11 and environmental management laws, means the system of treatment works, regulatory devices, equipment, and other facilities and appurtenances installed to treat sewage, industrial wastes, and other wastes delivered by a system of sewers and other related facilities, whether owned or operated by the state, a municipality, or a person, firm, or corporation. The term does not include septic tank disposal systems.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-259 ------ Definitions: water distribution system

"Water distribution system", for purposes of IC 13-18-11 and environmental management laws, means that part of the water supply system in which water is conveyed from the water treatment plant to the premises of the consumer.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-260 ------ Definitions: water pollution

"Water pollution", for purposes of water pollution control laws and environmental management laws, means:

(1) actual or threatened alteration of the physical, thermal, chemical, biological, bacteriological, or radioactive properties of any waters; or

(2) the discharge or threatened discharge of any contaminant into any waters that does or can create a nuisance or make the waters harmful, detrimental, or injurious to any of the following:

(A) Public health, safety, or welfare.

(B) Domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

(C) Livestock, wild animals, birds, fish, or aquatic life.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-261 ------ Definitions: water pollution control laws

"Water pollution control laws" refers to IC 13-18, except for the following:

(1) IC 13-18-2.

(2) IC 13-18-9 through IC 13-18-20.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-262 ------ Definitions: water supply permit

"Water supply permit", for purposes of IC 13-18-20, refers to a NPDES permit issued to a facility collecting, treating, or distributing water from:

(1) wells;

(2) reservoirs;

(3) lakes;

(4) rivers;

(5) sources of supply;

(6) pumps;

(7) mains;

(8) pipes;

(9) facilities; or

(10) structures;

through which potable water is obtained, treated as required, and provided to water users.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-263 ------ Definitions: water supply system

(a) "Water supply system", for purposes of IC 13-18-11 and environmental management laws, means the system of wells, pumps, structures, pipes, facilities, and other constructed conveyances through which water is obtained, treated as required, and supplied through a water distribution system to the public for human consumption.

(b) The term includes state owned facilities even though the water may not be sold to the public.

[As amended by: P.L.220-1999, §2.]

IC 13-11-2-264 ------ Definitions: water treatment plant

"Water treatment plant", for purposes of IC 13-18-11 and environmental management laws, means that part of the water supply system that provides the water or in some way alters the physical, chemical, or bacteriological quality of the water.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-265 ------ Definitions: waters

(a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(b) The term does not include:

(1) a private pond; or

(2) an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge;

unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-265.3 ---- Definitions: wet weather event

"Wet weather event", for purposes of IC 13-18, means storm water runoff, snow melt runoff, or ice melt runoff entering a combined sewer system.

[As added by: P.L.140-2000, §15.]

IC 13-11-2-265.5 ---- Definitions: watershed

"Watershed", for purposes of IC 13-18-3, has the meaning set forth in IC 14-8-2-310.

[As added by: P.L.140-2000, §14.]

IC 13-11-2-266 ------ Definitions: white goods

"White goods", for purposes of IC 13-21, means discarded:

(1) refrigerators;

(2) ranges;

(3) water heaters; and

(4) other similar domestic and commercial large appliances.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-267 ------ Definitions: wholesaler

(a) "Wholesaler", for purposes of IC 13-20-14, means a person engaged in the business of selling new tires at wholesale in Indiana.

(b) "Wholesaler", for purposes of IC 13-20-16, means a person engaged in the business of selling lead acid batteries at wholesale in Indiana.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-268 ------ Definitions: work receipt

"Work receipt", for purposes of IC 13-23, means a receipt that:

(1) is signed by a contractor certified under IC 13-23-3-3; and

(2) contains the following:

(A) The name and address of the contractor.

(B) An itemized list of the work performed by the contractor.

(C) The itemized cost of the work performed.

[As added by: P.L.1-1996, §1.]

IC 13-11-2-269 ------ Definitions: works

"Works", for purposes of IC 13-26, means the following:

(1) For a water project, the following:

(A) Wells.

(B) Reservoirs.

(C) Dams.

(D) Pumps.

(E) Transmission mains.

(F) Distribution mains, including local and service lines.

(G) Buildings and facilities for the purification and improvement of the quality of water.

(H) Fire hydrants.

(I) Meters.

(J) Storage facilities for the water.

(K) All other appurtenances or equipment:

(i) necessary;

(ii) useful; or
(iii) convenient;
in the operation of waterworks.

(2) For a sewage project, the following:
(A) Sewage treatment plants.
(B) Intercepting sewers.
(C) Main sewers.
(D) Submain sewers.
(E) Local sewers.
(F) Lateral sewers.
(G) Outfall sewers.
(H) Force mains.
(I) Pumping stations.
(J) Ejector stations.
(K) All other appurtenances or equipment necessary, useful, or convenient for the:
(i) collection and treatment;
(ii) purification; and
(iii) disposal;
of liquid and solid waste, sewage, night soil, and industrial waste.

(3) For a solid waste project, the following:
(A) An area or plant designed primarily for the collection and treatment of solid waste.
(B) An area or plant designed for the purpose of reducing the volume of solid waste that must finally be disposed of, including the following:
(i) Incinerators.
(ii) Pulverizers.
(iii) Compactors.
(iv) Shredding and baling plants.
(v) Transfer stations.
(vi) Compost plants.
(C) An area or plant that provides for:
(i) collection;
(ii) separation;
(iii) recycling; and
(iv) recovery;
of solid wastes.
(D) Sanitary landfills reviewed and approved by the department before purchase of land or equipment.

[As added by: P.L.1-1996, §1.]

TITLE 13. ENVIRONMENT
IC 13-12. GENERAL PROVISIONS

IC 13-12-1. EFFECT OF RECODIFICATION BY THE ACT OF THE 1996 REGULAR SESSION OF THE GENERAL ASSEMBLY

IC 13-12-1-1 --------- Effect of recodification: purpose

The purpose of the recodification act of the 1996 regular session of the general assembly is to recodify prior environmental law in a style that is clear, concise, and easy to interpret and apply. Except to the extent that:

(1) the recodification act of the 1996 regular session of the general assembly is amended to reflect the changes made in a provision of another bill that adds to, amends, or repeals a provision in the recodification act of the 1996 regular session of the general assembly; or

(2) the minutes of meetings of the code revision commission during 1995 expressly indicate a different purpose;

the substantive operation and effect of the prior environmental law continue uninterrupted as if the recodification act of the 1996 regular session of the general assembly had not been enacted.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-2 --------- Effect of recodification: application of chapter

Subject to section 1 of this chapter, sections 3 through 8 of this chapter shall be applied to the statutory construction of the recodification act of the 1996 regular session of the general assembly.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-3 --------- Effect of recodification: on prior rights, etc.

(a) The recodification act of the 1996 regular session of the general assembly does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;

(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;

(6) any tax levies made or authorized;

(7) any funds established;

(8) any patents issued;

(9) the validity, continuation, or termination of any contracts or leases executed;

(10) the validity, continuation, scope, termination, suspension, or revocation of:

(A) permits;

(B) licenses;

(C) certificates of registration;

(D) grants of authority; or

(E) limitations of authority; or

(11) the validity of court decisions entered regarding the constitutionality of any provision of the prior environmental law;

before the effective date of the recodification act of the 1996 regular session of the general assembly (July 1, 1996). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, per-

mits, licenses, certificates of registration, grants of authority, or limitations of authority continue and shall be imposed and enforced under prior environmental law as if the recodification act of the 1996 regular session of the general assembly had not been enacted.

(b) The recodification act of the 1996 regular session of the general assembly does not:

(1) extend, or cause to expire, a permit, license, certificate of registration, or other grant or limitation of authority; or

(2) in any way affect the validity, scope, or status of a license, permit, certificate of registration, or other grant or limitation of authority;

issued under the prior environmental law.

(c) The recodification act of the 1996 regular session of the general assembly does not affect the revocation, limitation, or suspension of a permit, license, certificate of registration, or other grant or limitation of authority based in whole or in part on violations of the prior environmental law or the rules adopted under the prior environmental law.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-4 --------- Effect of recodification: construction in general

The recodification act of the 1996 regular session of the general assembly shall be construed as a recodification of prior environmental law. Except as provided in section 1(1) and 1(2) of this chapter, if the literal meaning of the recodification act of the 1996 regular session of the general assembly would result in a substantive change in the prior environmental law, the difference shall be construed as a typographical, spelling, or other clerical error that must be corrected by:

(1) inserting, deleting, or substituting words,punctuation, or other matters of style in the recodification act of the 1996 regular session of the general assembly; and

(2) using any other rule of statutory construction;

as necessary or appropriate to apply the recodification act of the 1996 regular session of the general assembly in a manner that does not result in a substantive change in the law. The principle of statutory construction that a court must apply the literal meaning of an act if the literal meaning of the act is unambiguous does not apply to the recodification act of the 1996 regular session of the general assembly to the extent that the recodification act of the 1996 regular session of the general assembly is not substantively identical to the prior environmental law.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-5 --------- Effect of recodification: construction of statutory references

Subject to section 8 of this chapter, a reference in a statute or rule to a statute that is repealed and replaced in the same or a different form in the recodification act of the 1996 regular session of the general assembly shall be treated after the effective date of the new provision as a reference to the new provision.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-6 --------- Effect of recodification: construction of internal references

A citation reference in the recodification act of the 1996 regular session of the general assembly to another provision of the recodification act of the 1996 regular session of the general assembly shall be treated as including a reference to the provision of prior environmental law that is substantively equivalent to the provision of the recodification act of the 1996 regular session of the general assembly that is referred to by the citation reference.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-7 --------- Effect of recodification: construction of rule references

(a) As used in the recodification act of the 1996 regular session of the general assembly, a reference to rules adopted under any provision of this title or under any other provision of the recodification act of the 1996 regular session of the general assembly refers to either:

(1) rules adopted under the recodification act of the 1996 regular session of the general assembly; or

(2) rules adopted under the prior environmental law until those rules have been amended, repealed, or superseded.

(b) Rules adopted under the prior environmental law continue in effect after June 30, 1996, until the rules are amended, repealed, or suspended.

[As added by: P.L.1-1996, §2.]

IC 13-12-1-8 --------- Effect of recodification: effect of reference to prior law

(a) A reference in the recodification act of the 1996 regular session of the general assembly to a citation in the prior environmental law before its repeal is added in certain sections of the recodification act of the 1996 regular session of the general assembly only as an aid to the reader.

(b) The inclusion or omission in the recodification act of the 1996 regular session of the general assembly of a reference to a citation in the prior environmental law before its repeal does not affect:

(1) any rights or liabilities accrued;

(2) any penalties incurred;

(3) any violations committed;

(4) any proceedings begun;

(5) any bonds, notes, loans, or other forms of indebtedness issued, incurred, or made;

(6) any tax levies made;

(7) any funds established;

(8) any patents issued;

(9) the validity, continuation, or termination of contracts or leases executed; or

(10) the validity, continuation, scope, termination, suspension, or revocation of:

(A) permits;

(B) licenses;

(C) certificates of registration;

(D) grants of authority; or

(E) limitations of authority;

before the effective date of the recodification act of the 1996 regular session of the general assembly (July 1, 1996). Those rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, licenses, permits, certificates of registration, and other grants of authority continue and shall be imposed and enforced under prior environmental law as if the recodification act of the 1996 regular session of the general assembly had not been enacted.

(c) The inclusion or omission in the recodification act of the 1996 regular session of the general assembly of a citation to a provision in the prior environmental law does not affect the use of a prior conviction, violation, or noncompliance under the prior environmental law as the basis for revocation of a license, permit, certificate of registration, or other grant of authority under the recodification act of the 1996 regular session of the general assembly, as necessary or appropriate to apply the recodification act of the 1996 regular session of the general assembly in a manner that does not result in a substantive change in the law.

[As added by: P.L.1-1996, §2.]

IC 13-12-2. STATUTORY CONSTRUCTION

IC 13-12-2-1 --------- Statutory construction: liberally construed

Being necessary for the public health, safety, and welfare, this title shall be liberally construed to effectuate the purposes of this title.

[As added by: P.L.1-1996, §2.]

IC 13-12-3. ENVIRONMENTAL POLICY

IC 13-12-3-1 --------- Environmental policy: purpose of Title 13

The purpose of this title is:

(1) to provide for evolving policies for comprehensive environmental development and control on a statewide basis;

(2) to unify, coordinate, and implement programs to provide for the most beneficial use of the resources of Indiana; and

(3) to preserve, protect, and enhance the quality of the environment so that, to the extent possible, future generations will be ensured clean air, clean water, and a healthful environment.

[As added by: P.L.1-1996, §2.]

IC 13-12-3-2 --------- Environmental policy: remediation objectives

(a) The remediation and closure goals, objectives, and standards for activities conducted under IC 13-22 and IC 13-23 shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

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

[As added by: P.L.224-1999, §1.]

IC 13-12-4. ENVIRONMENTAL IMPACT STATEMENTS

IC 13-12-4-1 --------- Environmental impact statements: state environmental policy

The purposes of this chapter are the following:

(1) To declare a state policy that will encourage productive and enjoyable harmony between humans and the environment.

(2) To promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans.

(3) To enrich the understanding of the ecological systems and natural resources important to Indiana.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-2 --------- Environmental impact statements: preface

The general assembly recognizes the following:

(1) The profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of the following:

(A) Population growth.

(B) High-density urbanization.

(C) Industrial expansion.

(D) Resource exploitation.

(E) New and expanding technological advances.

(2) The critical importance of restoring and maintaining environmental quality to the overall welfare and development of humans.

(3) That each person should enjoy a healthful environment.

(4) That each person has a responsibility to contribute to the preservation and enhancement of the environment.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-3 --------- Environmental impact statements: declaration of policy

The general assembly declares that it is the continuing policy of the state, in cooperation with the federal and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to do the following:

(1) Foster and promote the general welfare.

(2) Create and maintain conditions under which humans and nature can exist in productive harmony.

(3) Fulfill the social, economic, and other requirements of present and future generations of Indiana citizens.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-4 --------- Environmental impact statements: policy objectives

To carry out the policy set forth in this chapter, it is the continuing responsibility of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources to the end that the state may do the following:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.

(2) Assure for all citizens of Indiana safe, healthful, productive, and esthetically and culturally pleasing surroundings.

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

(4) Preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice.

(5) Achieve a balance between population and resource use that will permit high standards of living and a wise sharing of life's amenities.

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-5 --------- Environmental impact statements: required for proposals for legislation and other major state actions significantly affecting the quality of the human environment

To the fullest extent possible:

(1) the policies, rules, and statutes of the state shall be interpreted and administered in accordance with the policies set forth in this chapter; and

(2) all state agencies shall do the following:

(A) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making that may have an impact on the environment.

(B) Identify and develop methods and procedures that will ensure that unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations.

(C) Include in every recommendation or report on proposals for legislation and other major state actions significantly affecting the quality of the human environment a detailed statement by the responsible official on the following:

(i) The environmental impact of the proposed action.

(ii) Any adverse environmental effects that cannot be avoided should the proposal be implemented.

(iii) Alternatives to the proposed action.

(iv) The relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity.

(v) Any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented.

Before making a detailed statement, the responsible state official shall consult with and obtain the comments of each state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of the statement and the comments and views of the appropriate federal, state, and local agencies that are authorized to develop and enforce environmental standards shall be made available to the governor and to the public and must accompany the proposal through the agency review processes. The air pollution control board, water pollution control board, and solid waste management board shall by rule define the actions that constitute a major state action significantly affecting the quality of the human environment.

(D) Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.

(E) Recognize the long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize state cooperation in anticipating and preventing a decline in the quality of the environment.

(F) Make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

(G) Initiate and use ecological information in the planning and development of resource oriented projects.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-6 --------- Environmental impact statements: agencies of state to review environmental compliance

All state agencies shall review their:

(1) statutory authority;

(2) administrative rules; and

(3) current policies and procedures;

to determine whether there are any deficiencies or inconsistencies that prohibit full compliance with the purposes and provisions of this chapter.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-7 --------- Environmental impact statements: law is supplemental

Sections 5 and 6 of this chapter do not affect the specific statutory obligations of any state agency to do any of the following:

(1) Comply with criteria or standards of environmental quality.

(2) Coordinate or consult with any other federal or state agency.

(3) Act or refrain from acting contingent upon the recommendations or certification of any other federal or state agency.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-8 --------- Environmental impact statements: not required for issuance of a license or permit

This chapter may not be construed to require an environmental impact statement for the issuance of a license or permit by any state agency.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-9 --------- Environmental impact statements: policies and goals supplemental

Policies and goals set forth in this chapter supplement those policies and goals set forth in other authorizations of state agencies.

[As added by: P.L.1-1996, §2.]

IC 13-12-4-10 -------- Environmental impact statements: federal NEPA statements eliminate need for EIS in certain cases

Any state agency that is required by the federal National Environmental Policy Act (P.L. 91-190) (42 U.S.C. 4321 et seq.) to file a federal environmental impact statement is not required to file a statement with the state government as provided under sections 5 and 6 of this chapter unless the action contemplated requires state legislation or state appropriations.

[As added by: P.L.1-1996, §2.]

IC 13-12-5. STATE ENVIRONMENTAL PROTECTION HIERARCHY

IC 13-12-5-1 --------- State environmental protection hierarchy: approaches

The general assembly recognizes that there are two (2) approaches to environmental protection:

(1) clean manufacturing; or

(2) waste management, which is also known as pollution control.

[As amended by: P.L.124-1997, §13.]

IC 13-12-5-2 --------- State environmental protection hierarchy: clean manufacturing defined

Clean manufacturing consists of economically feasible practices that reduce, avoid, or eliminate the unnecessary use of harmful industrial materials and the generation of industrial wastes, pollutants, emissions, and discharges at the point of production. Clean manufacturing practices are limited to the following:

(1) Product reformulation.

(2) Input substitution.

(3) Equipment redesign.

(4) Improved operations and procedures.

[As amended by: P.L.124-1997, §14.]

IC 13-12-5-3 --------- State environmental protection hierarchy: waste management or pollution control defined

Waste management or pollution control consists of environmental protection practices employed after industrial wastes, pollutants, discharges, and emissions have been generated. Waste management or pollution control practices include the following:

(1) Waste storage and waste transportation.

(2) Waste treatment, including the following:

(A) Detoxification.

(B) Incineration.

(C) Biological treatment.

(3) Land disposal of wastes.

(4) Recycling.

(5) Burning waste as fuels.

(6) Dispersal of waste into air or water.

(7) Dewatering of waste.

[As amended by: P.L.124-1997, §15.]

IC 13-12-5-4 --------- State environmental protection hierarchy: clean manufacturing preferred approach

The general assembly recognizes the following:

(1) That clean manufacturing is:

(A) the most reliable and effective form of environmental protection; and

(B) the preferred approach to environmental protection.

(2) That wastes, pollutants, emissions, or discharges that have not been avoided or eliminated by means of clean manufacturing at the point of production should be managed or controlled in a manner that has the least adverse impact on human health and the environment.

[As amended by: P.L.124-1997, §16.]

TITLE 13. ENVIRONMENT
IC 13-13. DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IC 13-13-1. ESTABLISHMENT OF DEPARTMENT

IC 13-13-1-1 --------- Establishment of department: IDEM established

The department of environmental management is established.

[As added by: P.L.1-1996, §3.]

IC 13-13-2. COMMISSIONER OF DEPARTMENT

IC 13-13-2-1 --------- Commissioner of department: appointment and duties

(a) The governor shall appoint an individual with appropriate training and experience as commissioner of the department. The commissioner:

(1) is the executive and chief administrative officer of the department; and

(2) may delegate authority to appropriate department staff.

(b) The commissioner:

(1) serves at the governor's pleasure; and

(2) is entitled to receive compensation in an amount set by the governor, subject to approval by the budget agency.

[As added by: P.L.1-1996, §3.]

IC 13-13-2-2 --------- Commissioner of department: appointments

The commissioner shall appoint individuals to the other positions in the department.

[As added by: P.L.1-1996, §3.]

IC 13-13-2-3 --------- Commissioner of department: ad hoc group authorized

The commissioner may establish an ad hoc group to study and make recommendations regarding critical environmental issues. The ad hoc group may include the following:

(1) University representatives.

(2) Scientific research organizations.

(3) Public policy and research advisory organizations.

(4) Individuals from the private sector with experience in related disciplines.

[As added by: P.L.1-1996, §3.]

IC 13-13-3. OFFICES AND DIVISIONS OF DEPARTMENT

IC 13-13-3-1 --------- Offices and divisions of department: offices listed

The department must include the following offices:

(1) An office dealing with environmental emergencies.

(2) An office for communications with the public.

(3) A hearings office, including the department's hearing officers.

(4) An office to conduct investigations.

[As added by: P.L.1-1996, §3.]

IC 13-13-3-2 --------- Offices and divisions of department: divisions listed

The department must include the following divisions:

(1) An air pollution control division.

(2) A water pollution control division.

(3) A solid waste management division.

(4) A laboratory division.

(5) An administrative services division.

(6) A division of pollution prevention.

[As added by: P.L.1-1996, §3.]

IC 13-13-3-3 --------- Offices and divisions of department: others authorized

The commissioner may create other offices and divisions.

[As added by: P.L.1-1996, §3.]

IC 13-13-4. EMPLOYEES OF DEPARTMENT

IC 13-13-4-1 --------- Employees of department: nonmerit positions

The:

(1) position of commissioner;

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

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

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

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

are subject to IC 4-15-1.8.

[As added by: P.L.1-1996, §3.]

IC 13-13-4-2 --------- Employees of department: merit positions

The positions in the department not described in section 1 of this chapter are subject to IC 4-15-2. An employee subject to IC 4-15-2 who accepts a position under IC 4-15-1.8 has the option of returning to the first available position under IC 4-15-2 for which the employee is qualified.

[As added by: P.L.1-1996, §3.]

IC 13-13-5. DESIGNATION OF DEPARTMENT FOR PURPOSES OF FEDERAL LAW

IC 13-13-5-1 --------- Designation of department: for purposes of federal law

Except as provided in IC 14-37, the department is designated as the following:

(1) The water pollution agency for Indiana for all purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) in effect January 1, 1988, and the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j) in effect January 1, 1988.

(2) The solid waste agency for Indiana for all purposes of the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) in effect January 1, 1988.

(3) The air pollution control agency for Indiana for all purposes of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(4) The state agency with responsibility concerning the Midwest Interstate Compact on Low-Level Radioactive Waste under IC 13-29-1.

(5) The state agency with responsibility concerning the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 through 9675) as in effect on January 1, 1993, and concerning 40 CFR 300.505, Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan.

(6) The state agency with responsibility concerning the federal Defense Environmental Restoration Program (10 U.S.C. 2701 through 2708) as in effect on January 1, 1993.

[As added by: P.L.1-1996, §3.]

IC 13-13-5-2 --------- Designation of department: authorization to secure federal benefits

The department may take any action necessary to secure for Indiana the benefits of the statutes described in section 1 of this chapter.

[As added by: P.L.1-1996, §3.]

IC 13-13-6. NORTHWEST INDIANA ADVISORY BOARD

IC 13-13-6-1 --------- Northwest Indiana advisory board: establishment

The commissioner shall establish a northwest Indiana advisory board to serve the following counties:

(1) A county that has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(2) A county that has a population of more than one hundred seven thousand (107,000) but less than one hundred eight thousand (108,000).

(3) A county that has a population of more than one hundred twenty-five thousand (125,000) but less than one hundred twenty-nine thousand (129,000).

[As added by: P.L.1-1996, §3.]

IC 13-13-6-2 --------- Northwest Indiana advisory board: membership

The advisory board consists of the following members:

(1) A member of:

(A) the senate; and

(B) the house of representatives;

if all or part of the member's district is located in a county described in section 1 of this chapter.

(2) Nine (9) members to be appointed by the commissioner from among individuals who reside in the counties described in section 1 of this chapter for two (2) year terms as follows:

(A) One (1) member of the general public.

(B) One (1) member representing environmental interests.

(C) One (1) member representing business and industry.

(D) One (1) member representing labor.

(E) One (1) member representing public health.

(F) One (1) member representing education.

(G) One (1) local elected official from each county described in section 1 of this chapter.

[As added by: P.L.1-1996, §3.]

IC 13-13-6-3 --------- Northwest Indiana advisory board: per diem and travel

(a) Each member of the board who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also not entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee is not entitled to reimbursement for traveling expenses provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
[As added by: P.L.1-1996, §3.]

IC 13-13-6-4 --------- Northwest Indiana advisory board: filling of unexpired terms

If an appointed member of the board is not able to serve the member's full term, the commissioner shall appoint an individual to serve for the remainder of the unexpired term.
[As added by: P.L.1-1996, §3.]

IC 13-13-6-5 --------- Northwest Indiana advisory board: duties

The board shall:

(1) monitor permit applications;

(2) disseminate information and material to the public;

(3) make recommendations to the department and the boards; and

(4) assist any department regional offices;

that affect or concern a county described in section 1 of this chapter.
[As added by: P.L.1-1996, §3.]

TITLE 13. ENVIRONMENT
IC 13-14. POWERS AND DUTIES OF DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND BOARDS

IC 13-14-1. DUTIES OF DEPARTMENT

IC 13-14-1-1 --------- Duties of department: solid and hazardous waste materials exchange

(a) Subject to subsection (c), the department shall establish a solid and hazardous waste materials exchange to provide for the exchange of information between interested persons concerning the following:

(1) Particular quantities of solid waste and hazardous waste available in Indiana for recovery.

(2) Persons interested in acquiring certain types of solid waste or hazardous waste for purposes of recovery.

(3) Methods for the treatment and recovery of solid waste and hazardous waste in Indiana.

(b) The solid and hazardous waste materials exchange created under subsection (a) may be operated under one (1) or more reciprocity agreements allowing for the exchange of information described in subsection (a) for similar information from programs operated in other states.

(c) The department may contract with a private organization for:

(1) the establishment;

(2) the operation; or

(3) both the establishment and the operation;

of the solid and hazardous waste materials exchange.

(d) The solid waste management board may adopt rules under IC 4-22-2 concerning the establishment and operation of the solid and hazardous waste materials exchange.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-2 --------- Duties of department: continuing surveillance and inspection

The department shall conduct a program of continuing surveillance and inspection of the following:

(1) Solid waste management sites.

(2) Actual or threatened sources of environmental pollution by contamination, radiation, odor, or noise.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-3 --------- Duties of department: programs

The department shall assure accomplishment of the comprehensive, long term programs established by the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-4 --------- Duties of department: standards and rules

The department shall procure compliance with standards and rules adopted by the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-5 --------- Duties of department: citizen involvement

The department shall develop and implement a program of public awareness and participation to assure maximum citizen involvement in the evolution and continuation of the environmental programs of the state.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-6 --------- Duties of department: education about the benefits of waste recycling and source reduction

(a) The department shall, in cooperation with other state agencies, establish programs to educate:

(1) students;

(2) consumers; and

(3) businesses;

about the benefits of solid waste recycling and source reduction.

(b) To implement the programs established under subsection (a), the department shall, subject to section 11.5 of this chapter, develop guidance documents and technical assistance programs.

[As amended by: P.L.261-1999, §1.]

IC 13-14-1-7 --------- Duties of department: proposed budget

The commissioner shall prepare the proposed budget of the department and the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-8 --------- Duties of department: financing structure

The commissioner may propose financing a structure to the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-9 --------- Duties of department: permits, licenses, orders and variances

(a) The commissioner shall issue permits, licenses, orders, and variances as authorized by:

(1) this title;

(2) other statutes; and

(3) rules of the boards.

(b) If the commissioner is notified by the department of state revenue that a person is on the most recent tax warrant list, the commissioner may not issue a permit or license to the applicant until:

(1) the applicant provides a statement to the commissioner from the department of state revenue indicating that the applicant's delinquent tax liability has been satisfied; or

(2) the commissioner receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

[As added by: P.L.1-1996, §4.]

IC 13-14-1-10 -------- Duties of department: local government programs

The department shall encourage and assist units of local government in developing programs and facilities for the following:

(1) Air, water, radiation, odor, and noise pollution control.

(2) Wastewater treatment.

(3) Water resource development.

(4) Solid waste management.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-11 -------- Duties of department: operating policies

The department shall follow the operating policies established in rules adopted by the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-11.5 ------ Duties of department: policy statements

(a) If the department utilizes a policy or statement that:

(1) interprets, supplements, or implements a statute or rule;

(2) has not been adopted in compliance with IC 4-22-2;

(3) is not intended by the department to have the effect of law; and

(4) is not related solely to internal department organization;

the policy or statement may not be put into effect until thirty (30) days after the policy or statement is made available for public inspection and comment and presented to the appropriate board.

(b) If the department utilizes a policy or statement described in subsection (a), the department shall distribute:

(1) two (2) copies of the policy or statement to the publisher of the Indiana Register for publication in the Indiana Register; and

(2) the copies required under IC 4-23-7.1-26 to the Indiana library and historical department.

(c) The department shall:

(1) maintain a current list of all department policies and statements described in subsection (a) that the department may use in the department's external affairs; and

(2) update the list at least one (1) time each month.

(d) The department shall include the following information on the list described in subsection (c) for each policy or statement:

(1) The title of the policy or statement.

(2) The identification number of the policy or statement.

(3) The date the policy or statement was originally adopted.

(4) The date the policy or statement was last revised.

(5) A reference to all other policies or statements described in subsection (a) that are repealed or amended by the policy or statement.

(6) A brief description of the subject matter of the policy or statement.

(e) At least one (1) time every three (3) months, the department shall distribute two (2) copies of the list maintained and updated under subsection (c) to the following:

(1) The publisher of the Indiana Register.

(2) The Indiana library and historical department.

[As amended by P.L.261-1999, §2.]

IC 13-14-1-12 -------- Duties of department: rules enforcement

The commissioner shall enforce rules consistent with the purposes of:

(1) air pollution control laws;

(2) water pollution control laws;

(3) IC 13-18-9;

(4) IC 13-18-10;

(5) IC 13-19-2;

(6) IC 13-19-3; and

(7) IC 36-9-30.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-13 -------- Duties of department: monitoring and reporting

The commissioner shall establish and administer monitoring and reporting requirements as necessary to carry out the duties and to exercise the powers provided in the following:

(1) Air pollution control laws.

(2) Water pollution control laws.

(3) Environmental management laws.

[As added by: P.L.1-1996, §4.]

IC 13-14-1-14 -------- Duties of department: information clearinghouse

The department shall do the following:

(1) Develop and maintain an information clearinghouse on the following subjects:

(A) Source separation.

(B) Recycling.

(C) Composting.

(D) Solid waste minimization.

(E) Solid waste reduction.

(F) Hazardous waste minimization.

(G) Hazardous waste reduction.

(2) Assist in the development and implementation of public education programs on:

(A) source separation;

(B) recycling;

(C) composting;

(D) solid waste reduction;

(E) solid waste minimization;

(F) hazardous waste minimization;

(G) hazardous waste reduction; and

(H) other alternatives to final disposal in landfills.

(3) Take action in any other matter involving:

(A) solid waste minimization;

(B) solid waste reduction;

(C) hazardous waste minimization; or

(D) hazardous waste reduction;

as directed by the commissioner.

[As added by: P.L.1-1996, §4.]

IC 13-14-2. POWERS OF DEPARTMENT

IC 13-14-2-1 --------- Powers of department: orders and determinations

(a) The commissioner may issue orders and make determinations under this title.

(b) An order issued under this section may address multiple sites for the purpose of arranging for site investigations and the establishment of priority of sites.

[As added by: P.L.1-1996, §4.]

IC 13-14-2-2 --------- Powers of department: entry upon private property

The department may have a designated agent, upon presentation of proper credentials, enter upon private or public property to inspect for and investigate possible violations of any of the following:

(1) Air pollution control laws.

(2) Water pollution control laws.

(3) Environmental management laws.

(4) IC 13-18-9.

(5) IC 13-18-10.

(6) IC 13-19-2.

(7) IC 13-19-3.

(8) Any rule adopted by one (1) of the boards.

[As added by: P.L.1-1996, §4.]

IC 13-14-2-3 --------- Powers of department: environmental representative of state

The department may do the following:

(1) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements for environmental protection.

(2) Conduct, convoke, attend, or participate in official or unofficial conferences or hearings within or outside Indiana concerning any matter within the scope of the power and duties of the boards or the department.

[As added by: P.L.1-1996, §4.]

IC 13-14-2-4 --------- Powers of department: acceptance of gifts and funds

The department may accept and receive, on behalf of the state, any gifts or other money made available to the state from any source for purposes of:

(1) this title; or

(2) other environmental protection activities, surveys, or programs.

[As added by: P.L.1-1996, §4.]

IC 13-14-2-5 --------- Powers of department: personnel and assistance

The commissioner may employ or contract for the legal, professional, and other personnel and assistance that is necessary for the efficient performance of duties imposed by this title.

[As added by: P.L.1-1996, §4.]

IC 13-14-2-6 --------- Powers of department: court proceedings

Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

(1) enforce any final order of the commissioner or of one (1) of the boards;

(2) collect any penalties or fees;

(3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;

(4) procure compliance with any standard or rule of one (1) of the boards; or

(5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) approved by the commissioner and created in connection with any remediation, closure, cleanup, or corrective action under this title in accordance with the terms of the covenant.

[As amended by: P.L.61-2001, §1.]

IC 13-14-2-7 --------- Powers of department: compliance orders; assessment of penalties

Except as provided in IC 13-14-6, the commissioner may issue orders to:

(1) secure compliance with:

(A) this title; or

(B) any applicable rule of a board; and

(2) assess civil penalties.

[As added by: P.L.1-1996, §4.]

IC 13-14-3. PLANS FOR LOCAL FACILITIES AND STANDARDS

IC 13-14-3-1 --------- Plans for local facilities and standards: IDEM to advise local units

The department shall encourage and advise local governmental units referred to in IC 13-11-2-158 in developing facilities or establishing standards for the following:

(1) Air, water, odor, and noise pollution control.

(2) Water or wastewater treatment.

(3) Water resource development.

(4) Solid waste disposal.

[As added by: P.L.1-1996, §4.]

IC 13-14-3-2 --------- Plans for local facilities and standards: must meet minimum state requirements

Each facility or standard of a local governmental unit must meet the minimum state requirements or standards established by the appropriate board.

[As added by: P.L.1-1996, §4.]

IC 13-14-3-3 --------- Plans for local facilities and standards: IDEM may require regional districts

(a) If the commissioner finds that the local governmental units have not developed plans that provide for adequate:

(1) water supply;

(2) air, water, or wastewater treatment; or

(3) solid waste disposal facilities;

the department may hold a public hearing.

(b) If the facts support the conclusion, the department may order the affected local governmental units to proceed to form regional water, sewage, air, or solid waste districts that are necessary under IC 13-26.

[As added by: P.L.1-1996, §4.]

IC 13-14-4. NOTICE TO DEPARTMENT OF PLANS AND PROGRAMS AFFECTING THE ENVIRONMENT

IC 13-14-4-1 --------- Notice to IDEM: IDEM to review and make recommendations

(a) Each agency, department, and institution of the state shall report to the department any plans or activities that affect or may affect the environment of Indiana.

(b) The department shall:

(1) review the reports described in subsection (a); and

(2) coordinate the programs of the various agencies

and make recommendations concerning the plans and activities of each agency, department, or institution that affects the environment.

[As added by: P.L.1-1996, §4.]

IC 13-14-4-2 --------- Notice to IDEM: IDEM to review grant applications

(a) Each:

(1) unit of local government referred to in IC 13-11-2-158;

(2) state agency; or

(3) interstate agency;

that makes an application for loans or grants under the federal statutes that relates to any program that affects or would affect the environment of Indiana shall notify the department in writing of the application before making the application.

(b) The department may, if the department is a party, participate in all proceedings for the grant.

[As added by: P.L.1-1996, §4.]

IC 13-14-4-3 --------- Notice to IDEM: persons to comply with rules regarding notice of contaminant discharge

(a) Each person:

(1) discharging; or

(2) proposing to discharge or emit;

contaminants that could affect environmental quality shall furnish to the department the reasonable technical or monitoring program reports that the boards specify by rule.

(b) An affidavit of the responsible officer or person in charge of the operation involved must accompany each report.

[As added by: P.L.1-1996, §4.]

IC 13-14-5. INSPECTIONS

IC 13-14-5-1 --------- Inspections: applicability

This chapter applies to inspections conducted under IC 13-14-2-2 after July 1, 1993.

[As added by: P.L.1-1996, §4.]

IC 13-14-5-2 --------- Inspections: required oral and written inspection reports

Except as provided in section 3 of this chapter, the designated agent of the department conducting the inspection must provide the property owner with the following:

(1) Before completing an inspection of property under IC 13-14-2-2, an oral report of the inspection that includes any specific matters discovered during the inspection that the designated agent of the department believes may be a violation of a law or of a permit issued by the department.

(2) Not later than forty-five (45) calendar days afterthe inspection, a written summary of the oral report given under subdivision (1).

[As added by: P.L.1-1996, §4.]

IC 13-14-5-3 --------- Inspections: written summary of oral report

If the designated agent of the department completes the inspection at a time when the property owner is not available to receive an oral report under section 2 of this chapter, the designated agent shall mail a written summary of the inspection by certified mail, return receipt requested, to the property owner not later than forty-five (45) calendar days following the inspection.

[As added by: P.L.1-1996, §4.]

IC 13-14-5-4 --------- Inspections: what is not required in reports

A designated agent of the department is not required to include in an oral report or in a written summary:

(1) a matter that is not evident to the designated agent at the time of the designated agent's inspection; or

(2) any fact that indicates or evidences an intentional, a knowing, or a reckless violation of:

(A) this title;

(B) a rule or standard adopted by a board; or

(C) any determination, permit, or order made or issued by the commissioner under this title or any other law.

[As added by: P.L.1-1996, §4.]

IC 13-14-5-5 --------- Inspections: boards shall adopt rules

The boards shall adopt rules under IC 4-22-2 to administer this chapter and IC 13-30-7.

[As added by: P.L.1-1996, §4.]

IC 13-14-5-6 --------- Inspections: department to review response information provided by property owner

(a) The property owner may provide information in response to any of the following:

(1) An oral report provided under section 2 of this chapter.

(2) A written summary provided under section 2 or 3 of this chapter.

(3) Questions raised during the inspection visit.

(b) The department shall review and consider any information presented by the property owner under subsection (a). The department shall append any written information provided under subsection (a) to the inspection report and include the written information in the public file.

[As added by: P.L.30-1999, §4.]

IC 13-14-6. LIMITATIONS OF ACTION; ADMINISTRATIVE PROCEEDINGS

IC 13-14-6-1 --------- Limitations on enforcement actions: applicability

This chapter applies to a department enforcement action, regardless of the application of IC 4-21.5 to the enforcement action.

[As added by: P.L.1-1996, §4.]

IC 13-14-6-2 --------- Limitations on enforcement actions: three year limit

A department enforcement action must commence by issuing a notice of violation under IC 13-30-3-3 not more than three (3) years after the date the department discovers:

(1) the event; or

(2) the last of a series of events;

that serves as the basis of the department's authority to conduct the enforcement action.

[As added by: P.L.1-1996, §4.]

IC 13-14-6-3 --------- Limitations on enforcement actions: void actions

A department enforcement action commenced after the time set forth in section 2 of this chapter is void.

[As added by: P.L.1-1996, §4.]

IC 13-14-7. ASSIGNMENT OF RULEMAKING AUTHORITY

IC 13-14-7-1 --------- Assignment of rulemaking authority: 1985 transitional

The:

(1) governor may assign to any of the boards the adoption of rules in any area not provided for by law as of September 1, 1985; or

(2) board may directly exercise that power until a specific agency for the exercise of the power is created.

[As added by: P.L.1-1996, §4.]

IC 13-14-8. RULES AND STANDARDS

IC 13-14-8-1 --------- Rules and standards: in general

The boards may:

(1) adopt;

(2) repeal;

(3) rescind; or

(4) amend;

rules and standards by proceeding in the manner prescribed in IC 4-22-2 and IC 13-14-9.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-2 --------- Rules and standards: IDEM proposals

(a) The department may propose to the boards the:

(1) adoption;

(2) repeal;

(3) rescission; or

(4) amendment;

of any rule or standard.

(b) The rules proposed by the department must be adopted by the appropriate board under IC 4-22-2 and IC 13-14-9 before the rules become effective.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-3 --------- Rules and standards: permissible parameters

A rule or standard adopted by a board may:

(1) make different provisions as required by varying circumstances and conditions for different contaminant sources and for different geographical areas;

(2) be made applicable to sources outside Indiana that:

(A) are causing;

(B) are contributing to; or

(C) could cause or contribute to;

environmental pollution in Indiana; and

(3) make provision for abatement standards and procedures:

(A) concerning occurrences, emergencies, or pollution; or

(B) on other short term conditions constituting an acute danger to health or to the environment.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-4 --------- Rules and standards: requisite factors to be taken into account

In adopting rules and establishing standards, a board shall take into account the following:

(1) All existing physical conditions and the character of the area affected.

(2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

(3) Zoning classifications.

(4) The nature of the existing air quality or existing water quality, as appropriate.

(5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-5 --------- Rules and standards: citizen proposals

(a) Any person may present written proposals for the adoption, amendment, or repeal of a rule by one (1) of the boards. A proposal presented under this section must be:

(1) supported by a statement of reasons; and

(2) accompanied by a petition signed by at least two hundred (200) persons.

(b) If the board with rulemaking authority in the subject area to which the rule pertains finds that the proposal:

(1) is not plainly devoid of merit; and

(2) does not deal with a subject on which a hearing was held within the previous six (6) months of the submission of the proposal;

the board shall give notice and hold a hearing on the proposal.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-6 --------- Rules and standards: hearings on proposed rules

(a) Each hearing on a proposed rule must be open to the public, and a reasonable opportunity to be heard with respect to the subject of a hearing shall be afforded to any person.

(b) All testimony taken at a hearing shall be recorded. The transcript of the hearing and any written submissions to the board at the hearing shall be open to public inspection, and copies of the transcript and written submissions shall be made available to any person upon payment of the cost of reproducing the original.

(c) A person who:

(1) is heard or represented at a hearing; or

(2) requests notice;

shall be given written notice of the action of the board with respect to the subject of the hearing.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-7 --------- Rules and standards: authorized areas for rulemaking

(a) Without limiting the generality of the regulatory authority of the boards under this title, the appropriate board may adopt rules under IC 4-22-2 and IC 13-14-9 prescribing the following:

(1) Standards or requirements for discharge or emission specifying the maximum permissible short term and long term concentrations of various contaminants of the air, water, or land.

(2) Procedures for the administration of a system of permits for:

(A) the discharge of any contaminants;

(B) the construction, installation, or modification of any:

(i) facility;

(ii) equipment; or

(iii) device;

that may be designed to control or prevent pollution; or

(C) the operation of any:

(i) facility;

(ii) equipment; or

(iii) device;

to control or to prevent pollution.

(3) Standards and conditions for the use of any fuel or vehicle determined to constitute an air pollution hazard.

(4) Standards for the filling or sealing of abandoned:

(A) water wells;

(B) water holes; and

(C) drainage holes;

to protect ground water against contamination.

(5) Alert criteria and abatement standards for pollution episodes or emergencies constituting an acute danger to health or to the environment, including priority lists for terminating activities that contribute to the hazard, whether or not the activities would meet all discharge requirements of the board under normal conditions.

(6) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to pollution.

(7) Requirements and standards for equipment and procedures for:

(A) monitoring contaminant discharges at their sources;

(B) the collection of samples; and

(C) the collection, reporting, and retention, in accordance with record retention schedules adopted under IC 5-15-5.1, of data resulting from that monitoring.

(8) Standards or requirements to control:

(A) the discharge; or

(B) the pretreatment;

of contaminants introduced or discharged into publicly owned treatment works.

(b) If the solid waste management board or air pollution control board is required to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act or an amendment to or addition of a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act, the board shall adopt the new rules or amend the existing rules not more than nine (9) months after the date the federal law becomes effective. This subsection does not limit a board's authority to amend at any time the rules adopted under this subsection.

[As amended by: P.L.123-1996, §10.]

IC 13-14-8-8 --------- Rules and standards: variances from rules; in general

(a) If a person who is affected by a rule adopted by a board believes that the imposition of the rule would impose an undue hardship or burden upon the person, the person may apply to the commissioner for a variance from the rule.

(b) The commissioner may hold a public hearing on an application submitted under subsection (a).

(c) If the commissioner determines that immediate compliance with the rule would impose an undue hardship or burden upon the applicant, the commissioner, except as provided in section 9 of this chapter, may grant a variance from the rule for any period not exceeding one (1) year.

(d) Upon the request of an applicant, the commissioner may renew an expired variance if the commissioner determines that compliance with the rule would continue to impose an undue hardship or burden upon the applicant. Except as provided in section 9 of this chapter, each renewal may be granted for a period not exceeding one (1) year.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-9 --------- Rules and standards: NPDES permit variances

(a) This section applies to a variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit issued under this title.

(b) Except as provided in subsection (c), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(1) granted for not more than five (5) years; and

(2) renewed for not more than five (5) years.

(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:

(1) issued under this title; and

(2) extended under IC 13-15-3-6 or IC 13-7-10-2(e) (before its repeal);

remains in effect until the National Pollutant Discharge Elimination System permit expires.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-10 -------- Rules and standards: variances from rules; criteria and procedures

A board may adopt rules under IC 4-22-2 to specify the following with respect to any of the board's rules:

(1) Criteria to define what constitutes an undue hardship or burden, as used in section 8 of this chapter, for the purposes of that rule.

(2) Procedures for making determinations on applications for variances from that rule.

[As added by: P.L.1-1996, §4.]

IC 13-14-8-11 -------- Rules and standards: variances from rules; appeals

(a) A person affected by a decision of the commissioner under sections 8 and 9 of this chapter may, within fifteen (15) days after receipt of notice of the decision, appeal the decision to the office of environmental adjudication. All proceedings under this section to appeal the commissioner's decision are governed by IC 4-21.5.

(b) The commissioner's decision to grant a variance does not take effect until available administrative remedies are exhausted.

[As amended by: P.L.25-1997, §4.]

IC 13-14-8-11.5 ----- Rules and standards: site specific standards for NPDES permits

(a) The department shall prepare and publish in the Indiana Register guidance on the application process and criteria for obtaining a site-specific limitation for a National Pollutant Discharge Elimination System (NPDES) permit. Criteria to be considered must include

wet weather events, water effects ratio, and other site-specific considerations as determined by the department. Water effects ratio shall be the ratio of the aquatic toxicity of a parameter in the water of the receiving stream compared to the aquatic toxicity of the parameter in the laboratory water used to determine the standard.

(b) Beginning January 1, 1997, the department shall review any application and make a preliminary determination for a site-specific limitation not later than one hundred eighty (180) days after receipt of the application. The department may request additional information necessary to make the preliminary determination consistent with the guidance published under subsection (a). The one hundred eighty (180) day period does not include any days between the date the department requests additional information and the date the additional information is received by the department.

(c) The final determination on a site-specific limitation will be part of the NPDES permit decision under 327 IAC 5.

(d) If the agency does not issue a preliminary determination within the one hundred eighty (180) days provided for in subsection (b), the applicant may require that the department hire a qualified outside consultant to prepare the preliminary determination as expeditiously as possible.

(e) The department and the applicant may agree to extend the one hundred eighty (180) day period provided for in subsection (b).

[As added by: P.L.123-1996, §3.]

IC 13-14-8-11.6 ------ Rules and standards: exceptions from permit requirement for discharger; WPCB to adopt general permit rule

(a) A discharger is not required to obtain a state permit for the modification or construction of a water pollution treatment or control facility if the discharger has an effective:

(1) National Pollutant Discharge Elimination System (NPDES) industrial permit for direct discharges to surface water; or

(2) industrial waste pretreatment permit not issued by the department for discharges to a publicly owned treatment works.

(b) If a modification is for the treatment or control of any new influent pollutant or increased levels of any existing pollutant, within thirty (30) days after commencement of operation, the discharger shall file with the department a notice of installation for the additional pollutant control equipment and a design summary of any modifications.

(c) The water pollution control board shall adopt a general permit rule for the approval of sanitary collection system plans, lift station plans, and force main plans.

[As added by: P.L.72-1999, §2.]

IC 13-14-9. RULEMAKING PROCEDURES

IC 13-14-9-1 --------- Rulemaking procedures: applicability

(a) This chapter applies to the following:

(1) A board.

(2) The underground storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-2 --------- Rulemaking procedures: public comment periods

Except as provided in sections 4.5, 7 and 8 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.

[As amended by: P.L.130-1997, §1.]

IC 13-14-9-3 --------- Rulemaking procedures: notice of first public comment period

The department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

[As amended by: P.L.130-1997, §2.]

IC 13-14-9-4 --------- Rulemaking procedures: notice of second public comment period

The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Contain the full text of the proposed rule, as provided under IC 4-22-2-24(c).

(2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-4.5 ------- Rulemaking procedures: notice of third public comment period

(a) Except for a rule:

(1) that has been preliminarily adopted by a board in a form that is:

(A) identical to; or

(B) not substantively different from;

the proposed rule published in a second notice under section 4 of this chapter; or

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter;

a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least twenty-one (21) days in length.

(b) The department shall publish notice of a third public comment period with the text and summary that are required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a third public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including sugges-

tions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter.

[As added by: P.L.130-1997, §3.]

IC 13-14-9-5 --------- Rulemaking procedures: two public meetings required prior to rule adoption

(a) A board may not adopt a rule until all of the following occur:

(1) The board holds a board meeting on the proposed rule.

(2) The department, after approval of the proposed rule by the board under subsection (c), publishes the following in the Indiana Register as provided in IC 4-22-2-24(c):

(A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).

(B) A summary of the response of the department to all comments received at the meeting held under subdivision (1).

(C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars ($500,000), a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) If a third public comment period is required under section 4.5 of this chapter, the department publishes notice of the third public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

(1) proceed to publication under subsection (a)(2);

(2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8 of this chapter; or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

[As amended by: P.L.224-1999, §2.]

IC 13-14-9-6 --------- Rulemaking procedures: requisite inclusions in written materials for board meetings

In addition to the requirements of section 8 of this chapter, the department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

(1) The full text of the proposed rule, as most recently prepared by the department.

(2) The written responses of the department to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

(3) The full text of the legislative services agency fiscal analysis if a fiscal analysis is required under IC 4-22-2-28.

[As amended by: P.L.224-1999, §3.]

IC 13-14-9-7 --------- Rulemaking procedures: commissioner determination that only one public comment period required

(a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, section 3 of this chapter does not apply to a rulemaking action if the commissioner determines that the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under section 3 of this chapter would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.

(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 the public notice provided under section 4 of this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-8 --------- Rulemaking procedures: commissioner determination that no public comment periods required

(a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, sections 3 and 4 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.

(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:

(1) published in the Indiana Register before the public meeting held under section 5(a)(1) of this chapter; and

(2) included in the written materials to be considered by the board at the public meeting held under section 5(a)(1) of this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-9 --------- Rulemaking procedures: alternatives for board at second board meeting on proposed rule

After complying with sections 2 through 8 of this chapter, the board may, at the board meeting held under section 5(a)(3) of this chapter:

(1) adopt a rule that is identical to the proposed rule published under section 5(a)(2) of this chapter;

(2) adopt the proposed rule with amendments that meet the criteria set forth in section 10 of this chapter;

(3) recommend amendments to the proposed rule that do not meet the criteria set forth in section 10 of this chapter;

(4) reject the proposed rule; or

(5) reconsider the proposed rule at a subsequent board meeting in accordance with IC 4-22-2-26(d).

[As added by: P.L.1-1996, §4.]

IC 13-14-9-10 -------- Rulemaking procedures: amendments to a proposed rule at second board meeting; logical outgrowth determination

(a) A board may amend a proposed rule at a board meeting held under section 5(a)(3) of this chapter and adopt the amended rule under section 9(2) of this chapter if the amendments are a logical outgrowth of:

(1) the proposed rule as published under section 5(a)(2) of this chapter; and

(2) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter.

(b) In determining, for the purposes of this section, whether an amendment is a logical outgrowth of the proposed rule and any comments, the board shall consider:

(1) whether the language of:

(A) the proposed rule as published under section 5(a)(2) of this chapter; and

(B) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter;

fairly apprised interested persons of the specific subjects and issues contained in the amendment; and

(2) whether the interested parties were allowed an adequate opportunity to be heard by the board.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-11 -------- Rulemaking procedures: amendments to a proposed rule at second board meeting which do not meet logical outgrowth determination; republication before adoption

If the board recommends amendments to a proposed rule under section 9(3) of this chapter, the full text of the proposed rule and accompanying amendments shall be published in accordance with section 5(a)(2) of this chapter. After that publication, the board shall hold another board meeting on the proposed rule under section 5(a)(3) of this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-12 -------- Rulemaking procedures: rejection by board of proposed rule because of inadequate opportunity for public comment

The board may reject a proposed rule under section 9(4) of this chapter if one (1) of the following conditions exists:

(1) The following occurs or has occurred:

(A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and

(B) either:

(i) the board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter, considering the criteria set forth in section 8(2) of this chapter; or

(ii) the board determines that due to the fundamental or inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the department to redraft the rule and to obtain the public comments under section 4 of this chapter; or

(2) the following occurs or has occurred:

(A) the proposed rule was subject to sections 3 and 4 of this chapter; and

(B) either:

(i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or

(ii) the board determines that, due to a procedural or other defect in the implementation of the requirements under sections 3 and 4 of this chapter, an interested or affected party will be unfairly and substantially prejudiced if the public comment period under section 4 of this chapter is not again afforded and that no reasonable alternative method to obtain public comments is available to the interested or affected party other than the public comment period under section 4 of this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9-13 -------- Rulemaking procedures: proposed rule rejected under §12 is subject to the comment period

If a board rejects a proposed rule under section 12 of this chapter, the proposed rule is subject to section 4 of this chapter whether or not the proposed rule has previously been the subject of the comment period required by section 4 of this chapter.

[As added by: P.L.1-1996, §4.]

IC 13-14-9.5. EXPIRATION AND READOPTION OF ADMINISTRATIVE RULES

IC 13-14-9.5-1 --------- Expiration and readoption of administrative rules: applicability

This chapter does not apply to a rule that incorporates a federal regulation by reference or adopts under a federal mandate a federal regulation in its entirety without substantive additions.

[As added by: P.L.17-1996, §9.]

IC 13-14-9.5-1.1 ------ Expiration and readoption of administrative rules: certain rules exempted; procedure

(a) This section applies to the following:

(1) A rule that is required to receive or maintain:

(A) delegation;

(B) primacy; or

(C) approval;

for state implementation or operation of a program established under federal law.

(2) A rule that is required to begin or continue receiving federal funding for the implementation or operation of a program.

(b) A rule described in subsection (a) does not expire under this chapter.

(c) In the seventh year after the effective date of a rule or an amendment to a rule described in subsection (a), the department shall publish a notice in the Indiana Register. The notice may contain a list of several rules that have been effective for seven (7) years. A separate notice must be published for each board with rulemaking authority. A notice under this subsection must provide for the following:

(1) A written comment period of at least thirty (30) days.

(2) A request for comments on specific rules that should be reviewed through the regular rulemaking process under IC 13-14-9.

(3) A notice of public hearing before the appropriate board.

(d) The department shall:

(1) prepare responses to all comments received during the comment period; and

(2) provide all comments and responses to the board during the public board hearing;

described in subsection (c).

(e) The board, after considering the written comments and responses, as well as testimony at the public hearing described in subsection (c), shall direct the department on whether additional rulemaking actions must be initiated to address concerns raised to the board.

(f) For the rules described in subsection (a) that are effective on or before July 1, 2001, the notice described in subsection (c) shall be published in the Indiana Register before December 31, 2008.

[As added by: P.L.146-2001, §3.]

IC 13-14-9.5-2 ------- Expiration and readoption of administrative rules: expiration date for rules

(a) Except as provided in subsection (b), or section 1.1 of this chapter, an administrative rule adopted under IC 13-14-9 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. The expiration date of a rule under this section is extended each time that a rule amending an unexpired rule takes effect. The rule, as amended, expires on January 1 of the seventh year after the year in which the amendment takes effect.

(b) An administrative rule that:

(1) was adopted under a provision of IC 13 that has been repealed by a recodification of IC 13;

(2) is in force on December 31, 1995; and

(3) is not amended by a rule that takes effect after December 31, 1995, and before January 1, 2002;

expires not later than January 1, 2002.

[As amended by: P.L.146-2001, §4.]

IC 13-14-9.5-3 ------- Expiration and readoption of administrative rules: adoption of rule in anticipation of expiration

(a) The department or a board that has rulemaking authority under this title may adopt a rule under IC 13-14-9 in anticipation of a rule's expiration under this chapter.

(b) Except as provided in section 5 of this chapter, the department or a board that has rulemaking authority under this title may not use emergency rule procedures to readopt a rule that is subject to expiration under this chapter.

[As added by: P.L.17-1996, §9.]

IC 13-14-9.5-4 ------- Expiration and readoption of administrative rules: procedure for rule readoption

(a) Except as provided in subsection (b), the department or a board that has rulemaking authority under this title may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If a person submits to the department or a board that has rulemaking authority under this title a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must:

(1) readopt that rule separately from the readoption rule described in subsection (a); and

(2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

(c) If the department or board does not receive a written request under subsection (b) regarding a rule within the first comment period, the agency may:

(1) submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or

(2) elect the procedure for readoption under IC 13-14-9.

[As added by: P.L.17-1996, §9.]

IC 13-14-9.5-5 ------- Expiration and readoption of administrative rules: governor may postpone expiration of rule for one year in emergency

If a rule is not readopted and the governor finds that the failure to readopt the rule causes an emergency to exist, the governor may, by executive order issued before the rule's expiration date, postpone the expiration date of the rule until a date that is one (1) year after the date specified in section 2 of this chapter.

[As added by: P.L.17-1996, §9.]

IC 13-14-9.5-6 ------- Expiration and readoption of administrative rules: removal of expired rules from IAC

Except as provided in section 4(a) of this chapter, the publisher shall remove all rules that have expired under this chapter from the Indiana Administrative Code.

[As added by: P.L.17-1996, §9.]

IC 13-14-10. GENERAL EMERGENCY PROCEDURES

IC 13-14-10-1 -------- General emergency procedures: emergency declaration; emergency order

(a) Whenever the commissioner concludes, in consultation with the commissioner of the state department of health, that contamination of air, water, or land in any area has reached the point where the contamination constitutes a clear and present danger to the health and safety of persons in any area, the commissioner's determination shall be immediately communicated to the governor. The commissioner, in concert with the commissioner of the state department of health, shall request the governor to declare that an emergency exists.

(b) The governor may:

(1) proclaim the existence of an emergency; and

(2) order all persons causing or contributing to the causing of the contamination to reduce or discontinue immediately the emission or discharge of contaminants.

(c) Notice of an emergency order must be in writing wherever practicable. However, if the governor considers that written notice is not practicable, the governor may give notice in the manner determined by the governor.

(d) A person against whom an emergency order of the governor has been issued shall, upon receiving notice of the order, immediately comply with the provisions of the order.

(e) The governor may enforce an order by any appropriate action.

(f) The procedures for emergency orders provided for in this section are governed by IC 4-21.5-4.

[As added by: P.L.1-1996, §4.]

IC 13-14-10-2 -------- General emergency procedures: restraining order

(a) Upon receipt of evidence that a pollution source or combination of sources, including an industrial user of a publicly owned treatment plant, is presenting an imminent and substantial endangerment to:

(1) the health of persons; or

(2) the welfare of persons whose livelihood is endangered;

the commissioner shall bring suit under subsection (b).

(b) Upon the receipt of evidence under subsection (a), the commissioner shall bring suit on behalf of the state in the appropriate court to:

(1) immediately restrain any person causing or contributing to the alleged pollution to stop the discharge or introduction of contaminants causing or contributing to the pollution; or

(2) take other necessary action.

(c) The duty of the commissioner to bring suit under subsection (a) is:

(1) in addition to the authority contained in section 1 of this chapter; and

(2) notwithstanding any other provision of this title.

[As added by: P.L.1-1996, §4.]

IC 13-14-10-3 -------- General emergency procedures: emergency assistance by IDEM; recovery of costs

(a) The commissioner may order and provide assistance to abate or remedy an emergency, on private or public property, caused by the discharge or impending discharge of any contaminant into or on the air, land, or waters of Indiana that poses an imminent and substantial danger to public health or the environment whenever:

(1) the assistance must be immediate to be efficacious; and

(2) any person responsible for abatement or remedying the emergency:

(A) cannot be determined or located; or

(B) has refused or failed to take prompt and effective action to abate or remedy the emergency.

(b) For the purpose of this section, the commissioner may request the direct purchase of supplies, materials, services, and equipment for immediate use under IC 5-22-10-4.

(c) In addition to any civil or criminal penalties under the environmental management laws the department may recover the cost of assistance provided under this section from any person responsible for the emergency by commencing a civil action in any court of competent jurisdiction. Officials who collect money under this subsection shall remit the money to the treasurer of state. The money shall be deposited in the environmental management special fund created by IC 13-14-12.

(d) The department may accept on behalf of the state any reimbursement for assistance provided under this section from the federal government. The reimbursements shall be remitted to the treasurer of state for deposit in the environmental management special fund created by IC 13-14-12.

(e) Notwithstanding any other provisions of this title, the authority granted under this section:

(1) is in addition to; and

(2) may be exercised independently of;

any other authority contained in this chapter.

[As amended by: P.L.49-1997, §47.]

IC 13-14-11. RECORDS OF THE DEPARTMENT AND BOARDS

IC 13-14-11-1 -------- Records of IDEM and the boards: public availability; trade secrets

(a) The commissioner shall maintain a record of the actions taken under this title. Subject to subsection (b), these:

(1) records, issued permits, permit applications, and related documentation filed with the department; and

(2) records, reports, and other information obtained under the recording, reporting, monitoring, sampling, information, entry, inspection, investigation, and copying requirements of this title;

shall be made available for public inspection and copying in the department offices during regular business hours under IC 5-14-3.

(b) Upon showing satisfactory to the commissioner by any person that all or any part of the records, reports, permits, permit applications, documentation, or information other than effluent or emission data, would, if made public, divulge methods or processes entitled to protection as trade secrets of the person, the commissioner shall consider, treat, and protect all or part of the trade secret records, reports, or information as confidential.

[As added by: P.L.1-1996, §4.]

IC 13-14-11-2 -------- Records of IDEM and the boards: copying fee reduction or waiver

The department and boards may reduce or waive fees otherwise required by IC 5-14-3-8 for the copying of public records if the department or board having authority over the records determines that the fee reduction or waiver is in the public interest.

[As added by: P.L.1-1996, §4.]

IC 13-14-11-3 -------- Records of IDEM and the boards: confidentiality requests

(a) A person required by the department or a board to submit a record that in the person's opinion constitutes a record that is:

(1) confidential under IC 5-14-3-4(a); or

(2) permissively excepted under IC 5-14-3-4(b);

may so certify and request that the record be made available only for the use of the department or the boards.

(b) The department shall consider a request made under subsection (a). If the department finds that the record is excepted from disclosure under IC 5-14-3-4(a), the request shall be granted. If the department finds that the record is permissively excepted from disclosure under IC 5-14-3-4(b), the request may be granted.

(c) It is the duty of:

(1) the person providing the record to ask that any or all of the record be declared excepted from disclosure under IC 5-14-3-4; and

(2) the commissioner to decide whether the record will be made public, subject to review as provided in IC 4-21.5-5.

[As added by: P.L.1-1996, §4.]

IC 13-14-11-4 -------- Records of IDEM and the boards: separate storage for confidential files

The department shall, subject to the approval of all three (3) of the boards, develop written procedures for the separate storage and security of files containing records excepted from disclosure requirements under IC 5-14-3-4.

[As added by: P.L.1-1996, §4.]

IC 13-14-11-5 -------- Records of IDEM and the boards: rules regarding confidentiality agreements

The boards shall adopt rules requiring the execution of a confidentiality agreement with persons employed, contracted, or subcontracted by the department that is enforceable by:

(1) the state; and

(2) the submitter of the information.

[As added by: P.L.1-1996, §4.]

IC 13-14-11-6 -------- Records of IDEM and the boards: authorized disclosure of confidential records

All records, reports, or information accorded confidential treatment under this chapter may be disclosed or transmitted to other officers, employees, or authorized representatives of the state or of the United States:

(1) concerned with carrying out or implementing this title; or

(2) when relevant in any proceeding related to enforcement.

[As added by: P.L.1-1996, §4.]

IC 13-14-12. ENVIRONMENTAL MANAGEMENT SPECIAL FUND

IC 13-14-12-1 -------- Environmental management special fund: sources of fund

(a) The officials collecting the following shall remit the money to the treasurer of state:

(1) Money collected under the following:

(A) IC 13-30-4-1.

(B) IC 13-30-4-2.

(C) IC 13-30-5-1.

(2) Fees collected under IC 13-16-1-2 through IC 13-16-1-5.

(b) The treasurer of state shall credit the money to the environmental management special fund.

[As amended by: P.L.143-2000, §2.]

IC 13-14-12-2 -------- Environmental management special fund: use of fund money

The money on deposit in the environmental management special fund shall be used exclusively for the purposes of the department and the boards. The revenues accruing to the fund are appropriated to the department for purposes of this title. However, expenditures for projects authorized by the department or a board must be approved by the governor and the budget agency.

[As added by: P.L.1-1996, §4.]

IC 13-14-12-3 -------- Environmental management special fund: emergency set-aside

The budget agency shall, with the governor's approval, set aside a certain amount of the fund to be expended for emergency purposes under IC 13-14-10-3 by the commissioner without additional approval from the budget agency or the governor.

[As added by: P.L.1-1996, §4.]

IC 13-14-12-4 -------- Environmental management special fund: auditor's report

(a) The auditor of state shall issue a report on the fund not later than ten (10) working days following the last day of each four (4) month period.

(b) The report must:

(1) include the beginning and ending balance, disbursements, and receipts, including accrued interest or other investment earnings of the fund;

(2) comply with accounting standards under IC 4-13-2-7(a)(1); and

(3) be available to the public.

(c) The auditor of state shall forward copies of the report to the following:

(1) The commissioner.

(2) The standing committees of the house of representatives and the senate concerned with the environment.

(3) The air pollution control board.

(4) The water pollution control board.

(5) The solid waste management board.

[As added by: P.L.1-1996, §4.]

TITLE 13. ENVIRONMENT
IC 13-15. PERMITS GENERALLY

IC 13-15-1. TYPES OF PERMITS

IC 13-15-1-1 --------- Types of permits: air

The air pollution control board shall establish requirements for the issuance of permits to control air pollution, noise, and atomic radiation, including the following:

(1) Permits to control or limit the emission of any contaminants into the atmosphere.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the air.

(3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the environment.

[As added by: P.L.1-1996, §5.]

IC 13-15-1-2 --------- Types of permits: water

The water pollution control board shall establish requirements for the issuance of permits to control water pollution and atomic radiation, including the following:

(1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works.

(3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the water pollution control board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

[As amended by: P.L.123-1996, §11.]

IC 13-15-1-3 --------- Types of permits: waste

The solid waste management board shall establish requirements for the issuance of permits to control solid waste, hazardous waste, and atomic radiation, including the following:

(1) Permits to control or limit the disposal of any contaminants onto or into the land.

(2) Permits for the construction, installation, or modification of facilities, equipment, or devices:

(A) to control or limit any discharge, emission, or disposal of contaminants into the land; or

(B) for the storage, treatment, processing, transferring, or disposal of solid waste or hazardous waste.

(3) Permits for the operation of facilities, equipment, or devices:

(A) to control or limit the discharge, emission, transfer, or disposal of any contaminants into the land; or

(B) for the storage, transportation, treatment, processing, transferring, or disposal of solid waste or hazardous waste.

[As added by: P.L.1-1996, §5.]

IC 13-15-2. RULES FOR ISSUANCE OF PERMITS

IC 13-15-2-1 --------- Rules for issuance of permits: boards shall adopt

(a) Each board shall adopt rules under IC 4-22-2 to establish requirements and procedures for the issuance of permits.

(b) In rules for the issuance of permits, each board may do the following:

(1) Prescribe standards for the discharge, emission, or disposal of contaminants and the operation of any facility, equipment, or device.

(2) Impose the conditions that are considered necessary to accomplish the purposes of this title.

[As added by: P.L.1-1996, §5.]

IC 13-15-2-2 --------- Rules for issuance of permits: boards may adopt rules providing incentives, operational flexibility

(a) The boards may adopt rules under IC 4-22-2 and IC 13-14-9 to allow the department to issue permits that do the following:

(1) Provide incentives to owners and operators of facilities to assess the pollution emitted by the facilities into all environmental media.

(2) Provide incentives to owners and operators of facilities to implement the most innovative and effective pollution control or pollution prevention strategies while maintaining enforceable performance goals.

(3) Provide incentives to owners and operators of facilities to reduce pollution levels at the facilities below the levels required by law.

(4) Consolidate environmental requirements into one (1) permit that would otherwise be included in more than one (1) permit.

(5) Reduce the time and money spent by owners and operators of facilities and the department on administrative tasks that do not benefit the environment.

(6) Provide owners and operators of facilities with as much operational flexibility as can reasonably be provided while being consistent with enforcement of permit requirements.

(b) The rules adopted under this section may provide for permits that contain the following:

(1) Authorization of emission trading.

(2) Consolidated reporting mechanisms.

(3) Third party certifications.

(4) Multimedia regulation.

(5) Other conditions consistent with subsection (a).

(c) The rules adopted under this section must provide that a permit issued under the rules adopted under this section meets the following criteria:

(1) Activities conducted under the permit must result in greater overall environmental protection than would otherwise be achieved under applicable law.

(2) Upon issuance of a permit, all limits, conditions, and standards contained in the permit are enforceable under IC 13-30-3.

(3) The permit applicant must give notice in accordance with IC 13-15-8, and the commissioner shall give notice to the public and provide an opportunity to comment on the proposed permit in accordance with IC 13-15-5.

(d) The rules adopted under this section must allow the department to give priority to applications involving permits that are issued as described in this section based on:

(1) the degree of environmental benefit that may be obtained under the permit;

(2) the potential application of any innovative control technologies or regulatory procedures that may be made available to other permit applicants and permit holders; and

(3) other criteria that the boards may establish.

(e) The rules adopted under this section must be consistent with federal law for federally authorized or delegated permit programs.

[As added by: P.L.128-1996, §2.]

IC 13-15-3. PROCEDURE FOR ISSUANCE OF PERMITS

IC 13-15-3-1 --------- Procedure for issuance of permits: notice of application to local officials

(a) Whenever the department receives a permit application, the department shall send notice that the permit application has been received by the department to the following:

(1) The county executive of a county that is affected by the permit application.

(2) The executive of a city that is affected by the permit application.

(3) The executive of a town council of a town that is affected by the permit application.

(b) The department may require a person who submits a permit application to the department to provide information on the application necessary for the department to implement subsection (a).

[As added by: P.L.1-1996, §5.]

IC 13-15-3-2 --------- Procedure for issuance of permits: term of permit; renewal term

(a) A permit issued under:

(1) this article (except IC 13-15-9);

(2) IC 13-17-11;

(3) IC 13-18-18; or

(4) IC 13-20-1;

may be issued for any period determined by the department to be appropriate but not to exceed five (5) years.

(b) Except as provided in federal law, a valid permit that has been issued under this chapter that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department. The board shall adopt rules implementing this subsection.

(c) The commissioner may delegate authority to issue or deny permits to a designated staff member.

[As amended by: P.L. 123-1996, §12 and P.L.128-1996, §1.]

IC 13-15-3-3 --------- Procedure for issuance of permits: public hearing requirements

(a) A public hearing shall be held on the question of:

(1) the issuance of an original or renewal permit for a hazardous waste disposal facility under IC 13-22-3; or

(2) the issuance of an original permit for a solid waste disposal facility or a solid waste incinerator regulated under IC 13-20-8;

as provided in subsection (b).

(b) A public hearing shall be held under subsection (a) upon:

(1) the request of the applicant;

(2) the filing of a petition requesting a public hearing that is signed by one hundred (100) adult individuals who:

(A) reside in the county where the proposed or existing facility is or is to be located; or

(B) own real property within one (1) mile of the site of the proposed or existing facility; or

(3) the motion of the commissioner.

(c) The public hearing authorized by this section does not constitute an agency action under IC 4-21.5.

[As added by: P.L.1-1996, §5.]

IC 13-15-3-4 --------- Procedure for issuance of permits: public hearing location

If the petition under section 3(b)(2) of this chapter requests that the public hearing be conducted at a location within a county affected by a proposed permit, the department shall conduct the public hearing at that location.

[As added by: P.L.1-1996, §5.]

IC 13-15-3-5 --------- Procedure for issuance of permits: staff responsibilities

Whenever a permit is required by any rule of one (1) of the boards under IC 13-15-1 for the construction, installation, operation, or modification of any facility, equipment, or device, the permit may be issued only after the department staff has:

(1) approved the plans and specifications; and

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

[As added by: P.L.1-1996, §5.]

IC 13-15-3-6 --------- Procedure for issuance of permits: effect of timely application for renewal

(a) When a person holding a valid permit concerning an activity of a continuing nature has made a timely and sufficient application for a renewal or a new permit in accordance with rules of one (1) of the boards, the existing permit does not expire until a final determination on the application has been made by the department. However, the commissioner may seek injunctive relief with regard to the continuing activity of the permit applicant while the permit application is pending if the continuing activity of the permit applicant constitutes a threat to the public health, safety, or welfare.

(b) An application for renewal of a hazardous waste disposal facility operating permit under IC 13-22-3 must be submitted at least one hundred eighty (180) days before the expiration of the facility's current permit to be considered timely under this section.

[As added by: P.L.1-1996, §5.]

IC 13-15-4. SCHEDULES FOR DETERMINATIONS ON PERMITS

IC 13-15-4-1 --------- Schedules for determinations on permits: timetables for IDEM action

Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

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

(A) A new hazardous waste or solid waste landfill.

(B) A new hazardous waste or solid waste incinerator.

(C) A major modification of a solid waste landfill.

(D) A major modification of a solid waste incinerator.

(E) A new hazardous waste treatment or storage facility.

(F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.

(G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.

(2) Two hundred seventy (270) days for an application concerning the following:

(A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.

(B) A major new National Pollutant Discharge Elimination System permit.

(3) One hundred eighty (180) days for an application concerning the following:

(A) A new solid waste processing or recycling facility.

(B) A minor new National Pollutant Discharge Elimination System individual permit.

(C) A permit concerning the land application of wastewater.

(4) One hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

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

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

(A) A minor modification to a solid waste landfill or incinerator permit.

(B) A wastewater facility or water facility construction permit.

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

(A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.

(B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).

(C) Registration of an air pollution facility.

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

(A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:

(i) landfill;

(ii) incinerator;

(iii) treatment facility; or

(iv) storage facility.

(B) Any other permit not specifically described in this section for which the application fee exceeds one hundred dollars ($100) and for which a time frame has not been established under section 3 of this chapter.

[As amended by: P.L.138-2000, §5.]

IC 13-15-4-2 --------- Schedules for determinations on permits: additional time for public hearing

(a) This section does not apply to permit applications described in section 1(1) or 1(2) of this chapter.

(b) If the department determines that a public hearing should be held under:

(1) IC 13-15-3-3; or

(2) any other applicable rule or law;

the commissioner has thirty (30) days in addition to the number of days provided for in section 1 of this chapter in which to approve or deny the application.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-3 --------- Schedules for determinations on permits: limits on rules changing statutory time periods

(a) A board may adopt a rule under IC 4-22-2 that changes a period described under section 1 of this chapter within which the commissioner must approve or deny an application:

(1) if:

(A) the general assembly enacts a statute;

(B) a board adopts a rule; or

(C) the federal government enacts a statute or adopts a regulation;

that imposes a new requirement concerning a class of applications that makes it infeasible for the commissioner to approve or deny the application within the period;

(2) if:

(A) the general assembly enacts a statute;

(B) a board adopts a rule; or

(C) the federal government enacts a statute or adopts a regulation;

that establishes a new permit program for which a period is not described under section 1 of this chapter; or

(3) if some other significant factor concerning a class of applications makes it infeasible for the commissioner to approve or deny the application within the period.

(b) If a board adopts an emergency rule under this section, the period described in section 1 of this chapter is suspended during the emergency rulemaking process.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-4 --------- Schedules for determinations on permits: where renewal application includes a modification

An application for a permit renewal that includes a modification shall be reviewed within the period applicable to the modification.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-5 --------- Schedules for determinations on permits: exemption for hazardous waste permit modification rules

Sections 1 through 4 and section 6 of this chapter do not alter the procedures and time frames set forth in the hazardous waste permit modification rules adopted by the department, except to the extent that sections 1 through 4 and 6 of this chapter establish specific calendar day time frames where no time frame exists under the rules.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-6 --------- Schedules for determinations on permits: interim permits; boards shall adopt rules before 1/1/97

(a) Notwithstanding the periods specified in sections 1 through 4 of this chapter and this section, a person proposing to construct, modify, or operate any equipment, facility, or pollution control device that is demonstrated to achieve pollution control or pollution prevention in excess of applicable federal, state, or local requirements may apply to the commissioner for an interim permit to construct, modify, or operate the equipment, facility, or pollution control device.

(b) The commissioner shall approve or deny the interim permit not later than sixty (60) days after receipt of the application for an interim permit, unless the applicant and the commissioner agree that a longer review period is necessary.

(c) The boards shall adopt rules under IC 4-22-2 to implement this section before January 1, 1997. The rules may not allow an interim construction or operation permit pending a final permit determination if an interim permit is not allowed under federal law for a federally authorized or delegated permit program.

(d) This section does not relieve a person from complying with:

(1) the permit requirements provided under this title; and

(2) rules adopted under this title;

to the extent that this title and the rules are not inconsistent with this section.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-7 --------- Schedules for determinations on permits: calculation of time periods

(a) For purposes of calculating a period under sections 1 through 6 of this chapter, the period:

(1) begins on the earlier of the date:

(A) an application and any required fee is received and stamped received by the department; or

(B) marked by the department on a certified mail return receipt accompanying an application and any required fee; and

(2) ends on the date a decision is issued to approve or deny the application under IC 4-21.5-3-4 or IC 4-21.5-3-5.

(b) If an applicant pays an application fee with a check that is not covered with sufficient funds, a period described under sections 1 through 6 of this chapter is suspended until the applicant pays the permit application fee.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-8 --------- Schedules for determinations on permits: extensions of time periods

(a) The commissioner and an applicant may agree in writing to extend any time allowed under sections 1 through 6 of this chapter for a decision to be made on an application.

(b) The commissioner and an applicant may agree in writing to have a consultant review an application submitted to the department:

(1) to expedite the process of reviewing the application; and

(2) at the applicant's expense.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-9 --------- Schedules for determinations on permits: denial of application for incompleteness

The commissioner may deny a permit application because the application is incomplete if:

(1) the department, not later than thirty-five (35) working days after receiving the application, identifies each part of the application that is incomplete; and

(2) the applicant has failed to submit or make a good faith effort to submit the requested information not later than sixty (60) days after receiving a written request from the department.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-10 -------- Schedules for determinations on permits: suspension of processing of permit application

The commissioner may suspend the processing of an application, and the period described under sections 1 through 6 of this chapter is suspended, if one (1) of the following occurs:

(1) The department determines that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(A) do not contain adequate information for the department to process the application; or

(B) are not consistent with applicable law.

The period described under sections 1 through 6 of this chapter shall be suspended during the first two (2) notices of deficiency sent to an applicant under this subdivision. If more than two (2) notices of deficiency are issued on an application, the period may not be suspended unless the applicant agrees in writing to defer processing of the application pending the applicant's response to the notice of deficiency. A notice of deficiency may include a request for the applicant to conduct tests or sampling to provide information necessary for the department to process the application. If an applicant's response does not contain complete information to satisfy all deficiencies described in a notice of deficiency, the department shall notify the applicant not later than thirty (30) working days after receiving the response. The commissioner shall resume processing the application, and the period described under sections 1 through 6 of this chapter resumes on the earlier of the date the department receives and stamps as received the applicant's complete information or the date marked by the department on a certified mail return receipt accompanying the applicant's complete information.

(2) The commissioner receives a written request from an applicant to:

(A) withdraw; or

(B) defer processing of;

the application for the purposes of resolving an issue related to a permit or to provide additional information concerning the application.

(3) The department is required by federal law or by an agreement with the United States Environmental Protection Agency for a federal permit program to transmit a copy of the proposed permit to the administrator of the United States Environmental Protection Agency for review and possible objections before the permit may be issued. The period described under sections 1 through 6 of this chapter shall be suspended from the time the department submits the proposed permit to the administrator for review until:

(A) the department receives the administrator's concurrence or objection to the issuance of the proposed permit; or

(B) the period established in federal law by which the administrator is required to make objections expires without the administrator having filed an objection.

(4) A board initiates emergency rulemaking under IC 4-22-2-37.1(a)(14) to revise the period described under sections 1 through 6 of this chapter.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-11 -------- Schedules for determinations on permits: options upon failure of IDEM to meet timetable; remedies available; limitations

If the commissioner does not issue or deny a permit within the time specified under sections 1 through 6 of this chapter, the applicant may proceed under this section. Except as provided in section 12 of this chapter, after reaching an agreement with the commissioner or after consulting with the commissioner for thirty (30) days and failing to reach an agreement, the applicant may choose to proceed under one (1) of the following alternatives:

(1) The:

(A) applicant may request and receive a refund of a permit application fee paid by the applicant; and

(B) commissioner shall do the following:

(i) Continue to review the application.

(ii) Approve or deny the application as soon as practicable.

(iii) Refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(2) The:

(A) applicant may:

(i) request and receive a refund of a permit application fee paid by the applicant; and

(ii) submit to the department a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall do the following:

(i) Review the draft permit.

(ii) Approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

(iii) Refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(3) The:

(A) applicant may require that the department use the permit application fee and any additional money needed to hire an outside consultant to prepare a draft permit and any required supporting technical justification for the permit; and

(B) commissioner shall:

(i) review the draft permit; and

(ii) approve, with or without revision, or deny the draft permit in accordance with section 16 of this chapter.

If additional money is needed to hire an outside consultant under this subdivision, the applicant shall pay the additional money needed to hire the outside consultant.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-12 Schedules for determinations on permits: no refund for renewal application

An applicant may not receive a refund of a permit application fee if the permit application concerned the renewal of a permit.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-13 -------- Schedules for determinations on permits: determination that qualified consultant is unavailable

An applicant may not proceed under section 11(3) of this chapter if the commissioner determines that a qualified consultant is not available. The commissioner's determination under this section is subject to appeal and review under IC 4-21.5.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-14 -------- Schedules for determinations on permits: limitations where construction is in process

An applicant may not proceed under any of the options described in section 11 of this chapter if construction or operation of the equipment or facility described in the permit application has already begun, unless construction or operation before obtaining the permit is authorized by a board rule or state statute.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-15 -------- Schedules for determinations on permits: selection of consultant

(a) If an applicant chooses to proceed under section 11(3) of this chapter, the department shall:

(1) select a consultant that has the appropriate background to review the applicant's application; and

(2) authorize the consultant to begin work;

not later than fifteen (15) working days after the department receives notice that the applicant has chosen to proceed under section 11(3) of this chapter.

(b) The commissioner may:

(1) consult with the applicant regarding the advisability of proceeding under this section; and

(2) document the communications.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-16 -------- Schedules for determinations on permits: submission of draft permit by applicant or consultant

(a) If an applicant chooses to proceed under section 11(2) or 11(3) of this chapter, the applicant or a consultant shall prepare and submit to the commissioner the draft permit and any required supporting technical justification for the permit not later than thirty-five (35) working days after:

(1) the applicant has notified the commissioner that the applicant has chosen to proceed under section 11(2) of this chapter; or

(2) the department has authorized a consultant to begin work under section 11(3) of this chapter.

(b) Subject to subsection (c), the commissioner shall:

(1) approve, with or without revision; or

(2) deny;

the draft permit not later than twenty-five (25) working days after receiving the draft permit.

(c) If notice of opportunity for public comment or public hearing is required under applicable law before a permit decision can be issued, the commissioner shall comply with all public participation requirements and:

(1) approve, with or without revision; or

(2) deny;

the draft permit not later than fifty-five (55) working days after receipt of the draft permit.

(d) If the commissioner denies the draft permit, the commissioner shall specify the reasons for the denial.

(e) If an applicant has elected to have a draft permit prepared under section 11(3) of this chapter and:

(1) the consultant fails to submit a draft permit and supporting technical justification to the commissioner; or

(2) the commissioner fails to approve or deny the draft permit;

within the applicable time specified under subsection (a), (b), or (c), the department shall refund the applicant's permit application fee not later than twenty-five (25) working days after expiration of the applicable period.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-17 -------- Schedules for determinations on permits: options prior to expiration of time periods

(a) Any time before a period specified under sections 1 through 6 of this chapter has expired, the commissioner may do the following:

(1) Notify an applicant that the commissioner does not believe that the commissioner will be able to approve or deny a permit application filed with the department before the time specified in sections 1 through 6 of this chapter expires.

(2) Offer to the applicant and allow the applicant to accept one (1) of the following options:

(A) The applicant may submit to the department a draft permit and any legally required supporting technical justification within a period agreed to by the applicant and the commissioner.

(B) The department may hire a qualified consultant at the applicant's cost to:

(i) complete the review of the application; and

(ii) prepare a draft permit and any legally required supporting technical justification.

(b) If the applicant submits a draft permit and supporting documentation on time under subsection (a)(2)(A) or elects to fund the hiring of a consultant under subsection (a)(2)(B), the commissioner shall issue or deny the permit within the period specified under sections 1 through 6 of this chapter. If the commissioner does not make a decision within the period specified:

(1) the department shall refund to the applicant:

(A) the permit application fee paid by the applicant; and

(B) any consultant's fees paid by the applicant;

(2) if a consultant has been hired by the department and has not submitted a draft permit to the department, the consultant shall submit the draft permit and any required supporting technical justification to the department not later than fifteen (15) working days after the expiration of the period specified in sections 1 through 6 of this chapter; and

(3) the commissioner shall approve, with or without revision, or deny the draft permit submitted by the applicant or a consultant within the period specified under section 16(b) or 16(c) of this chapter.

[As added by: P.L.1-1996, §5.]

IC 13-15-4-18 -------- Schedules for determinations on permits: remedies not exclusive

The remedies provided in this chapter are not the exclusive remedies available to a permit applicant. A permit applicant's election of a remedy under this chapter does not preclude the permit applicant from seeking other remedies available at law or in equity.

[As added by: P.L.1-1996, §5.]

IC 13-15-5. COMMENTS ON PERMIT ISSUANCE OR DENIAL

IC 13-15-5-1 --------- Comments on permit issuance or denial: publication of notice of permit application; comment period; public hearing

(a) In response to an application for an original permit or a renewal permit, the commissioner:

(1) shall, if required by IC 13-15-3-3 or other law; or

(2) may, if not required by law;

publish a notice requesting comments concerning the question of issuance or denial of the permit.

(b) If the application is for an operating permit under 42 U.S.C. 7661 through 7661f, the commissioner shall give notice to all states that are:

(1) contiguous to Indiana; or

(2) located not more than fifty (50) miles from a source that is a subject of the permit application.

(c) A comment period of at least thirty (30) days must follow publication of a notice under this section. During the comment period, interested persons may:

(1) submit written comments to the commissioner concerning the issuance or denial of the permit; and

(2) request a public hearing concerning the issuance or denial of the permit.

(d) The commissioner, in response to a written request, may hold a public hearing in the geographical area affected by the proposed permit on the question whether to issue or deny the permit.

[As added by: P.L.1-1996, §5.]

IC 13-15-5-2 --------- Comments on permit issuance or denial: impact of U.S. EPA objections

The commissioner may not issue a permit under the operating permit program under 42 U.S.C. 7661 through 7661f if the United States Environmental Protection Agency makes a written objection within the time allowed under applicable federal law.

[As added by: P.L.1-1996, §5.]

IC 13-15-5-3 --------- Comments on permit issuance or denial: permit issuance or denial; notice thereof

(a) Except as provided in section 2 of this chapter:

(1) after the comment period; or

(2) if a public hearing is held, after the public hearing;

the commissioner shall issue the permit or deny the permit application.

(b) Unless the commissioner states otherwise in writing, the commissioner's action under this section is effective immediately.

(c) Notice of the commissioner's action shall be served upon the following:

(1) The permit applicant.

(2) Each person who submitted written comments under section 1 of this chapter.

(3) Each person who requests notice of the permit determination.

(4) The Administrator of the United States Environmental Protection Agency if service is required under the applicable federal law.

(d) If the commissioner's action is likely to have a significant impact upon persons who are not readily identifiable, the commissioner may publish notice of the action on the permit application in a newspaper of general circulation in the county affected by the proposed permit.

[As added by: P.L.1-1996, §5.]

IC 13-15-6. APPEAL OF AGENCY DETERMINATION TO ISSUE OR DENY PERMIT

IC 13-15-6-1 --------- Appeal of agency determination to issue or deny permit: must be filed within 15 days of notice; exception

(a) Not later than fifteen (15) days after being served the notice provided by the commissioner under IC 13-15-5-3:

(1) the permit applicant; or

(2) any other person aggrieved by the commissioner's action;

may appeal the commissioner's action to the office of environmental adjudication and request that an environmental law judge hold an adjudicatory hearing concerning the action under IC 4-21.5-3 and IC 4-21.5-7.

(b) Notwithstanding subsection (a) and IC 4-21.5-3-7(a)(3), a person may file an appeal of the commissioner's action in issuing an initial permit under the operating permit program under 42 U.S.C. 7661 through 7661f not later than thirty (30) days after the date the person received the notice provided under IC 13-15-5-3, for a permit issued after April 30, 1999.

[As amended by: P.L.224-1999, §5.]

IC 13-15-6-2 --------- Appeal of agency determination to issue or deny permit: requirements for request for hearing

A written request for an adjudicatory hearing under section 1 of this chapter must do the following:

(1) State the name and address of the person making the request.

(2) Identify the interest of the person making the request.

(3) Identify any persons represented by the person making the request.

(4) State with particularity the reasons for the request.

(5) State with particularity the issues proposed for consideration at the hearing.

(6) Identify the permit terms and conditions that, in the judgment of the person making the request, would be appropriate in the case in question to satisfy the requirements of the law governing permits of the type granted or denied by the commissioner's action.

[As added by: P.L.1-1996, §5.]

IC 13-15-6-3 --------- Appeal of agency determination to issue or deny permit: board assignment of matter for hearing; stays; review of final order of board

(a) Not later than thirty (30) days after being served a request for an adjudicatory hearing, an environmental law judge under IC 4-21.5-7 shall, if the environmental law judge determines that:

(1) the request was properly submitted; and

(2) the request establishes a jurisdictional basis for a hearing;

assign the matter for a hearing.

(b) Upon assigning the matter for a hearing, an environmental law judge may stay the force and effect of the following:

(1) A contested permit provision.

(2) A permit term or condition the environmental law judge considers inseverable from a contested permit provision.

(c) After a final hearing under this section, a final order of an environmental law judge on a permit application is subject to review under IC 4-21.5-5.

[As amended by: P.L.90-1998, §14.]

IC 13-15-6-4 --------- Appeal of agency determination to issue or deny permit: failure of commissioner to act on certain air operating permit applications shall be treated as final agency action for purposes of obtaining judicial review

(a) This section applies to an application for a permit or for the renewal of a permit under the operating permit program under 42 U.S.C. 7661 through 7661f.

(b) Failure of the commissioner to act on an application in accordance with the times

provided in Section 503 of the federal Clean Air Act Amendments of 1990 (42 U.S.C. 7661b) or Title IV of the federal Clean Air Act Amendments of 1990 (42 U.S.C. 7651 to 7651o) shall be treated as a final agency action solely for the purposes of obtaining judicial review in state court of an action brought by:

(1) any person that participated in the public comment process; or

(2) any person entitled to judicial review of the final agency action under IC 4-21.5-5;

to require that an action be taken by the commissioner on the permit application without additional delay.

[As added by: P.L.1-1996, §5.]

IC 13-15-6-5 --------- Appeal of agency determination to issue or deny permit: certain air operating permit applications; filing of petition for judicial review of final agency action

(a) This section applies to an application for a permit or for the renewal of a permit under the operating permit program under 42 U.S.C. 7661 through 7661f.

(b) Notwithstanding IC 4-21.5-5-5, a person may file a petition for judicial review of final agency action on an application for a permit, a permit renewal, or a permit revision more than thirty (30) days after the person is served notice of the final agency action if the following conditions exist:

(1) The petition is based on new grounds that arise more than thirty (30) days after the person is served the notice.

(2) The petition is filed not more than thirty (30) days after the new grounds arise.

(3) The new grounds:

(A) are based on new information that was not available during the review period; and

(B) could not by due diligence have been discovered and produced within the time required for the proceedings under this section.

[As amended by: P.L.90-1998, §15.]

IC 13-15-6-6 --------- Appeal of agency determination to issue or deny permit: APCB may adopt rules providing for judicial review under sections 4 and 5

The air pollution control board may adopt rules under IC 4-22-2 to provide that the opportunity for judicial review allowed under section 4 or 5 of this chapter applies to the revision or modification of a permit or license under the operating permit program under 42 U.S.C. 7661 through 7661f.

[As added by: P.L.1-1996, §5.]

IC 13-15-6-7 --------- Appeal of agency determination to issue or deny permit: computation of time

(a) In computing a period of time under this chapter, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is a:

(1) Saturday;

(2) Sunday;

(3) legal holiday under a state statute; or

(4) day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subsections (a)(1) through (a)(4).

(c) A period of time under this chapter that commences when a person is served with a paper commences with respect to a particular person on the earlier of the date that:

(1) the person is personally served with the notice; or

(2) a notice for the person is deposited in the United States mail.

(d) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

[As added by: P.L.90-1998, §16.]

IC 13-15-7. REVOCATION OR MODIFICATION OF PERMITS; APPEAL OF REVOCATION OR MODIFICATION

IC 13-15-7-1 --------- Revocation or modification of a permit: causes for

Except as provided in sections 2 and 4 of this chapter, the commissioner or a designated staff member may revoke or modify a permit granted by the department under environmental management laws or IC 13-7 (before its repeal) for any of the following causes:

(1) Violation of any condition of the permit.

(2) Failure to disclose all of the relevant facts.

(3) Any misrepresentation made in obtaining the permit.

(4) Changes in circumstances relating to the permit that require either a temporary or permanent reduction in the discharge of contaminants.

(5) Any other change, situation, or activity relating to the use of a permit that, in the judgment of the department, is not consistent with the following:

(A) The purposes of this title.

(B) Rules adopted by one (1) of the boards.

[As amended by: P.L.14-2000, §36.]

IC 13-15-7-2 --------- Revocation or modification of a permit: air operating permits

The commissioner shall reopen and revise a permit issued under the operating permit program of 42 U.S.C. 7661 through 7661f before the expiration of the permit when any of the following conditions exist:

(1) Additional federal requirements become applicable to a source whose permit allows at least three (3) more years of continued operation. However, a permit does not have to be revised if the additional requirements will not become effective until after the date the permit expires. A permit revision to address additional requirements must be completed by the commissioner not more than eighteen (18) months after the adoption of the additional requirements.

(2) Additional requirements become applicable to the permitted source under the acid rain program. Upon approval by the United States Environmental Protection Agency, an excess offset emissions plan is considered to be incorporated into the permit.

(3) The commissioner or the United States Environmental Protection Agency determines that:

(A) the permit contains a material mistake; or

(B) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(4) The commissioner or the Administrator of the United States Environmental Protection Agency determines that the permit must be revised or revoked to assure compliance with the applicable federal requirements (as defined in 40 CFR 70.2).

[As added by: P.L.1-1996, §5.]

IC 13-15-7-3 --------- Revocation or modification of a permit: appeal to board

A person aggrieved by the revocation or modification of a permit may appeal the revocation or modification to the office of environmental adjudication for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the permit revocation or modification, the permit remains in force. However, the commissioner may seek injunctive relief with regard to the activity described in the permit while the decision resulting from the hearing is pending.

[As amended by: P.L.25-1997, §7.]

IC 13-15-7-4 --------- Revocation or modification of a permit: APCB shall adopt rules regarding changes without air operating permit revision

(a) This section applies to a facility that:

(1) has been issued an operating permit by the air pollution board; or

(2) is operating without a permit but has made a timely and complete application for a permit under IC 13-17-8-10.

(b) The air pollution control board shall adopt rules under IC 4-22-2 as part of the operating permit program established under 42 U.S.C. 7661 through 7661f providing that a facility may make changes without a permit revision if the following conditions exist:

(1) The changes are not modifications under any provision of Title I of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(2) The changes do not exceed emissions:

(A) expressed as a rate of emissions; or

(B) expressed as total emissions;

allowable under the permit.

(3) The facility provides the commissioner with written notification at least seven (7) days before the proposed changes are made. However, the air pollution control board may adopt rules that provide a different period for notifications that involve emergency situations.

[As added by: P.L.1-1996, §5.]

IC 13-15-8. NOTICE BY APPLICANTS FOR PERMITS FOR UNDEVELOPED LAND AND PROPERTY WITHOUT A PERMIT

IC 13-15-8-1 --------- Notice by applicants for permits for undeveloped land: applicability

(a) This chapter applies to an application for a permit issued under IC 13-15-1 upon property:

(1) that is undeveloped; or

(2) for which a valid existing permit has not been issued.

(b) This chapter does not apply to an application for a permit issued under IC 13-15-1 if the permit is for the construction, installation, or modification of any of the following:

(1) A combined sewer.

(2) A sanitary sewer.

(3) A storm sewer.

(4) A public water supply.

(5) A water main extension.

[As added by: P.L.1-1996, §5.]

IC 13-15-8-2 --------- Notice by applicants for permits for undeveloped land: notice to owners or occupants of adjoining land

Not more than ten (10) working days after submitting an application for a permit issued under IC 13-15-1 or IC 13-7-10.1-1 (before its repeal), the person that submitted the application for the permit shall make a reasonable effort to provide notice:

(1) to all owners of land that adjoins the land that is the subject of the permit application; or

(2) if the owner of land that adjoins the land that is the subject of the permit application does not occupy the land, to all occupants of the land;

that the person has submitted the application for the permit.

[As added by: P.L.1-1996, §5.]

IC 13-15-8-3 --------- Notice by applicants for permits for undeveloped land: requirements of notice

The notice provided by a person under section 2 of this chapter must:

(1) be in writing;

(2) include the date on which the application for the permit was submitted to the department; and

(3) include a brief description of the subject of the application.

[As added by: P.L.1-1996, §5.]

IC 13-15-8-4 --------- Notice by applicants for permits for undeveloped land: costs of compliance

A person that submits an application for a permit under IC 13-15-1 shall pay the costs of complying with this chapter.

[As added by: P.L.1-1996, §5.]

IC 13-15-9. NUCLEAR FACILITY PERMITS

IC 13-15-9-1 --------- Nuclear facility permits: permit required for construction

A person may not:

(1) construct or operate a nuclear powered generating facility or nuclear fuel reprocessing plant; or

(2) increase the capacity of such an existing facility; without a permit from the department.

[As added by: P.L.1-1996, §5.]

IC 13-15-9-2 --------- Nuclear facility permits: boards may adopt rules

(a) Each board may adopt rules under IC 4-22-2 establishing:

(1) conditions for the issuance of a permit under this chapter; and

(2) requirements for the operation of nuclear facilities.

(b) Rules adopted by the air pollution control board may relate to air pollution from nuclear facilities. Rules adopted by the water pollution control board may relate to water pollution from nuclear facilities. Rules adopted by the solid waste management board may relate to other environmental problems associated with nuclear facilities.

(c) The boards may not adopt rules that establish contradictory conditions and requirements.

[As added by: P.L.1-1996, §5.]

IC 13-15-9-3 --------- Nuclear facility permits: environmental feasibility report required

A person proposing to construct:

(1) a nuclear powered generating facility; or

(2) a nuclear fuel reprocessing plant;

shall file with the technical secretary of each board an environmental feasibility report, on a form prescribed by the boards, concurrently with the filing of the preliminary safety analysis required to be filed with the United States Atomic Energy Commission.

[As added by: P.L.1-1996, §5.]

IC 13-15-9-4 --------- Nuclear facility permits: public hearings

(a) The commissioner, on behalf of each board, may conduct a public hearing at a time and place to be determined by the department on the environmental effects of the proposed operation.

(b) A person affected by the proposed construction may participate in the hearing to the extent and in the manner that the board prescribes.

[As added by: P.L.1-1996, §5.]

IC 13-15-9-5 --------- Nuclear facility permits: requirements to be met by rules and standards

(a) Each board shall adopt rules and standards under section 2 of this chapter to protect the citizens of Indiana from the hazards of radiation.

(b) Each permit required under this chapter according to rules adopted by the boards must specify the maximum allowable level of radioactive discharge.

(c) Each permit issued must include a requirement for:

(1) appropriate procedures of monitoring any discharge; and

(2) a report of each discharge to the department.

[As added by: P.L.1-1996, §5.]

IC 13-15-10. SOLID WASTE PERMIT CERTIFICATION REQUIREMENTS AND PROGRAMS; WASTE FACILITY OPERATOR TRUST FUND

IC 13-15-10-1 -------- Solid waste permit certification: SWMB to adopt rules concerning operators of certain facilities

The solid waste management board shall adopt rules to establish a department operated training and certification program for the following:

(1) Operators of solid waste incinerators and waste to energy facilities.

(2) Operators of land disposal sites.

(3) Operators of facilities described under IC 13-15-1-3 whose operation could have an adverse impact on the environment if not operated properly.

[As added by: P.L.1-1996, §5.]

IC 13-15-10-2 -------- Solid waste permit certification: permitted facility to be operated by certified person

A person may not obtain or renew a permit for a facility listed in section 1 of this chapter unless the facility is operated by an individual who is certified under this chapter.

[As added by: P.L.1-1996, §5.]

IC 13-15-10-3 -------- Solid waste permit certification: waste facility operator trust fund established

(a) The waste facility operator trust fund is established. The solid waste management board shall deposit fees collected under this chapter in the fund.

(b) Money in the fund shall be used for paying the expenses of the training and certification program described in this chapter.

[As added by: P.L.1-1996, §5.]

IC 13-15-10-4 -------- Solid waste permit certification: requirements of rules

The solid waste management board shall adopt rules under IC 4-22-2 to implement this chapter. The rules must include the following:

(1) Requirements for certification that consider any training that is required by state rule or federal regulation.

(2) Mandatory testing and retraining.

(3) Recognition of training programs that the solid waste management board approves to serve as a training program that this chapter requires. A recognized training program may be offered by an employer or by any other provider.

(4) Recognition of an interim period for which existing facility operators must obtain certification.

[As added by: P.L.1-1996, §5.]

IC 13-15-10-5 -------- Solid waste permit certification: fees

(a) The solid waste management board shall establish by rule and cause to be collected fees for the following:

(1) Examination of applicants for certification.

(2) Issuance, renewal, or transfer of a certificate.

(3) Restoration of an expired certificate when that action is authorized by law.

(4) Issuance of certificates by reciprocity or

endorsement for out-of-state applicants.

(5) Issuance of board or committee reciprocity or endorsements for resident practitioners who apply to another state for a certificate.

(b) A fee may not be less than fifty dollars ($50) unless the fee is collected under a rule adopted by the solid waste management board that sets a fee for miscellaneous expenses incurred by the department on behalf of the operators the solid waste management board regulates. The fees may not be less than are required to pay all of the costs, both direct and indirect, of the operation of the department under this chapter.

(c) A fee may not be charged to an operator employed by a solid waste facility that is wholly owned and operated by a unit of local government.

[As added by: P.L.1-1996, §5.]

IC 13-15-10-6 -------- Solid waste permit certification: acceptable methods for payment of fees; limits

(a) For the payment of fees under this chapter, the solid waste management board shall accept cash, a draft, a money order, a cashier's check, and a certified or other personal check.

(b) If:

(1) the solid waste management board receives an uncertified personal check for the payment of a fee; and

(2) the check does not clear the bank; the solid waste management board may void the license, registration, or certificate for which the check was received.

(c) Unless designated by rule, a fee is not refundable or transferable.

[As added by: P.L.1-1996, §5.]

IC 13-15-11. ENVIRONMENTAL MANAGEMENT PERMIT OPERATION FUND

IC 13-15-11-1 -------- Environmental management permit operation fund: established

The environmental management permit operation fund is established for the purpose of providing money for permitting and directly associated activities of the:

(1) National Pollutant Discharge Elimination System;

(2) solid waste; and

(3) hazardous waste; programs of the department and the boards.

[As added by: P.L.1-1996, §5.]

IC 13-15-11-2 -------- Environmental management permit operation fund: administration

(a) The department shall administer the fund.

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

[As added by: P.L.1-1996, §5.]

IC 13-15-11-3 -------- Environmental management permit operation fund: sources of fund

The fund consists of fees and delinquent charges collected under the following:

(1) IC 13-18-20.

(2) IC 13-20-21.

(3) IC 13-22-12.

[As added by: P.L.1-1996, §5.]

IC 13-15-11-4 -------- Environmental management permit operation fund: duties of treasurer

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

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

[As added by: P.L.1-1996, §5.]

IC 13-15-11-5 -------- Environmental management permit operation fund: auditor's report

(a) The auditor of state shall make a report on the fund every four (4) months. The report:

(1) shall be issued not later than ten (10) working days following the last day of each four (4) month period;

(2) must include the beginning and ending balance, disbursements, and receipts;

(3) must comply with accounting standards under IC 4-13-2-7(a)(1); and

(4) must be available to the public.

(b) The auditor of state shall forward copies of the report to the following:

(1) The commissioner.

(2) The standing committees of the house of representatives and the senate concerned with the environment.

(3) The budget committee.

(4) The environmental quality service council.

[As added by: P.L.1-1996, §5.]

IC 13-15-12. ANNUAL EVALUATION OF PERMIT PROCESS

IC 13-15-12-1 -------- Annual evaluation of permit process: commissioner's report

Every twelve (12) months, the commissioner shall submit to the following a report that contains an evaluation of the actions taken by the department to improve the department's process of issuing permits:

(1) The governor.

(2) The general assembly.

(3) The boards.

[As added by: P.L.1-1996, §5.]

IC 13-15-12-2 -------- Annual evaluation of permit process: required report content

The report described under section 1 of this chapter must contain the following information concerning the department:

(1) A description of the reduction or increase in the backlog of permit applications in each department permit program during the preceding twelve (12) month period.

(2) The amount of:

(A) permit fees collected; and

(B) expenditures made from fee revenue;

during the preceding twelve (12) month period.

(3) A discussion of possible increases or decreases in the operating costs of each department permit and inspection program.

(4) A discussion of the measures that have been taken by the department to improve the operating efficiency of the permit and inspection programs.

(5) The number of notices issued by the department under IC 13-15-4-10.

(6) A discussion of the department's operational goals for the next twelve (12) months.

(7) A permit status report that includes the following information:

(A) The facility name and type of each permit application pending on January 1 of the previous year and the date each application was filed with the department.

(B) The action taken on each application by December 31 of the previous year.

(C) The facility name and type of each permit application pending on December 31 of the previous year and the date each was filed with the department.

[As added by: P.L.1-1996, §5.]

TITLE 13. ENVIRONMENT
IC 13-16. FEES GENERALLY

IC 13-16-1. GENERAL PROVISIONS REGARDING ESTABLISHMENT OF FEES

IC 13-16-1-1 --------- General provisions regarding establishment of fees: applicability

This chapter applies to fees established under this title by any of the following:

(1) The air pollution control board.

(2) The water pollution control board.

(3) The solid waste management board.

[As added by: P.L.1-1996, §6.]

IC 13-16-1-2 --------- General provisions regarding establishment of fees: procedures for establishing or changing fees

To establish fees or change the amount of a fee, a board shall:

(1) follow the procedure required for the adoption of rules; and

(2) take into account:

(A) the cost of the issuance of a permit or license;

(B) the cost of the performance of services in connection with the supervision, review, and other necessary activities related to the area involved;

(C) the cost of the surveillance of the activity or property covered by the license or permit; and

(D) fees charged for equivalent permits or licenses in other states.

[As added by: P.L.1-1996, §6.]

IC 13-16-1-3 --------- General provisions regarding establishment of fees: basis of fee amount

A fee established by one (1) of the boards under this chapter for a type or class of permit may be based on the average of the costs specified in section 2 of this chapter for all permits of that type or class.

[As added by: P.L.1-1996, §6.]

IC 13-16-1-4 --------- General provisions regarding establishment of fees: periodic review of fees

The boards shall periodically review the fees established under this chapter. A board may change the amount of a fee if the board determines, based upon the factors set forth in section 2 of this chapter, that the amount of the fee is not appropriate.

[As added by: P.L.1-1996, §6.]

IC 13-16-1-5 --------- General provisions regarding establishment of fees: fees to be deposited in environmental management special fund

A fee established under this chapter shall be deposited in the environmental management special fund under IC 13-14-12 when the fee is collected.

[As added by: P.L.1-1996, §6.]

IC 13-16-1-6 --------- General provisions regarding establishment of fees: limitations on boards and IDEM with respect to fees

Notwithstanding sections 1 through 5 of this chapter or any other law, a board or the department may not do any of the following:

(1) Except as provided in section 7 of this chapter, change a fee established by:

(A) IC 13-18-20;

(B) IC 13-20-21; or

(C) IC 13-22-12.

(2) Establish an additional fee that was not in effect on January 1, 1994, concerning the following:

(A) National Pollutant Discharge Elimination System programs.

(B) Solid waste programs.

(C) Hazardous waste programs.

(3) Require payment of a fee for material used as alternate daily cover pursuant to a permit issued by the department under 329 IAC 10-20-13.

[As amended by: P.L.224-1999, §7.]

IC 13-16-1-7 --------- General provisions regarding establishment of fees: adjustment of individual bills based on amount of fund balance

(a) Before billing a person under IC 13-18-20, IC 13-20-21, or IC 13-22-12, the commissioner shall review the money in the environmental management permit operation fund established under IC 13-15-11 and make the following adjustments:

(1) If the balance of the fund collected under IC 13-18-20, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars ($2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars ($2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-18-20.

(2) If the balance of the fund collected under IC 13-20-21, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars ($2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars ($2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-20-21.

(3) If the balance of the fund collected under IC 13-22-12, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars ($2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars ($2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-22-12.

(b) The appropriate board may adopt rules under IC 4-22-2 and IC 13-14-9 to adjust the amount of the fund balance at which the commissioner is required to adjust individual bills under subsection (a)(1), (a)(2), or (a)(3). However, the amount of the fund balance established by rule under this subsection may not exceed two million five hundred thousand dollars ($2,500,000).

[As added by: P.L.224-1999, §8.]

IC 13-16-2. INSTALLMENT PAYMENTS

IC 13-16-2-1 Installment payments: requirements

(a) The department shall establish fee payment schedules that allow a person that is required to pay an annual fee established under:

(1) this title; or

(2) rules adopted under this title;

to pay the fee in equal installments over a twelve (12) month period that begins on the date the fee is assessed.

(b) The department shall allow a person to pay an annual fee according to a fee payment schedule established under this section if the person determines that a single payment of the entire fee is an undue hardship on the person.

(c) A fee payment schedule established under this section may not require a person to pay more than one (1) installment in any three (3) month period during the twelve (12) month period.

(d) The department is not required to assess installments separately.

[As added by: P.L.2-1997, §40.]

TITLE 13. ENVIRONMENT
IC 13-17. AIR POLLUTION CONTROL

IC 13-17-1. INTENT AND PURPOSE OF AIR POLLUTION CONTROL LAWS

IC 13-17-1-1 --------- Intent and purpose of air pollution control laws: stated

It is the intent and purpose of air pollution control laws to maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana. The air pollution control board and the department shall safeguard the air resource through the prevention, abatement, and control of air pollution by all practical and economically feasible methods.

[As added by: P.L.1-1996, §7.]

IC 13-17-1-2 --------- Intent and purpose of air pollution control laws: role of local programs

Local and air quality basin control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

[As added by: P.L.1-1996, §7.]

IC 13-17-1-3 --------- Intent and purpose of air pollution control laws: means of accomplishment

Accomplishing the intent and purpose of air pollution control laws can be done most effectively by focusing on goals to be achieved by a maximum of cooperation among all parties concerned, and the rules established under this article should be clearly premised upon scientific knowledge of causes as well as of effects.

[As added by: P.L.1-1996, §7.]

IC 13-17-2. ESTABLISHMENT OF AIR POLLUTION CONTROL BOARD

IC 13-17-2-1 --------- Establishment of APCB: board established

The air pollution control board is established.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-2 --------- Establishment of APCB: membership

The board consists of the following eleven (11) members:

(1) The following ex officio members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

[As amended by: P.L.90-1998, §17.]

IC 13-17-2-3 --------- Establishment of APCB: political affiliation

Not more than four (4) of the appointed members of the board may be members of the same political party.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-4 --------- Establishment of APCB: limitations on members

The board must have at least a majority of members who:

(1) represent the public interest; and

(2) do not derive any significant part of their income from persons subject to permits or enforcement orders under the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549).

[As added by: P.L.1-1996, §7.]

IC 13-17-2-5 --------- Establishment of APCB: disclosure of conflicts

Each board member shall fully disclose any potential conflicts of interest relating to permits or enforcement orders under the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549).

[As added by: P.L.1-1996, §7.]

IC 13-17-2-6 --------- Establishment of APCB: ex officio representatives

An ex officio member of the board may designate in writing a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-7 --------- Establishment of APCB: term of members; filling vacancies

(a) The term of an appointed member of the board is four (4) years.

(b) The term of each member of the board continues until a successor has been appointed and qualified.

(c) If a vacancy occurs in the appointed membership of the board, the governor shall appoint a member not later than sixty (60) days after the vacancy occurs for the remainder of the unexpired term created by the vacancy. The board shall suspend the exercise of the board's duties under the air pollution control laws if the vacancy has not been filled not later than sixty (60) days after the vacancy occurs.

(d) The governor may remove an appointed member of the board for cause. Cause includes the failure to attend at least two (2) board meetings within a one (1) year period.

(e) The board may not adopt a final rule under IC 13-14-8 until all members of the board have been appointed.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-8 --------- Establishment of APCB: compensation of members

(a) The ex officio members of the board serve without additional compensation.

(b) Each appointed member of the board is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) The per diem and mileage are valid claims against the department.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-9 --------- Establishment of APCB: meetings

(a) The board shall hold at least six (6) regular meetings each year at a place and time to be fixed by the board.

(b) Special meetings of the board may be called by:

(1) the chairman; or

(2) three (3) members of the board;

by delivery of written notice to each member of the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-10 -------- Establishment of APCB: quorum

Six (6) members of the board, four (4) of whom must be appointed members of the board, constitute a quorum.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-11 -------- Establishment of APCB: chair and vice-chair

The governor shall annually select:

(1) one (1) of the eight (8) appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice chairman.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-12 -------- Establishment of APCB: technical secretary

(a) The board shall select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the department shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall review all materials prepared for the board by the department to make any necessary revisions. Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary is not a voting member of the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-2-13 -------- Establishment of APCB: legal counsel

(a) The board may select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as legal counsel. The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the department for legal accuracy and sufficiency and direct the department to make any necessary revisions.

(b) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-3. POWERS AND DUTIES CONCERNING AIR POLLUTION CONTROL

IC 13-17-3-1 --------- Powers and duties concerning air pollution control: IDEM assistance to local government

The department shall provide assistance on air pollution matters to towns, cities, and counties.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-2 --------- Powers and duties concerning air pollution control: commissioner may conduct inspections

The commissioner may conduct inspections under air pollution control laws in accordance with IC 13-14-2.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-3 --------- Powers and duties concerning air pollution control: enforcement

Air pollution control laws may be enforced under IC 13-14-2-6 or IC 13-30-3.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-4 --------- Powers and duties concerning air pollution control: APCB to adopt rules

(a) The board shall adopt rules under IC 4-22-2 that are:

(1) consistent with the general intent and purposes declared in IC 13-17-1 and section 1 of this chapter; and

(2) necessary to the implementation of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549).

(b) Notwithstanding IC 13-15-5, the board may adopt rules under IC 4-22-2 and IC 13-14-9 that allow the commissioner's actions on permits and permit modifications to become effective immediately, regardless of whether a thirty (30) day comment period is held on the permits or permit modifications. The board may adopt rules under this subsection only after considering the:

(1) environmental significance of;

(2) federal requirements for federally delegated or approved programs concerning; and

(3) need for opportunity for public participation on;

the permits or permit modifications.

[As amended by: P.L.90-1998, §18.]

IC 13-17-3-5 --------- Powers and duties concerning air pollution control: penalties for violations

Violations of air pollution control laws are subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-6 --------- Powers and duties concerning air pollution control: APCB to develop operating policies

The board shall develop operating policies governing the implementation of air pollution control laws by the commissioner.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-7 --------- Powers and duties concerning air pollution control: agreed orders; review

(a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-8 --------- Powers and duties concerning air pollution control: board duties

The board shall carry out other duties imposed by law.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-9 --------- Powers and duties concerning air pollution control: commissioner to cooperate with other groups

(a) The commissioner shall assist and cooperate with other groups interested in and affected by air pollution.

(b) The commissioner may do the following:

(1) Advise, consult, and cooperate with:

(A) other state agencies;

(B) towns, cities, and counties;

(C) industries;

(D) other states;

(E) the federal government; and

(F) affected groups;

in the prevention and control of new and existing air contamination sources within Indiana.

(2) Encourage and conduct studies, investigations, and research relating to the following:

(A) Air pollution.

(B) The causes, effects, prevention, control, and abatement of air pollution.

(3) Collect and disseminate information relating to the following:

(A) Air pollution.

(B) The prevention and control of air pollution.

(4) Encourage voluntary cooperation by persons, towns, cities, and counties or other affected groups in restoring and preserving a reasonable degree of purity of air within Indiana.

(5) Encourage authorized air pollution agencies of towns, cities, and counties to handle air pollution problems within their respective jurisdictions to the greatest extent possible.

(6) Upon request, provide technical assistance to towns, cities, or counties requesting technical assistance for the furtherance of air pollution control.

(7) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to the control of air pollution.

(8) Accept and administer grants or other money or gifts for the purpose of carrying out any of the functions of air pollution control laws.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-10 -------- Powers and duties concerning air pollution control: budget authority

The commissioner may budget and receive appropriated money for expenditures to carry out air pollution control laws.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-11 -------- Powers and duties concerning air pollution control: APCB may adopt rules under authority of CAA and regulations

The board may adopt rules under IC 4-22-2 under discretionary authority granted to the state by:

(1) the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549); or

(2) a regulation adopted under the federal Clean Air Act.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-12 -------- Powers and duties concerning air pollution control: additional rulemaking authority of APCB

Unless otherwise indicated, any express grant of authority provided to the board under this title may not be interpreted to prohibit the board from adopting rules that extend the grant of authority to cover additional activities in accordance with section 4 of this chapter or IC 13-14-8.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-13 -------- Powers and duties concerning air pollution control: limits on solid waste incinerator permit issuance

The commissioner may not issue any permit to a solid waste incinerator required by the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549), if the commissioner is also responsible in whole or in part for the design, construction, or operation of the unit.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-14 -------- Powers and duties concerning air pollution control: APCB to adopt rules classifying regions of state with respect to attainment and setting standards for ambient air quality

The board shall adopt rules under IC 4-22-2 that do the following:

(1) Classify regions into attainment areas and nonattainment areas for regulated air pollutants based upon scientific study of geographical, topographical, and meteorological data.

(2) Set standards for ambient air quality for each region to effectuate the purposes of air pollution control laws.

[As added by: P.L.1-1996, §7.]

IC 13-17-3-15 -------- Powers and duties concerning air pollution control: APCB may adopt rules relating to noise

(a) The board may adopt rules and standards prescribing limitations on noise emission. In adopting rules under this section, the board may prescribe that a person may not emit or cause to be emitted any noise that:

(1) unreasonably interferes with any lawful business or activity; or

(2) is injurious to the health or well-being of any person.

(b) The board may adopt rules concerning the following:

(1) Equipment and procedures for monitoring noise.

(2) The collection and retention of data resulting from the monitoring.

(3) The reporting of data to the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-4. AIR POLLUTION EMERGENCIES

IC 13-17-4-1 --------- Air pollution emergencies: policy statement

The discharge into the outdoor atmosphere of air contaminants that would cause air pollution and create a public nuisance is contrary to the public policy of the state and this article.

[As added by: P.L.1-1996, §7.]

IC 13-17-4-2 --------- Air pollution emergencies: declaration by governor

(a) Air pollution may at certain times and places so seriously affect the public health and so threaten the population as to warrant emergency powers to prevent or minimize disasters of unforeseen proportions. If the commissioner determines, in consultation with the commissioner of the state department of health, that air pollution in an area constitutes an unreasonable and emergency risk to the health and safety of those in the area, that determination shall be immediately communicated to the governor.

(b) The governor may, by proclamation, do the following:

(1) Declare that an emergency exists.

(2) Order all persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants.

[As added by: P.L.1-1996, §7.]

IC 13-17-4-3 --------- Air pollution emergencies: injunctive proceedings must be initiated within 24 hours

(a) Not more than twenty-four (24) hours after issuance of a proclamation under section 2 of this chapter, the attorney general, at the request of the governor, shall initiate injunctive proceedings in the appropriate court against each person causing or contributing to the air pollution to:

(1) stop the emission of contaminants causing the pollution; or

(2) take other action that is necessary.

(b) If the attorney general does not commence an action within the twenty-four (24) hour period, the governor's proclamation becomes void.

[As added by: P.L.1-1996, §7.]

IC 13-17-5. MOTOR VEHICLE EMISSION CONTROL

IC 13-17-5-1 --------- Motor vehicle emission control: APCB may adopt rules; limitation

The air pollution control board may adopt rules for the control of emissions from vehicles. However, the board must, before adopting the rules, forward to each member of the

general assembly a copy of the proposed rules. The rules may prescribe requirements for the following:

(1) The installation and use of equipment designed to reduce or eliminate emissions.

(2) The proper maintenance of that equipment and of vehicles.

[As added by: P.L.1-1996, §7.]

IC 13-17-5-2 --------- Motor vehicle emission control: limitations on rules

Any rules proposed for adoption under section 1 of this chapter must be consistent with provisions of federal law relating to control of emissions from vehicles. The board may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed for the control of emissions from vehicles if the feature or equipment has been certified, approved, or otherwise authorized under federal law.

[As added by: P.L.1-1996, §7.]

IC 13-17-5-3 --------- Motor vehicle emission control: obligation to maintain

Except as permitted or authorized by law, a person may not:

(1) fail to maintain in good working order; or

(2) remove, dismantle, or otherwise cause to be inoperative;

any air pollution control system or mechanism that is used to control air pollution of a vehicle and that is required by rules of the board to be maintained in or on the vehicle.

[As added by: P.L.1-1996, §7.]

IC 13-17-5-4 --------- Motor vehicle emission control: suspension of registration

The commissioner of the bureau of motor vehicles shall suspend the registration of any vehicle that is not in compliance with section 3 of this chapter and may not reinstate the registration until:

(1) the emission control equipment of the vehicle has been restored, replaced, or repaired and is in good working order; and

(2) if the vehicle is subject to a rule of the board requiring testing of the emission characteristics of certain vehicles in certain counties, all requirements of that rule applying to the vehicle have been satisfied.

[As added by: P.L.1-1996, §7.]

IC 13-17-5-5.1 ------- Motor vehicle emission control: rules authorizing periodic inspections in certain counties; inspections

(a) A rule adopted by the board under air pollution control laws that requires:

(1) certain motor vehicles registered in certain counties to undergo a periodic test of emission characteristics; and

(2) vehicles failing the emissions test to be repaired and retested;

applies to the vehicles registered in those counties subject to the rules. An exemption in the rules applies to motor vehicles registered in those counties subject to the rule.

(b) An inspection station authorized by a rule adopted by the board may:

(1) inspect any vehicle; and

(2) certify that the inspected vehicle meets air emission control standards established in the applicable rules.

(c) The department may contract with a person to conduct inspections to test the emissions or emission control devices of motor vehicles. If inspections are conducted by a contractor under this subsection, the inspections and testing shall be conducted under the direction of the department. The department may not enter into a contract with a foreign corporation under this section unless the foreign corporation is registered with the secretary of state to do business in Indiana.

(d) The duration of a contract entered into under this section may not exceed ten (10) years.

(e) This section does not prohibit the board or the department from adopting fleet inspection procedures.

(f) IC 5-22-17-3 does not apply to a procurement under this section.

[As added by: P.L.229-1999, §2.]

IC 13-17-5-5.4 ------- Motor vehicle emission control: applicability to certain counties

(a) This section applies to the following counties:

(1) A county having a population of more than sixty-four thousand (64,000) but less than sixty-five thousand (65,000).

(2) A county having a population of more than eighty-five thousand (85,000) but less than eighty-eight thousand (88,000).

(b) For the purpose of determining the number of inspection stations operating in a county under this subsection, a temporary or portable inspection station counts as an inspection station. After July 1, 1997, the department must maintain in a county under subsection (a) an equal or greater number of inspection stations as were operating in the county on July 1, 1996.

[As added by: P.L.79-1997, §2.]

IC 13-17-5-6 --------- Motor vehicle emission control: limitations on APCB emissions testing rules

(a) A rule adopted by the board under air pollution control laws that:

(1) requires periodic motor vehicle emissions tests; and

(2) makes new vehicles exempt from the emissions tests for a time;

may not require that new vehicles be presented at an official vehicle inspection station for the purpose of obtaining a certificate of compliance.

(b) A rule adopted by the board under air pollution control laws that:

(1) requires periodic motor vehicle emissions tests; and

(2) makes certain vehicles exempt from the emissions test due to the length of time since the vehicles were manufactured;

may not require that those vehicles be presented at an official vehicle inspection station for the purpose of obtaining a certificate of compliance.

[As added by: P.L.1-1996, §7.]

IC 13-17-5-7 --------- Motor vehicle emission control: IDEM to annually advise budget agency on adequacy of program funding

(a) The department shall annually advise the budget committee on whether:

(1) money appropriated by the general assembly; and

(2) money available through federal grants;

is adequate to implement a motor vehicle emissions testing program described in section 5.1 of this chapter.

(b) If the money described under subsection (a) becomes insufficient to implement a motor vehicle emissions testing program, the department shall immediately notify:

(1) the governor; and

(2) the budget committee;

of the insufficiency.

[As amended by: P.L.229-1999, §3.]

IC 13-17-5-8 --------- Motor vehicle emission control: violations

(a) Whenever:

(1) an officer or employee of the department; or

(2) a person the department has contracted with under section 5 (before its repeal) or 5.1 of this chapter or IC 13-1-1-11 (before its repeal);

learns of a violation of section 1, 2, 3, or 4 of this chapter or IC 13-1-1-6 (before its repeal), the officer or employee shall notify the bureau of motor vehicles in writing of the violation or failure for purposes of the suspension of the registration of the vehicle in question under IC 9-18-2-39.

(b) After a vehicle's registration is suspended under IC 9-18-2-39:

(1) an officer or employee of the department; or

(2) a person the department has contracted with under section 5 (before its repeal) or 5.1 of this chapter or IC 13-1-1-11 (before its repeal);

who recognizes that the violation of section 1, 2, 3, or 4 of this chapter or IC 13-1-1-6 (before its repeal) has been corrected shall notify the bureau of motor vehicles in writing of the correction or achievement of compliance for purposes of the reinstatement of the vehicle's registration under IC 9-18-2-39.

[As amended by: P.L.229-1999, §4.]

IC 13-17-6. REGULATION OF ASBESTOS AND ASBESTOS CONTRACTORS

IC 13-17-6-1 --------- Regulation of asbestos and asbestos contractors: APCB to adopt rules relating to accreditation and licensing

(a) This section does not apply to a person making an inspection under the authority of IC 22-8-1.1.

(b) The board shall adopt rules under IC 4-22-2 requiring the commissioner to establish a program for the following:

(1) The accreditation of persons engaged in the inspection, management, or abatement of asbestos containing material.

(2) The licensing of asbestos contractors.

(c) The board shall, in the rules adopted under this section, do the following:

(1) Prohibit a person without accreditation or an asbestos contractor without a license from engaging in the inspection, management, or abatement of asbestos containing material at:

(A) elementary and secondary schools; and

(B) facilities subject to:

(i) United States Environmental Protection Agency regulations; or

(ii) rules of the board;

pertaining to asbestos emission control.

(2) Require training and examination as a precondition to accreditation.

(3) Require periodic retraining and reexamination to maintain accreditation.

(4) Establish minimum requirements for the issuance of an asbestos contractor license, including a requirement that all workers employed by an asbestos contractor to inspect, manage, or abate asbestos containing material be accredited under the program established under this section.

(5) Extend the applicability of the accreditation and licensing requirements to other facilities as determined by the board.

(6) Exempt from accreditation and licensing requirements a person that performs work:

(A) on a private residential dwelling and commercial residential building with fewer than five (5) dwelling units; and

(B) during an emergency that results from a sudden and unexpected event that is not a planned asbestos project.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-2 --------- Regulation of asbestos and asbestos contractors: APCB to adopt rules establishing fees; proceeds to be deposited into asbestos trust fund

(a) This section does not apply to a person making an inspection under the authority of IC 22-8-1.1.

(b) The board shall adopt a rule under IC 4-22-2 to do the following:

(1) Establish a fee not to exceed one hundred fifty dollars ($150) per person per certification for persons seeking accreditation through the program established under section 1 of this chapter.

(2) Establish a fee for asbestos contractors seeking licensing through the program established under section 1 of this chapter.

(c) The amount of the fee established under subsection (b) must not be more than is considered to be necessary to recover the cost of establishing the accreditation and licensing programs.

(d) The proceeds of the fee shall be deposited in the asbestos trust fund established by section 3 of this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-3 --------- Regulation of asbestos and asbestos contractors: asbestos trust fund established

(a) The asbestos trust fund is established to provide a source of money for the purposes set forth in section 4 of this chapter.

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

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

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

(e) The sources of money for the fund are the following:

(1) Accreditation fees paid under section 2 of this chapter.

(2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(3) Penalties imposed under IC 13-30-4 and IC 13-30-5 for violations of the rules of the board concerning asbestos.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-4 --------- Regulation of asbestos and asbestos contractors: uses of fund

The commissioner may use money in the fund to do the following:

(1) Pay the expenses of administration of the accreditation program established under section 1 of this chapter.

(2) Cover other costs related to implementation of the federal Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. 2641 et seq.).

[As added by: P.L.1-1996, §7.]

IC 13-17-6-5 --------- Regulation of asbestos and asbestos contractors: contractor to use accredited employees or agents

An asbestos contractor licensed under this chapter may not allow an agent or employee of the contractor to:

(1) exercise control over an asbestos project; or

(2) come into contact with asbestos;

unless the agent or employee is accredited under this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-6 --------- Regulation of asbestos and asbestos contractors: records of contractor

(a) An asbestos contractor licensed under this chapter shall compile records concerning each asbestos project the asbestos contractor performs. The records must include the following information on each asbestos project:

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

(A) The person who supervised the asbestos project for the asbestos contractor.

(B) Each employee or agent of the asbestos contractor that worked on the project.

(2) The site of the asbestos project.

(3) A description of the asbestos project.

(4) The amount of asbestos containing material that was removed in the project.

(5) The date on which the asbestos project was started and the date on which the asbestos project was completed.

(6) A summary of procedures that were used in theasbestos project to comply with all applicable federal and state standards on asbestos projects.

(7) The name and address of each disposal site used for the disposal of asbestos containing material that was disposed of on the asbestos project.

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(7) must be included in the records concerning the project compiled under this section.

(c) An asbestos contractor shall retain the records compiled under subsection (a) concerning a particular asbestos project for at least thirty (30) years after the asbestos project is concluded.

(d) An asbestos contractor shall make records kept under this section available to the department upon request.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-7 --------- Regulation of asbestos and asbestos contractors: annual investigation by IDEM

At least one (1) time each year, the department shall investigate the procedures employed by each licensed asbestos contractor with regard to the:

(1) abatement;

(2) removal;

(3) renovation;

(4) enclosure;

(5) repair; and

(6) encapsulation;

of asbestos containing material by conducting an inspection of the site of an asbestos project being carried out by the licensed asbestos contractor.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-8 --------- Regulation of asbestos and asbestos contractors: governmental entity may not accept bid of unlicensed contractor

A political subdivision or a state agency may not accept a bid for an asbestos project from a person that does not hold an asbestos contractor license.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-9 --------- Regulation of asbestos and asbestos contractors: inspection and investigation by commissioner

The commissioner may do the following:

(1) Inspect the site of an asbestos project:

(A) during the project; or

(B) after the project is completed.

(2) Conduct an investigation of an asbestos project upon:

(A) the commissioner's own initiation; or

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

[As added by: P.L.1-1996, §7.]

IC 13-17-6-10 -------- Regulation of asbestos and asbestos contractors: notice of injunction

(a) If the commissioner finds that an asbestos project is not being performed in accordance with air pollution control laws or rules adopted under air pollution control laws, the commissioner may enjoin further work on the asbestos project without prior notice or hearing by delivering a notice to:

(1) the asbestos contractor engaged in the asbestos project; or

(2) the agent or representative of the asbestos contractor.

(b) A notice issued under this section must:

(1) specifically enumerate the violations of law that are occurring on the asbestos project; and

(2) prohibit further work on the asbestos project until the violations enumerated under subdivision (1) cease and the notice is rescinded by the commissioner.

(c) Not later than ten (10) days after receiving written notification from a contractor that violations enumerated in a notice issued under this section have been corrected, the commissioner shall issue a determination whether or not to rescind the notice.

(d) An asbestos contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the commissioner's action IC 4-21.5 and IC 4-21.5-7.

[As amended by: P.L.25-1997, §8.]

IC 13-17-6-11 -------- Regulation of asbestos and asbestos contractors: reprimand of asbestos contractor or worker; suspension or revocation of license or accreditation

(a) The commissioner may under IC 4-21.5 reprimand an asbestos contractor or asbestos worker or suspend or revoke the license of an asbestos contractor or the accreditation of an asbestos worker for the following reasons:

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

(2) Failing to meet the qualifications for a license or accreditation or failing to comply with the requirements of air pollution control laws or rules adopted under air pollution control laws.

(3) Failing to meet an applicable federal or state standard for the abatement, removal, or encapsulation of asbestos.

(b) The commissioner may under IC 4-21.5 reprimand an asbestos contractor or suspend or revoke the license of an asbestos contractor that does any of the following:

(1) Employs a person who is not accredited under this chapter.

(2) Permits a person who is not accredited under this chapter to work on an asbestos project.

[As added by: P.L.1-1996, §7.]

IC 13-17-6-12 -------- Regulation of asbestos and asbestos contractors: asbestos requirements and exceptions thereto

(a) Except as provided in subsections (c) and (d), a person that enters into a contract providing for the person to execute, for compensation, an asbestos project must hold an asbestos contractor's license.

(b) Except as provided in subsections (c) and (d), an individual who works on an asbestos project must be accredited under this chapter.

(c) In an emergency that results from a sudden and unexpected event that is not a planned renovation or demolition, the commissioner may waive the requirements set forth in subsections (a) and (b) for a person that enters into a contract or works to resolve the emergency.

(d) The commissioner may:

(1) exempt an employer from subsection (a); and

(2) exempt the employer's employees from subsection (b) with respect to an asbestos project on premises owned or leased by the employer;

if the commissioner determines that the employer has adopted and is enforcing an asbestos safety program that is adequate to protect the health and safety of the employees and of any other persons who are or may be affected by the asbestos project.

[As added by: P.L.1-1996, §7.]

IC 13-17-7. CLEAN AIR ACT (CAA) PERMIT COMPLIANCE PROGRAM

IC 13-17-7-1 --------- CAA permit compliance program: liability for failure to obtain certain permits limited to that provided in this chapter

Except as otherwise provided in this chapter, if a person:

(1) constructed, reconstructed, modified, or operated a facility or source that emits or is capable of emitting into the atmosphere a regulated pollutant in an amount for which:

(A) a registration;

(B) a construction permit; or

(C) an operating permit;

is required under IC 13-30-2-1(7) and rules adopted by the board under IC 13-15-1-1;

(2) fails to obtain the:

(A) registration;

(B) construction permit; or

(C) operating permit;

as required by Indiana law;

(3) meets the conditions described in section 2 of this chapter; and

(4) pays a civil penalty described in section 6 of this chapter;

the person's failure to obtain the registration, construction permit, or operating permit does not result in any liability beyond the liability described in this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-7-2 --------- CAA permit compliance program: conditions necessary for a person to qualify for exemption from liability

(a) All of the following conditions must be satisfied for a person to qualify for the exemption from liability established in section 1 of this chapter:

(1) If the source is required to obtain a Title V operating permit, a complete permit application for a Title V operating permit, a FESOP, or an enforceable operating agreement that includes the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996, or a date established by the board for timely submission of an application for a Title V operating permit, whichever is earlier. The permit application submitted under this subdivision must comply with:

(A) the requirements of 40 CFR 70.5(a)(2); and

(B) all rules adopted by the board implementing 40 CFR 70.5(a)(2).

(2) If the source is not required to obtain a Title V operating permit, a complete application for a registration or construction permit, as applicable, for the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996. The registration or construction permit application must comply with all rules adopted by the board.

(3) Each existing emitting facility or source for which limited liability is claimed under this chapter is clearly identified in the application submitted under subdivision (1) or (2), whichever is applicable.

(4) The emitting facility or source was constructed or modified before January 1, 1994.

(5) The emitting source was not the subject of a completed administrative or civil action for failure to obtain a necessary air construction or operation permit:

(A) after January 1, 1989; and

(B) before January 1, 1994.

(6) The source is not the subject of a pending administrative or civil action for failure to obtain a necessary air construction or operation permit.

(b) The department may not require:

(1) a separate registration application;

(2) a construction permit application; or

(3) an additional operating permit application;

if the Title V operating permit application submitted for the sources or facilities qualifying for an exemption from liability under section 1 of this chapter and identified under subsection (a)(3) contains information that satisfies all requirements of the rules adopted by the board and all Indiana statutes concerning new or modified sources and facilities.

(c) This section does not relieve a person from any obligation to:

(1) apply for or obtain a permit required for the prevention of significant deterioration or by new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D); or

(2) obtain a registration or construction permit required under an Indiana law or rules adopted by the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-7-3 --------- CAA permit compliance program: situations where exemption from liability is inapplicable

This chapter does not do any of the following:

(1) Limit the scope of a person's liability for criminal penalties under IC 13-30-4, IC 13-30-5, IC 13-30-6, and IC 13-30-8.

(2) Excuse or prohibit enforcement of violations of any state or federal health based or technology based standard, including national primary and secondary ambient air quality standards.

(3) Excuse a facility or source for failure to obtain in advance a construction permit required by the prevention of significant deterioration or new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D).

(4) Apply to an individual facility at a source:

(A) that has potential emissions of more than one hundred (100) tons per year of any regulated pollutant;

(B) to which the board had established permit requirements under rules in effect on January 1, 1994; and

(C) that never received an operating permit under 326 IAC 2-1-4 as in effect on January 1, 1994.

[As added by: P.L.1-1996, §7.]

IC 13-17-7-4 --------- CAA permit compliance program: inapplicability to resolved or settled enforcement actions

An enforcement action that has been resolved or settled with the commissioner or any other person may not be reopened on the basis of this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-7-5 --------- CAA permit compliance program: civil action to enjoin or abate emissions

A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

(1) IC 13-14-10-2;

(2) IC 13-15-3-6;

(3) IC 13-17-4;

(4) IC 13-30-1-1 through IC 13-30-1-7;

(5) IC 13-30-3-2 through IC 13-30-3-9; or

(6) IC 34-19-1-2;

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

[As amended by: P.L.1-1998, §105.]

IC 13-17-7-6 --------- CAA permit compliance program: amount of limited civil penalty

The sole civil penalty for a failure to possess a permit or registration as described in section 1 of this chapter, regardless of the number of facilities identified in the application filed under section 2 of this chapter, is as follows:

(1) For a person who submits a timely and complete Title V operating permit application under section 2 of this chapter:

(A) three thousand dollars ($3,000); and

(B) an amount equal to the amount charged for an annual operation fee for all

facilities or sources owned or operated by the person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).

(2) For a person who submits a timely and complete application for a FESOP, an enforceable operating agreement under section 2(a)(1) of this chapter, or a timely and complete application for a registration or construction permit under section 2(a)(2) of this chapter:

(A) two thousand dollars ($2,000); and

(B) an amount equal to the amount charged for an annual operation fee for all facilities or sources owned or operated by that person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).

[As added by: P.L.1-1996, §7.]

IC 13-17-7-7 --------- CAA permit compliance program: limits on the limitation on liability

The limitation on liability provided under section 1 of this chapter only applies to an administrative or a judicial enforcement action brought against a person for failure to possess a valid state construction permit, operating permit, or registration. This chapter does not apply to any other type of violation.

[As added by: P.L.1-1996, §7.]

IC 13-17-7-8 --------- CAA permit compliance program: APCB may adopt rules to implement

The board may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-8. TITLE V OPERATING PERMIT PROGRAM, TRUST FUND, AND FEES

IC 13-17-8-1 --------- Title V operating permit program: Title V operating permit trust fund

(a) The Title V operating permit program trust fund is established to provide a source of money for the implementation, enforcement, and administration of the operating permit program required to implement 42 U.S.C. 7661 through 7661f of the federal Clean Air Act, as provided in sections 2 through 9 of this chapter.

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

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

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

(e) The sources of money for the fund are the following:

(1) Fees collected under the operating permit program required to implement 42 U.S.C. 7661 through 7661f.

(2) Appropriations made by the general assembly.

(f) Money in the fund may be used only to pay the costs of the operating permit program activities described in section 3 of this chapter.

(g) Revenues that accrue to the fund are appropriated to the department for the purposes described in section 3 of this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-2 --------- Title V operating permit program: collection of Title V fees

(a) The owner or operator of a source subject to the requirement to obtain a permit necessary to implement 42 U.S.C. 7661 through 7661f shall pay a fee determined by the board under rules adopted under IC 4-22-2.

(b) The department shall do the following:

(1) Collect the fees described in subsection (a).

(2) Deposit the fees in the Title V operating permit program trust fund.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-3 --------- Title V operating permit program: establishing Title V fee amounts by APCB

The air pollution control board shall adopt fees to be collected under the operating permit program. The annual aggregate amount of fees collected under the operating permit program from all sources subject to the operating permit program must be sufficient to cover only the direct and indirect reasonable costs of the following permit program activities:

(1) Preparing rules, regulations, and guidance regarding implementation and enforcement of the program.

(2) Reviewing and acting on the following:

(A) An application for an operating permit.

(B) An operating permit revision.

(C) An operating permit renewal.

(3) The general administrative cost of running the operating permit program.

(4) Implementing and enforcing the terms of a permit granted under the operating permit program. However, court costs for enforcement actions are not included under this subdivision.

(5) Emissions and ambient monitoring.

(6) Modeling analyses and demonstrations.

(7) Preparing inventories and tracking emissions.

(8) Developing and administering a small business stationary source technical and environmental compliance assistance program.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-4 --------- Title V operating permit program: items which may be included in fee structure

The fee structure established under section 3 of this chapter may include any of the following:

(1) The placement of persons described in section 2(a) of this chapter into categories.

(2) Fee amounts based on the amount and type of emissions if:

(A) maximum; and

(B) minimum or base;

fee amounts are included as part of the fee structure.

(3) Fee amounts based on the cost of performing the activities described in section 3 of this chapter.

(4) A maximum fee amount for each source described in section 2(a) of this chapter;

(5) A base or minimum fee for each source described in section 2(a) of this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-5 --------- Title V operating permit program: applicability of fee structure

The fee structure established under section 3 of this chapter applies to each source subject to the requirement to obtain a permit required to implement 42 U.S.C. 7661 through 7661f.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-6 --------- Title V operating permit program: limits on initial fee structure

The following apply to the initial fee structure established under section 3 of this chapter:

(1) Except as provided in subdivision (2), the initial fee structure may not include a fee for a source that exceeds one hundred fifty thousand dollars ($150,000) in each year.

(2) For a source that:

(A) is located in an area designated as a serious or severe ozone nonattainment area under the federal Clean Air Act; and

(B) emits more than:

(i) one hundred (100) tons of volatile organic compounds; and

(ii) one hundred (100) tons of nitrogen oxides;

the initial fee structure may not include a fee that exceeds two hundred thousand dollars ($200,000) in each year.

(3) Except as provided in subdivision (4), during the period:

(A) after December 31, 1994; and

(B) before January 1, 2000;

the fee structure may not be attributable to the amount or type of emissions from a steam electric generating unit that is an affected unit under 42 U.S.C. 7651c.

(4) During the period described in subdivision (3), the total annual fee for affected units at a source that contains at least one (1) affected unit described in subdivision (3) may not exceed fifty thousand dollars ($50,000). Fees paid for the source under the fee structure established in section 3 of this chapter shall be credited toward the amount of the fee that the source is required to pay under this subdivision.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-7 --------- Title V operating permit program: limits on fee increases or decreases

(a) Except as provided in section 8 of this chapter, this section applies to an increase or a decrease in the fees described in this chapter:

(1) based on the Consumer Price Index (CPI), consistent with 42 U.S.C. 7661a; or

(2) necessary to provide adequate revenue to fund all activities described under section 3 of this chapter.

(b) The increase or decrease shall be made equally and proportionately to all:

(1) minimum fees;

(2) base fees;

(3) maximum fees;

(4) cost of service fees; and

(5) emission based fees;

established as described in this chapter or as revised by the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-8 --------- Title V operating permit program: exception to limitations on fee increases

The requirement for equal and proportionate increases does not apply to adjustments to cost of service based fees that are:

(1) the result of increased activities described under section 3 of this chapter; and

(2) attributable to federal mandates related to particular types or categories of sources.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-9 --------- Title V operating permit program: annual accounting to U.S. EPA

The commissioner shall provide the Administrator of the United States Environmental Protection Agency with an annual accounting of:

(1) the receipt of operating permit fees; and

(2) the expenditure of money in the fund under this chapter;

to demonstrate that operating permit fees are used solely to support the operating permit program.

[As added by: P.L.1-1996, §7.]

IC 13-17-8-10 -------- Title V operating permit program: application shield

(a) This section applies to the issuance or denial of an operating permit under the operating permit program established under 42 U.S.C. 7661 through 7661f.

(b) If:

(1) an applicant has submitted a timely and complete application for a permit required under the operating permit program; and

(2) final action has not been taken on the application;

the applicant's failure to have a permit is not a violation of this article until after final agency action is taken on the permit application.

[As added by: P.L.1-1996, §7.]

IC 13-17-9. OPEN BURNING

IC 13-17-9-1 --------- Open burning: specified burning allowable with permit or other authorization

(a) Subject to section 3 of this chapter, a person may open burn the following for maintenance purposes:

(1) Vegetation from a farm, an orchard, a nursery, a tree farm, a cemetery, or a drainage ditch.

(2) Wood products derived from pruning or clearing a roadside by a county highway department.

(3) Wood products derived from the initial clearing of a public utility right-of-way if the open burn occurs in an unincorporated area.

(4) Undesirable:

(A) wood structures on real property; or

(B) wood remnants of the demolition of a predominantly wooden structure originally located on real property;

located in an unincorporated area.

(b) A person who is allowed to open burn under subsection (a) is not required to obtain:

(1) a permit; or

(2) any other authorization;

from the department, a unit of local government, or a volunteer fire department before conducting the open burning.

[As amended by: P.L.1-1999, §35.]

IC 13-17-9-2 --------- Open burning: burning of certain railroad items

Subject to section 3 of this chapter, a person may open burn clean petroleum products for the purpose of maintaining or repairing railroad tracks, including the railroad rights-of-way. A person may not open burn railroad ties.

[As added by: P.L.1-1996, §7.]

IC 13-17-9-3 --------- Open burning: conditions for compliance with chapter

All open burning that is allowed under this chapter must comply with the following conditions:

(1) A person who open burns any material shall extinguish the fire if the fire creates a nuisance or fire hazard.

(2) Burning may not be conducted during unfavorable meteorological conditions such as high winds, temperature inversions, or air stagnation.

(3) All fires must be attended at all times during burning until completely extinguished.

(4) All asbestos containing materials must be removed before the burning of a structure.

(5) Asbestos containing materials may not be burned.

(6) Except as provided under section 1 of this chapter, all burning must comply with state and federal laws.

[As added by: P.L.1-1996, §7.]

IC 13-17-10. INCINERATION OF PCB

IC 13-17-10-1 -------- Incineration of PCBs: prerequisites to

A person may not incinerate PCB in an incinerator unless the person:

(1) holds a permit issued by the commissioner specifically authorizing the incineration of PCB in the incinerator; and

(2) has received the recommendation of the local plan commission that has jurisdiction over the area in which the incinerator is located and the county executive of the county in which the incinerator is located has approved the incineration of the PCB or, if an appropriate local plan commission does not exist, the county executive of the county in which the incinerator is located has approved the incineration of the PCB.

[As added by: P.L.1-1996, §7.]

IC 13-17-10-2 -------- Incineration of PCBs: additional prerequisite

The commissioner may not:

(1) issue; or

(2) consider an application for;

a permit specifically authorizing the incineration of PCB until the study required by section 3 of this chapter is concluded.

[As added by: P.L.1-1996, §7.]

IC 13-17-10-3 -------- Incineration of PCBs: study of alternative PCB technologies

The department, in cooperation with the United States Environmental Protection Agency, an applicant for a permit issued under this chapter, and a city or town in which an incinerator described under section 1 of this chapter is or will be located, shall conduct a study of alternative PCB technologies. The study must include an assessment of the efficacy and the technical and economic feasibility of the following:

(1) Alternative technologies such as the following:

(A) The application of lime to break down PCB.

(B) The low temperature thermal disorption process.

(C) Disorption and vaporization extraction.

(D) Plasma torch technology.

(E) Bacterial remediation.

(2) Other technologies identified by the commissioner as having possible value in the treatment or disposal of PCB in Indiana.

[As added by: P.L.1-1996, §7.]

IC 13-17-10-4 -------- Incineration of PCBs: deadline for study; report

(a) The study required by section 3 of this chapter must be concluded before January 1, 1996.

(b) At the conclusion of the study the commissioner shall prepare a report setting forth the results of the study. The commissioner shall:

(1) present the report to:

(A) the governor; and

(B) the general assembly; and

(2) make copies of the report available to the public.

[As added by: P.L.1-1996, §7.]

IC 13-17-11. THERMAL OXIDATION UNIT PERMITS

IC 13-17-11-1 -------- Thermal oxidation units: no applicability to on-site operation

This chapter does not apply to a thermal oxidation unit that would be used by a person that:

(1) generates soil contaminated by petroleum or a petroleum byproduct at a site owned or operated by the person; and

(2) remediates the soil at the same site.

[As added by: P.L.1-1996, §7.]

IC 13-17-11-2 -------- Thermal oxidation units: applicability to Lake and Porter counties

The department may not issue a permit for the construction or the operation of a thermal oxidation unit that would be used only to remediate soil contaminated by petroleum or a petroleum byproduct if the thermal oxidation unit would be constructed or operated in a county that:

(1) has a population of:

(A) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or

(B) more than one hundred twenty-five thousand (125,000) but less than one hundred twenty-nine thousand (129,000); and

(2) is located in an air quality control area that has been classified as a nonattainment area under the federal Clean Air Act (42 U.S.C. 7401 et seq.);

unless it can be demonstrated that the thermal oxidation unit is in compliance with a state implementation plan submitted under Section 182 of the federal Clean Air Act (42 U.S.C. 7511a).

[As added by: P.L.1-1996, §7.]

IC 13-17-12. ENFORCEMENT OF LOCAL AIR POLLUTION ORDINANCES

IC 13-17-12-1 -------- Enforcement of local air pollution ordinances: local units not prohibited from enforcing certain local ordinances

Air pollution control laws do not prevent towns, cities, or counties from:

(1) enforcing local air pollution ordinances consistent with air pollution control laws; or

(2) adopting or enforcing more restrictive ordinances to further the expressed purposes of air pollution control laws.

[As added by: P.L.1-1996, §7.]

IC 13-17-12-2 -------- Enforcement of local air pollution ordinances: adoption and enforcement of county air pollution ordinances authorized

(a) For the maintenance of the quality of the air resource, a county may adopt and enforce ordinances controlling air pollution.

(b) In a county not having a consolidated city, the ordinances may not include municipalities with an air pollution ordinance under air pollution control laws.

(c) In a county having a consolidated city, a county air pollution ordinance may apply throughout the entire county, including territory inside the corporate boundaries of excluded cities.

[As added by: P.L.1-1996, §7.]

IC 13-17-12-3 -------- Enforcement of local air pollution ordinances: local administration of air pollution control program

A town, city, or county within an air quality basin may administer its air pollution control program in cooperation with one (1) or more towns, cities, or counties of Indiana in accordance with IC 36-1-7. However, a county having a consolidated city is not required to enter into an agreement under IC 36-1-7 to regulate air pollution inside an excluded city in the county.

[As added by: P.L.1-1996, §7.]

IC 13-17-12-4 -------- Enforcement of local air pollution ordinances: annual reports

An air pollution control agency shall submit annual reports as requested by the department.

[As added by: P.L.1-1996, §7.]

IC 13-17-12-5 -------- Enforcement of local air pollution ordinances: failure to enforce local ordinance

If:

(1) an air quality jurisdiction; or

(2) an administrator of an air quality jurisdiction;

fails to enforce a local ordinance that affords protection to the public equal to that provided by state law, the department may, after consultation with the jurisdiction or administrator, take appropriate action necessary to enforce applicable provisions of state law.

[As added by: P.L.1-1996, §7.]

IC 13-17-12-6 -------- Enforcement of local air pollution ordinances: Indianapolis authorized to establish Title V operating permit program

A county having a consolidated city may, subject to department approval, establish an air permit program that complies with:

(1) the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549);

(2) regulations implementing Title V of the Clean Air Act Amendments of 1990 (40 CFR 70 et seq.); and

(3) rules adopted by the board.

[As added by: P.L.1-1996, §7.]

IC 13-17-13. ENFORCEABLE OPERATING AGREEMENT PROGRAM

IC 13-17-13-1 -------- Enforceable operating agreement program: APCB may adopt rules to authorize

The air pollution control board may adopt rules under IC 4-22-2 to establish categories of sources or facilities that may be effectively restricted through specific requirements established by the rules to emit less than the amount of air pollutants for which a Title V air operating permit is required.

[As added by: P.L.1-1996, §7.]

IC 13-17-13-2 -------- Enforceable operating agreement program: IDEM to recommend rules to establish

For categories established under section 1 of this chapter, the department shall recommend rules to establish an enforceable operating agreement program. The program established under this section may apply to some or all of the sources or facilities within the categories. Rules adopted under this section must be approved by the United States Environmental Protection Agency.

[As added by: P.L.1-1996, §7.]

IC 13-17-13-3 -------- Enforceable operating agreement program: annual report

(a) The department shall provide an annual report to the following:

(1) The board.

(2) The environmental quality service council.

(b) The report must include a summary of the:

(1) reviews conducted; and

(2) agreements approved;

in the preceding year under this chapter.

[As added by: P.L.1-1996, §7.]

IC 13-17-14. LEAD-BASED PAINT ACTIVITIES

IC 13-17-14-1 -------- Lead-based paint activities: applicability

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

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

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

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

(B) a child who:

(i) is not more than six (6) years of age or an age specified in rules adopted by the board under section 5 of this chapter; and

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

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-2 -------- Lead-based paint activities: program established; purpose

The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building that the board specifies in rules adopted under section 5 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

[As added by: P.L.123-1997, §11.]

IC 13-17-14-3 -------- Lead-based paint activities: licenses

(a) A person that engages in lead-based paint activities must obtain a license under this chapter and under rules adopted by the board under section 5 of this chapter.

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

(1) Inspector.

(2) Risk assessor.

(3) Project designer.

(4) Supervisor.

(5) Abatement worker.

(6) Contractor.

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

(d) A person shall:

(1) take required training and pass an examination provided in a lead-based paint training course approved by the department;

(2) pass an examination provided by the department or a third party as required by rules adopted by the board under section 5 of this chapter; and

(3) meet any requirements established by rules adopted by the board under section 5 of this chapter;

before a person may receive a lead-based paint activities license.

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

(f) A person who holds a license for a position listed in subsection (b) must complete periodic refresher training and pass any re-examination required by rules adopted under section 5 of this chapter.

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

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

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

(3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(h) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted by the board under section 5 of this chapter for performing the appropriate lead-based paint activities.

[As added by: P.L.123-1997, §11.]

IC 13-17-14-4 -------- Lead-based paint activities: training

(a) A lead-based paint activities training program must meet requirements specified in rules adopted by the board under section 5 of this chapter before providing initial or refresher training to a person seeking a license listed in section 3(b) of this chapter.

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

(c) A lead-based paint activities training course must be conducted by an instructor approved by the department as provided in the rules adopted by the board under section 5 of this chapter.

[As added by: P.L.123-1997, §11.]

IC 13-17-14-5 -------- Lead-based paint activities: APCB shall adopt rules

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 to implement this chapter. The rules must contain at least the elements required to receive program authorization under 40 CFR 76, Subpart L and must do the following:

(1) Establish minimum requirements for the issuance of a license for lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors.

(2) Establish minimum requirements for approval of the providers of lead-based paint activities training courses.

(3) Establish minimum qualifications for lead-based paint activities training course instructors.

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

(5) Establish work practice standards.

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

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

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

(A) A state.

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

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

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

(A) A state.

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

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

(D) An organization exempt from income taxation under 26 U.S.C. 501(a).

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

(c) The proceeds of the fees under subsection (a) must be deposited in the lead trust fund established by section 6 of this chapter.

[As amended by: P.L.111-1999, §1.]

IC 13-17-14-6 -------- Lead-based paint activities: lead trust fund established

(a) The lead trust fund is established to provide a source of money for the purposes set forth in subsection (f).

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

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

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

(e) The sources of money for the fund are the following:

(1) License fees established under section 5 of this chapter.

(2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(3) Penalties imposed under IC 13-30-4 and IC 13-30-5 for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

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

(1) Pay the expenses of administering this chapter.

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-7 -------- Lead-based paint activities: recordkeeping

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

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

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

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

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

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

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

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

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

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

(8) The occupant protection plan.

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

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

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

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

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

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-8 -------- Lead-based paint activities: prohibition

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-9 -------- Lead-based paint activities: inspections

Without limiting the authority to inspect under IC 13-14-2-2, the commissioner may do the following:

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

(A) during the project; or

(B) after the project is completed.

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

(A) the commissioner's own initiation; or

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

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

(A) the commissioner's own initiation; or

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-10 ------ Lead-based paint activities: stop work notice; recission; review

(a) If the commissioner finds that a lead-based paint activities project is not being performed in accordance with air pollution control laws or rules adopted by the board, the commissioner may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

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

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

(b) A notice issued under this section must:

(1) specify the violations of law that are occurring on the lead-based paint activities project; and

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

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

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

[As added by: P.L.123-1997, §11.]

IC 13-17-14-11 ------ Lead-based paint activities: violations; enforcement

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

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

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

(3) Failing to meet the qualifications for a license or failing to comply with the requirements of air pollution control laws or rules adopted by the board.

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

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

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

(1) Violating any requirement of this chapter.

(2) Falsifying information on an application for approval.

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

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

(5) Failing to maintain required records.

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

[As added by: P.L.123-1997, §11.]

TITLE 13. ENVIRONMENT
IC 13-18. WATER POLLUTION CONTROL

IC 13-18-1. ESTABLISHMENT OF WATER POLLUTION CONTROL BOARD

IC 13-18-1-1 --------- Establishment of WPCB: board established

The water pollution control board is established as an independent board.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-2 --------- Establishment of WPCB: membership

(a) The board consists of the following eleven (11) members:

(1) The following ex officio members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing employed by an entity that holds an NPDES major permit.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

[As amended by: P.L.90-1998, §19.]

IC 13-18-1-3 --------- Establishment of WPCB: political affiliation

Not more than four (4) of the appointed members of the board may be members of the same political party.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-4 --------- Establishment of WPCB: ex officio representatives

An ex officio member of the board may designate in writing a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-5 --------- Establishment of WPCB: filling vacancies

(a) An appointed member of the board serves a term of four (4) years.

(b) The term of each member of the board continues until a successor has been appointed and qualified.

(c) If a vacancy occurs in the appointed membership of the board, the governor shall appoint a member not later than sixty (60) days after the vacancy occurs for the remainder of the unexpired term created by the vacancy. The board shall suspend the exercise of the

board's duties under the water pollution control laws if the vacancy has not been filled not later than sixty (60) days after the vacancy occurs.

(d) The governor may remove an appointed member of the board for cause. Cause includes the failure to attend at least two (2) board meetings within a one (1) year period.

(e) The board may not adopt a final rule under IC 13-14-8 until all members have been appointed.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-6 --------- Establishment of WPCB: compensation of members

(a) Ex officio members of the board serve without additional compensation.

(b) Each appointed member of the board is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) The per diem salary and mileage reimbursement are valid claims against the department.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-7 --------- Establishment of WPCB: regular meetings

The board shall hold at least six (6) regular meetings each year at a place and time to be fixed by the board.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-8 --------- Establishment of WPCB: special meetings

Special meetings of the board may be called by:

(1) the chairman; or

(2) three (3) members of the board;

by delivery of written notice at the office of each member of the board.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-9 --------- Establishment of WPCB: quorum

Six (6) members of the board, four (4) of whom must be appointed members of the board, constitute a quorum.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-10 -------- Establishment of WPCB: chair and vice-chair

The governor shall annually select:

(1) one (1) of the appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice chairman.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-11 -------- Establishment of WPCB: technical secretary

(a) The board shall select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as technical secretary of the board.

(b) Between meetings of the board, the department shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall review all materials prepared for the board by the department to make any necessary revisions. Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary is not a voting member of the board.

[As added by: P.L.1-1996, §8.]

IC 13-18-1-12 -------- Establishment of WPCB: legal counsel

(a) The board may select, from a list of three (3) qualified individuals recommended by the governor, an independent third party who is not an employee of the state to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the department for legal accuracy and sufficiency and direct the department to make any necessary revisions.

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

[As added by: P.L.1-1996, §8.]

IC 13-18-2. WATER POLLUTION AGENCY UNDER FEDERAL LAW

IC 13-18-2-1 --------- Water pollution agency under federal law: activities authorized

In carrying out the purposes of IC 13-13-5-1(1), the department may, in addition to any other action that is necessary or appropriate to carry out the purpose of IC 13-13-5-1(1), do the following:

(1) Cooperate with the United States Surgeon General and other agencies of the federal government, other states, interstate agencies, and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary condition of waters.

(2) On behalf of Indiana, apply for and receive money made available to the department under the Federal Water Pollution Control Act by any agency of the federal government. However, all money received from any federal agency:

(A) shall be paid into the state treasury; and

(B) shall be expended, under the direction of the department, solely for the purpose for which the grant has been made.

(3) Approve projects for which application for loans or grants under the Federal Water Pollution Control Act is made by:

(A) any political subdivision or other public body created by or under Indiana law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(B) a state agency; or

(C) an interstate agency.

(4) Participate through the department's authorized representatives in proceedings under the Federal Water Pollution Control Act.

(5) Give consent on behalf of Indiana to requests by the Administrator of the Federal Security Agency to the Attorney General of the United States for the bringing of suit for abatement of pollution.

(6) Consent to the joinder as a defendant in a suit for the abatement of pollution of a person who is alleged to be discharging matter contributing to the pollution.

[As added by: P.L.1-1996, §8.]

IC 13-18-2-2 --------- Water pollution agency under federal law: provisions supplemental

This chapter, IC 13-13-5-1(1), and IC 13-13-5-2:

(1) do not amend, alter, or repeal any provision of the water pollution control laws; and

(2) are supplemental to the other provisions of the water pollution control laws.

[As added by: P.L.1-1996, §8.]

IC 13-18-2-3 --------- Water pollution agency under federal law: list of impaired waters

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

(1) publish the list in the Indiana Register;

(2) make the list available for public comment for at least ninety (90) days; and

(3) present the list to the board.

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

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

[As added by: P.L.140-2000, §16.]

IC 13-18-3. POWERS AND DUTIES CONCERNING WATER POLLUTION CONTROL

IC 13-18-3-1 --------- Powers and duties concerning water pollution control: WPCB to adopt rules

The water pollution control board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation; or

(2) by which:

(A) any fish life or any beneficial animal or vegetable life may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-2 --------- Powers and duties concerning water pollution control: adoption of rules to implement federal law authorized

(a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

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

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

except as provided in IC 14-37.

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

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

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

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

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

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

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

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

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

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

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

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

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

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

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

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

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are met.

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

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

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

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

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

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

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

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

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

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

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

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

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

[As amended by: P.L.1-2001, §16.]

IC 13-18-3-2.3 ------- Powers and duties concerning water pollution control: CSO long-term control plan

(a) A long term control plan, upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:

(1) the plan provides for the implementation of cost effective control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;

(2) the plan provides, at a minimum, for the capture for treatment of first flush;

(3) the plan is reviewed periodically; and

(4) additional controls are implemented as provided in section 2.4 of this chapter.

Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.

(b) When a use attainability analysis is required for a suspension of designated uses under this chapter, the department must, to the maximum extent permitted under state or federal law:

(1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and

(2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.

[As added by: P.L.140-2000, §18.]

IC 13-18-3-2.4 ------- Powers and duties concerning water pollution control: periodic review of CSO long-term control plan

A permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards, including standards suspended under section 2.5 of this chapter. The permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The permit holder shall:

(1) document to the department that the long term control plan has been reviewed;

(2) update the long term control plan as necessary;

(3) submit any amendments to the long term control plan to the department for approval; and

(4) implement control alternatives determined to be cost effective.

Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.

[As amended by: P.L.1-2001, §17.]

IC 13-18-3-2.5 ------- Powers and duties concerning water pollution control: temporary suspension of desingated uses and waer quality criteria for waters affected by discharges from CSOs

(a) Subject to the limitations of subsection (d), designated uses and associated water quality criteria are temporarily suspended on a site specific basis, for waters affected by discharges from combined sewer overflow points listed in the National Pollutant Discharge Elimination System (NPDES) permit due to wet weather events, if:

(1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system:

(2) the approved long term control plan is incorporated into the permit holder's NPDES permit;

(3) the approved long term control plan:

(A) satisfies the requirements of section 2.3 of this chapter; and

(B) specifies the designated uses and water quality standards to be suspended under this section;

(4) the permit holder:

(A) has implemented the approved long term control plan; or

(B) is implementing the approved long term control plan in accordance with the schedule approved in the long term control plan;

(5) the permit holder is in compliance with the requirements for the operation and maintenance of its wastewater treatment facilities and combined sewer system, including its combined sewer operational plan approved by the department; and

(6) the provisions of 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

The provisions of 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(b) Existing uses as defined in 40 CFR 131.3(e) and associated water quality criteria may be suspended only in accordance with federal law.

(c) To the extent permitted under federal law, the department shall provide a compliance schedule for attainment of water quality based limitations for discharges from combined sewer overflow points in the NPDES permit during the period when the long term control plan is being developed.

(d) A temporary suspension applies only:

(1) to the NPDES permit holder for discharges from the permit holder's listed combined sewer overflow points; and

(2) during the time and to the physical extent that the designated uses and water qual-

ity standards are not attained due to the discharges from the listed combined sewer overflow points, but no more than four (4) days after the date the overflow discharge ends.

(e) The board may adopt rules in accordance with IC 13-14-8 and IC 13-14-9 to amend the water quality standards to include the terms of the temporary suspension allowed by this section.

(f) The permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically, but at least every three (3) years. The permit holder shall provide all such information to the department.

(g) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the permit holder shall review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The permit holder shall provide the results of the review to the department.

(h) A temporary suspension under this section may be authorized only to the extent allowed under federal law. If the department determines that information provided under this section demonstrates that uses being suspended are attainable, the department shall promptly notify the permit holder of its determination. A permit holder may appeal the department's determination under this section in accordance with IC 4-21.5.

(i) After the effective date of the determination under subsection (h), the long term control plan may be modified to achieve attainment of the previously suspended uses and associated water quality criteria. The compliance schedule and other provisions of the NPDES permit shall also be modified as necessary.

[As added by: P.L.140-2000, §20.]

IC 13-18-3-3 --------- Powers and duties concerning water pollution control: WPCB to develop operating policies

The board shall develop operating policies governing the implementation of the water pollution control laws by the department.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-4 --------- Powers and duties concerning water pollution control: orders

(a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-5 --------- Powers and duties concerning water pollution control: other duties

The board shall carry out other duties imposed by law.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-6 --------- Powers and duties concerning water pollution control: enforcement of laws

The water pollution control laws may be enforced under IC 13-30-3 or IC 13-14-2-6.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-7 --------- Powers and duties concerning water pollution control: commissioner may order actions to abate pollution

The commissioner may order any person to acquire, construct, repair, alter, or extend the plants that are necessary for the disposal or treatment of organic or inorganic matter that is:

(1) causing;

(2) contributing to; or

(3) about to cause or contribute to;

a polluted condition of the waters of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-8 --------- Powers and duties concerning water pollution control: commissioner may order sealing of mines and wells

The commissioner may require the sealing of mines, oil and gas wells, brine wells, or any other subterranean strata that are:

(1) causing;

(2) contributing to; or

(3) about to cause or contribute to;

a polluted condition of the waters of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-9 --------- Powers and duties concerning water pollution control: IDEM right of entry

The department may, through any authorized agent, enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any water of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-10 -------- Powers and duties concerning water pollution control: IDEM may call on other governmental entities

The department may call upon:

(1) any state officer, board, department, school, university, or other state institution; and

(2) the officers or employees of an individual entity described in subdivision (1);

for any assistance necessary to carry out the water pollution control laws.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-11 -------- Powers and duties concerning water pollution control: water pollution control laws to be liberally construed

Since the water pollution control laws are necessary for the public health, safety, and welfare, the water pollution control laws shall be liberally construed to effectuate the purposes of the water pollution control laws.

[As added by: P.L.1-1996, §8.]

IC 13-18-3-12 -------- Powers and duties concerning water pollution control: approval requirements for sanitary sewer or public water main plans

The water pollution control board shall adopt rules providing that whenever a person submits plans to a unit concerning the design or construction of:

(1) a sanitary sewer or public water main, if:

(A) a professional engineer who is registered under IC 25-31 prepared the plans;

(B) the unit provided for review of the plans by a qualified engineer and subsequently approved the plans; and

(C) all other requirements specified in rules adopted by the water pollution control board are met; or

(2) a sanitary sewer extension for and within a subdivision, if:

(A) a qualified land surveyor who is registered under IC 25-21.5 prepared the plans;

(B) the subdivision is being laid out or having been laid out by the land surveyor subject to IC 25-21.5-7;

(C) the unit provided for review of the plans by a qualified engineer and subsequently approved the plans; and

(D) all other requirements specified in rules adopted by the

water pollution control board are met;

the plans are not required to be submitted to any state agency for a permit, permission, or review, unless required by federal law.

[As amended by: P.L.241-1999, §1.]

IC 13-18-3-13 -------- Powers and duties concerning water pollution control: departmental determination of responsibility for violation

If a violation of 327 IAC 15-5 occurs, the department shall determine which person is responsible for committing the violation. In making this determination, the department shall, if appropriate, consider:

(1) public records of ownership;

(2) building permits issued by local units of government; or

(3) other relevant information.

The department's determination to proceed against a person responsible for committing a violation must be based on the specific facts and circumstances related to a particular violation.

[As added by: P.L.161-1999, §1.]

IC 13-18-3-14 -------- Powers and duties concerning water pollution control: outstanding state resource water improvement fund established

(a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.

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

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

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

(3) Any interest received accrues to the fund.

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

[As added by: P.L.140-2000, §21.]

IC 13-18-4. RESTRICTIONS ON POLLUTION OF WATER

IC 13-18-4-1 --------- Restrictions on pollution of water: WPCB may adopt rules to determine polluted water

The board may adopt rules under IC 4-22-2 to determine what qualities and properties of water indicate a polluted condition of the water in any of the streams or waters of Indiana:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation for which or in which any waters may be lawfully used or employed;

(2) by which any agricultural, floricultural, or horticultural pursuit may be or is injuriously affected;

(3) by which the lawful conduct of any livestock industry or the use of any waters for domestic animals may be prevented, injuriously affected, or impaired;

(4) by which any lawful use of any waters by the state or by any person may be lessened or impaired or materially interfered with; or

(5) by which:

(A) any fish life or any beneficial animal or vegetable life in the waters may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life in the water is prevented or injuriously affected.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-2 --------- Restrictions on pollution of water: filing of rules or determinations

A rule or determination made by the board or the commissioner under sections 1 through 4 of this chapter shall be filed of record in the office of the department.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-3 --------- Restrictions on pollution of water: WPCB may adopt rules restricting polluting content of discharge

The board may adopt rules restricting the polluting content of any waste material and polluting substances discharged or sought to be discharged into any of the streams or waters of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-4 --------- Restrictions on pollution of water: commissioner may take steps to prevent pollution

The commissioner may take appropriate steps to prevent any pollution that is determined to be unreasonable and against public interests in view of the condition in any stream or other waters of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-5 --------- Restrictions on pollution of water: unlawful acts

A person may not:

(1) throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana; or

(2) cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any waters;

any organic or inorganic matter that causes or contributes to a polluted condition of any waters, as determined by a rule of the board adopted under sections 1 and 3 of this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-6 --------- Restrictions on pollution of water: notice to cease and desist unlawful acts

(a) Whenever the commissioner determines that a person:

(1) is violating; or

(2) is about to violate;

section 5 of this chapter, the department shall serve notice on the person by certified mail of the commissioner's determination.

(b) The commissioner shall include in the notice an order against the person to:

(1) cease the violation; and

(2) abate the condition of pollution;

fixing in the order a reasonable time within which the correction and abatement must take place.

(c) Proceedings concerning an order issued under this section are governed by IC 4-21.5.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-7 --------- Restrictions on pollution of water: mixing zones; Lake Michigan permits

(a) Notwithstanding any rules of the board, the commissioner shall allow for a mixing zone in permits that involve a discharge into Lake Michigan if the applicant can demonstrate to the commissioner that the mixing zone will not cause harm to human health or aquatic life.

(b) For mixing zones allowed under subsection (a), surface water quality standards for bioaccumulative chemicals of concern shall be applied to the undiluted discharge, rather than at a point outside the mixing zone.

[As added by: P.L.1-1996, §8.]

IC 13-18-4-8 --------- Restrictions on pollution of water: discharge induced mixing permits

Sec. 8. In issuing permits authorizing discharge induced mixing, the commissioner shall allow for mixing initiated by the use of:

(1) submerged, high rate diffuser outfall structures; or

(2) the functional equivalent of submerged, high rate diffuser outfall structures;

that provide turbulent initial mixing and minimize organism exposure times.

[As added by: P.L.1-1996, §8.]

IC 13-18-5. RELEASE OF HAZARDOUS MATERIALS

IC 13-18-5-1 --------- Release of hazardous materials: WPCB to adopt rules requiring secondary containment

The board shall adopt rules under IC 4-22-2 to require the following:

(1) The construction or installation of secondary containment structures at facilities in which hazardous materials are stored or transferred for the purpose of preventing released hazardous materials from entering surface water or groundwater.

(2) The development by the owner or operator of each facility at which hazardous materials are stored or handled of a plan for responding to the release of a hazardous material at that facility.

(3) The rules must be consistent with applicable safety and fire code laws.

[As added by: P.L.1-1996, §8.]

IC 13-18-5-2 --------- Release of hazardous materials: exemptions to secondary containment rules

The rules adopted under section 1 of this chapter must provide exemptions for the following:

(1) A facility that is subject to similar requirements under other administrative rules or under state law, federal law, or federal regulations.

(2) Hazardous materials that are stored or transferred as products packaged for distribution to and use by the public.

(3) An above ground storage tank that:

(A) is used to store oils or petroleum products; and

(B) has a capacity of not more than six hundred sixty (660) gallons.

(4) Tanks subject to regulations adopted by the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6991 through 6991i, as amended.

(5) Tanks subject to IC 13-23.

[As added by: P.L.1-1996, §8.]

IC 13-18-7. PLANS FOR ABATEMENT OR CORRECTION

IC 13-18-7-1 --------- Plans for abatement or correction: commissioner must approve

The commissioner must approve all plans and specifications for abatement or correction of any polluted condition.

[As added by: P.L.1-1996, §8.]

IC 13-18-7-2 --------- Plans for abatement or correction: IDEM to advise and consult

The department shall advise and consult, on request, with any person planning any correction or prevention of any pollution condition of any water of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-8. COMPLIANCE WITH ORDERS

IC 13-18-8-1 --------- Compliance with orders: steps to comply

A person upon whom a final order is served under the water pollution control laws shall take the steps that are necessary to comply with the final order.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-2 --------- Compliance with orders: costs of compliance by municipal corporation

(a) If the offender is a municipal corporation, the cost of:

(1) acquisition, construction, repair, alteration, or extension of the necessary plants, machinery, or works; or

(2) taking other steps that are necessary to comply with the order;

shall be paid out of money on hand available for these purposes or out of the general money of the municipal corporation not otherwise appropriated.

(b) If there is not sufficient money on hand or unappropriated, the necessary money shall be raised by the issuance of bonds. The bond issue is subject only to the approval of the state board of tax commissioners.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-3 --------- Compliance with orders: direct obligation bonds may be issued by municipal corporation

If the estimated cost of the steps necessary for a municipal corporation to comply with a final order is great enough that the bond issue necessary to finance the project would not raise the total outstanding bonded indebtedness of the municipal corporation in excess of the constitutional limit, the necessary bonds:

(1) may be issued as a direct obligation of the municipal corporation; and

(2) may be retired by a general tax levy against all the property within the limit of the municipal corporation listed and assessed for taxation.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-4 --------- Compliance with orders: revenue bonds may be issued by municipal corporation

(a) Subject to subsection (b), if:

(1) the amount of the bonds necessary to be issued would raise the total outstanding bonded indebtedness of the municipal corporation above the constitutional limitation; or

(2) the municipal corporation determines against the issuance of direct obligation bonds;

the municipal corporation shall issue revenue bonds and provide for the retirement of the bonds in the same manner and subject to the same conditions provided for the issuance and retirement of bonds in IC 36-9-23 to the extent that the provisions of that statute are applicable and not in conflict with any of the express provisions of the water pollution control laws.

(b) IC 36-9-23-12 does not apply to bond issues proposed by a municipal corporation to comply with a final order issued under the authority of the water pollution control laws or IC 13-1-3 (before its repeal) and objections or submission to the qualified voters of the municipal corporation:

(1) may not be authorized; and

(2) if objections are made, do not operate to justify or excuse failure to comply with the final order.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-5 --------- Compliance with orders: use of funds raised by bond issue limited

The money made available by the issuance of either direct obligation bonds or revenue bonds as provided by the water pollution control laws or IC 13-1-3 (before its repeal):

(1) constitutes a sanitary fund; and

(2) shall be used for no other purpose than for carrying out an order issued under the water pollution control laws or IC 13-1-3 (before its repeal).

[As added by: P.L.1-1996, §8.]

IC 13-18-8-6 --------- Compliance with orders: applicability of IC 36-9-23

(a) Subject to subsection (b):

(1) the construction, acquisition, improvement, equipment, custody, operation, repair, and maintenance of a plant, machinery, or works by a municipal corporation in compliance with a final order of the commissioner, other than the financing; and

(2) the rights, powers, and duties of the municipal corporation and the respective officers and departments of the municipal corporation, whether the plant, machinery, or works is financed by the issuance of revenue or direct obligation bonds;

is governed by IC 36-9-23 to the extent that the provisions of IC 36-9-23 are applicable and do not conflict with any of the express provisions of the water pollution control laws.

(b) IC 36-9-23-12 does not apply to the construction, acquisition, equipping, improvement, repair, or maintenance of a plant, machinery, or works by any municipal corporation in compliance with a final order issued under the water pollution control laws or IC 13-1-3 before its repeal, and the objections or submission to the qualified voters of the municipal corporation:

(1) may not be authorized; and

(2) if objections are made, do not operate to justify or excuse failure to comply with the final order.

(c) IC 36-9-23 may not be construed to allow the municipal corporation or any of the officers of the municipal corporation discretion in the manner of complying with the order since complying with the order is mandatory.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-7 --------- Compliance with orders: what constitutes failure to comply

Failure of:

(1) a municipal corporation; or

(2) the board of directors or other governing body of a private corporation, association, or other legal entity;

to provide for the financing and construction of the works that are necessary to carry out a final order issued under the water pollution control laws or IC 13-1-3 (before its repeal) by appropriate ordinance or resolution constitutes failure to begin appropriate action or proceedings to comply with the order.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-8 --------- Compliance with orders: extension of time to comply; effect of failure to comply

(a) The commissioner may extend the time fixed in a final order issued under the water pollution control laws or IC 13-1-3 (before its repeal) within which any offender is ordered to correct or abate a condition of pollution of any water upon written petition filed with the department not less than thirty (30) days before the time fixed in the order if it appears that:

(1) a good faith effort to comply with the order is being made; and

(2) it will be impossible for the offender to complete the project of work undertaken within the time fixed.

(b) A person who fails or refuses to correct or abate the polluted condition in compliance with the order:

(1) within the time fixed; or

(2) within the time additionally granted under this section;

is subject to the penalties imposed by IC 13-30-4, IC 13-30-5, IC 13-30-6, and IC 13-30-8.

[As added by: P.L.1-1996, §8.]

IC 13-18-8-9 --------- Compliance with orders: failure is class B misdemeanor

A person who fails to discharge a duty imposed upon the person by the water pollution control laws commits a Class B misdemeanor.

[As added by: P.L.1-1996, §8.]

IC 13-18-9. PROHIBITIONS ON CERTAIN DETERGENTS

IC 13-18-9-1 --------- Prohibitions on certain detergents: applicability

This chapter does not apply to any of the following:

(1) Detergents for cleaning in place food processing and dairy equipment.

(2) Phosphoric acid products, including sanitizers, brighteners, acid cleaners, and metal conditioners.

(3) Detergents for use in dish washing machine equipment, including household and commercial machine dishwashers.

(4) Institutional laundry detergents, including detergents for use in hospitals and health care facilities.

(5) Detergents for use in dairy, beverage, food processing, and other industrial cleaning equipment.

(6) A detergent or cleaning compound contained in fuel or lubricating oil.

(7) Any other use of detergents in which the phosphorus contents are not permitted to:

(A) enter a public or private sewer; or

(B) be disposed of in the natural environment.

[As added by: P.L.1-1996, §8.]

IC 13-18-9-2 --------- Prohibitions on certain detergents: sale and use of detergents containing ABS

A person may not use, sell, or otherwise dispose of any hard or nondegradable detergent containing alkyl benzine sulfonate (ABS) in any manner or any location in Indiana or into the boundary waters of Indiana from a source within Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-9-3 --------- Prohibitions on certain detergents: sale and use of detergents containing phosphorus; exception

(a) A person may not use, sell, or otherwise dispose of any detergent containing phosphorus, except:

(1) for those amounts not exceeding one-half percent (0.5%) by weight incidental to manufacturing; and

(2) in accordance with rules adopted under IC 4-22-2 by the water pollution control board;

in Indiana or into the boundary waters of Indiana from a source within Indiana.

(b) The concentration of phosphorus shall be determined by the applicable method prescribed by the American Society for Testing and Materials.

[As added by: P.L.1-1996, §8.]

IC 13-18-9-4 --------- Prohibitions on certain detergents: IDEM to enforce; WPCB to adopt rules; commissioner's discretion

(a) The department shall enforce this chapter under IC 13-30-3 or IC 13-14-2-6.

(b) The board shall adopt rules under IC 4-22-2 for the disposition of any detergent carried over on September 1, 1974. However, the commissioner may approve the use of phosphates by a manufacturer or processor for cleaning plant or equipment upon application to the commissioner by the manufacturer or processor. The commissioner shall require phosphate removal from the water so used by criteria established by the board.

[As added by: P.L.1-1996, §8.]

IC 13-18-9-5 --------- Prohibitions on certain detergents: proceedings to enjoin violations

The attorney general shall, upon the request of the department, institute injunction proceedings to enjoin acts constituting a violation of this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-9-6 --------- Prohibitions on certain detergents: penalties for violation

A person who violates this chapter is subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §8.]

IC 13-18-10. CONFINED FEEDING CONTROL

IC 13-18-10-1 -------- Confined feeding control: IDEM approval must precede construction of confined feeding operation

A person may not start construction of a confined feeding operation without obtaining the prior approval of the department.

[As added by: P.L.1-1996, §8.]

IC 13-18-10-2 -------- Confined feeding control: application for approval; notice

(a) Application for approval of the construction of a confined feeding operation must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.

(2) A manure management plan that outlines procedures for the following:

(A) Soil testing.

(B) Manure testing.

(3) Maps of manure application areas.

(4) Supplemental information that the department requires, including the following:

(A) General features of topography.

(B) Soil types.

(C) Drainage course.

(D) Identification of nearest streams, ditches, and lakes.

(E) Location of field tiles.

(F) Location of land application areas.

(G) Location of manure treatment facilities.

(H) Farmstead plan, including the location of water wells on the site.

(5) A fee of one hundred dollars ($100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(b) An applicant who applies for approval to construct a confined feeding operation on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation is to be located does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation is to be located;

not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

(c) Plans and specifications for manure treatment or control facilities for a confined feeding operation must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation if the commissioner determines that the applicant meets the requirements of:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

[As amended by: P.L.125-1997, §4.]

IC 13-18-10-2.1 ----- Confined feeding control: IDEM determination on application

(a) The department:

(1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation that concerns manure handling and application to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations.

(e) The department may amend an approval or revoke an approval:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

(C) the water pollution control laws; or

(D) rules adopted under the water pollution control laws; and

(2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

[As added by: P.L.125-1997, §5

IC 13-18-10-2.2 ----- Confined feeding control: completion of construction

(a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation:

(1) was constructed; and

(2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction of an approved confined feeding operation must:

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction of the confined feeding operation or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation have been completed, whichever is later.

[As added by: P.L.125-1997, §6

IC 13-18-10-2.3 ----- Confined feeding control: manure management plan

A confined feeding operation must submit a manure management plan that outlines procedures for soil testing, manure testing, and maps of manure application areas to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter.

[As added by: P.L.125-1997, §7

IC 13-18-10-2.6 ----- Confined feeding control: compliance and technical assistance program

The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations that may be administered by:

(1) the department;

(2) a state college or university; or

(3) a contractor.

[As added by: P.L.125-1997, §8

IC 13-18-10-3 -------- Confined feeding control: enforcement

This chapter, including requirements established in a department approval under section 2 of this chapter, may be enforced under IC 13-30-3 or IC 13-14-2-6.

[As amended by: P.L.125-1997, §9.]

IC 13-18-10-4 -------- Confined feeding control: WPCB rules; IDEM policies

(a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 and the department may adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter. The rules, policies, or statements may concern construction and operation of confined feeding operations and may include uniform standards for:

(1) construction and manure containment that are appropriate for a specific site; and

(2) manure application and handling that are consistent with best management practices:

(A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and

(B) that are appropriate for a specific site.

(b) Standards adopted in a rule, policy, or statement under subsection (a) must:

(1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) university extension bulletins; and

(2) be developed through technical review by the department, university specialists, and other animal industry specialists.

[As amended by: P.L.125-1997, §10.]

IC 13-18-10-5 -------- Confined feeding control: injunctive relief

The department may seek injunctive relief under this chapter.

[As amended by: P.L.125-1997, §11.]

IC 13-18-10-6 -------- Confined feeding control: penalties

A person who violates this chapter is subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §8.]

IC 13-18-11. OPERATOR CERTIFICATION

IC 13-18-11-1 -------- Operator certification: applicability

(a) As used in this chapter, "transient noncommunity water system" has the meaning set forth in IC 13-11-2-237.5.

(b) The commissioner may determine that this chapter does not apply to a transient noncommunity water system.

[As amended by: P.L.1-2001, §18.]

IC 13-18-11-1.5 ------ Operator certification: IDEM to adopt regulations

The department shall adopt regulations to implement certification programs for operators of water treatment plants or water distribution systems. The certification program for the operators shall be classified in accordance with the complexity, size, and source of the water for the treatment system and the complexity and size for the distribution system.

[As added by: P.L.132-2000, §3.]

IC 13-18-11-2 -------- Operator certification: classification of water treatment plants

The commissioner shall classify all water treatment plants, wastewater treatment plants, and water distribution systems actually used or intended for use:

(1) with due regard to the:

(A) size;

(B) type;

(C) character of wastes or water to be treated; and

(D) other physical conditions affecting those plants and systems; and

(2) according to the:

(A) skill;

(B) knowledge; and

(C) experience;

that the operator in responsible charge must have to successfully supervise the operation of those facilities so as to protect the public health.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-3 -------- Operator certification: certification

The commissioner shall certify persons as to their qualifications to supervise successfully the operation of:

(1) water treatment plants;

(2) water distribution systems; and

(3) wastewater treatment plants.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-4 -------- Operator certification: certificates

(a) The commissioner shall issue certificates attesting to the competency of operators. A certificate must indicate the classification of works, plant, or system that the operator is qualified to supervise.

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

[As added by: P.L.1-1996, §8.]

IC 13-18-11-5 -------- Operator certification: application; fee

The commissioner shall prescribe and provide an application form for use by applicants in applying for the appropriate certificate issued under this chapter. An applicant must deposit a fee of thirty dollars ($30) at the time of making application for certification.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-6 -------- Operator certification: wastewater treatment plant; renewal; fee

(a) A wastewater treatment plant operator certified under this chapter may renew the operator's certificate biennially by paying a renewal fee of thirty dollars ($30).

(b) The fee is due and payable before July 2 of the year for which a renewal certificate is issued.

(c) A wastewater treatment plant operator who fails to renew a certificate for three (3) successive years may not receive a renewal certificate without reexamination.

[As amended by: P.L.132-2000, §4.]

IC 13-18-11-6.5 ------ Operator certification: water treatment plant; renewal; fee

(a) A water treatment plant operator or water distribution system operator certified under this chapter may renew the operator's certificate triennially by:

(1) paying a renewal fee of thirty dollars ($30); and

(2) meeting any continuing education requirements established by the department.

(b) The:

(1) fee is due and payable; and

(2) proof of compliance with continuing education requirements must be submitted to the department;

before July 2 of the year for which a renewal certificate is to be issued.

(c) A water treatment plant operator or a water distribution system operator who fails to renew a certificate within one (1) year after the date the certificate expires may not receive a renewal certificate without reexamination.

[As added by: P.L.132-2000, §5.]

IC 13-18-11-7 -------- Operator certification: notice in advance of expiration of wastewater treatment plant operator certificate

(a) The commissioner shall notify by mail each person certified by the commissioner as a wastewater treatment plant operator under this chapter of the following:

(1) The date of the expiration of the operator's certificate.

(2) The amount of the required fee for renewal for two (2) years.

(b) The commissioner shall mail the notice at least one (1) month in advance of the date of expiration of the person's certificate to the last known address of the individual on file with the commissioner.

[As amended by: P.L.132-2000, §6.]

IC 13-18-11-7.5 ------ Operator certification: notice in advance of expiration of water treatment plant operator or water distribution system operator certificate

(a) The commissioner shall notify by mail each person certified by the commissioner as a water treatment plant operator or water distribution system operator under this chapter of the following:

(1) The date of expiration of the operator's certificate.

(2) The amount of the required fee for renewal for three (3) years.

(3) The continuing education required for renewal for three (3) years.

(b) The commissioner shall mail the notice at least one (1) month in advance of the date of expiration of the person's certificate to the last known address of the individual on file with the commissioner.

[As added by: P.L.132-2000, §7.]

IC 13-18-11-8 -------- Operator certification: revocation of certificate

(a) The commissioner may suspend or revoke the certificate of an operator, following a hearing under IC 13-15-7-3 and IC 4-21.5, if any of the following conditions are found:

(1) The operator has practiced fraud or deception.

(2) Reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties.

(3) The operator is incompetent or unable to properly perform the operator's duties.

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

[As amended by: P.L.132-2000, §8.]

IC 13-18-11-9 -------- Operator certification: reciprocal privileges

The commissioner may, upon receipt of an application and payment of the fee, issue a certificate without examination in a comparable classification to any person who holds a certificate in any state of the United States if:

(1) the requirements for certification of operators under which the person's certificate was issued:

(A) do not conflict with this chapter; or

(B) are of a standard not lower than that specified by this chapter and the rules adopted under this chapter; and

(2) reciprocal privileges are granted to certified operators of Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-10 ------ Operator certification: "grandfathered" wastewater treatment plant operator certificates

(a) Certificates in appropriate classification shall be issued upon application and payment of the fee to operators of wastewater treatment plants who, on July 1, 1968, hold

certificates of competency attained by examination under the voluntary certification program administered by:

(1) the Indiana Water Pollution Control Association; or

(2) the Indiana Section, American Water Works Association.

However, application for a certificate under this subsection must be made not later than July 1, 1969.

(b) Certificates of proper classification shall be issued upon payment of the fee without examination to each person certified by the governing body or owner to have been in direct responsible charge of the wastewater treatment plant on July 1, 1968. A certificate issued under this subsection is valid only for that particular wastewater treatment plant, which the certificate must indicate.

[As amended by: P.L.132-2000, §9.]

IC 13-18-11-10.5 ---- Operator certification: water treatment plant or water distribution system operator certificates

(a) The commissioner may issue a certificate to a person under this chapter if all of the following conditions are met:

(1) The person is an operator in responsible charge of a water treatment plant or water distribution system that was:

(A) in operation before September 2, 2000; and

(B) required to have a certified operator for the first time under rules adopted in accordance with guidelines published by the United States Environmental Protection Agency in the Federal Register at 64 FR 5916 et seq.

(2) The owner of the water treatment plant or water distribution system applies for a certificate for the operator in responsible charge before September 1, 2002.

(3) The certificate issued by the commissioner:

(A) is site specific; and

(B) may not be transferred to another operator.

(4) The certificate will become invalid if the classification of the water treatment plant or water distribution system for which the certificate was issued changes to a higher level.

(b) A person certified under subsection (a) must meet all requirements for certification renewal that apply to the classification of the water treatment plant or water distribution system to renew the certificate under this chapter.

(c) A person certified under subsection (a) who commences work for a different water treatment plant or water distribution system must meet the initial certification requirements for the plant or system.

(d) Notwithstanding section 14 of this chapter, a water treatment plant or water distribution system that meets the conditions of subsection (a)(1) may continue to operate if the water treatment plant or water distribution system applies to the commissioner for certification of the operator in responsible charge of the water treatment plant or water distribution system as provided in this section.

[As added by: P.L.132-2000, §10.]

IC 13-18-11-11 ------- Operator certification: qualified supervision of plants and systems

(a) All water or wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the commissioner in a classification corresponding to the classification of the plant or distribution system to be supervised. However, this section does not prohibit a governmental agency, a corporation, or an individual from continuing to employ in that capacity a person in responsible charge of the operations of the works if the person is certified under section 10 of this chapter.

(b) A certified operator may supervise more than one (1) plant or system if it can be shown that adequate supervision to ensure safe and effective operation is provided for all plants and systems supervised.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-12 ------ Operator certification: provisional certification

(a) When a vacancy in a position of operator occurs due to death, resignation, extended illness, or a similar cause, the vacancy may be filled for a period not exceeding one (1) year by an operator with a provisional certification.

(b) On written request of the governing body or owner of a wastewater or water supply system, the commissioner may issue a provisional certification under subsection (a) to a person with the required education and experience qualifications, until the person has had an opportunity to qualify by examination and be certified under this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-13 ------ Operator certification: WPCB to adopt rules

The board shall adopt rules under IC 4-22-2 that are necessary to carry out the intent of this chapter. The rules must include the following:

(1) Provisions establishing the basis for classification of water treatment plants, water distribution systems, and wastewater treatment plants.

(2) Provisions establishing qualifications of applicants and procedures for examination of candidates.

(3) Other provisions that are necessary for the administration of this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-14 ------ Operator certification: required for plant operation

(a) A person, firm, or corporation, whether municipal or private, may not operate a water or wastewater treatment plant or a water distribution system unless the commissioner has certified the operator in responsible charge under this chapter.

(b) A person may not perform the duties of an operator in responsible charge of works described in subsection (a) without being certified under this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-15 ------ Operator certification: fees

All fees collected under this chapter shall be deposited with the treasurer of state.

[As added by: P.L.1-1996, §8.]

IC 13-18-11-16 ------ Operator certification: class C infraction

A person who violates this chapter commits a Class C infraction. Each day of violation of this chapter constitutes a separate infraction.

[As added by: P.L.1-1996, §8.]

IC 13-18-12. WASTEWATER MANAGEMENT

IC 13-18-12-1 -------- Wastewater management: regulation of providers of service

The water pollution control board and the department shall regulate persons who provide wastewater management services.

[As added by: P.L.1-1996, §8.]

IC 13-18-12-2 -------- Wastewater management: permit required

(a) A person may not transport, treat, store, or dispose of wastewater in violation of this chapter.

(b) A person may not engage in:

(1) the cleaning of sewage disposal systems; or

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

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

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

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

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

[As amended by: P.L.31-1999, §1.]

IC 13-18-12-3 -------- Wastewater management: initiation of program

The board shall initiate, in accordance with IC 13-15, a wastewater management permit program for all persons who offer to perform or are performing wastewater management services.

[As added by: P.L.1-1996, §8.]

IC 13-18-12-4 -------- Wastewater management: WPCB to adopt rules

(a) The board shall, in accordance with IC 13-14-8, adopt rules to establish the following:

(1) Standards for the following:

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

(B) Cleaning of sewage disposal systems.

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

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

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

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

[As amended by: P.L.31-1999, §2.]

IC 13-18-12-5 -------- Wastewater management: WPCB may adopt fee schedule

(a) Subject to subsections (b) and (c), the board may adopt a fee schedule for the issuance of:

(1) wastewater management permits;

(2) wastewater management vehicle licenses; and

(3) land application site approvals;

under this chapter.

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

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

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

[As added by: P.L.1-1996, §8.]

IC 13-18-12-6 -------- Wastewater management: enforcement; penalties

(a) This chapter shall be enforced under IC 13-30-3.

(b) Violations of this chapter are subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

(c) The commissioner may make inspections under this chapter in accordance with IC 13-14-2-2 and IC 13-14-5.

[As added by: P.L.1-1996, §8.]

IC 13-18-12-6.5 ----- Wastewater management: revocation or modification of permit, license or approval

In addition to any other authority in this title, the commissioner or a designated staff member may, under IC 4-21.5, revoke or modify a permit, license, or approval issued under this chapter for any of the following reasons:

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

(2) Failure to disclose all relevant facts.

(3) A misrepresentation made in obtaining the permit, license, or approval.

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

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

[As added by: P.L.31-1999, §3.]

IC 13-18-12-7 -------- Wastewater management: exceptions to requirements

This chapter does not require a person to obtain a permit or vehicle license under this chapter if the person is:

(1) engaged in:

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

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

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

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

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

[As added by: P.L.1-1996, §8.]

IC 13-18-12-8 -------- Wastewater management: notification requirements for upsets

(a) If a publicly owned treatment works permittee:

(1) determines that an upset has occurred in the publicly owned treatment works that is likely to pose a threat to human or animal life; or

(2) has knowledge of an imminent threat from a chemical or other release to the collection system that is likely to cause an upset in the publicly owned treatment works that is likely to pose a threat to human or animal life;

the permittee shall notify emergency response personnel of the department not more than two (2) hours after the determination under subdivision (1) or the acquisition of knowledge of an imminent threat under subdivision (2).

(b) If the department receives notification from a publicly owned treatment works permittee under subsection (a), the department:

(1) must notify all appropriate state and local government agencies;

(2) may provide technical assistance to the publicly owned treatment works as the department determines is necessary; and

(3) must, if the department determines that there is or may be a threat to human health or animal life, notify the affected news media;

not more than forty-eight (48) hours after receiving the notification under subsection (a).

[As added by: P.L.132-2000, §3.]

IC 13-18-13. WASTEWATER REVOLVING LOAN PROGRAM

IC 13-18-13-1 -------- Wastewater revolving loan program: established

The wastewater revolving loan program is established.

[As added by: P.L.1-1996, §8.]

IC 13-18-13-2 -------- Wastewater revolving loan program: loan fund established

(a) The wastewater revolving loan fund is established to provide money for loans and other financial assistance to or for the benefit of political subdivisions under this chapter.

(b) The general assembly may appropriate money to the fund. Grants or gifts of money to the fund from the federal government or other sources and the proceeds of the sale of:

(1) gifts to the fund; and

(2) loans and other financial assistance, as provided insections 10 through 14 of this chapter;

shall be deposited in the fund.

(c) Repayments of loans and other financial assistance, including interest, premiums, and penalties, shall be deposited in the fund.

(d) The treasurer of state shall invest the money in the fund that is:

(1) not currently needed to meet the obligations of the fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from these investments shall be deposited in the fund.

(e) As an alternative to subsection (d), the budget agency may invest or cause to be invested all or a part of the fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may permit disbursements by the trustee to:

(1) the department;

(2) the budget agency;

(3) a political subdivision;

(4) the Indiana bond bank; or

(5) any person to which the department, the budget agency, or a political subdivision is obligated, as provided in the trust agreement or indenture.

The state board of finance must approve any trust agreement or indenture before execution.

(f) Except as provided in the federal Clean Water Act, the cost of administering the fund may be paid from the fund.

(g) All money accruing to the fund is appropriated continuously for the purposes specified in this chapter.

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

[As amended by: P.L.126-1997, §8.]

IC 13-18-13-3 -------- Wastewater revolving loan program: use of money in fund

Money in the fund may be used to do the following:

(1) Provide loans or other financial assistance to political subdivisions for the planning, designing, construction, renovation, improvement, or expansion of wastewater collection and treatment systems and other activities necessary or convenient to complete these tasks.

(2) Pay the cost of administering the fund and the program.

(3) Conduct all other activities that are permitted by the federal Clean Water Act.

[As added by: P.L.1-1996, §8.]

IC 13-18-13-4 -------- Wastewater revolving loan program: administration

The department and the budget agency shall administer and manage:

(1) the fund;

(2) the program;

(3) the supplemental fund; and

(4) the supplemental program;

in accordance with this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-13-5 -------- Wastewater revolving loan program: IDEM duties

The department shall do the following:

(1) Manage all aspects of the program and supplemental program, except as provided under section 6 of this chapter.

(2) Be the point of contact in relations with the United States Environmental Protection Agency, except as provided under section 6 of this chapter.

(3) Cooperate with the budget agency in the administration and management of the program and supplemental program.

(4) Cooperate with the budget agency in preparing and providing program information.

(5) Review each proposed financial assistance agreement to determine whether the agreement meets the environmental and technical aspects of the program or supplemental program.

(6) Periodically inspect project design and construction to determine compliance with the following:

(A) This chapter.

(B) The federal Clean Water Act.

(C) Construction plans and specifications.

(7) Negotiate, jointly with the budget agency, the negotiable aspects of each financial assistance agreement.

(8) If not accepted and held by the budget agency, accept and hold any letter of credit from the federal government through which the state receives grant payments for the program and disbursements to the fund.

(9) Prepare, jointly with the budget agency, annual reports concerning the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

(10) Submit the reports prepared under subdivision (9) to the governor and the general assembly.

(11) Enter into memoranda of understanding with the budget agency concerning the administration and management of the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

[As amended by: P.L. 126-1997, §9.]

IC 13-18-13-6 -------- Wastewater revolving loan program: budget agency duties

The budget agency shall do the following:

(1) Manage and implement the financial aspects of the program and supplemental program.

(2) Cooperate with the department in the administration and management of the program and supplemental program.

(3) If not accepted and held by the department, accept and hold any letter of credit from the federal government through which the state receives grant payments for the program and disbursements to the fund.

(4) Be the point of contact with political subdivisions and other interested persons in preparing and providing program information.

(5) Negotiate, jointly with the department, the negotiable aspects of each financial assistance agreement.

(6) Prepare or cause to be prepared each financial assistance agreement.

(7) Sign each financial assistance agreement.

(8) Conduct or cause to be conducted an evaluation as to the financial ability of each political subdivision to pay the loan or other financial assistance and other obligations evidencing the loans or other financial assistance, if required to be paid, and comply with the financial assistance agreement in accordance with the terms of the agreement.

(9) Prepare, jointly with the department, annual reports concerning the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

(10) Submit the reports prepared under subdivision (9) to the governor and the general assembly.

(11) Enter into memoranda of understanding with the department concerning the administration and management of the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

[As amended by: P.L.126-1997, §10.]

IC 13-18-13-7 -------- Wastewater revolving loan program: joint duties

The budget agency may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) bond counsel;

(D) other special counsel;

(E) accountants; and

(F) any other consultants, employees, and agents;

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

(2) Fix and pay the compensation of those persons employed in subdivision (1) from money:

(A) available in the fund or supplemental fund; or

(B) otherwise made available for the program or the supplemental program.

[As amended by: P.L.126-1997, §11.]

IC 13-18-13-8 -------- Wastewater revolving loan program: services and fees

(a) The department and the budget agency may:

(1) provide services to a political subdivision in connection with a loan or other financial assistance, including advisory and other services; and

(2) charge a fee for services provided.

(b) The department and the budget agency may charge a fee for costs and services incurred in the review or consideration of an application for a proposed loan or other financial assistance to or for the benefit of a political subdivision under this chapter, regardless of whether the application is approved or rejected.

(c) A political subdivision may pay fees charged under this section.

[As added by: P.L.1-1996, §8.]

IC 13-18-13-9 -------- Wastewater revolving loan program: priority ranking system

(a) The department shall use a priority ranking system to recommend loans or other financial assistance from the fund. The department shall develop the priority ranking system to achieve optimum water quality consistent with the water quality goals of the state and the federal Clean Water Act.

(b) Based on the recommendations made under subsection (a), the budget agency may make loans and provide other financial assistance from the fund to or for the benefit of political subdivisions.

[As amended by: P.L.126-1997, §12.]

IC 13-18-13-10 ------ Wastewater revolving loan program: conditions for loans and other financial assistance

The budget agency may make loans or provide other financial assistance from the fund to or for the benefit of a political subdivision under the following conditions:

(1) The loan or other financial assistance must be used:

(A) for planning, designing, constructing, renovating, improving, or expanding wastewater collection and treatment systems and other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish reserves or sinking funds; or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan or other financial assistance during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Any other costs or expenses necessary or incident to the loan, other financial assistance, or the administration of the fund and the program.

(2) Subject to section 15 of this chapter, upon recommendation of the budget agency the state board of finance shall establish the interest rate or parameters for establishing the interest rate on each loan, including parameters for establishing the amount of interest subsidies.

(3) The budget agency shall establish the terms and conditions that the budget agency considers necessary or convenient to:

(A) make loans; or

(B) provide other financial assistance under this chapter.

[As amended by: P.L.126-1997, §13.]

IC 13-18-13-11 ------ Wastewater revolving loan program: documents to accompany loan

A loan or other financial assistance from the fund must be accompanied by the following:

(1) All papers and opinions required by the budget agency.

(2) Unless otherwise provided by rule, the following:

(A) An approving opinion of nationally recognized bond counsel.

(B) A certification and guarantee of signatures.

(C) A certification that, as of the date of the loan or other financial assistance:

(i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or

(ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.

(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.

[As amended by: P.L.126-1997, §14.]

IC 13-18-13-12 ------ Wastewater revolving loan program: financial assistance agreement

A political subdivision receiving a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the political subdivision.

[As amended by: P.L.126-1997, §15.]

IC 13-18-13-13 ------ Wastewater revolving loan program: sale of loans

The budget agency may sell loans or evidences of other financial assistance and other obligations of political subdivisions evidencing the loans or other financial assistance from the fund periodically at any price and on terms acceptable to the budget agency. Proceeds of sales under this section shall be deposited in the fund.

[As amended by: P.L.126-1997, §16.]

IC 13-18-13-14 ------ Wastewater revolving loan program: pledge of loans as security

(a) The budget agency may pledge loans or evidences of other financial assistance and other obligations of political subdivisions evidencing the loans or other financial assistance from the fund to secure:

(1) other loans or financial assistance from the fund to or for the benefit of political subdivisions; or

(2) other loans or financial assistance from the supplemental fund to or for the benefit of political subdivisions;

to the extent permitted by the federal Clean Water Act.

(b) The budget agency must approve the terms of a pledge under this section.

(c) Notwithstanding any other law, a pledge of property made by the department and the budget agency under this section or IC 4-23-21-8(e) (before its repeal) is binding from the time the pledge is made. Revenues, other money, or other property pledged and thereafter received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:

(1) the department;

(2) the budget agency; or

(3) the fund;

regardless of whether the parties have notice of any lien.

(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the budget agency.

(e) Action taken to:

(1) enforce a pledge under this section or IC 4-23-21-8(e) (before its repeal); and

(2) realize the benefits of the pledge;

is limited to the property pledged.

(f) A pledge under this section or IC 4-23-21-8(e) (before its repeal) does not create a liability or indebtedness of the state.

[As amended by: P.L.126-1997, §17.]

IC 13-18-13-15 ------ Wastewater revolving loan program: interest rates

(a) In recommending to the state board of finance the interest rate or parameters for establishing the interest rate on each loan, as provided in section 10 of this chapter, the budget agency shall recommend and the state board of finance shall establish the following:

(1) A base or subsidized interest rate that:

(A) would be payable by political subdivisions other than political subdivisions described in subdivision (2) or (3); and

(B) may provide for the payment of no interest during all or a part of the estimated construction period for the wastewater treatment system.

(2) A base reduced or more heavily subsidized interest rate, that:

(A) would be payable by political subdivisions whose median household incomes are:

(i) not more than the state nonmetropolitan median household income, as determined and reported by the federal government periodically; and

(ii) not less than eighty-one percent (81%) of the state nonmetropolitan median household income; and

(B) may provide for the payment of no interest during all or a part of the estimated construction period for the wastewater collection and treatment system.

(3) A base zero (0) or most heavily subsidized interest rate that:

(A) would be payable on loans made to political subdivisions whose median household incomes are not more than eighty percent (80%) of the state nonmetropolitan household income; and

(B) may provide for the payment of no interest during all or a part of the estimated construction period of the wastewater collection and treatment system.

(b) The budget agency, in recommending to the state board of finance the interest rate or parameters for establishing the interest rate on each loan under section 10 of this chapter, shall take into account the following:

(1) Credit risk.

(2) Environmental enforcement and protection.

(3) Affordability.

(4) Other fiscal factors the budget agency considers relevant.

(c) In enacting this section, the general assembly understands that, in financing the program, the Indiana bond bank issued at the budget agency's request, and will continue to issue at the budget agency's request:

(1) revenue bonds payable from and secured by political subdivisions; and

(2) loan payments made by and loan payments made to political subdivisions.

It is not the intent of the general assembly to cause the budget agency or the state board of finance to establish interest rates on loans or parameters for establishing interest rates that would cause the bond bank's revenue bonds to be insecure or otherwise negatively affect the ability of the state to continue to finance the program.

[As amended by: P.L.126-1997, §18.]

IC 13-18-13-16 ------ Wastewater revolving loan program: obligations of political subdivision

The budget agency shall require that a political subdivision receiving a loan or other financial assistance under this chapter establish under applicable statute and maintain sufficient user charges or other charges, fees, taxes, special assessments, or revenues available to the political subdivision to:

(1) operate and maintain the wastewater collection and treatment system; and

(2) pay the obligations of the system.

[As amended by: P.L.126-1997, §19.]

IC 13-18-13-17 ------ Wastewater revolving loan program: curing default

(a) Notwithstanding any other law and if provided in a financial assistance agreement, any state department or state agency, including the treasurer of state:

(1) that is the custodian of money payable to a political subdivision, other than money in payment for goods or services provided by the political subdivision; and

(2) after written notice from the budget director that the political subdivision is in default on the payment of principal or interest on a loan or evidence of other financial assistance;

may withhold payment of money from that political subdivision and pay over the money to the budget agency or the Indiana bond bank, as directed by the budget director, for the purpose of curing the default.

(b) The withholding of payment from the political subdivision and payment to:

(1) the budget agency; or

(2) the Indiana bond bank;

as applicable, may not adversely affect the validity of the defaulted loan or other financial assistance.

[As amended by: P.L.126-1997, §20.]

IC 13-18-13-18 ------ Wastewater revolving loan program: joint adoption of rules

The water pollution control board and the budget agency may jointly adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-13-19 ------ Wastewater revolving loan program: loans and notes

(a) Notwithstanding any other law, a political subdivision may borrow money from the budget agency by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision shall observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell its notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of its bonds or other available money at the time the notes are due. The notes must be issued pursuant to a resolution or ordinance and the proceeds must be used to carry out the purposes specified in this chapter.

(c) A political subdivision that issues notes under subsection (b) or IC 4-23-21-13 (before its repeal) may renew or extend the notes periodically on terms agreed to with the budget agency, and the budget agency may purchase and sell the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including any renewals or extensions, must mature:

(1) in the amounts; and

(2) at the times not exceeding four (4) years from the date of original issuance;

that are agreed to by the political subdivision and the budget agency.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue its notes and sell the notes to the department and the budget agency, and the political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of its notes. These notes are:

(1) valid and binding obligations of the political subdivision;

(2) enforceable in accordance with the terms of the notes; and

(3) payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes.

(f) If the political subdivision issues bonds, all or part of the proceeds of which will be used to pay the notes issued under subsection (b), neither:

(1) the provisions of this section; nor

(2) the actual issuance by a political subdivision of notes under subsection (b);

relieves the political subdivision of the obligation to comply with the statutory requirements for the issuance of bonds.

[As amended by: P.L.126-1997, §21.]

IC 13-18-13-20 ------ Wastewater revolving loan program: leveraged loan program authorized

(a) As an alternative to making loans or providing other financial assistance to political subdivisions, the budget agency may use the money in the fund or the supplemental fund to provide a leveraged loan program and other financial assistance programs permitted by the federal Clean Water Act to or for the benefit of political subdivisions, including using money in the fund or the supplemental fund to enhance the obligations of political subdivisions issued for the purposes of this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 5-1.5 or another statute or a trust agreement or indenture as contemplated by IC 13-18-13-2(e); or

(ii) an account established within such a fund; or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or costs for obligations of a political subdivision or for bonds issued by the Indiana bond bank if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or a part of obligations issued by political subdivisions or of bonds issued by the Indiana bond bank.

(b) The budget agency may enter into any agreements with the Indiana bond bank or political subdivisions to carry out the purposes specified in this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund and the supplemental fund. A guarantee under subsection (a)(3) does not create a liability or indebtedness of the state.

[As amended by: P.L.126-1997, §22.]

IC 13-18-13-30 ------ Wastewater revolving loan program: use of fund to secure loan program

Notwithstanding any other law, and to the extent permitted by the federal Clean Water Act and the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), money in the fund, together with loan repayments to be deposited in the fund, may be used to secure a leveraged loan program or other financial assistance programs established in connection with the drinking water revolving loan fund established by IC 13-18-21-2.

[As added by: P.L.104-1998, §2.]

IC 13-18-14. INTERSTATE SEWAGE

IC 13-18-14-1 -------- Interstate sewage: approvals needed to transport

Predominantly domestic sewage and surface run-off or sludges derived from domestic sewage or surface run-off may not be transported through any drain, pipe, railroad car, truck, or barge from another state into Indiana for use in any land filtration or land treatment project without the express approval of the following:

(1) The general assembly.

(2) The county executive of each county affected by the land filtration or transportation.

[As added by: P.L.1-1996, §8.]

IC 13-18-15. CONNECTION TO SEWAGE SERVICE

IC 13-18-15-1 -------- Connection to sewage service: commissioner may order

If the commissioner finds it is in the interest of the health, safety, convenience, and welfare of the residents of an area, a person may be ordered to connect to or receive and treat sewage from any other person or from an industry, a shopping center, a mobile home park, or a housing development when the service and use will not:

(1) result in irreparable injury to the receiving equipment; or

(2) make impossible the provision of the service previously provided to the users of the equipment.

[As added by: P.L.1-1996, §8.]

IC 13-18-15-2 -------- Connection to sewage service: terms for connection and service; granting of waiver

(a) The persons involved shall negotiate the terms for connection and service under this chapter.

(b) If service is ordered under this chapter, a receiver of that service that is located in an unincorporated area may grant a waiver to a municipality providing the service. A waiver under this section:

(1) must waive the receiver's right of remonstrance against annexation of the areas in which the service is to be provided; and

(2) may be one (1) of the terms for connection and service described in subsection (a).

(c) The waiver, if granted:

(1) shall be noted on the deed of each property affected and recorded as provided by law; and

(2) is considered a covenant running with the land.

[As added by: P.L.1-1996, §8.]

IC 13-18-15-3 -------- Connection to sewage service: role of utility regulatory commission

(a) If the negotiations fail:

(1) any person involved; or

(2) the department;

may apply to the Indiana utility regulatory commission for a determination of any question upon which an agreement was not reached.

(b) Upon application to the commission, the commission shall, in accordance with the commission's procedures:

(1) determine:

(A) the reasonable and just charges; and

(B) the compensation to be made for the connection and service; and

(2) enter an order designating:

(A) each person who shall perform the work of establishing the connection; and

(B) the other conditions that are necessary to effect the connection.

[As added by: P.L.1-1996, §8.]

IC 13-18-15-4 -------- Connection to sewage service: appeal of order

Any person aggrieved by an order under section 3 of this chapter has all rights of appeal as with other orders of the commission.

[As added by: P.L.1-1996, §8.]

IC 13-18-15-5 -------- Connection to sewage service: exception

A landowner in an unincorporated area who connects to a sewer or water service because a person other than the landowner has polluted or contaminated the area is not required to grant a municipality a waiver against remonstrance if:

(1) the area in which the service to be provided is annexed; and

(2) a person other than the landowner or the municipality has paid the cost of extension of or connection to the service.

[As amended by: P.L.124-1996, §8.]

IC 13-18-16. PUBLIC WATER SUPPLIES

IC 13-18-16-1 -------- Public water supplies: construction permit requirement

(a) A permit is required for the construction, installation, or modification of:

(1) sources;

(2) facilities;

(3) equipment; or

(4) devices;

of a public water supply, including water distribution systems.

(b) Plans and specifications for the construction, installation, or modification of sources, facilities, equipment, or devices of a public water supply must be submitted to the commissioner with a permit application. The plans and specifications must be complete and of sufficient detail to show all proposed construction, changes, or modifications that may affect the sanitary quality, chemical quality, or adequacy of the public water supply involved. The applicant shall supply any additional data or material considered appropriate by the commissioner to a review of the plans and specifications.

(c) Unless otherwise provided in rules adopted under section 8(b) of this chapter, plans and specifications must be submitted to the commissioner with the permit application for water distribution systems.

(d) Construction, installation, or modification of a public water supply may not begin until the commissioner has issued a permit under subsection (a).

(e) In determining whether to issue a permit under this section, the commissioner shall proceed under IC 13-15.

[As amended by: P.L.25-1997, §10.]

IC 13-18-16-2 -------- Public water supplies: revocation or modification

The commissioner may initiate action under IC 13-15-7 to revoke or modify a permit.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-3 -------- Public water supplies: contamination of the water supply; civil penalty

The commissioner may initiate action under IC 4-21.5-3 to assess a civil penalty against a permit holder who fails to take action to correct or prevent contamination of the sanitary or chemical quality of the water supply after the permit holder knew or should have known that the action should be taken. The civil penalty assessed under this section may not exceed one thousand dollars ($1,000) for each day of violation.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-4 -------- Public water supplies: emergency repairs

This chapter does not preclude emergency repairs or proceedings.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-5 -------- Public water supplies: permit approval

Plans and specifications submitted to the commissioner under section 1 of this chapter shall be approved if it is determined that the plans and specifications meet all of the following conditions:

(1) The plans and specifications are satisfactory with respect to the following:

(A) Sanitary quality, including chlorination, if required.

(B) Chemical quality.

(C) Adequacy of the water supply.

(2) The plans and specifications meet the requirements of any rules or standards adopted by the board under section 8 of this chapter governing the location, design, construction, and operation and maintenance of:

(A) public water supply installations; and

(B) changes or additions to public water supply installations.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-6 -------- Public water supplies: duty to maintain public water supply

(a) All public water supplies shall be continuously operated and maintained so that water is:

(1) safe in quality;

(2) clean and adequate in quantity; and

(3) chemically satisfactory for ordinary domestic consumption.

(b) The person responsible for the operation of a public water supply shall take all measures that are necessary to carry out the requirements of subsection (a) so as to protect the quality and quantity of the raw water supply from actual or threatened contamination. These measures include the relocation of the point of raw water collection to a site that is not contaminated or threatened by contamination.

(c) The failure to carry out a duty set forth in subsection (a) or (b) constitutes a violation subject to the penalties imposed under this chapter. Each day a violation occurs under this section constitutes a separate violation.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-7 -------- Public water supplies: samples and reports

A person responsible for the operation of public water supplies shall submit:

(1) samples of water for analysis; and

(2) reports of operation pertaining to the sanitary quality, chemical quality, or adequacy of those supplies;

that the commissioner requests. The operator certified under IC 13-18-11 must verify under oath the reports of operation.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-8 -------- Public water supplies: WPCB to adopt rules

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 establishing requirements for the issuance of permits to control public water supplies, including the following:

(1) Permits for the construction, installation, or modification of facilities, equipment, or devices for any public water supply.

(2) Permits for the operation of sources, facilities, equipment, or devices for any public water supply.

(b) The board shall adopt a permit by rule for water main extensions (as defined in 327 IAC 8-3-1) to satisfy the permit requirement in section 1(a) of this chapter.

[As amended by: P.L.25-1997, §11.]

IC 13-18-16-9 -------- Public water supplies: IDEM designated agency for SDWA

Except as provided in IC 14-37, the department:

(1) is the state agency with responsibility concerning the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j) in effect January 1, 1988; and

(2) may take any action necessary to secure the benefits of that act for Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-10 ------ Public water supplies: IDEM responsibilities

The department shall conduct a program of continuing surveillance and inspection of public water supplies and technical assistance in connection with public water supplies.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-11 ------ Public water supplies: IDEM to assist local units

The department shall encourage and advise units of local government in developing programs and facilities for public water supplies.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-12 ------ Public water supplies: pre-construction approval required

A person may not:

(1) install or contract for the construction of any public water supply facilities, including water purification or treatment works; or

(2) make any material change in any public water supply facilities;

until a permit has been issued by the commissioner.

[As amended by: P.L.25-1997, §12.]

IC 13-18-16-13 ------ Public water supplies: determination by commissioner that water supply is impure and dangerous

(a) The commissioner may investigate and determine whether any public water supply is impure and dangerous to health. If the commissioner determines that a public water supply:

(1) is impure and dangerous to public health; or

(2) is not sufficiently purified because of improper construction, inadequate size, or inefficient management or operation;

the commissioner may under IC 13-30-3-10 through IC 13-30-3-12 order that the public water supply be made pure and safe to health.

(b) If the commissioner determines under subsection (a) that a public water supply is impure and dangerous to public health because of inefficient management or operation, the commissioner may order the person responsible for the public water supply to appoint, not later than fifteen (15) days after the commissioner's determination, a competent person to take charge of and superintend the operation of the water supply plant or works.

(c) The commissioner must approve the person appointed in response to the commissioner's order under subsection (b). However, the person responsible for the water supply plant or works shall pay the salary of the person appointed.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-14 ------ Public water supplies: order by commissioner regarding operation of sewage treatment facility

(a) If a sewage treatment works or plant is not producing a reasonably pure effluent because of inefficient supervision or operation and has consequently:

(1) made any public water supply impure or dangerous to health;

(2) polluted any waters; or

(3) created a public nuisance;

the commissioner may under IC 13-30-3-10 through IC 13-30-3-12 order the person responsible for the sewage treatment works or plant to appoint, not later than fifteen (15) days after the commissioner's order, a competent person to take charge of and superintend the operation of the sewage treatment works or plant.

(b) The commissioner must approve the person appointed in response to the commissioner's order under subsection (a). However, the person responsible for the sewage treatment works or plant shall pay the salary of the person appointed.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-15 ------ Public water supplies: enforcement

The commissioner may enforce this chapter under IC 13-30-3.

[As added by: P.L.1-1996, §8.]

IC 13-18-16-16 ------ Public water supplies: reconstituting the nonprofit water utility as a water authority

(a) A nonprofit water utility may adopt a resolution approved by its board of directors under this section that reconstitutes the nonprofit water utility as a water authority to be named as provided in the resolution.

(b) A resolution adopted under this section must allow:

(1) the structure of the board of directors; and

(2) the rules governing the water authority;

to remain the same as those applicable to the nonprofit water utility.

(c) The water authority shall retain all its powers, privileges, rights, and exemptions as a nonprofit water utility under:

(1) its existing bylaws and articles; and

(2) all laws applicable to nonprofit water utilities and local water corporations, including powers granted under IC 32-11-3-1.

(d) A water authority constituted under this section is a political subdivision of the state.

(e) A copy of a resolution adopted under this section must be filed with the secretary of state. When the secretary of state receives a copy of a resolution under this subsection, the secretary of state shall dissolve the corporate status of the nonprofit water utility for purposes of state law.

(f) A water authority constituted under this section shall:

(1) remain obligated under any existing contracts or agreements; and

(2) remain obligated and assume the indebtedness;

of the nonprofit water utility.

(g) Notwithstanding any other law and subject to subsection (h), a water authority constituted under this section is subject only to the laws applicable to nonprofit water utilities and local water corporations.

(h) A water authority constituted under this section is subject to IC 8-1.5-3-8 for purposes of setting rates and charges.

[As amended by: P.L.220-1999, §3.]

IC 13-18-17. GROUNDWATER PROTECTION

IC 13-18-17-1 -------- Groundwater protection: interagency groundwater task force established; duties

(a) The interagency groundwater task force is established to do all of the following:

(1) Study groundwater contamination in Indiana.

(2) Coordinate efforts among the agencies to address groundwater pollution problems.

(3) Coordinate the implementation of the Indiana groundwater quality protection and management strategy.

(4) Develop policies to prevent groundwater pollution.

(b) The task force consists of the following:

(1) The commissioner.

(2) The director of the department of natural resources.

(3) The commissioner of the state department of health.

(4) The state chemist.

(5) The state fire marshal.

(6) One (1) representative of the business community.

(7) One (1) representative of the environmentalist community.

(8) One (1) representative of the agricultural community.

(9) One (1) representative of labor.

(10) One (1) representative of local government.

(c) The governor shall appoint the members provided for in subsection (b)(6) through (b)(10). The term of a member appointed under this subsection is two (2) years. A member may be appointed to successive terms.

(d) Each member of the task force who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) An agency head listed in subsection (b):

(1) shall provide staff support to the task force; and

(2) may appoint a proxy to participate in task force proceedings when the agency head is not present.

(f) The agency heads referred to in subsection (b)(1) through (b)(5) shall invite participation in the task force by representatives of the governor's office and the United States Environmental Protection Agency.

(g) The task force may adopt bylaws to govern the conduct of task force activities. The task force shall hold at least one (1) public meeting in four (4) months.

(h) The task force shall present an annual report on the activities of the task force to the governor and the general assembly.

[As added by: P.L.1-1996, §8.]

IC 13-18-17-2 -------- Groundwater protection: IDEM to maintain registry of sites of contaminated water

(a) The department, with the assistance of other state agencies as requested, shall establish and maintain a registry of sites within Indiana at which contamination of groundwater has been detected.

(b) The information in the registry shall be made available to the public under IC 5-14-3 for inspection and copying during ordinary business hours.

(c) The department shall continuously supplement and clarify information in the registry as additional information on sites with groundwater contamination becomes available.

[As added by: P.L.1-1996, §8.]

IC 13-18-17-3 -------- Groundwater protection: IDEM to operate groundwater quality clearinghouse

(a) The department, with the assistance of other state agencies as requested, shall establish and operate a groundwater quality clearinghouse within the department.

(b) The groundwater quality clearinghouse established under this section shall do all of the following:

(1) Receive complaints about groundwater contamination.

(2) Screen reports of groundwater pollution.

(3) Ensure that complaints and reports are adequately investigated.

(4) Provide information to the public about groundwater and groundwater pollution.

(5) Coordinate the management of groundwater quality data in Indiana.

[As added by: P.L.1-1996, §8.]

IC 13-18-17-4 -------- Groundwater protection: IDEM responsibilities with respect to contamination of private wells

(a) The department under IC 13-14-2-2:

(1) may investigate allegations of; and

(2) shall investigate confirmed incidents of;

contamination of groundwater that affect private water supply wells.

(b) The commissioner shall:

(1) issue an advisory to the users and owners of a water well found to be contaminated concerning the hazards to health posed by the contamination;

(2) take emergency action, including emergency action under IC 13-14-10, to reduce exposure to well water contaminants that pose a threat to human health; and

(3) as appropriate to safeguard human health, order abandonment of contaminated water wells.

[As added by: P.L.1-1996, §8.]

IC 13-18-17-5 -------- Groundwater protection: WPCB to adopt rules establishing groundwater quality standards

(a) The water pollution control board shall adopt rules under IC 4-22-2 establishing groundwater quality standards that include numeric and narrative criteria, a groundwater classification plan, and a method of determining where the groundwater quality standards must apply. The standards established under this subsection shall be used for the following purposes:

(1) To establish minimum compliance levels for groundwater quality monitoring at regulated facilities.

(2) To ban the discharge of effluents into potable groundwater.

(3) To establish health protection goals for untreated water in water supply wells.

(4) To establish concentration limits for contaminants in ambient groundwater.

(b) The following agencies shall adopt rules under IC 4-22-2 to apply the groundwater quality standards established under this section to activities regulated by the agencies:

(1) The department.

(2) The department of natural resources.

(3) The state department of health.

(4) The office of the state chemist.

(5) The office of the state fire marshal.

[As amended by: P.L.168-1999, §1.]

IC 13-18-17-6 -------- Groundwater protection: WPCB to adopt rules establishing protection zones around community wells

(a) The board shall adopt rules under IC 4-22-2 to establish protection zones around community water system wells.

(b) The state agencies referred to in section 5(b) of this chapter may not permit activities within the zones established under subsection (a) that would violate the rules or interfere with the purposes of the rules.

(c) The department shall establish and operate a program of education and assistance to local officials in developing and managing well field protection zones.

(d) The rules adopted under subsection (a) or any zoning under IC 36-7 to establish protection zones around community water system wells may not restrict any activity by:

(1) an owner of land;

(2) a mineral owner; or

(3) a mineral leaseholder of record;

unless the owner or leaseholder is sent written notice of, and has an opportunity to be heard on, the establishment of the zone and the construction of the community water supply system that caused the establishment of the zone.

(e) A person that requests a permit for construction of a community water system or establishment of a well field protection zone is responsible for any notice requirements the board establishes.

[As amended by: P.L.25-1997, §13.]

IC 13-18-17-7 -------- Groundwater protection: WPCB to adopt rules for the construction and monitoring of surface impoundments

(a) The board shall adopt rules under IC 4-22-2 for the construction and monitoring of surface impoundments, including pits, ponds, and lagoons, used for the storage or treatment of nonhazardous waste and wastewater.

(b) The requirements of the rules adopted under this section must apply to all the state agencies referred to in section 5(b) of this chapter.

[As added by: P.L.1-1996, §8.]

IC 13-18-18. GENERAL COAL MINE PERMITS

IC 13-18-18-1 -------- General coal mine permits: WPCB to adopt rules establishing a general coal mine permit

The board with jurisdiction over National Pollutant Discharge Elimination System permits for coal mines shall adopt rules under IC 4-22-2 to establish a general coal mine permit that may be obtained for a facility instead of obtaining another more specialized National Pollutant Discharge Elimination System coal mine permit.

[As added by: P.L.1-1996, §8.]

IC 13-18-18-2 -------- General coal mine permits: WPCB to determine criteria

The board shall determine the criteria that must be met to qualify for the general permit.

[As added by: P.L.1-1996, §8.]

IC 13-18-18-3 -------- General coal mine permits: notice of intent

The rules adopted under this chapter must allow a coal mine operator the option of submitting a notice of intent to be governed by the general permit requirements before the requirements apply to the coal mine operator.

[As added by: P.L.1-1996, §8.]

IC 13-18-19. NPDES PERMITS

IC 13-18-19-1 -------- NPDES permits: notice of application to county surveyor; additional requirements for regulated drains

When the department receives an application for an original National Pollutant Discharge Elimination System (NPDES) permit required for discharge into a stream, the department shall do the following:

(1) Send a list in writing, on a monthly basis, of original applications received during the month to the county surveyor of the affected county, not later than thirty (30) days after receipt of the application.

(2) Advise the applicant in writing that if the stream is a regulated drain under IC 36-9-27, the county drainage board must also review the application for approval under IC 36-9-27.

[As added by: P.L.1-1996, §8.]

IC 13-18-19-2 -------- NPDES permits: permits containing conditions that include alternate water quality based effluent limits

(a) The department may issue National Pollutant Discharge Elimination System (NPDES) permits containing conditions that include alternate water quality based effluent limits that:

(1) are based on receiving water flows associated with, or characteristic of:

(A) wet weather events of various degrees of duration and intensity; or

(B) low flow stream conditions derived on a monthly, quarterly, or annual basis;

(2) provide increased mass limitations, concentration limitations, or mass and concentration limitations, for publicly owned treatment works (POTW) that:

(A) are capable of treating wastewater flows that exceed the design flow used to calculate normal water quality based effluent limitations; and

(B) as a result of the increased limitations, can reduce the volume of discharge of wastewater from plant bypasses or combined sewer overflows; or

(3) include any factor or combination of factors described in subdivisions (1) and (2).

(b) The department may require an applicant for an NPDES permit containing at least one (1) of the conditions described in subsection (a) to document, in a reasonable manner, stream conditions and local controls that are germane to a condition described in subsection (a) before the department issues the NPDES permit.

[As added by: P.L.140-2000, §22.]

IC 13-18-20. NPDES PERMIT FEES

IC 13-18-20-1 -------- NPDES permit fees: supercedes IC 13-16-1

Notwithstanding NPDES fees established under IC 13-16-1, the annual fees contained in this chapter shall be assessed to each facility that has a NPDES permit.

[As added by: P.L.1-1996, §8.]

IC 13-18-20-2 -------- NPDES permit fees: for industrial permits

For industrial permits, other than coal mine permits or stone quarry permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
	> 100.0	$34,800

Annual flow fees are reduced by twenty percent (20%) for discharges that are comprised of greater than ninety percent (90%) of non-contact cooling water.

[As added by: P.L.1-1996, §8.]

IC 13-18-20-3 -------- NPDES permit fees: for coal mine general permits

Each facility for which a coal mine operator files a notice of intent under the general coal mine permit rules adopted under IC 13-18-18 shall pay an annual fee of five hundred dol-

lars ($500) instead of the following individual permit fees. The annual fee must accompany the initial notice of intent and is due each year on the anniversary date of the date when the initial notice of intent was filed.

Outfalls	Fee
1 Outfall	$500
2-3 Outfalls	$750
4-6 Outfalls	$1,000
7-10 Outfalls	$1,500
11-20 Outfalls	$2,500
21-99 Outfalls	$3,500

IC 13-18-20-4 -------- NPDES permit fees: for stone quarry permits

For stone quarry permits, the annual fee is as follows:

Outfalls	Fee
1 Outfall	$750
2 Outfalls	$1,500
3 Outfalls	$2,000
4 Outfalls	$2,500

[As added by: P.L.1-1996, §8.]

IC 13-18-20-5 -------- NPDES permit fees: for municipal permits

For municipal permits, the annual base fee per facility is:

(1) one thousand five hundred dollars ($1,500) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$300
.051 -	.1	$600
.101 -	.2	$2,000
.201 -	.3	$4,000
.301 -	.5	$5,000
.501 -	1.0	$6,000
1.001 -	2.0	$7,000
2.001 -	5.0	$8,000
5.001 -	10.0	$10,000
10.001 -	15.0	$13,000
15.001 -	30.0	$15,000
30.001 -	50.0	$20,000
50.001 -	100.0	$22,000

[As added by: P.L.1-1996, §8.]

IC 13-18-20-6 -------- NPDES permit fees: for state permits

For state permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
	> 100.0	$34,800

[As added by: P.L.1-1996, §8.]

IC 13-18-20-7 -------- NPDES permit fees: for federal permits

For federal permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Actual Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
	> 100.0	$34,800

[As added by: P.L.1-1996, §8.]

IC 13-18-20-8 -------- NPDES permit fees: for semipublic permits

For semipublic permits, the annual base fee per facility is:

(1) seven hundred fifty dollars ($750) for a major permit; and

(2) two hundred dollars ($200) for a minor permit;

plus the following annual discharge flow fee per facility:

Daily Average Design Flow in MGD		Fee
.001 -	.05	$150
.051 -	.1	$300
.101 -	.2	$1,000
.201 -	.3	$2,000
.301 -	.5	$2,500
.501 -	1.0	$3,000
1.001 -	2.0	$3,500
2.001 -	5.0	$4,000
5.001 -	10.0	$5,000
10.001 -	15.0	$6,500
15.001 -	30.0	$7,500
30.001 -	50.0	$10,000
50.001 -	100.0	$11,000

[As added by: P.L.1-1996, §8.]

IC 13-18-20-9 -------- NPDES permit fees: for public water supply permits

For public water supply permits, the annual base fee per facility is:

(1) one thousand dollars ($1,000) for a major permit; and

(2) four hundred dollars ($400) for a minor permit;

plus the following annual discharge flow fee per facility based on projected daily average flow in MGD as set forth in a facility NPDES permit:

Projected Daily Average Flow in MGD		Fee
.001 -	.05	$240
.051 -	.1	$360
.101 -	.2	$840
.201 -	.3	$1,200
.301 -	.5	$1,680
.501 -	1.0	$2,060
1.001 -	2.0	$3,600
2.001 -	5.0	$5,400
5.001 -	10.0	$8,400
10.001 -	15.0	$12,000
15.001 -	30.0	$16,800
30.001 -	50.0	$22,800
50.001 -	100.0	$28,800
	> 100.0	$34,800

[As added by: P.L.1-1996, §8.]

IC 13-18-20-10 ------ NPDES permit fees: for storm water permits

(a) For storm water permits for construction activity, a fee of one hundred dollars ($100) shall be submitted with a notice of intent (NOI).

(b) For storm water permits for industrial activity, the annual fee is one hundred dollars ($100).

[As added by: P.L.1-1996, §8.]

IC 13-18-20-11 ------ NPDES permit fees: for industrial waste pretreatment permit

For an industrial waste pretreatment permit, the annual fee is three hundred fifty dollars ($350).

[As added by: P.L.1-1996, §8.]

IC 13-18-20-12 ------ NPDES permit fees: application fee

(a) When a person files an application with the department concerning a NPDES permit, including:

(1) an application for an initial permit;

(2) the renewal of a permit;

(3) the modification of a permit; or

(4) a variance from a permit;

the person must remit an application fee of fifty dollars ($50) to the department.

(b) If a person does not remit an application fee to the department, the department shall deny the person's application.

[As added by: P.L.1-1996, §8.]

IC 13-18-20-13 ------ NPDES permit fees: fee year

NPDES annual fees begin accruing January 1 of each year. The department shall assess the fees not later than January 15 of that year.

[As added by: P.L.1-1996, §8.]

IC 13-18-20-14 ------ NPDES permit fees: penalties

(a) In addition to the penalties described under:

(1) IC 13-30-4-1;

(2) IC 13-30-4-2; and

(3) IC 13-30-5-1;

if a person does not remit an annual NPDES fee or an installment established by the department under IC 13-16-2 to the department not more than sixty (60) days after the date the fee is assessed or not more than thirty (30) days after the date the installment is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the annual fee or ten percent (10%) of the installment, whichever is applicable.

(b) A delinquency charge, if applicable, is due and payable sixty (60) days after the date an annual NPDES fee is assessed or thirty (30) days after the date the installment is due.

[As amended by: P.L.2-1997, §41.]

IC 13-18-20-15 ------ NPDES permit fees: permit revocation for failure to pay

If a person does not remit an annual NPDES fee or an installment established by the department under IC 13-16-2 and any applicable delinquency charge to the department not more than ninety (90) days after the date the fee is assessed or not more than sixty (60) days after the date the installment is due, the department may revoke the person's NPDES permit. However, before the department may revoke the permit:

(1) not earlier than sixty (60) days after the date the annual NPDES fee is assessed or not earlier than thirty (30) days after the installment is due; and

(2) not later than thirty (30) days before the department revokes the permit;

the department must deliver a written notice to the person that describes what fees and delinquency charges are due and indicates that the department may revoke the person's permit for nonpayment after thirty (30) days.

[As amended by: P.L.2-1997, §42.]

IC 13-18-20-16 ------ NPDES permit fees: deposit into environmental management permit operation fund

The fees and delinquency charges established under this chapter:

(1) are payable to the department; and

(2) shall be deposited in the environmental management permit operation fund established by IC 13-15-11-1.

[As added by: P.L.1-1996, §8.]

IC 13-18-21. DRINKING WATER REVOLVING LOAN PROGRAM

IC 13-18-21-1 -------- Drinking water revolving loan program: established

The drinking water revolving loan program is established.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-2 -------- Drinking water revolving loan program: funding

(a) The drinking water revolving loan fund is established to provide money for loans and other financial assistance under this chapter to or for the benefit of participants, including forgiveness of principal if allowed under federal law.

(b) The general assembly may appropriate money to the fund. Grants or gifts of money to the fund from the federal government or other sources and the proceeds of the sale of:

(1) gifts to the fund; and

(2) loans and other financial assistance, as provided in sections 10 through 14 of this chapter;

shall be deposited in the fund.

(c) Repayments of loans and other financial assistance, including interest, premiums, and penalties, shall be deposited in the fund.

(d) The treasurer of state shall invest the money in the fund that is:

(1) not currently needed to meet the obligations of the fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from these investments shall be deposited in the fund.

(e) As an alternative to subsection (d), the budget agency may invest or cause to be invested all or part of the fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, an investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may allow disbursements by the trustee to:

(1) the department;

(2) the budget agency;

(3) a participant;

(4) the Indiana bond bank; or

(5) any person to which the department, the budget agency, or a participant is obligated, as provided in the trust agreement or indenture.

The state board of finance must approve any trust agreement or indenture before execution.

(f) Except as provided in the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), the cost of administering the fund and the program may be paid from the fund or from four percent (4%) of the money allotted to the state under 42 U.S.C. 300j-12.

(g) All money accruing to the fund and money allotted to the state under 42 U.S.C. 300j-12 is appropriated continuously for the purposes specified in this chapter.

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

[As amended by: P.L. 132-1999, §11.]

IC 13-18-21-3 -------- Drinking water revolving loan program: uses of funds

(a) Money in the fund may be used to do the following:

(1) Provide loans or other financial assistance to participants for the:

(A) planning;

(B) designing;

(C) construction;

(D) renovation;

(E) improvement;

(F) expansion; or

(G) any combination of clauses (A) through (F);

for pubic water systems that will facilitate compliance with national primary drinking water regulations applicable to public water systems under the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) or otherwise significantly further the health protection objectives of the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and other activities necessary or convenient to complete these tasks.

(2) Except as provided in the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), pay the cost of administering the fund and the program.

(3) Conduct all other activities that are allowed by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) Notwithstanding section 2(g) of this chapter, if an adequate state match is available, the department and the budget agency shall use two percent (2%) of the funds allotted to the state under 42 U.S.C. 300j-12 to provide technical assistance to participants for public water systems serving not more than ten thousand (10,000) persons in Indiana. The department and the budget agency may jointly contract with a person or persons to provide the technical assistance. Funds used under this subsection may not be used for enforcement actions.

(c) To the extent permitted by this chapter, fifteen percent (15%) of the amount credited to the fund in a state fiscal year shall be available solely for providing loan assistance to participants for public water systems regularly serving less than ten thousand (10,000) persons in Indiana, to the extent that the money can be obligated for eligible projects under the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(d) To avoid the loss of money allotted to the state under 42 U.S.C. 300j-12 et seq., the budget agency and the department shall develop and implement a strategy to assist participants in acquiring and maintaining technical, managerial, and financial capacity as contemplated by 42 U.S.C. 300g-9. This is all the legal authority required by the state for the budget agency and the department to ensure that all new community water systems and new nontransient, noncommunity water systems, as contemplated by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.), commencing operations after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each federal primary drinking water regulation in effect on the date operations commence. The department has primary responsibility to carry out this subsection.

(e) This chapter does not require the budget agency to provide a loan or other financial assistance to any participant that would cause any bonds or other obligations issued to finance the program to lose their exemption from federal income taxation.

[As amended by: P.L. 132-1999, §12.]

IC 13-18-21-4 -------- Drinking water revolving loan program: administration

The department and the budget agency shall administer and manage the fund and program in accordance with this chapter.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-5 -------- Drinking water revolving loan program: IDEM responsibilities

The department shall do the following:

(1) Manage all aspects of the program, except as provided by section 6 of this chapter.

(2) Be the point of contact in relations with the United States Environmental Protection Agency, except as provided in section 6 of this chapter.

(3) Cooperate with the budget agency in the administration and management of the program.

(4) Cooperate with the budget agency in preparing and providing program information.

(5) Review each proposed financial assistance agreement to determine whether the agreement meets the environmental and technical aspects of the program.

(6) Periodically inspect project design and construction to determine compliance with the following:

(A) This chapter.

(B) The federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(C) Construction plans and specifications.

(7) Negotiate, jointly with the budget agency, the negotiable aspects of each financial assistance agreement.

(8) If not accepted and held by the budget agency, accept and hold any letter of credit from the federal government through which the state receives grant payments for the program and disbursements to the fund.

(9) Prepare, jointly with the budget agency, annual reports concerning the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program.

(10) Submit the reports prepared under subdivision (9) to the governor and the general assembly.

(11) Enter into memoranda of understanding with the budget agency concerning the administration and management of the following:

(A) The fund.

(B) The program.

(C) The supplemental fund.

(D) The supplemental program

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-6 -------- Drinking water revolving loan program: budget agency responsibilities

The budget agency shall do the following:

(1) Manage and implement the financial aspects of the program.

(2) Cooperate with the department in the administration and management of the program.

(3) If not accepted and held by the department, accept and hold any letter of credit from the federal government through which the state receives grant payments for the program and disbursements to the fund.

(4) Be the point of contact with participants and other interested persons in preparing and providing program information.

(5) Negotiate, jointly with the department, the negotiable aspects of each financial assistance agreement.

(6) Prepare or cause to be prepared each financial assistance agreement.

(7) Execute each financial assistance agreement.

(8) Conduct or cause to be conducted an evaluation as to the financial ability of each participant to pay the loan or other financial assistance and other obligations evidencing the loans or other financial assistance, if required to be paid, and comply with the financial assistance agreement.

(9) Prepare, jointly with the department, annual reports concerning the fund and the program.

(10) Submit the reports prepared under subdivision (9) to the governor and the general assembly.

(11) Enter into memoranda of understanding with the department concerning the administration and management of the fund and the program.

[As amended by: P.L. 132-1999, §13.]

IC 13-18-21-7 -------- Drinking water revolving loan program: budget agency employment authority

The budget agency may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) bond counsel;

(D) special counsel;

(E) accountants; and

(F) any other consultants, employees, and agents;

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

(2) Fix and pay the compensation of persons employed in subdivision (1) from money:

(A) available in the fund; or

(B) otherwise made available for the program.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-8 -------- Drinking water revolving loan program: fees for services

(a) The department and the budget agency may:

(1) provide services to a participant in connection with a loan or other financial assistance, including advisory and other services; and

(2) charge a fee for services provided.

(b) The department and the budget agency may charge a fee for costs and services incurred in the review or consideration of an application for a proposed loan or other financial assistance under this chapter to or for the benefit of a participant, regardless of whether the application is approved or rejected.

(c) A political subdivision may pay fees charged under this section.

[As amended by: P.L. 132-1999, §14.]

IC 13-18-21-9 -------- Drinking water revolving loan program: priority ranking system for fund assistance

(a) The department shall use a priority ranking system to recommend loans or other financial assistance from the fund. The department shall develop the priority ranking system consistent with federal primary drinking water regulations and health protection objectives of the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) Based on the recommendations made under subsection (a), the budget agency may make loans and provide other financial assistance from the fund to or for the benefit of participants.

[As amended by: P.L. 132-1999, §15.]

IC 13-18-21-10 ------ Drinking water revolving loan program: loan conditions

The budget agency may make loans or provide other financial assistance from the fund to or for the benefit of a participant under the following conditions:

(1) The loan or other financial assistance must be used:

(A) for planning, designing, constructing, renovating, improving, and expanding public water systems and for other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish reserves or sinking funds; or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan or other financial assistance during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the loan, other financial assistance, or the administration of the fund and the program.

(2) Subject to section 15 of this chapter, upon recommendation of the budget agency, the state board of finance shall establish the interest rate or parameters for establishing the interest rate on each loan, including parameters for establishing the amount of interest subsidies.

(3) The budget agency shall establish the terms and conditions that the budget agency considers necessary or convenient to:

(A) make loans; or

(B) provide other financial assistance under this chapter.

(4) Notwithstanding any other law, the budget agency may establish and implement requirements that:

(A) apply to loans and other financial assistance to be made to participants that are not political subdivisions; and

(B) are different from, or in addition to, requirements that apply to loans and financial assistance made to political subdivisions.

[As amended by: P.L. 132-1999, §16.]

IC 13-18-21-11 ------ Drinking water revolving loan program: loan opinions and certifications

A loan or other financial assistance from the fund must be accompanied by the following:

(1) All papers and opinions required by the budget agency.

(2) Unless otherwise provided by rule, the following:

(A) An approving opinion of nationally recognized bond counsel.

(B) A certification and guarantee of signatures.

(C) A certification that, as of the date of the loan or other financial assistance:

(i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or

(ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.

(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-12 ------ Drinking water revolving loan program: financial assistance

A participant receiving a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the participant.

[As amended by: P.L. 132-1999, §17.]

IC 13-18-21-13 ------ Drinking water revolving loan program: sale of loans

The budget agency may sell loans or evidence of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund periodically at any price and on terms acceptable to the budget agency. Proceeds of sales under this section shall be deposited in the fund.

[As amended by: P.L. 132-1999, §18.]

IC 13-18-21-14 ------ Drinking water revolving loan program: pledge of loans

(a) The budget agency may pledge loans or evidence of other financial assistance and other obligations of participants evidencing the loans or other financial assistance from the fund to secure:

(1) other loans or financial assistance from the fund to or for the benefit of participants; or

(2) other loans or financial assistance from the supplemental fund to or for the benefit of participants;

to the extent allowed by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) The budget agency must approve the terms of a pledge under this section.

(c) Notwithstanding any other law, a pledge of property made under this section is binding from the time the pledge is made. Revenues, other money, or other property pledged and received are immediately subject to the lien of the pledge without any other act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:

(1) the department;

(2) the budget agency; or

(3) the fund;

regardless of whether the parties have notice of any lien.

(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the budget agency.

(e) Action taken to:

(1) enforce a pledge under this section; and

(2) realize the benefits of the pledge;

is limited to the property pledged.

(f) A pledge under this section does not create a liability or indebtedness of the state.

[As amended by: P.L. 132-1999, §19.]

IC 13-18-21-15 ------ Drinking water revolving loan program: setting interest rate

(a) In recommending to the state board of finance the interest rate or parameters for establishing the interest rate on each loan (other than a loan to a qualified entity described in

IC 13-11-2-164(b)(4)), as provided in section 10 of this chapter, the budget agency shall recommend and the state board of finance shall establish the following:

(1) A base or subsidized interest rate that:

(A) would be payable by participants other than participants described in subdivision (2) or (3); and

(B) may provide that payment of interest is not required during all or part of the estimated construction period for the public water system.

(2) A base reduced or more heavily subsidized interest rate that:

(A) is payable by a participant with median household incomes that are:

(i) not more than the state median household income for an area that is not a metropolitan area, as determined and reported periodically by the federal government; and

(ii) not less than eighty-one percent (81%) of the state median household income for an area that is not a metropolitan area; and

(B) may provide that payment of interest is not required during all or part of the estimated construction period for the public water system.

(3) A base of zero (0) or the most heavily subsidized interest rate that:

(A) would be payable on loans made to participants with median household incomes that are not more than eighty percent (80%) of the state household income for an area that is not a metropolitan area; and

(B) may provide that payment of interest is not required during all or part of the estimated construction period of the public water system.

(b) The budget agency, in recommending to the state board of finance the interest rate or parameters for establishing the interest rate on each loan (including all loans to participants that are not political subdivisions) under section 10 of this chapter, may take into account the following:

(1) Credit risk.

(2) Environmental, water quality, and health protection.

(3) Affordability.

(4) Other fiscal factors the budget agency considers relevant, including the program's cost of funds and whether the financial assistance provided to a particular participant is taxable or tax exempt under federal law.

Based on the factors set forth in subdivisions (1) through (4), more than one (1) interest rate may be established and used for loans made to different participants in the same interest rate category.

(c) In financing the program, the Indiana bond bank and the Indiana development finance authority shall issue at the budget agency's request:

(1) revenue bonds payable from and secured by participants; and

(2) loan payments made by and to participants.

The budget agency or the state board of finance is not required by this chapter to establish interest rates on loans or parameters for establishing interest rates that would cause any revenue bonds to be insecure or otherwise negatively affect the ability of the state to continue to finance the program.

[As amended by: P.L. 132-1999, §20.]

IC 13-18-21-16 ------ Drinking water revolving loan program: requisite user fees or other revenues

The budget agency shall require a participant receiving a loan or other financial assistance under this chapter to establish under applicable law and maintain sufficient user charges or other charges, fees, taxes, special assessments, or revenues available to the participant to:

(1) operate and maintain the public water system; and

(2) pay the obligations of the public water system.

[As amended by: P.L. 132-1999, §21.]

IC 13-18-21-17 ------ Drinking water revolving loan program: curing of default

(a) Notwithstanding any other law and if provided in a financial assistance agreement, a state department or state agency, including the treasurer of state, that is the custodian of money payable to a participant, other than money in payment for goods or services provided by the participant, may withhold payment of money from that participant and pay over the money to the budget agency or the Indiana bond bank, as directed by the budget director, for the purpose of curing a default. Withholding payment under this subsection may not occur until after written notice from the budget director that the participant is in default on the payment of principal or interest on a loan or evidence of other financial assistance.

(b) The withholding of payment from the participant and payment to:

(1) the budget agency; or

(2) the Indiana bond bank;

as applicable, may not adversely affect the validity of the defaulted loan or other financial assistance.

[As amended by: P.L. 132-1999, §22.]

IC 13-18-21-18 ------ Drinking water revolving loan program: authorization for joint rules

The water pollution control board and the budget agency may jointly adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-19 ------ Drinking water revolving loan program: debt authorization

(a) Notwithstanding any other law, a political subdivision may borrow money under this chapter by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision shall observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of bonds or other available money at the time the notes are due. The notes must be issued under a resolution or ordinance and the proceeds must be used to carry out the purposes specified in this chapter.

(c) A political subdivision that issues notes under subsection (b) may renew or extend the notes periodically on terms agreed to with the budget agency, and the budget agency may purchase and sell the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including any renewals or extensions, must mature:

(1) in the amounts; and

(2) at the times not exceeding four (4) years from the date of original issuance;

that are agreed to by the political subdivision and the budget agency.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue notes and sell the notes to the department and the budget agency, and the political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of the notes. The notes are:

(1) valid and binding obligations of the political subdivision;

(2) enforceable in accordance with the terms of the notes; and

(3) payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes.

(f) If the political subdivision issues bonds, all or part of the proceeds of which will be used to pay notes issued under subsection (b), the:

(1) provisions of this section; or

(2) actual issuance by a political subdivision of notes under subsection (b);

do not relieve the political subdivision of the obligation to comply with the statutory requirements for the issuance of bonds.

[As added by: P.L. 126-1997, §30.]

IC 13-18-21-20 ------ Drinking water revolving loan program: leveraged loan program authorized

(a) As an alternative to making loans or providing other financial assistance to participants, the budget agency may use the money in the fund to provide a leveraged loan program and other financial assistance programs allowed by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) to or for the benefit of participants, including using money in the fund or a supplemental fund, including the supplemental fund established by section 22 of this chapter, to enhance the obligations of participants issued for the purposes of this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 5-1.5 or another statute or a trust agreement or indenture as contemplated by IC 13-18-21-2(e); or

(ii) an account established within a fund described in item (i); or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or costs for obligations of a participant or for bonds issued by the Indiana bond bank or the Indiana development finance authority if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or part of:

(A) obligations issued by participants; or

(B) bonds issued by the Indiana bond bank or the Indiana development finance authority.

(b) The budget agency may enter into any agreements with the Indiana bond bank, the Indiana development finance authority, or participants to carry out the purposes specified in this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund. A guarantee under subsection (a)(3) does not create a liability or indebtedness of the state.

[As amended by: P.L. 132-1999, §23.]

IC 13-18-21-21 ------ Drinking water revolving loan program: supplemental drinking water assistance program established

The supplemental drinking water and wastewater assistance program is established.

[As amended by: P.L. 132-1999, §24.]

IC 13-18-21-22 ------ Drinking water revolving loan program: purpose, funding of supplemental program

(a) The supplemental drinking water and wastewater assistance fund is established to provide money for grants, loans, and other financial assistance to or for the benefit of:

(1) participants for the purposes described in section 23(1) of this chapter; and

(2) political subdivisions for the purposes described in section 23(2) of this chapter.

(b) The general assembly may appropriate money to the supplemental fund. Grants or gifts of money to the supplemental fund and proceeds of the sale of:

(1) gifts to the supplemental fund; and

(2) loans and other financial assistance, as provided in sections 25 through 29 of this chapter;

shall be deposited in the supplemental fund.

(c) Repayments of loans and other financial assistance from the supplemental fund, including interest, premiums, and penalties, shall be deposited in the supplemental fund.

(d) The treasurer of state shall invest the money in the supplemental fund that is:

(1) not currently needed to meet the obligations of the supplemental fund; and

(2) not invested under subsection (e);

in the same manner as other public money may be invested. Earnings that accrue from the investments shall be deposited in the supplemental fund.

(e) As an alternative to the investment provided for in subsection (d), the budget agency may invest or cause to be invested all or a part of the supplemental fund in a fiduciary account or accounts with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with one (1) or more trust agreements or indentures. A trust agreement or indenture may permit disbursements by the trustee to the department, the budget agency, a participant, the Indiana bond bank, or any other person as provided in the trust agreement or indenture. The state board of finance must approve the form of any trust agreement or indenture before execution.

(f) The cost of administering the supplemental fund may be paid from money in the supplemental fund.

(g) All money accruing to the supplemental fund is appropriated continuously for the purposes specified in this chapter.

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

[As amended by: P.L. 132-1999, §25.]

IC 13-18-21-23 ------ Drinking water revolving loan program: use of supplemental fund monies

Money in the supplemental fund may be used to do the following:

(1) Provide grants, loans, or other financial assistance to or for the benefit of participants for the planning, designing, acquisition, construction, renovation, improvement, or expansion of public water systems and other activities necessary or convenient to complete these tasks, whether or not those other activities are permitted by the federal Clean Water Act or the federal Safe Drinking Water Act.

(2) Provide grants, loans, or other financial assistance to or for the benefit of political subdivisions for the planning, designing, acquisition, construction, renovation, improvement, or expansion of wastewater or storm water collection and treatment systems and other activities necessary or convenient to complete these tasks, whether or not those other activities are permitted by the federal Clean Water Act or the federal Safe Drinking Water Act.

(3) Provide grants to political subdivisions for tasks associated with the development and preparation of:

(A) long term control plans;

(B) use attainability analyses; and

(C) storm water management programs.

(4) Pay the cost of administering the supplemental fund and the supplemental program.

(5) Conduct all other activities that are permitted by the federal Clean Water Act or the federal Safe Drinking Water Act.

[As amended by: P.L. 55-2001, §2.]

IC 13-18-21-24 ------ Drinking water revolving loan program: supplemental priority ranking system

The budget agency shall develop criteria to recommend grants, loans, or other financial assistance from the supplemental fund.

[As amended by: P.L. 132-1999, §27.]

IC 13-18-21-25 ------ Drinking water revolving loan program: loans or grants from supplemental fund

(a) The budget agency may make grants or loans or provide other financial assistance from the supplemental fund for the benefit of a participant under the following conditions:

(1) A grant, loan, or other financial assistance may be used:

(A) for planning, designing, acquiring, constructing, renovating, improving, or expanding public water systems, and other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish reserves or sinking funds; or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the grant, loan, or other financial assistance or the administration of the supplemental fund or the supplemental program.

(2) The budget agency must establish the terms and conditions that the budget agency considers necessary or convenient to make grants or loans or provide other financial assistance under this chapter.

(b) In addition to its powers under subsection (a), the budget agency may also make grants or loans or provide other financial assistance from the supplemental fund to or for the benefit of a political subdivision under the following conditions:

(1) A grant, loan, or other financial assistance may be used:

(A) for planning, designing, acquiring, constructing, renovating, improving, or expanding wastewater or storm water collection and treatment systems, and other activities necessary or convenient to complete these tasks;

(B) to:

(i) establish reserves or sinking funds; or

(ii) provide interest subsidies;

(C) to pay financing charges, including interest on the loan during construction and for a reasonable period after the completion of construction; or

(D) to pay the following:

(i) Consultant, advisory, and legal fees.

(ii) Other costs or expenses necessary or incident to the grant, loan, or other financial assistance or the administration of the supplemental fund or the supplemental program.

(2) A grant may be used for tasks associated with the development and preparation of:

(A) long term control plans;

(B) use attainability analyses; and

(C) storm water management programs.

(3) The budget agency must establish the terms and conditions that the budget agency considers necessary or convenient to make grants or loans or provide other financial assistance under this chapter.

[As amended by: P.L. 55-2001, §3.]

IC 13-18-21-26 ------ Drinking water revolving loan program: accompaniments to financial assistance

(a) A grant, loan, or other financial assistance from the supplemental fund must be accompanied by all papers and opinions required by the budget agency.

(b) Unless otherwise provided by rule, a loan or other financial assistance must be accompanied by the following:

(1) A certification and guarantee of signatures.

(2) A certification that, as of the date of the loan or other financial assistance, no litigation is pending challenging the validity of or entry into:

(A) the grant, loan, or other financial assistance; or

(B) any security for the loan or other financial assistance.

(c) The budget agency may require an approving opinion of nationally recognized bond counsel.

[As amended by: P.L. 132-1999, §29.]

IC 13-18-21-27 ------ Drinking water revolving loan program: financial assistance agreement required

A participant receiving a grant, loan, or other financial assistance from the supplemental fund shall enter into a financial assistance agreement. A financial assistance agreement under this section is a valid, binding, and enforceable agreement of the participant.

[As amended by: P.L. 132-1999, §30.]

IC 13-18-21-28 ------ Drinking water revolving loan program: sale of loans

(a) The budget agency may sell loans or evidences of other financial assistance and other obligations evidencing the loans or other financial assistance from the supplemental fund:

(1) periodically;

(2) at any price; and

(3) on terms acceptable to the budget agency.

(b) Proceeds of sales under this section shall be deposited in the supplemental fund, the wastewater revolving loan fund, or the fund at the direction of the budget director.

[As amended by: P.L. 132-1999, §31.]

IC 13-18-21-29 ------ Drinking water revolving loan program: sale of loans

(a) The budget agency may pledge:

(1) loans or evidences of other financial assistance; and

(2) other obligations evidencing the loans or other financial assistance;

from the supplemental fund to secure other loans or financial assistance from the fund, the wastewater revolving loan fund, or the supplemental fund for the benefit of participants.

(b) The terms of a pledge under this section must be acceptable to the budget agency.

(c) Notwithstanding any other law, a pledge of property made by the budget agency under this section is binding from the time the pledge is made. Revenues, other money, or other property pledged and thereafter received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against:

(1) the department;

(2) the budget agency; or

(3) the supplemental fund;

regardless of whether the parties have notice of any lien.

(d) A resolution, an indenture, or other instrument by which a pledge is created does not have to be filed or recorded, except in the records of the budget agency.

(e) Action taken to:

(1) enforce a pledge under this section; and

(2) realize the benefits of the pledge;

is limited to the property pledged.

(f) A pledge under this section does not create a liability or indebtedness of the state.

[As amended by: P.L. 132-1999, §32.]

IC 13-18-21-30 ------ Drinking water revolving loan program: fund may be used to secure loan program

Notwithstanding any other law, and to the extent permitted by the federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and the federal Clean Water Act, money in the fund, together with loan repayments to be deposited in the fund, may be used to secure a leveraged loan program or other financial assistance programs established in connection with the wastewater revolving loan fund established by IC 13-18-13-2.

[As added by: P.L. 104-1998, §4.]

TITLE 13. ENVIRONMENT
IC 13-19. SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT GENERALLY

IC 13-19-1. PURPOSE, POLICY, AND GOAL OF STATUTE

IC 13-19-1-1 --------- Purpose, policy and goal of statute: policy of state with respect to solid waste management methods

The policy of the state is that:

(1) source reduction;

(2) recycling; and

(3) other solid waste management alternatives;

are preferred over incineration and landfill disposal as solid waste management methods.

[As added by: P.L.1-1996, §9.]

IC 13-19-1-2 --------- Purpose, policy and goal of statute: goal of the state with respect to waste reduction; timetable

The goal of the state is to reduce the amount of solid waste incinerated and disposed of in landfills in Indiana by:

(1) thirty-five percent (35%) before January 1, 1996; and

(2) fifty percent (50%) before January 1, 2001;

through the application and encouragement of solid waste source reduction, recycling, and other alternatives to incineration and landfill disposal.

[As added by: P.L.1-1996, §9.]

IC 13-19-1-3 --------- Purpose, policy and goal of statute: policy relating to differential treatment of waste in interstate commerce

(a) The state may not impose differential treatment against solid waste involved in interstate commerce unless:

(1) authorized by federal law;

(2) differential treatment of solid waste in interstate commerce equalizes financial, regulatory, or enforcement burdens among:

(A) persons engaged in or benefitting from the interstate commerce; or

(B) any other group of persons; or

(3) the differential treatment serves a legitimate state purpose that could not be served as well by reasonably available means that did not impose differential treatment.

(b) A court may enjoin a violation of this section but may not award monetary damages or attorney's fees against any of the following:

(1) The state.

(2) A state agency.

(3) An officer or employee of the state.

[As added by: P.L.1-1996, §9.]

IC 13-19-2. ESTABLISHMENT OF SOLID WASTE MANAGEMENT BOARD

IC 13-19-2-1 --------- Establishment of SWMB: board established

The solid waste management board is established as an independent board.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-2 --------- Establishment of SWMB: membership

(a) The board consists of thirteen (13) members as follows:

(1) The following ex officio members:

(A) The commissioner of the state department of health.

(B) The director of the department of natural resources.

(C) The lieutenant governor.

(2) The following ten (10) members, who shall be appointed by the governor based on recommendations from representative constituencies:

(A) One (1) representative of agriculture.

(B) One (1) representative of manufacturing.

(C) One (1) representative of environmental interests.

(D) One (1) representative of labor.

(E) One (1) representative of local government.

(F) One (1) health professional who holds a license to practice in Indiana.

(G) One (1) representative of small business.

(H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

(I) One (1) representative of the solid waste management industry.

(J) One (1) representative of the solid waste management districts.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-3 --------- Establishment of SWMB: political affiliation

Not more than five (5) of the appointed members of the board may be members of the same political party.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-4 --------- Establishment of SWMB: ex officio representatives

An ex officio member of the board may designate in writing a technical representative to serve as a voting member of the board when the ex officio member is unable to attend a board meeting.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-5 --------- Establishment of SWMB: terms of members; filling vacancies

(a) The term of an appointed member of the board is four (4) years.

(b) The term of each member of the board continues until a successor has been appointed and qualified.

(c) If a vacancy occurs in the appointed membership of the board, the governor shall appoint a member not later than sixty (60) days after the vacancy occurs for the remainder of the unexpired term. The board shall suspend the exercise of the board's duties under this chapter or IC 13-19-3 if the vacancy has not been filled not later than sixty (60) days after the vacancy occurs.

(d) The governor may remove an appointed member of the board for cause. Cause includes the failure to attend at least two (2) board meetings within a one (1) year period.

(e) The board may not adopt a final rule under IC 13-14-8 until all members have been appointed.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-6 --------- Establishment of SWMB: compensation of members

(a) The ex officio members of the board serve without additional compensation.

(b) Each appointed member of the board is entitled to the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) The per diem and mileage are valid claims against the department.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-7 --------- Establishment of SWMB: meetings

(a) The board shall hold at least six (6) regular meetings each year at a place and time to be fixed by the board.

(b) Special meetings of the board may be called by:

(1) the chairman; or

(2) three (3) members of the board;

by delivery of written notice at the office of each member of the board.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-8 --------- Establishment of SWMB: quorum

Seven (7) members of the board, four (4) of whom must be appointed members of the board, constitute a quorum.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-9 --------- Establishment of SWMB: chair and vice-chair

The governor shall annually select:

(1) one (1) of the ten (10) appointed members of the board to serve as chairman; and

(2) another of the appointed members of the board to serve as vice chairman.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-10 -------- Establishment of SWMB: technical secretary

(a) The board shall select, from a list of three (3) qualified persons recommended by the governor, an independent third party who is not an employee of the state to serve as technical secretary of the board.

(b) During the interim between meetings of the board, the department shall do the following:

(1) Handle correspondence.

(2) Make or arrange for investigations and surveys.

(3) Obtain, assemble, or prepare reports and data as directed by the board.

(c) The technical secretary shall review all materials prepared for the board by the department to make any necessary revisions. Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary. The technical secretary is not a voting member of the board.

[As added by: P.L.1-1996, §9.]

IC 13-19-2-11 -------- Establishment of SWMB: legal counsel

(a) The board may select from a list of three (3) qualified persons recommended by the governor an independent third party who is not an employee of the state to serve as legal counsel.

(b) The legal counsel shall do the following:

(1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.

(2) Review all materials prepared for the board by the department for legal accuracy and sufficiency and direct the department to make any necessary revisions.

(c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

[As added by: P.L.1-1996, §9.]

IC 13-19-3. POWERS AND DUTIES CONCERNING SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT

IC 13-19-3-1 --------- Powers and duties concerning solid and hazardous waste management: powers of the SWMB

The solid waste management board shall do the following:

(1) Except as provided in sections 3 through 4 of this chapter, adopt rules under IC 4-22-2 to regulate solid and hazardous waste and atomic radiation in Indiana, including rules necessary to the implementation of the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), as amended.

(2) Develop operating policy concerning the activities of the department.

(3) Carry out other duties imposed by law.

[As amended by: P.L.25-1997, §14.]

IC 13-19-3-2 --------- Powers and duties concerning solid and hazardous waste management: agreed orders; review

(a) The commissioner may enter into agreed orders as provided in IC 13-30-3-6.

(b) An environmental law judge under IC 4-21.5-7 shall review orders and determinations of the commissioner.

[As added by: P.L.1-1996, §9.]

IC 13-19-3-3 --------- Powers and duties concerning solid and hazardous waste management: legislative proscriptions on SWMB rulemaking

The board may not adopt rules under section 1 of this chapter to regulate the following:

(1) The disposal of waste indigenous to the coal mining process, coal combustion fly or bottom ash, or coal combustion fly or bottom ash in mixture with flue gas desulfurization byproducts generated by coal combustion units if the material:

(A) is not included in the definition of hazardous waste or is exempt from regulation as a hazardous waste under 42 U.S.C. 6921; and

(B) is disposed of at a facility regulated under IC 14-34.

(2) The use of coal combustion fly or bottom ash, coal combustion fly or bottom ash in mixture with flue gas desulfurization byproducts generated by coal combustion units, or boiler slag if the use includes one (1) of the following uses:

(A) The extraction or recovery of materials and compounds contained within coal ash.

(B) Bottom ash as an antiskid material.

(C) Raw material for manufacturing another product.

(D) Mine subsidence, mine fire control, and mine sealing.

(E) Structural fill, when combined with cement, sand, or water to produce a controlled strength fill material.

(F) A base in road construction.

[As added by: P.L.1-1996, §9.]

IC 13-19-3-4 --------- Powers and duties concerning solid and hazardous waste management: limits on rules concerning landfill vertical expansions

Except as provided by sections 5 and 6 of this chapter, the board and the department may not adopt rules under section 1 of this chapter to:

(1) prohibit; or

(2) arbitrarily restrict;

vertical expansions of existing permitted landfills.

[As amended by: P.L.122-1996, §3.]

IC 13-19-3-5 --------- Powers and duties concerning solid and hazardous waste management: required rules concerning landfill vertical expansions

Notwithstanding federal regulations, the board and the department shall adopt rules under section 1 of this chapter that require an applicant for a vertical expansion of an existing permitted landfill to submit environmental assessments as part of the application, including the following:

(1) Hydrogeology of the existing landfill site and adjacent areas.

(2) Evaluation of groundwater.

(3) Operational history of the landfill.

(4) Identification of adjacent land uses.

[As added by: P.L.1-1996, §9.]

IC 13-19-3-6 --------- Powers and duties concerning solid and hazardous waste management: further required rules concerning landfill vertical expansions

Notwithstanding federal regulations, the board and the department shall adopt rules under section 1 of this chapter that require the applicant for a vertical expansion of an existing permitted landfill to submit design, engineering, and operational requirements, including the following:

(1) A more precise definition of the hydrogeology of the site, including a soil gas analysis.

(2) Operational requirements.

(3) Surface water control plan.

(4) Landfill gas control plan.

(5) Final cover requirements.

(6) Closure and financial assurance plans.

(7) Remedial action plan.

[As added by: P.L.1-1996, §9.]

IC 13-19-3-7 --------- Powers and duties concerning solid and hazardous waste management: use of foundry sand that meets Type III criteria without permits

The department and the boards shall allow a person to use foundry sand that meets Type III criteria under 329 IAC 10-9 for the following activities in accordance with guidance without requiring the person to obtain any permits from the department:

(1) As a daily cover for litter and vermin control at a landfill in accordance with any applicable permits issued for the landfill.

(2) As a protective cover for a landfill leachate system in accordance with any applicable permits issued for the landfill.

(3) For use as capped embankments for ground and sight barriers under ten thousand (10,000) cubic yards or embankments for airports, bridges, or overpasses.

(4) For use:

(A) in a land application operation; or

(B) as a soil amendment;

if the application or amendment does not include the operation of a landfill.

(5) As a structural fill base capped by clay, asphalt, or concrete for the following:

(A) Roads.

(B) Road shoulders.

(C) Parking lots.

(D) Floor slabs.

(E) Utility trenches.

(F) Bridge abutments.

(G) Tanks and vaults.

(H) Construction or architectural fill.

(I) Other similar uses.

(6) As a raw material constituent incorporated into another product including the following:

(A) Flowable fill.

(B) Concrete.

(C) Asphalt.

(D) Brick.

(E) Block.

(F) Portland cement.

(G) Glass.

(H) Roofing materials.

(I) Rock wool.

(J) Plastics.

(K) Fiberglass.

(L) Mineral wool.

(M) Lightweight aggregate.

(N) Paint.

(O) Plaster.

(P) Other similar products.

[As amended by: P.L.14-2000, §37.]

IC 13-19-3-7.2 ------- Powers and duties concerning solid and hazardous waste management: SWMB may adopt rules for voluntary site remediation certification

(a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 to develop a voluntary certification program for persons that remediate sites where releases of hazardous substances (as defined in IC 13-11-2-98) or petroleum (as defined in IC 13-11-2-160) have occurred.

(b) The rules adopted under this section must establish, at a minimum, the following:

(1) Eligibility criteria for certification.

(2) Criteria and procedures for suspension or revocation of certification.

(3) A certification application fee.

(c) The department may audit remediations performed by persons certified under rules adopted under this section.

[As added by: P.L.131-1997, §1.]

IC 13-19-3-8 --------- Powers and duties concerning solid and hazardous waste management: SWMB may not adopt rules regulating slag

The board may not adopt rules under section 1 of this chapter to regulate the following activities involving the legitimate use of slag generated by the production of iron or steel under Bureau of the Census Standard Industrial Classification 3312:

(1) Production of slag.

(2) Transportation of slag.

(3) Storage of slag.

(4) Processing of slag.

(5) Legitimate use of slag.

[As added by: P.L.257-2001, §1.]

IC 13-19-3-8.2 ------- Powers and duties concerning solid and hazardous waste management: IDEM may modify solid waste facility permit

The department may modify a permit to prohibit the processing or disposal of specific solid waste at:

(1) a solid waste disposal facility; or

(2) a solid waste processing facility.

[As added by: P.L.218-2001, §6.]

IC 13-19-4. GOOD CHARACTER REQUIREMENTS FOR SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT PERMITS

IC 13-19-4-1 --------- Good character requirements: applicability

This chapter does not apply to transfer stations.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-2 --------- Good character requirements: required submissions

Before an application for the issuance, renewal, transfer, or major modification of a permit described in IC 13-15-1-3 may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

(1) a disclosure statement that:

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

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

(2) all of the following information:

(A) The information concerning legal proceedings that:

(i) is required under Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

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

(B) A description of all judgments that:

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

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

(C) A description of all judgments of conviction entered against the applicant or responsible party within five (5) years before the date of submission of the

application for the violation of any state or federal environmental protection law.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-3 --------- Good character requirements: disclosure statement

(a) In a disclosure statement required by section 2 of this chapter, the applicant or responsible party shall set forth the following information:

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

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

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

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

(B) allege an act or omission that:

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

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

(4) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that have been filed against the applicant or responsible party within five (5) years before the date of submission of the application.

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

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

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

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

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

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

[As added by: P.L.1-1996, §9.]

IC 13-19-4-4 --------- Good character requirements: verification

The department may investigate and verify the information set forth in a disclosure statement required by section 2 of this chapter.

[As amended by: P.L.2-1997, §43.]

IC 13-19-4-5 --------- Good character requirements: basis for denial of application

(a) Subject to subsection (b), the commissioner may deny an application for the issuance, renewal, transfer, or major modification of a permit described in IC 13-15-1-3 if the commissioner finds that:

(1) the applicant or a responsible party has intentionally misrepresented or concealed any material fact in a statement required by section 2 or 3 of this chapter;

(2) a civil or administrative complaint described in section 3(a)(3) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(3) a criminal complaint described in section 3(a)(4) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(4) a judgment of criminal conviction described in section 3(a)(5) or 3(a)(6) of this chapter has been entered against the applicant or a responsible party within five (5) years before the date of submission of the application; or

(5) the applicant or a responsible party has knowingly and repeatedly violated any state or federal environmental protection laws.

(b) The commissioner may not deny a permit under this section based solely upon pending complaints disclosed under section 3(a)(3)(B) or 3(a)(4) of this chapter.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-6 --------- Good character requirements: mitigating factors

Before making a determination to deny an application for the issuance, renewal, transfer, or major modification of a permit under section 5 of this chapter, the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal); or

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal);

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal);

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal); or

(C) a judgment of conviction referred to in section 5(a)(4) of this chapter or IC 13-7-10.2-4(a)(4);

whether any appeal is pending.

(4) The degree of culpability of the applicant or responsible party.

(5) The applicant's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(6) The applicant's or responsible party's dissociation from any other persons or entities convicted of acts referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(7) Prior or subsequent self-policing or internal education programs established by the applicant to prevent activities referred to in section 5(a) of this chapter or IC 13-7-10.2-4(a) (before its repeal).

(8) Whether the best interests of the public will be served by denial of the permit.

(9) Any demonstration of good citizenship by the applicant or responsible party.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-7 --------- Good character requirements: requisite findings

(a) In taking action under this chapter on an application for the issuance, renewal, transfer, or major modification of a permit described in IC 13-15-1-3, the commissioner shall make separately stated findings of fact to support the action taken.

(b) The findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. However, when the commissioner denies an application, the commissioner is not required to explain the extent to which any of the mitigating factors set forth in section 6 of this chapter influenced the commissioner's determination to deny the application.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-8 --------- Good character requirements: requirements relating to prospective change of ownership

(a) This section does not apply to the transfer of ownership of a facility from a permittee whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste to a prospective owner whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste.

(b) If there is a prospective change of ownership in a facility for which a permit described in IC 13-15-1-3 is required, the prospective owner, at least one hundred eighty (180) days before the proposed change in ownership, may submit to the commissioner a disclosure statement that:

(1) includes the information required by section 3(a) of this chapter; and

(2) was executed under section 3(b) of this chapter.

(c) The commissioner:

(1) shall review the disclosure statement; and

(2) may investigate and verify the information set forth in the disclosure statement.

(d) If the commissioner determines that:

(1) the information disclosed by the disclosure statement; and

(2) any investigation by the commissioner;

would require the commissioner to deny the prospective owner's permit application if the prospective owner were applying for a permit under section 2 of this chapter, the commissioner shall disapprove the transfer of ownership of the facility to the prospective owner.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-9 --------- Good character requirements: AOPA applicability

IC 4-21.5 governs determinations, notice, hearings, and appeal of determinations under this chapter.

[As added by: P.L.1-1996, §9.]

IC 13-19-4-10 -------- Good character requirements: SWMB may adopt rules

The board may adopt rules under IC 4-22-2 to administer this chapter.

[As added by: P.L.1-1996, §9.]

IC 13-19-5. ENVIRONMENTAL REMEDIATION REVOLVING LOAN PROGRAM

IC 13-19-5-1 --------- Environmental remediation revolving loan program: established; purpose

The environmental remediation revolving loan program is established to assist in the remediation of brownfields to encourage the rehabilitation, redevelopment, and reuse of real property by political subdivisions by providing loans, forgivable loans, or other financial assistance to political subdivisions to conduct any of the following activities:

(1) Identification and acquisition of brownfields within a political subdivision as suitable candidates for redevelopment following the completion of remediation activities.

(2) Environmental assessment of identified brownfields and other activities necessary or convenient to complete the environmental assessments.

(3) Remediation activities conducted on brownfields.

(4) The clearance of real property under IC 36-7-14-12.2 or IC 36-7-15.1-7 in connection with remediation activities.

(5) Other activities necessary or convenient to complete remediation activities on brownfields.

[As amended by: P.L.119-1999, §11.]

IC 13-19-5-2 --------- Environmental remediation revolving loan program: purpose, uses of fund

(a) The environmental remediation revolving loan fund is established for the purpose of providing money for loans and other financial assistance, including grants, to or for the benefit of political subdivisions under this chapter. The fund shall be administered by the authority.

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

(c) The fund consists of the following:

(1) Appropriations made by the general assembly.

(2) Grants and gifts intended for deposit in the fund.

(3) Repayments of loans and other financial assistance, including premiums, interest, and penalties.

(4) Proceeds from the sale of loans and other financial assistance under section 9 of this chapter.

(5) Interest, premiums, gains, or other earnings on the fund.

(6) Money transferred from the hazardous substances response trust fund under IC 13-25-4-1(a)(9).

(d) The authority shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest, premiums, gains, or other earnings from these investments shall be credited to the fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the fund in a fiduciary account with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may allow disbursements by the trustee to:

(1) the authority;

(2) the Indiana bond bank; or

(3) any person to which the authority, the Indiana bond bank, or a political subdivision is obligated, including a trustee that is a financial institution for a grantor trust;

as provided in the trust agreement or indenture. The budget agency and the state board of finance must approve any trust agreement or indenture before its execution.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-3 --------- Environmental remediation revolving loan program: duties of authority

The authority shall do the following under this chapter:

(1) Be responsible for the management of all aspects of the program.

(2) Prepare and provide program information.

(3) Negotiate the negotiable aspects of each financial assistance agreement and submit the agreement to the budget agency for approval.

(4) Sign each financial assistance agreement.

(5) Review each proposed project and financial assistance agreement to determine if the project meets the credit, economic, or fiscal criteria established by rule or guidance document.

(6) Periodically inspect or cause to be inspected projects to determine compliance with this chapter.

(7) Prepare annual reports concerning the fund and the program and submit the reports to the governor and the general assembly.

(8) Enter into memoranda of understanding with the department and the budget agency concerning the administration and management of the fund and the program.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-4 --------- Environmental remediation revolving loan program: duties of budget agency

The budget agency shall do the following under this chapter:

(1) Conduct or cause to be conducted an evaluation concerning the financial ability of a political subdivision to:

(A) pay a loan or other financial assistance and other obligations evidencing loans or other financial assistance, if required to be paid; and

(B) otherwise comply with terms of the financial assistance agreement.

(2) Review and, if it will not cause long term fiscal detriment to the state, the fund, and the program, approve each financial assistance agreement.

(3) Enter into memoranda of understanding with the department and the authority concerning the administration and management of the fund and the program.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-5 --------- Environmental remediation revolving loan program: duties of IDEM

The department shall do the following under this chapter:

(1) Evaluate the technical aspects of the political subdivision's:

(A) environmental assessment of potential brownfield properties;

(B) proposed remediation; and

(C) remediation activities conducted on brownfield properties.

(2) Inspect or cause to be inspected remediation activities conducted under this chapter.

(3) Act as a liaison with the United States Environmental Protection Agency regarding the program.

(4) Be a point of contact for political subdivisions concerning technical questions about the environmental aspects of the program.

(5) Enter into memoranda of understanding with the budget agency and the authority concerning the administration and management of the fund and the program.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-6 --------- Environmental remediation revolving loan program: employment and compensation

The authority may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) bond counsel;

(D) other special counsel;

(E) accountants; and

(F) any other consultants, employees, and agents;

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

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the fund or otherwise made available for the program.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-7 --------- Environmental remediation revolving loan program: services to political subdivisions

The authority may provide services to a political subdivision in connection with a loan or other financial assistance, including advisory and other services.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-8 --------- Environmental remediation revolving loan program: priority ranking system

The authority shall develop a priority ranking system for making loans and providing other financial assistance under this chapter based on the following:

(1) Socioeconomic distress in an area, as determined by the poverty level and unemployment rate in the area.

(2) The technical evaluation by the department under section 5(1)(A) and section 5(1)(B).

(3) Other factors determined by the authority, including the following:

(A) The number and quality of jobs that would be generated by a project.

(B) Housing, recreational, and educational needs of communities.

(C) Any other factors the authority determines will assist in the implementation of this chapter.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-9 --------- Environmental remediation revolving loan program: loan requirements

(a) Based on the priority ranking system established under section 8 of this chapter, the authority may make loans or provide other financial assistance from the fund to or for the benefit of a political subdivision under this section.

(b) A loan or other financial assistance must be used for at least one (1) of the purposes under section 1 of this chapter and may be used for any of the following purposes:

(1) To establish reserves or sinking funds or provide interest subsidies.

(2) To pay financing charges, including interest on the loan or other financial assistance during remediation and for a reasonable period after the completion of remediation.

(3) To pay consultant, advisory, and legal fees, and any other costs or expenses resulting from:

(A) the assessment, planning, or remediation of a brownfield; or

(B) the loan or other financial assistance.

(c) Upon the recommendation of the authority and the approval of the budget agency, the interest rate or parameters for establishing the interest rate on each loan, including parameters for establishing the amount of interest subsidies, shall be established by the state board of finance.

(d) Not more than ten percent (10%) of the money available in the fund during a year may be loaned or otherwise provided to any one (1) political subdivision.

(e) Before a political subdivision may receive a loan or other financial assistance, includ-

ing grants, from the fund, a political subdivision must submit the following:

(1) Documentation of community and neighborhood comment concerning the use of a brownfield on which remediation activities will be undertaken after remediation activities are completed.

(2) A plan for repayment of the loan or other financial assistance, if applicable.

(3) An approving opinion of a nationally recognized bond counsel if required by the authority.

(4) A summary of the environmental objectives of the proposed project.

(f) A political subdivision that receives a loan or other financial assistance from the fund shall enter into a financial assistance agreement. A financial assistance agreement is a valid, binding, and enforceable agreement of the political subdivision.

(g) With the approval of the budget agency, the authority may sell or assign:

(1) loans or evidence of other financial assistance; and

(2) other obligations of political subdivisions evidencing the loans or other financial assistance from the fund;

at any price and on terms acceptable to the authority. Proceeds of sales or assignments under this subsection shall be deposited in the fund. A sale or an assignment under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the sale or assignment terms.

(h) The authority may pledge loans or evidences of other financial assistance and other obligations of political subdivisions evidencing the loans or other financial assistance from the fund to secure other loans or financial assistance from the fund to or for the benefit of political subdivisions. The terms of a pledge under this subsection must be approved by the budget agency. Notwithstanding any other law, a pledge of property made by the authority and approved by the budget agency under this subsection is binding from the time the pledge is made. Revenues, other money, or other property pledged and then received are immediately subject to the lien of the pledge without any further act. The lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, the department, the budget agency, a trustee, or the fund, regardless of whether the parties have notice of a lien. A resolution, an indenture, or other instrument by which a pledge is created is not required to be filed or recorded, except in the records of the authority or the budget agency. An action taken to enforce a pledge under this subsection and to realize the benefits of the pledge is limited to the property pledged. A pledge under this subsection does not create a liability or an indebtedness of the state or the authority except, in the case of the authority, strictly in accordance with the pledge terms.

[As amended by: P.L.119-1999, §12.]

IC 13-19-5-10 -------- Environmental remediation revolving loan program: authority upon default

Notwithstanding any other law and if provided in a financial assistance agreement, any state department or state agency, including the treasurer of state, that is the custodian of money payable to a political subdivision, other than money in payment for goods or services provided by the political subdivision, after written notice from the budget director that the political subdivision is in default on the payment of principal or interest on a loan or evidence of other financial assistance, may:

(1) withhold payment of money from that political subdivision; and

(2) pay over the money to the authority, a trustee that is a financial institution for a grantor trust, or the Indiana bond bank, as directed by the budget director, for the purpose of curing the default.

However, the withholding of payment from the political subdivision and payment to the authority, a trustee, or the Indiana bond bank may not adversely affect the validity of the defaulted loan or other financial assistance.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-11 -------- Environmental remediation revolving loan program: guidelines or guidance documents

The authority may adopt guidelines or guidance documents without complying with IC 4-22-2 to implement this chapter.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-12 -------- Environmental remediation revolving loan program: authority of political subdivisions

(a) Notwithstanding any other law, a political subdivision may borrow money from the authority by negotiating a loan or other financial assistance directly and without complying with requirements for the competitive sale of bonds, notes, or other obligations or evidences of indebtedness. A political subdivision must observe any existing contractual commitments to bondholders or other persons when entering into a financial assistance agreement.

(b) Notwithstanding any other law, a political subdivision may issue and sell its notes, the principal and accrued interest on which shall be paid with proceeds from the issuance of its bonds or other available money at the time the notes are due. The:

(1) notes must be issued in accordance with a resolution or an ordinance; and

(2) proceeds must be used to carry out this chapter.

(c) A political subdivision that issues notes under subsection (b) may renew or extend the notes on terms agreed to with the authority. The authority may purchase and see the renewed or extended notes. Accrued interest on the date of renewal or extension may be paid or added to the principal amount of the note being renewed or extended.

(d) The notes issued by a political subdivision under subsection (b), including renewals or extensions, mature in the amounts and at the times, not exceeding four (4) years from the date of original issuance, agreed to by the political subdivision and the authority.

(e) Compliance with subsection (b) constitutes full authority for a political subdivision to issue notes and sell the notes to the authority. The political subdivision is not required to comply with any other law applicable to the authorization, approval, issuance, and sale of its notes. The notes are valid and binding obligations of the political subdivision and are enforceable in accordance with the terms of the notes and payable solely from the sources specified in the resolution or ordinance authorizing the issuance of the notes. However, if the political subdivision issues bonds, all or part of the proceeds of which will be used to pay the notes issued under subsection (b), neither this section nor the actual issuance by a political subdivision of its notes under subsection (b) relieves the political subdivision of its obligation to comply with the statutory requirements for the issuance of its bonds.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-13 -------- Environmental remediation revolving loan program: nonloan uses of fund

(a) As an alternative to making loans or providing other financial assistance to political subdivisions, the authority, after obtaining the approval of the budget agency, may use the money in the fund or provide a leveraged loan program and other financial assistance programs to or for the benefit of political subdivisions, including using money in the fund to enhance a political subdivision's obligations under this chapter by:

(1) granting money to:

(A) be deposited in:

(i) a capital or reserve fund established under IC 5-1.5 or another law, including this chapter; or

(ii) any account established within the fund; or

(B) provide interest subsidies;

(2) paying bond insurance premiums, reserve insurance premiums, or credit enhancement, liquidity support, remarketing, or conversion fees, or other similar fees or

costs for obligations of a political subdivision or for bonds or other obligations issued by a trustee that is a financial institution for a grantor trust or by the Indiana bond bank if credit market access is improved or interest rates are reduced; or

(3) guaranteeing all or a part of obligations issued by political subdivisions or of bonds or other obligations issued by a trustee that is a financial institution for a grantor trust or by the Indiana bond bank.

(b) The authority and the budget agency may enter into any agreements with:

(1) a trustee that is a financial institution for a grantor trust;

(2) the Indiana bond bank; or

(3) political subdivisions;

to carry out this chapter.

(c) A guarantee of obligations or bonds under subsection (a)(3) must be limited to money in the fund. A guarantee under subsection (a)(3) does not create a liability or an indebtedness of the state or of the authority except, in the case of the authority, strictly in accordance with the guarantee terms.

(d) Notwithstanding any other law, the authority is considered a qualified entity for purposes of IC 5-1.5.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-14 -------- Environmental remediation revolving loan program: authority to issue and guarantee revenue bonds, notes, and other obligations

(a) Notwithstanding any other law and in addition to any other law, including IC 4-4, the authority may issue, guarantee, and sell its revenue bonds, notes, and other obligations and guarantee loans and other financial assistance in connection with the program and the fund. The revenue bonds, notes, and other obligations must be issued in accordance with a resolution of the authority on terms or within parameters established by the authority, and proceeds must be used to carry out one (1) or more of the purposes of this chapter.

(b) Compliance with this section constitutes full authority for the authority to issue and guarantee its revenue bonds, notes, and other obligations, to guarantee loans and other financial assistance, and to sell the revenue bonds, notes, and other obligations at public or private negotiated sale on terms or within parameters established by the authority. The authority is not required to comply with any other law applicable to the authorization, approval, issuance, guarantee, and sale of its revenue bonds, notes, and other obligations and guarantee loans and other financial assistance. The revenue bonds, notes, and other obligations, including guarantees, issued by the authority in connection with the program and the fund are valid and binding obligations of the authority and are enforceable in accordance with their terms and payable solely from the sources specified in the resolution authorizing their issuance, guarantee, and sale. The authority's revenue bonds, notes, and other obligations, including guarantees, do not create a liability or debt of the state.

[As added by: P.L.59-1997, §13.]

IC 13-19-5-15 -------- Environmental remediation revolving loan program: brownfield development activities

(a) The authority may deposit appropriations or other money received under this chapter after June 30, 1999, into an account of the fund. The authority shall use money deposited in the account to award forgivable loans to political subdivisions for remediation or other brownfield redevelopment activities. The authority shall, in the manner provided by section 11 of this chapter, adopt guidelines to establish a political subdivision's eligibility for a forgivable loan. The guidelines must provide priority for projects that:

(1) involve abandoned gas stations or underground storage tank issues; or

(2) are located within one-half (0.5) mile of any of the following:

(A) A child care center (as defined by IC 12-7-2-28.4).

(B) A child care home (as defined by IC 12-7-2-28.6).

(C) A child caring institution (as defined by IC 12-7-2-29).

(D) A school age child care program (as defined by IC 12-17-12-5).

(E) An elementary or a secondary school attended by students in kindergarten or grades 1 through 12.

(b) Not more than twenty percent (20%) of the total amount of loans provided for a project under this chapter may be in the form of a forgivable loan.

(c) The financial assistance agreement for a project to be financed with a forgivable loan must specify economic development or redevelopment goals for the project that must be achieved before the political subdivision will be released from its obligation to repay the forgivable loan.

[As amended by: P.L.109-2001, §2.]

IC 13-19-5-16 -------- Environmental remediation revolving loan program: remediation account; monies nonreverting

(a) The authority shall establish an account of the fund to be used only for activities for remediation of petroleum contamination. The authority may deposit appropriations or other money received under this chapter after June 30, 2001, into the account established under this subsection.

(b) Money in the account established under subsection (a) does not revert to the environmental remediation revolving loan fund at the end of a fiscal year.

[As added by: P.L.291-2001, §118.]

TITLE 13. ENVIRONMENT
IC 13-20. SOLID WASTE MANAGEMENT

IC 13-20-1. DEMONSTRATION OF NEED FOR SOLID WASTE MANAGEMENT FACILITIES

IC 13-20-1-1 --------- Demonstration of need: applicability

This chapter does not apply to an individual, a corporation, a partnership, or a business association that in its regular business activity:

(1) produces solid waste as a byproduct of or incidental to its regular business activity; and

(2) disposes of the solid waste at a site that meets the following conditions that is:

(A) owned by the individual, corporation, partnership, or business association; and

(B) limited to use by that individual, corporation, partnership, or business association for the disposal of solid waste produced by:

(i) that individual, corporation, partnership, or business association; or

(ii) a subsidiary of an entity referred to in item (i).

[As amended by: P.L.218-2001, §7.]

IC 13-20-1-2 --------- Demonstration of need: requirement

A person that applies for a permit described in IC 13-15-1-3 that concerns a solid waste management facility must demonstrate that there is a local or regional need in Indiana for the facility.

[As added by: P.L.1-1996, §10.]

IC 13-20-1-3 --------- Demonstration of need: descriptions to be submitted

A person that applies for a permit referred to in section 2 of this chapter must submit the following information to the department along with the permit application:

(1) A description of the area that would be served by the solid waste management facility.

(2) A description of existing solid waste management facilities in the area that would be served by the solid waste management facility.

(3) A description of the need that would be fulfilled by constructing the solid waste management facility.

[As added by: P.L.1-1996, §10.]

IC 13-20-1-4 --------- Demonstration of need: permit denial

If the department determines that there is not a local or regional need in Indiana for the solid waste management facility, the person referred to in section 2 of this chapter may not receive a permit described under IC 13-15-1-3 of this chapter. If a permit is denied under this subsection, the department must provide the person referred to in section 2 of this chapter with a statement describing the reasons the department denied the permit.

[As added by: P.L.1-1996, §10.]

IC 13-20-1-5 --------- Demonstration of need: SWMB to adopt rules

The solid waste management board shall adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-2. PERMITS FOR SOLID WASTE LANDFILLS

IC 13-20-2-1 --------- Permits for solid waste landfills: financial statement required

Before an original permit for the construction or operation of a landfill may be granted, the applicant must submit a statement of financial position that meets the following requirements:

(1) The statement must have been prepared in accordance with generally accepted accounting principles.

(2) The statement must have been audited by an independent certified public accountant.

(3) The accountant referred to in subdivision (2) must have issued an unqualified opinion as to the statement.

(4) The statement must indicate that, at the end of the calendar year or fiscal year immediately preceding the year in which the permit would be issued, the applicant had a positive net worth of at least two hundred fifty thousand dollars ($250,000).

[As added by: P.L.1-1996, §10.]

IC 13-20-2-2 --------- Permits for solid waste landfills: certain outstanding judgments to be reported

Before an original permit for the construction or operation of a landfill may be granted, the applicant or a person authorized to act for the applicant under this section must submit a statement in which the applicant or authorized person swears or affirms, subject to the penalty for perjury set forth in IC 35-44-2-1, that, to the best of the applicant's or authorized person's knowledge, there are no unsatisfied and nonappealable judgments requiring the payment of money by the applicant.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-3 --------- Permits for solid waste landfills: submission by subsidiary

If the applicant is a subsidiary corporation, the submission of the statement of financial position of the ultimate parent satisfies the requirement under section 1 of this chapter if the applicant has been a subsidiary of the parent for at least one (1) year before the submission of the statement of financial position.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-4 --------- Permits for solid waste landfills: IDEM may verify statements

The department may investigate and verify the information contained in the statements required by this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-5 --------- Permits for solid waste landfills: basis for denial of permit application

The commissioner may deny an application for an original permit for the construction or operation of a landfill if the commissioner finds that:

(1) the applicant does not have a positive net worth of at least two hundred fifty thousand dollars ($250,000); or

(2) there is at least one (1) unsatisfied and nonappealable judgment requiring the payment of money by the applicant.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-6 --------- Permits for solid waste landfills: valuation of property

For the purposes of this chapter, real property in which the applicant has an interest must be valued at the property's fair market value as determined under the assumption that the permit application will not be granted.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-7 --------- Permits for solid waste landfills: SWMB may adopt rules

The solid waste management board may adopt rules under IC 4-22-2 to administer this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-2-8 --------- Permits for solid waste landfills: notification of county official when legal action filed

If a legal action is filed that:

(1) names the department or a representative of the department as a party to the action; and

(2) concerns an application that has been filed with the department to obtain an original permit or a permit renewal for a solid waste landfill;

the department shall notify the county executive of the county in which the solid waste landfill is or would be located that the legal action has been filed.

[As added by: P.L.1-1996, §10.]

IC 13-20-3. SOLID WASTE MANAGEMENT REPORTING

IC 13-20-3-1 --------- Solid waste management reporting: certification of origin of waste by hauler

(a) A solid waste hauler that takes solid waste to a transfer station or a final disposal facility located in Indiana shall certify to the owner or operator of the transfer station or final disposal facility the county and state of origin of the largest part of the solid waste by weight. If a transfer station or a final disposal facility does not have a scale suitable for weighing the solid waste received at the transfer station or final disposal facility, the following conversion factors shall be used to determine the weight of the solid waste by conversion from the volume of the solid waste:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

(b) The owner or operator of a transfer station or final disposal facility who receives certified statements under subsection (a) shall do the following:

(1) Retain the statements for one (1) year.

(2) File quarterly reports with the department that state the county and state of origin of the largest part of the solid waste by weight received at the facility during the reporting period.

[As added by: P.L.1-1996, §10.]

IC 13-20-3-2 --------- Solid waste management reporting: records of waste taken out of state by hauler

(a) A solid waste hauler that collects solid waste in Indiana and takes the solid waste to a transfer station or final disposal facility outside Indiana shall maintain records for at least one (1) year that identify, for each shipment, the county and state of origin of the largest part of the solid waste by volume.

(b) Each solid waste hauler who is required to maintain records under subsection (a) shall file quarterly reports with the department that:

(1) state the location of each out-of-state transfer stationor final disposal facility; and

(2) identify the volume of solid waste from each county and state taken to the transfer station or final disposal facility during the reporting period.

[As added by: P.L.1-1996, §10.]

IC 13-20-3-3 --------- Solid waste management reporting: records of secondary haulers

A hauler that:

(1) is required to make a certification or report under section 1 or 2 of this chapter concerning the origin of the solid waste; and

(2) did not collect the solid waste at the point of origin;

may satisfy the requirements of sections 1 and 2 of this chapter concerning a certification or report of origin of the solid waste by presenting a certification from the owner or operator of the facility at which the solid waste was picked up that indicates the county and state of origin of the largest part of the solid waste. The department shall establish procedures that allow the use of average figures in making the certification.

[As added by: P.L.1-1996, §10.]

IC 13-20-3-4 --------- Solid waste management reporting: exceptions to requirements

The requirements of sections 1 and 2 of this chapter do not apply to haulers and owners or operators engaged in transporting or disposing of solid waste that is:

(1) generated by a person; and

(2) disposed of at a site that is:

(A) owned by the person; and

(B) limited, for the purposes of the disposal of solid waste, to use by the person for the disposal of solid waste generated by the person.

[As added by: P.L.1-1996, §10.]

IC 13-20-3-5 --------- Solid waste management reporting: SWMB to adopt rules

The board shall adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-4. MUNICIPAL WASTE COLLECTION AND TRANSPORTATION REQUIREMENTS

IC 13-20-4-1 --------- Municipal waste collection and transport: applicability

This chapter does not apply to a vehicle used exclusively to transport municipal waste that is:

(1) generated by a person; and

(2) disposed of at a site that is:

(A) owned by the person; and

(B) for the purposes of solid waste disposal, may only be used by the person for the disposal of solid waste generated by the person.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-2 --------- Municipal waste collection and transport: IDEM to operate registration program

The department shall operate a municipal waste collection and transportation vehicle registration program.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-3 --------- Municipal waste collection and transport: vehicle registration required

(a) A person engaged in the collection and transportation of municipal waste must have a valid municipal waste collection and transportation vehicle registration.

(b) A person engaged in the collection and transportation of municipal waste may apply for a municipal waste collection and transportation vehicle registration by completing and filing with the department, on a form provided by the department, information necessary for the department to implement this chapter and IC 13-20-6.

(c) Not later than thirty (30) days after receipt of a properly completed municipal waste collection and transportation vehicle registration application, the department shall issue to the applicant:

(1) a municipal waste collection and transportation vehicle registration; and

(2) vehicle identification stickers;

for each municipal waste collection and transportation vehicle owned, leased, or operated by the applicant.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-4 --------- Municipal waste collection and transport: registration term; renewal

(a) A municipal waste collection and transportation vehicle registration issued under this chapter is valid for two (2) years from the date the registration is issued.

(b) A municipal waste collection and transportation vehicle registration may be renewed by completing and filing with the department, on a form provided by the department, a renewal application at least thirty (30) days before the expiration of the registration.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-5 --------- Municipal waste collection and transport: multi-vehicle registration

(a) A person who owns, leases, or operates more than one (1) municipal waste collection and transportation vehicle must obtain one (1) municipal waste collection and transportation vehicle registration listing all municipal waste collection and transportation vehicles owned, leased, or operated by the person.

(b) A person described under subsection (a) must notify the department not later than thirty (30) days after the person acquires or disposes of a municipal waste collection and transportation vehicle. The department shall promptly issue the person the required number of new vehicle identification stickers.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-6 --------- Municipal waste collection and transport: carrying of registration; display of sticker

(a) The person to whom a municipal waste collection and transportation vehicle registration is issued must carry a copy of the current registration at all times on each municipal waste collection and transportation vehicle owned, leased, or operated by the person.

(b) Vehicle identification stickers provided by the department, indicating that the vehicle carries municipal waste, must be affixed adhesively at all times in a prominent location:

(1) on each side of each registered municipal waste collection and transportation vehicle's cargo compartment; or

(2) at the option of the person to whom the registration is issued, on each side of a truck cab of a vehicle.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-7 --------- Municipal waste collection and transport: municipal waste transport manifest

(a) This section applies to the transportation of municipal waste from solid waste processing facilities.

(b) A shipment of municipal waste in a municipal waste collection and transportation vehicle must be accompanied by a municipal waste transportation manifest.

(c) A manifest required under subsection (b) must include the following information:

(1) The amount in tons of municipal waste transported in the vehicle.

(2) The name and address of the solid waste processing facility from which the municipal waste is transported.

(3) The destination of the municipal waste.

(4) The name of the person transporting the municipal waste.

(5) If the municipal waste is transported from a transfer station that receives municipal waste, the identity of and acknowledgement number issued by the department under IC 13-20-6-5 or IC 13-7-10.5-14 (before its repeal) to the following:

(A) The transporter of the municipal waste.

(B) The transfer station from which the municipal waste is transported.

(C) A broker involved in the transportation of the municipal waste.

(d) The owner or operator of the solid waste processing facility from which municipal waste is to be transported shall:

(1) prepare the manifest required by subsection (b); and

(2) deliver the manifest to the operator of the vehicle.

(e) The operator of the vehicle shall:

(1) carry the manifest while transporting the municipal waste; and

(2) present the manifest to the owner or operator of the facility to which the municipal waste is transported.

(f) The owner or operator of the facility to which the municipal waste is transported shall:

(1) retain each manifest for one (1) year; and

(2) send one (1) copy of each manifest to the department not later than three (3) months after receiving a manifest for at least one (1) year.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-9 --------- Municipal waste collection and transport: prohibition

A person may not operate a vehicle if the vehicle does not comply with the requirements of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-10 -------- Municipal waste collection and transport: vehicle inspection

(a) The department may inspect a vehicle for the purpose of determining compliance with this chapter.

(b) The department may:

(1) inspect a vehicle that is not moving; and

(2) not stop a vehicle that is in motion on a public highway (as defined in IC 9-25-2-4) only to conduct an inspection;

under subsection (a).

[As added by: P.L.1-1996, §10.]

IC 13-20-4-11 -------- Municipal waste collection and transport: duties of facility accepting municipal waste

A solid waste disposal facility or a solid waste processing facility may not accept a shipment of municipal waste:

(1) from a municipal waste collection and transportation vehicle that does not have vehicle identification stickers properly affixed as required by section 6 of this chapter; and

(2) that is not accompanied by a municipal waste transportation manifest as required by section 7 of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-12 -------- Municipal waste collection and transport: processing facility must manifest waste

A solid waste processing facility may not transport municipal waste to:

(1) another solid waste processing facility; or

(2) a solid waste disposal facility;

unless the municipal waste is accompanied by a municipal waste transportation manifest required by section 7 of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-13 -------- Municipal waste collection and transport: local government authority not affected

This chapter does not preclude, restrict, or supersede the right of:

(1) a county in Indiana;

(2) a municipality in Indiana; or

(3) a solid waste management district established under Indiana law;

to regulate or license a solid waste collection and transportation vehicle under authority granted by statute or by an ordinance adopted under IC 36.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-14 -------- Municipal waste collection and transport: fees

(a) The department shall charge the following fees:

(1) One hundred dollars ($100) to:

(A) issue; or

(B) renew;

a vehicle registration under this chapter.

(2) One dollar and fifty cents ($1.50) per vehicle for vehicle identification stickers.

(3) Fifty cents ($0.50) for a municipal waste transportation manifest.

(b) Fees collected under this section shall be deposited in the municipal waste transportation fund established by section 15 of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-4-15 -------- Municipal waste collection and transport: municipal waste transportation fund established

(a) The municipal waste transportation fund is established to assist the department to implement this chapter. The department shall administer the fund.

(b) Sources of money for the fund are fees collected under section 14 of this chapter.

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

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

[As added by: P.L.1-1996, §10.]

IC 13-20-4-16 -------- Municipal waste collection and transport: SWMB may adopt rules

The solid waste management board may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-5. REQUIREMENTS FOR TRANSPORTING SOLID WASTE TO FINAL DISPOSAL FACILITY

IC 13-20-5-1 --------- Requirements for transporting solid waste to final disposal facility: applicability

This chapter does not apply to the disposal of solid waste by a person that:

(1) generated the solid waste; and

(2) disposes of the solid waste at a site that is:

(A) owned by the person; and

(B) limited, for purposes of the disposal of solid waste, to use by the person for the disposal of solid waste generated by the person.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-2 --------- Requirements for transporting solid waste to final disposal facility: documents required

Upon transporting solid waste in a vehicle to a final disposal facility in Indiana for disposal, the operator of the vehicle shall present to the owner or operator of the facility the following:

(1) A written statement that the owner or operator shall retain for one (1) year, in which the vehicle operator certifies, under oath or affirmation and subject to the penalty for perjury under IC 35-44-2-1, the:

(A) county in Indiana; or

(B) state, if a state other than Indiana;

in which the largest part of the solid waste was generated.

(2) If the largest part of the solid waste was generated in a state other than Indiana, a document in which an officer of a state or local government who has responsibility in the other state for the protection of public health or the environment certifies that the part of the solid waste generated in that state is not subject to regulation as:

(A) hazardous waste under the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

(B) infectious waste under IC 16-41-16.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-3 --------- Requirements for transporting solid waste to final disposal facility: obligation of facility owner/operator re §2(1)

If the operator of a vehicle does not present a written statement to the owner or operator of a final disposal facility as required by section 2(1) of this chapter, the owner or operator may not permit the disposal in the final disposal facility of the solid waste transported in the operator's vehicle.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-4 --------- Requirements for transporting solid waste to final disposal facility: obligation of facility owner/operator re §2(2)

If:

(1) the operator of a vehicle presents the owner or operator of a final disposal facility with a written statement as required by section 2(1) of this chapter;

(2) the written statement indicates that the largest part of the solid waste transported in the vehicle was generated in a state other than Indiana; and

(3) the vehicle operator does not present the owner or operator with a document that meets the requirements set forth in section 2(2) of this chapter;

the owner or operator may not permit the disposal in the final disposal facility of the solid waste transported in the operator's vehicle.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-5 --------- Requirements for transporting solid waste to final disposal facility: generating county or state

For purposes of the collection of fees under IC 13-20-22, the county or state identified in the written statement presented under section 2(1) of this chapter with respect to a quantity of solid waste transported in a vehicle is considered the county or state in which the entire quantity of solid waste was generated.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-6 --------- Requirements for transporting solid waste to final disposal facility: exemption by reason of local agreement

A document referred to in section 2(2) of this chapter is not required from a vehicle operator who transports solid waste to a final disposal facility if:

(1) the:

(A) county executive of the county; or

(B) board of directors of the solid waste management district;

in which the final disposal facility is located has entered into an agreement concerning solid waste management with a governmental unit that is, or that is located within, a county that is contiguous to Indiana but within another state;

(2) the agreement provides for solid waste generated within that governmental unit to be disposed of in the final disposal facility without the need for a document referred to in section 2(2) of this chapter; and

(3) the written statement presented by the vehicle operator under section 2(1) of this chapter certifies that the largest part of the solid waste in the vehicle was generated in that governmental unit.

[As added by: P.L.1-1996, §10.]

IC 13-20-5-7 --------- Requirements for transporting solid waste to final disposal facility: exemption issued by the commissioner

(a) A document referred to in section 2(2) of this chapter is not required from a vehicle operator who transports solid waste to a final disposal facility if the solid waste is subject to an exemption issued by the commissioner under this section.

(b) The commissioner may exempt from the requirement set forth in section 2(2) of this chapter solid waste that is generated in a county that is contiguous to Indiana but within another state and that is transported into Indiana for final disposal by a particular person if the commissioner determines that the disposal of the solid waste in Indiana will not:

(1) impair the long term disposal capacity of Indiana; or

(2) impair the health and safety of the people of Indiana.

(c) A person that is a transporter or prospective transporter of solid waste may apply for an exemption under this section.

[As added by: P.L.1-1996, §10.]

IC 13-20-6. REQUIREMENTS FOR MUNICIPAL WASTE TRANSFER ACTIVITIES

IC 13-20-6-1 --------- Requirements for municipal waste transfer activities: applicability; exemption for onsite disposal

This chapter does not apply to a person who:

(1) generates municipal waste on a site owned or operated by the person; and

(2) disposes of the municipal waste at a site that:

(A) is owned or operated by the person; and

(B) for the purpose of municipal waste disposal, may only be used by the person to dispose of municipal waste generated by the person.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-2 --------- Requirements for municipal waste transfer activities: disclosure statement required prior to engaging in municipal waste transfer activities

(a) Before an operator engages in municipal waste transfer activities, the operator and each responsible party must submit a disclosure statement to the department that:

(1) meets the requirements set forth in subsection (b); and

(2) is executed under subsection (c).

(b) The disclosure statement required under this section must set forth the following information:

(1) The name, business address, and Social Security number or federal taxpayer identification number of the operator or responsible party.

(2) A description of the operator's or responsible party's experience in the collection, transportation, and disposal of municipal waste.

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

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

(B) allege an act or omission that:

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

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

within five (5) years before the date of the submission of the disclosure document.

(4) A description of all pending criminal complaints alleging the violation of a state or federal environmental protection law that have been filed against the operator or responsible party within five (5) years before the date of submission of the disclosure statement.

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

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

(7) A description of federal, state, and local environmental permits, including identification numbers, that the operator or responsible party holds.

(c) A disclosure statement submitted under subsection (a) must be:

(1) executed under oath or affirmation; and

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

(d) The department may investigate and verify the information set forth in a statement required under this section.

(e) Before December 31 of each year, an operator or a responsible party who has submitted a disclosure statement under this section must submit to the department a statement that:

(1) describes changes that have:

(A) occurred since the filing of the disclosure statement; and

(B) made the information contained in the disclosure statement no longer current; or

(2) indicates that no changes described in subdivision (1) have occurred.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-3 --------- Requirements for municipal waste transfer activities: basis for suspension

(a) The commissioner may order a suspension of an operator's waste transfer activities if the commissioner finds that any of the following have occurred:

(1) The operator or a responsible party has intentionally misrepresented or concealed a material fact in a disclosure statement or an annual update of a disclosure statement required under section 2 of this chapter.

(2) A civil or administrative complaint described in section 2 (b)(3) of this chapter has been filed against the operator or a responsible party within five (5) years before the date of submission of the disclosure statement or an annual update of a disclosure statement.

(3) A criminal complaint described in section 2(b)(4) of this chapter has been filed against the operator or a responsible party within five (5) years before the date of submission of the disclosure statement or an annual update of a disclosure statement.

(4) A judgment of criminal conviction described in section 2 (b)(5) or 2(b)(6) of this chapter has been entered against the operator or a responsible party within five (5) years before the date of submission of the disclosure statement or an annual update of a disclosure statement.

(5) The operator or a responsible party has knowingly and repeatedly violated a state or federal environmental protection law.

(b) Before making a determination to order the suspension of an operator's waste transfer activities under subsection (a), the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the operator or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in subsection (a)(2); or

(B) a criminal complaint referred to in subsection (a)(3);

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in subsection (a)(2);

(B) a criminal complaint referred to in subsection (a)(3); or

(C) a judgment of conviction referred to in subsection (a)(4);

whether any appeal is pending.

(4) The degree of culpability of the operator or responsible party.

(5) The operator's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in subsection (a)(2) through (a)(5).

(6) The operator's or responsible party's dissociation from any other persons or entities convicted of acts referred to in subsection (a)(2) through (a)(5).

(7) Prior or subsequent self-policing or internal education programs established by the operator or responsible party to prevent activities referred to in subsection (a).

(8) Any demonstration of good citizenship by the operator or responsible party.

(9) If the best interests of the public would be served by precluding the operator from engaging in waste transfer activities.

(c) The commissioner shall make separately stated findings of fact to support a finding made under this section.

(d) The findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. However, the commissioner is not required to explain the extent to which any of the mitigating factors described under subsection (b) influenced the commissioner's finding.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-4 --------- Requirements for municipal waste transfer activities: procedures for suspension

(a) The commissioner may, by order, do the following:

(1) Suspend the waste transfer activities of an operator who is not a resident of Indiana if the operator is not properly licensed, certified, or permitted to conduct waste transfer activities in another state in which the operator does business.

(2) Suspend the waste transfer activities of a transfer station that does not meet the requirements of the inspection program established under section 7 of this chapter.

(b) An order issued by the commissioner under this section requiring an operator or transfer station to suspend operations must contain the date by which waste transfer activities must be suspended.

(c) After issuing an order requiring an operator or transfer station to suspend waste transfer activities but before the date by which the activities must be suspended, the department must provide notice by certified mail, return receipt requested, to the following:

(1) Each regulated solid waste processing facility in Indiana.

(2) Each regulated solid waste disposal facility in Indiana.

(3) Each broker and transporter that has submitted a disclosure statement under section 2 of this chapter.

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

(1) The name of the operator or transfer station subject to the order.

(2) The date on which waste transfer activities are suspended under the order.

(3) The acknowledgement number issued to the operator under section 5 of this chapter.

(4) If the order applies to a transfer station, the location of the transfer station.

(e) Upon a determination by the commissioner that an operator previously ordered to suspend waste transfer activities may engage again in waste transfer activities, the department shall immediately provide notice by certified mail, return receipt requested, to each:

(1) regulated solid waste processing facility in Indiana;

(2) regulated solid waste disposal facility in Indiana; and

(3) broker and transporter that submitted a disclosure statement under section 2 of this chapter;

that the operator or transfer station will be allowed to resume waste transfer activities. The notice required under this subsection must contain the date on which the operator or transfer station will be allowed to resume waste transfer activities.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-5 --------- Requirements for municipal waste transfer activities: issuance of acknowledgement number

When an operator or responsible party submits an initial disclosure statement or an annual update of a disclosure statement to the department under this chapter, the department shall send a letter to the operator or responsible party that:

(1) acknowledges the receipt of the disclosure statement; and

(2) contains an acknowledgement number issued to the operator by the department.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-6 --------- Requirements for municipal waste transfer activities: nonresident operators

An operator who is not a resident of Indiana:

(1) shall post a surety bond with the department in an amount and at a time that is:

(A) determined under rules adopted by the board; and

(B) necessary to ensure the collection and payment of any civil penalties that the operator may be required to pay in Indiana because of the solid waste transfer activities of the operator; and

(2) is considered to appoint the secretary of state as the operator's agent for purposes of service of process in connection with any matter involving solid waste transfer activities.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-7 --------- Requirements for municipal waste transfer activities: uniform transfer station inspection program establishment; fees

(a) The department shall establish a uniform transfer station inspection program to protect the health of the residents of Indiana and the environment of Indiana:

(1) for transfer stations located:

(A) inside Indiana; and

(B) outside Indiana;

that receive municipal waste and that engage in waste transfer activities; and

(2) under rules adopted by the solid waste management board.

(b) The solid waste management board shall establish fees payable by the transfer stations inspected. The amount of a fee imposed for the inspection of a transfer station may not exceed the cost of time and materials directly expended by:

(1) the department; or

(2) a contractor hired by the department;

for conducting the inspection of the transfer station.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-8 --------- Requirements for municipal waste transfer activities: prohibited activities

(a) An operator who is not a resident of Indiana or a transfer station may not engage in waste transfer activities while the operator or transfer station is suspended from engaging in waste transfer activities under section 3 or 4 of this chapter.

(b) On or after the effective date established under a rule adopted by the board, a solid waste disposal facility or a solid waste processing facility located inside Indiana may not knowingly accept municipal waste from a transfer station located inside of or outside of Indiana that receives municipal waste if:

(1) the municipal waste is not accompanied by a manifest that contains the information required under IC 13-20-4-7; or

(2) the person who manages the solid waste disposal facility or solid waste processing facility has received notice under section 4(c) of this chapter that:

(A) the transfer station that shipped the municipal waste; or

(B) an operator listed on the manifest;

has been suspended from engaging in waste transfer activities under this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-6-9 --------- Requirements for municipal waste transfer activities: SWMB to adopt rules

The solid waste management board shall adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-8. REGULATION OF SOLID WASTE INCINERATION

IC 13-20-8-1 --------- Regulation of solid waste incineration: SWMB to adopt rules

The solid waste management board shall adopt rules under IC 4-22-2 to regulate the construction and operation of incinerators under IC 13-14-8. The rules must incorporate by reference pertinent rules adopted by the air pollution control board.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-2 --------- Regulation of solid waste incineration: requirements to be included in rule

The rules adopted by the board under this chapter must establish requirements for applications for incinerator permits to be issued under this chapter. The rules must require that an application include the following:

(1) An engineering description of the following:

(A) The proposed incinerator.

(B) All related solid waste processing and pollution control equipment.

(2) A description of the operating characteristics of the proposed incinerator.

(3) A narrative comparing the emissions of the proposed incinerator with those of other proven and operating incinerator designs.

(4) A description of control and air monitoring instrumentation for the proposed incinerator.

(5) A description of safety, testing, and maintenance procedures for the proposed incinerator, including:

(A) emergency shutdown if a system malfunctions;

(B) a maintenance schedule; and

(C) emissions testing and reporting.

(6) A pre-operational emissions test plan for the proposed incinerator, including methods of stack sampling and analysis, to establish that the incinerator meets regulatory emission standards.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-3 --------- Regulation of solid waste incineration: additional requirements to be included in rule

The rules adopted by the board under this chapter concerning the operation of incinerators must require compliance with applicable air pollution control standards and must include the following provisions:

(1) Control levels for acid gas, sulfur dioxide, oxides of nitrogen, hydrocarbons, particulates, and other contaminants for which control levels are established by the air pollution control board or the solid waste management board.

(2) Requirements for the sampling and analysis of incineration residues.

(3) Pre-operational requirements.

(4) Requirements for operational safeguards to ensure exclusion from the incinerator of any hazardous wastes subject to regulation under IC 13-22.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-4 --------- Regulation of solid waste incineration: further requirements to be included in rule

The rules concerning the operation of incinerators must allow a reasonable period of time for temporary operation of an incinerator and associated equipment for the following:

(1) Post-construction adjustment and testing.

(2) Performing the pre-operational emissions test required under section 5 of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-5 --------- Regulation of solid waste incineration: IDEM to operate permit program

(a) The department, in accordance with IC 13-15, shall operate a permit program for all incinerators subject to regulation under the rules of the air pollution control board and the solid waste management board.

(b) The department shall issue permits for an incinerator that is in compliance with construction and operating rules adopted by the solid waste management board and the air pollution control board.

(c) The department shall grant operating authority under a permit issued by the department only after the owner of the incinerator has:

(1) complied with all construction and pre-operational standards established by pertinent rules; and

(2) submitted the results of a pre-operational emissions test that demonstrate that the incinerator's performance complies with all pertinent rules.

(d) The pre-operational emissions test required by this section shall be conducted under the supervision of the department. In addition, the report of the results of the pre-operational emissions test must contain a certification that the test was performed in compliance with the following:

(1) All pertinent rules.

(2) The pre-operational emissions test plan submitted with the permit application.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-6 --------- Regulation of solid waste incineration: provisions to be included in permit

A permit issued under this chapter for the operation of an incinerator must include:

(1) a provision requiring the permit holder to notify the department and appropriate local government officials of:

(A) any release of a contaminant in a quantity exceeding a control level established under section 3 of this chapter;

(B) any violation of operating requirements established in the permit;

(C) any unscheduled shutdown of the incinerator or associated equipment; or

(D) any damage to the incinerator or associated equipment that could, if unrepaired, result in a release of a contaminant in a quantity exceeding a control level established under section 3 of this chapter; and

(2) a provision requiring that the notification be given not later than twenty-four (24) hours after the permit holder learns of the release, violation, shutdown, or damage.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-7 --------- Regulation of solid waste incineration: enforcement; penalties

(a) This chapter shall be enforced under IC 13-30-3.

(b) A violation of this chapter or a rule adopted under this chapter is subject to the penalties set forth in the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-8 --------- Regulation of solid waste incineration: exception from requirements

A permit is not required under this chapter for the incineration of a solid waste in an incinerator operated as a hazardous waste facility under IC 13-22 if the permit issued for the incinerator under IC 13-22 authorizes the incineration of the solid waste in the incinerator.

[As added by: P.L.1-1996, §10.]

IC 13-20-8-9 --------- Regulation of solid waste incineration: notification to waste-to-energy facility

(a) A generator that ships solid waste to a waste-to-energy facility must, before the facility accepts the solid waste, notify the facility if the solid waste meets any of the following criteria:

(1) The solid waste contains:

(A) a volatile:

(i) liquid; or

(ii) solid;

(B) a powder;

(C) a flammable material;

(D) an allergen; or

(E) a sensitizer.

(2) The solid waste:

(A) was segregated from other solid waste; or

(B) received special preparation for shipment.

(3) The solid waste is a bulk material.

(4) The solid waste is a waste resulting directly from a manufacturing process.

(b) The notification under subsection (a) is required before each shipment by a generator of solid waste in bulk quantities to a waste-to-energy facility.

[As added by: P.L.218-2001, §8.]

IC 13-20-9. RESTRICTIONS ON DISPOSAL OF VEGETATIVE MATTER

IC 13-20-9-1 --------- Restrictions on disposal of vegetative matter: applicability

This chapter does not apply to the following:

(1) The use of vegetative matter resulting from landscaping maintenance and land clearing projects that, after composting, is used as cover material for a solid waste landfill.

(2) The deposit into a solid waste landfill of:

(A) grass;

(B) woody vegetative matter that is:

(i) less than three (3) feet in length; and

(ii) bagged, bundled, or otherwise contained; or

(C) de minimis amounts of vegetative matter that are:

(i) less than three (3) feet in length;

(ii) bagged, bundled, or otherwise contained; and

(iii) not set out separately for collection and disposal.

[As added by: P.L.1-1996, §10.]

IC 13-20-9-2 --------- Restrictions on disposal of vegetative matter: prohibition

Except as provided in section 4 of this chapter, a person may not knowingly deposit vegetative matter resulting from landscaping maintenance and land clearing projects in a solid waste landfill.

[As added by: P.L.1-1996, §10.]

IC 13-20-9-3 --------- Restrictions on disposal of vegetative matter: SWMB may adopt rules

The solid waste management board may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-9-4 --------- Restrictions on disposal of vegetative matter: waiver in emergency

If an emergency exists, the county executive of a county may, by resolution or order:

(1) waive the prohibition under section 2 of this chapter; and

(2) allow vegetative matter resulting from landscaping maintenance and land clearing projects to be deposited in the solid waste landfill;

for not more than ninety (90) days.

[As added by: P.L.1-1996, §10.]

IC 13-20-10. REGISTRATION OF FACILITIES FOR COMPOSTING CERTAIN VEGETATIVE MATTER

IC 13-20-10-1 -------- Registration of facilities for composting certain vegetative matter: applicability

(a) This chapter applies to composting of vegetative matter resulting from landscaping maintenance and land clearing projects.

(b) This chapter does not apply to the following:

(1) A person who conducts a composting operation at the person's residence or farm for vegetative matter and other types of organic material that are:

(A) generated by the person's activities; and

(B) stored, treated, or disposed of at the person's residence or farm.

(2) A person who conducts a composting operation that processes less than two thousand (2,000) pounds of vegetative matter during a year.

(3) Temporary stores of vegetative matter where only an incidental amount of composting will occur before removal of the matter.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-2 -------- Registration of facilities for composting certain vegetative matter: registration required

A person may operate a composting facility for vegetative matter only if the person registers the composting facility with the department.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-3 -------- Registration of facilities for composting certain vegetative matter: application for registration

To register a composting facility for vegetative matter with the department, a person must submit an application to the department that contains the following:

(1) A:

(A) legal description; and

(B) topographic map;

of the site on which the composting facility will be located.

(2) A description of the composting facility that indicates the area to be served by the composting operation.

(3) An estimate of the volume of materials that will be processed annually by the composting facility.

(4) Any other information that the department or the solid waste management board requires by rule.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-4 -------- Registration of facilities for composting certain vegetative matter: facility requirements

Except as provided in sections 5 and 6 of this chapter, the active area of a composting facility for vegetative matter:

(1) may not be located:

(A) within two hundred (200) feet of a well that supplies potable water; or

(B) within two hundred (200) feet of a residential structure that exists at the time that the composting facility initially registers under this chapter;

(2) must be located outside the ten (10) year floodplain, except a facility that is either:

(A) operated in conjunction with a publicly owned works permitted under IC 13-15-3; or

(B) designed and operated to provide adequate controls to prevent ground or surface water contamination in the event a ten (10) year flood occurs;

(3) must be designed and operated to:

(A) prevent compost from being placed within five (5) feet of a water table or provide adequate controls to prevent ground or surface water contamination;

(B) adequately control runoff from the composting facility; and

(C) manage leachate that is generated by the composting facility; and

(4) must include controls for the following:

(A) Dust.

(B) Odor.

(C) Noise.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-5 -------- Registration of facilities for composting certain vegetative matter: local ordinance

A unit of local government may adopt an ordinance providing the distance required between the active area of a composting facility for vegetative matter and an existing residence. An ordinance adopted under this section may not do any of the following:

(1) Allow the active area of a composting facility to locate less than two hundred (200) feet from an existing residence.

(2) Require the active area of a composting facility to locate more than six hundred (600) feet from an existing residence.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-6 -------- Registration of facilities for composting certain vegetative matter: conditions for allowing location less than 200 feet from a residence

The active area of a composting facility for vegetative matter may be located less than two hundred (200) feet from a residence if:

(1) no unit of local government with jurisdiction over:

(A) the residence; or

(B) the composting facility;

has adopted an ordinance under section 5 of this chapter or IC 13-7-35-6(b) (before its repeal); and

(2) the composting facility obtains written consent from the occupant and the owner of the residence.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-7 -------- Registration of facilities for composting certain vegetative matter: annual report

A person who operates a composting facility for vegetative matter that must be registered under this chapter shall submit an annual report to the department:

(1) before February 1 of each year; and

(2) that indicates the volume of material processed by the composting facility during the preceding year.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-8 -------- Registration of facilities for composting certain vegetative matter: registration term; renewal

A registration under this chapter:

(1) expires five (5) years after the date the composting facility for vegetative matter is registered; and

(2) may be renewed by the person who registered the composting facility if the person applies to the department.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-9 -------- Registration of facilities for composting certain vegetative matter: combination of vegetative waste with other solid waste prohibited

Except as provided in IC 13-20-9-1, a person may not knowingly combine vegetative matter resulting from landscaping maintenance and land clearing projects that is intended for:

(1) collection; and

(2) disposal at a solid waste landfill;

with another type of solid waste.

[As added by: P.L.1-1996, §10.]

IC 13-20-10-10 ------ Registration of facilities for composting certain vegetative matter: SWMB may adopt rules

The board may adopt rules under IC 4-22-2 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-11. LANDFILL INSPECTORS

IC 13-20-11-1 -------- Landfill inspectors: designation by IDEM

The department shall designate ten (10) employees of the department as landfill inspectors. However, the department may not designate a landfill inspector for a county that has a consolidated city.

[As added by: P.L.1-1996, §10.]

IC 13-20-11-2 -------- Landfill inspectors: duties

A department employee designated as a landfill inspector for a county under this chapter shall monitor operations at every landfill in the county. The duties of the landfill inspector include the following:

(1) Promoting compliance with the rules of the solid waste management board governing landfill operations.

(2) Keeping records required by the rules of the board or ensuring that those records be kept.

(3) Investigating possible violations of:

(A) the rules of the board; or

(B) any statute;

governing landfill operation or solid waste disposal.

[As added by: P.L.1-1996, §10.]

IC 13-20-12. SANITARY LANDFILL LOCATIONS IN LAKE COUNTY

IC 13-20-12-1 -------- Sanitary landfill locations in Lake County: applicability

This chapter applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

[As added by: P.L.1-1996, §10.]

IC 13-20-12-2 -------- Sanitary landfill locations in Lake County: prohibition

A person may not establish a sanitary landfill for the disposal of garbage, rubbish, or refuse on land in Indiana within one-half (1/2) mile of an area:

(1) that has been subdivided for residential purposes; and

(2) for which the plat is on file in the office of the county recorder at the time the landfill is established.

[As added by: P.L.1-1996, §10.]

IC 13-20-12-3 -------- Sanitary landfill locations in Lake County: penalty

A person that violates section 2 of this chapter shall be assessed a civil penalty of not more than one thousand dollars ($1,000). Each additional day of violation constitutes a separate violation.

[As added by: P.L.1-1996, §10.]

IC 13-20-13. REGULATION OF WASTE TIRE STORAGE SITES; WASTE TIRE MANAGEMENT FUND

IC 13-20-13-1 -------- Waste tire storage sites: applicability

The provisions of this chapter concerning waste tire storage site and waste tire processing operation certificates of registration do not apply to the following:

(1) A facility operated as a recycling facility under a valid permit issued by the commissioner.

(2) A site at which waste tires are stored under a recycling program approved by the commissioner.

(3) The site of a facility that is used to retread tires at which fewer than five thousand (5,000) waste tires are present indoors within a completely enclosed structure.

(4) A vehicle or container in which waste tires are stored for less than thirty (30) days.

(5) A vehicle that is properly licensed, capable of legally transporting waste tires, and in which waste tires are completely enclosed.

[As amended by: P.L.93-1998, §4.]

IC 13-20-13-1.5 ----- Waste tire storage sites: standard of compliance

A person that stores waste tires shall do so in a manner that:

(1) does not pose a threat to human health or the environment;

(2) does not pose a fire hazard; and

(3) controls vectors that pose a threat to human health.

[As added by: P.L.93-1998, §5.]

IC 13-20-13-2 -------- Waste tire storage sites: registration required

A person may not create or maintain a waste tire storage site or waste tire processing operation unless the person:

(1) has registered the waste tire storage site or waste tire processing operation under this chapter or IC 13-7-23 (before its repeal); and

(2) holds a valid certificate of registration issued under section 3 of this chapter or IC 13-7-23-7 (before its repeal).

[As amended by: P.L.93-1998, §6.]

IC 13-20-13-3 -------- Waste tire storage sites: certificate of registration

(a) The commissioner shall issue a waste tire storage site or waste tire processing operation certificate of registration to a person that owns or operates a waste tire storage site or waste tire processing operation if the person complies with the requirements of this chapter and rules adopted by the board under section 11 of this chapter.

(b) A certificate of registration issued under this section expires five (5) years after the date the certificate is issued.

(c) The commissioner may include in a certificate of registration issued under this section conditions that ensure compliance with:

(1) this chapter; and

(2) rules adopted by the board under this chapter;

including a compliance schedule.

(d) The department may deny an application for a certificate of registration under this chapter if:

(1) the application is incomplete;

(2) the applicant has failed to comply with the requirements of:

(A) this chapter;

(B) IC 13-20-14; or

(C) a rule adopted by the board under section 11 of this chapter or under IC 13-20-14-6; or

(3) an enforcement action is pending against the applicant.

[As amended by: P.L.93-1998, §7.]

IC 13-20-13-4 -------- Waste tire storage sites: application for certificate of registration

(a) To apply for a certificate of registration under section 3 of this chapter, a person must submit the following to the department:

(1) A description of the location of the:

(A) waste tire storage site; or

(B) waste tire processing operation.

(2) A description of buildings, signs, notices, and alarms to be used:

(A) on the waste tire storage site; or

(B) in connection with the waste tire processing operation.

(3) A description of the management program for the waste tire storage site or waste tire processing operation, including emergency measures to be used on the site or at the operation.

(4) If the person who applies for the certificate of registration does not own the property where the waste tires will be stored or processed, the signature of the person who owns the property.

(5) If a person is to operate a waste tire storage site, a description of evidence of financial assurance to be maintained by the person under rules adopted by the board under section 11 of this chapter.

(6) A fee in an amount determined by the board.

(7) Other information reasonably requested by the department.

(b) The department shall deposit the fee submitted under subsection (a)(6) in the waste tire management fund established by this chapter.

[As amended by: P.L.93-1998, §8.]

IC 13-20-13-5 -------- Waste tire storage sites: obligations of certificate of registration holder

A person that obtains a certificate of registration under section 3 of this chapter must do the following:

(1) Report annually to the department on the following:

(A) The number of waste tires received at the waste tire storage site or by the waste tire processing operation.

(B) The number and manner of disposal of the waste tires.

(2) Maintain contingency plans to protect public health and the environment.

(3) If the person operates a waste tire storage site, maintain financial assurance acceptable to the department necessary for waste tire removal, in an amount specified in rules adopted by the board under section 11(b)(3) of this chapter.

(4) Maintain a copy of the certificate of registration at the site.

(5) Comply with applicable rules and requirements established by the fire prevention and building safety commission for indoor waste tire storage sites.

(6) Retain a copy of manifests received from a waste tire transporter under IC 13-20-14 for at least one (1) year and make a copy of the manifests available to the department upon request.

[As amended by: P.L.93-1998, §9.]

IC 13-20-13-5.5 ----- Waste tire storage sites: revocation or modification of certificate of registration

(a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent by certified mail to the holder of the certificate for:

(1) failure to disclose all relevant facts;

(2) making a misrepresentation in obtaining the registration; or

(3) failure to correct, within the time established by the department:

(A) a violation of a condition of the registration; or

(B) a violation of this chapter or a rule adopted by the board under section 11 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

[As amended by: P.L.1-1999, §36.]

IC 13-20-13-6 -------- Waste tire storage sites: IDEM to operate inspection program

(a) The department shall operate a waste tire storage site and waste tire processing operation inspection program.

(b) A person that obtains a certificate of registration under section 3 of this chapter must allow the department access to the waste tire storage site or waste tire processing operation at reasonable times to inspect for potential violations of:

(1) this chapter; or

(2) rules adopted under this chapter.

[As amended by: P.L.93-1998, §11.]

IC 13-20-13-7 -------- Waste tire storage sites: fees

(a) A fee of twenty-five cents ($0.25) is imposed on the sale of the following:

(1) Each new tire that is sold at retail.

(2) Each new tire mounted on a new vehicle sold at retail.

(b) The person that sells the new tire or vehicle at retail to the ultimate consumer of the tire or vehicle shall collect the fee imposed by this section.

(c) A person that collects a fee under subsection (b):

(1) shall pay the fees collected under subsection (b):

(A) to the department of state revenue; and

(B) at the same time and in the same manner that the person pays the state gross retail tax collected by the person to the department of state revenue;

(2) shall indicate on the return:

(A) prescribed by the department of state revenue; and

(B) used for the payment of state gross retail taxes;

that the person is also paying fees collected under subsection (b); and

(3) is entitled to deduct and retain one percent (1%) of the fees required to be paid to the department of state revenue under this subsection.

(d) The department of state revenue shall deposit fees collected under this section in the waste tire management fund established by this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-13-8 -------- Waste tire storage sites: waste tire management fund established

(a) Except as provided in subsection (d)(2), (d)(3), (d)(6), and (d)(7) the waste tire management fund is established for the following purposes:

(1) Thirty-five percent (35%) of the money deposited in the fund each year shall be used to assist the department:

(A) in the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly;

(B) in operating the waste tire education program under section 15 of this chapter; and

(C) to pay the expenses of administering the programs described in clause (B).

(2) Sixty-five percent (65%) of the money deposited in the fund each year shall be used to assist the department of commerce:

(A) in providing grants and loans to persons involved in waste tire management activities under section 9 of this chapter; and

(B) to pay the expenses of administering the programs described in clause (A).

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

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

(d) Sources of money for the fund are the following:

(1) Fees paid under section 4(a)(6) of this chapter and IC 13-20-14-5(e).

(2) Fees collected under section 7 of this chapter. All money deposited in the fund under this subdivision may be used by the department for waste reduction, recycling, removal and remediation projects.

(3) Costs and damages recovered from a person under section 14 of this chapter or IC 13-20-14-8. All money deposited in the fund under this subdivision may be used by the department for removal and remediation projects.

(4) Fees established by the general assembly for the purposes of this chapter.

(5) Appropriations made by the general assembly.

(6) Gifts and donations intended for deposit in the fund. A gift or donation deposited in the fund under this subdivision may be specified to be entirely for the use of the department or the department of commerce.

(7) Civil penalties collected under IC 13-30-4 for violations of:

(A) this chapter;

(B) IC 13-20-14; and

(C) rules adopted under section 11 of this chapter and IC 13-20-14-6.

All money deposited in the fund under this subdivision may be used by the department for waste tire removal and remediation projects.

[As amended by: P.L.1-1999, §37.]

IC 13-20-13-9 -------- Waste tire storage sites: authorized uses of money in the fund

(a) The department may use money in the fund to assist the department in:

(1) removing waste tires from sites where waste tires have been disposed of improperly;

(2) properly managing waste tires;

(3) performing surveillance and enforcement activities used to implement proper waste tire management; and

(4) conducting the waste tire education program under section 15 of this chapter.

(b) The department of commerce may use money in the fund to provide grants and loans to persons to establish and operate programs involving the following:

(1) Recycling or reuse of waste tires.

(2) Using waste tires as a source of fuel.

(3) Developing markets for waste tires and products containing recycled or reused waste tires.

(c) The department of commerce may adopt rules under IC 4-22-2 necessary to implement this section.

[As added by: P.L.1-1996, §10.]

IC 13-20-13-10 ------ Waste tire storage sites: IDEM annual report

(a) The department shall report annually to the governor and the general assembly on the following:

(1) Waste tire management as required by this chapter.

(2) The status of the waste tire management fund.

(3) The status of programs funded by the fund.

(b) A report issued by the department under this section may include recommendations for revisions to waste tire management programs.

(c) Before the department may issue a report under this section, the department must solicit public comment on the report.

[As added by: P.L.1-1996, §10.]

IC 13-20-13-11 ------ Waste tire storage sites: SWMB to adopt rules

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 necessary to implement this chapter.

(b) The rules adopted under this section must include the following:

(1) Requirements for the registration of waste tire storage sites and waste tire processing operations.

(2) Requirements concerning the following:

(A) The operation of waste tire storage sites and waste tire processing operations.

(B) Proper storage and processing of waste tires.

(C) Contingency plans concerning the minimization of hazards to human health and the environment at waste tire storage sites and waste tire processing operations.

(D) Record keeping guidelines concerning the quantity of waste tires stored and processed at waste tire storage sites and waste tire processing operations.

(3) Financial assurance acceptable to the department necessary for waste tire removal that a person that operates a waste tire storage site must maintain.

(4) The establishment of the fee required by section 4(a)(4) of this chapter in an amount necessary to cover the costs incurred in the following:

(A) Registering waste tire storage sites and waste tire processing operations under this chapter.

(B) Administering this chapter.

[As amended by: P.L.93-1998, §13.]

IC 13-20-13-12 ------ Waste tire storage sites: waste tires stored at certain facilities not solid waste

A waste tire that is stored at a facility that:

(1) does not process waste tires; or

(2) processes waste tires by cutting or shredding the waste tires;

is not solid waste if the facility is registered under this chapter and the waste tires are stored in accordance with this chapter and rules adopted under this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-13-13 ------ Waste tire storage sites: authority of commissioner regarding removal or remedial action

(a) The commissioner may proceed in court, by appropriate action, to:

(1) compel a person responsible for the improper storage of waste tires to undertake a removal or remedial action with respect to the waste tires; or

(2) obtain an order to enter upon private or public property to carry out a removal or remedial action with respect to the waste tires if the commissioner cannot identify or locate another person responsible for carrying out the removal or remedial action who:

(A) is willing to carry out the removal or remedial action and is capable of doing so; or

(B) can be compelled to carry out the removal or remedial action under subdivision (1).

(b) The commissioner may issue an administrative order for the purpose set forth in subsection (a)(1).

[As added by: P.L.1-1996, §10.]

IC 13-20-13-14 ------ Waste tire storage sites: cost recovery authorized

The commissioner may proceed in the appropriate court to recover costs and damages from a person who:

(1) is responsible for the improper storage of waste tires; and

(2) fails, without sufficient cause, to properly undertake a removal or remedial action under section 13 of this chapter.

[As amended by: P.L.93-1998, §14.]

IC 13-20-13-15 ------ Waste tire storage sites: IDEM to operate waste tire education program

The department shall operate a waste tire education program to inform the public concerning the following issues:

(1) Proper waste tire management procedures.

(2) Methods to minimize the production of waste tires, including information concerning the advantages of using retreaded tires.

[As added by: P.L.1-1996, §10.]

IC 13-20-14. DISPOSAL OF WASTE TIRES

IC 13-20-14-1 -------- Disposal of waste tires: landfill disposal of whole tires prohibited

(a) Except as provided in:

(1) rules adopted under subsection (d); and

(2) section 10 of this chapter;

a whole waste tire may not be disposed of at a solid waste landfill.

(b) The department may approve shredded or ground up tires for use as daily cover for a solid waste landfill.

(c) Material approved under subsection (b) is exempt from IC 13-20-22 and IC 13-21-13.

(d) The solid waste management board shall adopt rules that allow for the incidental disposal of small amounts of whole waste tires at solid waste landfills.

(e) The rules adopted under subsection (d) may allow a landfill operator to meet the requirements of the rule by employing procedures designed to achieve the objectives of subsection (d) in lieu of a numeric standard.

[As amended by: P.L.132-1997, §1.]

IC 13-20-14-2 -------- Disposal of waste tires: posting of notice at new tire retailers

(a) In each retail establishment in which a retailer sells new tires, the retailer shall post in a conspicuous place a written notice that bears the following statements:

"Do not put waste tires in the trash."

"Recycle your waste tires."

"State law requires us to accept your waste tires for recycling or proper disposal if you purchase new tires from us.".

(b) A notice required by this section must be at least eight and one-half (8.5) inches wide and eleven (11) inches high.

(c) A person who knowingly violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-14-3 -------- Disposal of waste tires: new tire dealer to accept waste tires from customers

(a) A retailer who sells new tires to a person shall accept waste tires that the person presents to the retailer at the place where possession of the new tires is transferred to the person.

(b) The number of waste tires that a retailer is required to accept from a person under this section is equal to the number of new tires that the retailer sells to the person.

[As added by: P.L.1-1996, §10.]

IC 13-20-14-4 -------- Disposal of waste tires: by a source of waste tires

(a) A source of waste tires shall dispose of waste tires in the source's possession by one (1) or more of the following means:

(1) Delivery to a wholesaler or to an agent of a wholesaler.

(2) Delivery to a manufacturer of tires.

(3) Delivery to a facility that:

(A) recycles tires; or

(B) collects tires for delivery to a recycling facility.

(4) Delivery to a permitted final disposal facility regulated under environmental management laws.

(5) Delivery to a waste tire storage site.

(6) Delivery to a facility operated as a waste tire cutting facility under a permit issued by the commissioner.

(7) Delivery to a registered waste tire transporter or a person who operates a municipal waste collection and transportation vehicle licensed under IC 13-20-4.

(b) A person referred to in subsection (a) is not required to accept waste tires from a source of waste tires.

[As amended by: P.L.93-1998, §15.]

IC 13-20-14-5 -------- Disposal of waste tires: waste tire transporter; registration; manifest

(a) This section does not apply to a person who operates a municipal waste collection and transportation vehicle licensed under IC 13-20-4.

(b) A person may not act as a waste tire transporter unless the person is registered with the department as a waste tire transporter. To apply for a certificate of registration as a waste tire transporter, a person must submit the following to the department:

(1) The person's name.

(2) The address of the person's principal office.

(3) The addresses of any offices maintained by the person in Indiana.

(4) Evidence of financial assurance, maintained in accordance with rules adopted under section 6 of this chapter, in the amount of at least ten thousand dollars ($10,000). The financial assurance must be in the form of:

(A) a bond for performance, executed by a corporate surety licensed to do business in Indiana;

(B) a negotiable certificate of deposit; or

(C) a negotiable letter of credit;

payable to the department and conditional upon faithful performance of the requirements of this chapter and the registration.

(c) The rules adopted under section 6 of this chapter must adopt a manifest form and require a waste tire transporter to prepare and carry a manifest based upon that form each time a waste tire transporter transports waste tires. The format and wording of the form must require a waste tire transporter to enter information in each manifest indicating the source and number of waste tires to be transported and the destination to which the waste tires are transported.

(d) Until the rules prescribing a manifest form are adopted under subsection (c), a waste tire transporter may use a manifest form designed by the waste tire transporter. A form designed and used under this subsection must meet the format and wording requirements set forth in subsection (c).

(e) A person who acts as a waste tire transporter in Indiana shall pay an annual registration fee of twenty-five dollars ($25) that shall be deposited in the waste tire management fund and appropriated to the department for the department's use in providing for the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly.

(f) A waste tire transporter shall do the following:

(1) Retain a copy of a manifest described under this section for at least one (1) year.

(2) Make a copy of a manifest described under this section available to the department upon request.

(3) Report annually to the department the number of waste tires transported by the waste tire transporter.

(4) Maintain financial assurance acceptable to the department in accordance with subsection (b)(4).

(g) The commissioner may include in a certificate of registration issued under this chapter conditions that ensure compliance with:

(1) this chapter; and

(2) rules adopted by the board under this chapter;

including a compliance schedule.

(h) The department may deny an application to register under this chapter if:

(1) the application is incomplete;

(2) the applicant has failed to comply with the requirements of:

(A) this chapter;

(B) IC 13-20-13; or

(C) a rule adopted by the board under section 6 of this chapter or under IC 13-20-13-11; or

(3) an enforcement action is pending against the applicant.

[As amended by: P.L.93-1998, §16.]

IC 13-20-14-5.3 ----- Disposal of waste tires: source of more than 12 waste tires per year

A person that is the source of more than twelve (12) waste tires per year, including tire retailers, auto salvagers, and sellers of used tires, shall:

(1) retain a copy of manifests received from a waste tire transporter under section 5 of this chapter for at least one (1) year; and

(2) make a copy of the manifests available to the department upon request.

[As added by: P.L.93-1998, §17.]

IC 13-20-14-5.6 ----- Disposal of waste tires: revocation or modification of a certificate of registration

(a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent by certified mail to the holder of the certificate, for:

(1) failure to disclose all relevant facts,

(2) making a misrepresentation in obtaining the registration; or

(3) failure to correct, within the time established by the department, a violation of:

(A) a condition of the registration;

(B) this chapter; or

(C) a rule adopted by the board under section 6 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

[As amended by: P.L.1-1999, §38.]

IC 13-20-14-6 -------- Disposal of waste tires: SWMB to adopt rules

The solid waste management board shall adopt rules under IC 4-22-2 and IC 13-14-8 to implement this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-14-7 -------- Disposal of waste tires: enforcement

(a) The commissioner may proceed in court, by appropriate action, to:

(1) compel a person responsible for the improper disposal of waste tires to undertake a removal or remedial action with respect to the waste tires; or

(2) obtain an order to enter upon private or public property to carry out a removal or remedial action with respect to the waste tires if the commissioner cannot identify or locate another person responsible for carrying out the removal or remedial action who:

(A) is willing to carry out the removal or remedial action and is capable of doing so; or

(B) can be compelled to carry out the removal or remedial action under subdivision (1).

(b) The commissioner may issue an administrative order for the purpose set forth in subsection (a)(1).

[As amended by: P.L.93-1998, §19.]

IC 13-20-14-8 -------- Disposal of waste tires: cost recovery, damages

The commissioner may proceed in the appropriate court to recover costs and damages from a person who:

(1) is responsible for the improper disposal of waste tires; and

(2) fails, without sufficient cause, to properly undertake a removal or remedial action under section 7 of this chapter.

[As amended by: P.L.93-1998, §20.]

IC 13-20-14-9.5 ----- Disposal of waste tires: obligation of transfer station; SWMB to adopt rules

(a) Except as provided in rules adopted under subsection (c), an operator of a transfer station shall remove whole waste tires present in solid waste that is being transferred from a vehicle or container to another vehicle or container at the transfer station.

(b) Whole waste tires removed by an operator of a transfer station under subsection (a) shall be disposed of as provided in this chapter.

(c) The solid waste management board shall adopt rules that allow for the incidental transfer of small amounts of whole waste tires under subsection (a).

(d) The rules adopted under subsection (c) may allow a transfer station operator to meet the requirements of the rule by employing procedures designed to achieve the objectives of subsection (c) in lieu of a numeric standard.

[As added by: P.L.123-1996, §14.]

IC 13-20-14-10 ------ Disposal of waste tires: disposal at mineral extraction excavation

A person may dispose of a whole waste tire at a land excavation associated with a mineral extraction operation if the:

(1) person:

(A) owns the whole waste tire; and

(B) owns or leases the disposal site; and

(2) waste tire:

(A) has a:

(i) bead width of at least fourteen (14) inches; and

(ii) rim or wheel diameter of at least twenty-four (24) inches;

(B) was used on:

(i) an off-road construction or mining vehicle; or

(ii) off-road construction or mining equipment; and

(C) is buried under at least twenty-five (25) feet of compacted cover.

[As added by: P.L.132-1997, §2.]

IC 13-20-15. REGULATION OF POLYCHLORINATED BIPHENYLS AND TERPHENYLS

IC 13-20-15-1 -------- Regulation of PCBs: purpose; SWMB to adopt rules

The solid waste management board shall administer and implement this chapter to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB. The board shall adopt the rules required by this chapter under IC 4-22-2.

[As added by: P.L.1-1996, §10.]

IC 13-20-15-2 -------- Regulation of PCBs: sale or manufacture for sale prohibited

(a) Except as provided in subsections (e) and (f), a person may not:

(1) sell; or

(2) manufacture for sale;

in Indiana the compound PCB.

(b) Except as provided in subsections (c), (d), (e), and (f), a person may not:

(1) sell;

(2) manufacture for sale; or

(3) use;

an item, a product, or a material in the person's business in Indiana if the item, product, or material contains a concentration of PCB equal to or greater than one hundred (100) ppm.

(c) The board may adopt rules to prescribe a lower maximum concentration of PCB for a specific item, product, or material if the board finds the one hundred (100) ppm concentration provided in subsection (b) to be inadequate to protect the public health, safety, and welfare from the toxic dangers of the PCB contained in the item, product, or material.

(d) An item, a product, or a material for which a lower maximum concentration of PCB is prescribed by federal law or regulation may not contain a concentration of PCB higher than the federal maximum.

(e) PCB or an item, a product, or a material containing PCB may be:

(1) manufactured;

(2) sold for use; or

(3) used;

in Indiana if the PCB or item is used in a closed system as a dielectric fluid for an electric transformer or capacitor under rules adopted by the board to insure the public health, safety, and welfare.

(f) An item, a product, or a material containing PCB may be:

(1) manufactured for sale;

(2) sold for use; or

(3) used;

in a business in Indiana under an exemption certificate issued by the commissioner under section 3 of this chapter or IC 13-7-16.5-4 (before its repeal).

[As added by: P.L.1-1996, §10.]

IC 13-20-15-3 -------- Regulation of PCBs: exemption for incidental concentrations

(a) A person may apply to the commissioner for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as considered necessary for an accurate evaluation of the application.

(b) The commissioner, according to rules adopted by the board, may grant an exemption for an item, a product, or a material:

(1) manufactured for sale;

(2) sold for use; or

(3) used by the person;

in the person's business if the item, product, or material contains incidental concentrations of PCB.

(c) In granting a certificate of exemption, the commissioner shall impose conditions on the exemption so that the exemption covers only incidental concentrations of PCB.

[As added by: P.L.1-1996, §10.]

IC 13-20-15-4 -------- Regulation of PCBs: use of concentrations equal to or greater than 100 ppm

In addition to the prohibitions prescribed in section 2 of this chapter, a person may not use an item, a product, or a material containing a concentration of PCB equal to or greater than one hundred (100) ppm in the person's business in Indiana unless:

(1) the person files with the department:

(A) a written notice of intent to use:

(i) the PCB; or

(ii) the item, product, or material containing PCB;

in the person's business; and

(B) a plan for the disposal of all material containing PCB;

(2) the department approves the plan for disposal of the material containing PCB described in subdivision (1)(B); and

(3) the person annually files with the department a report detailing:

(A) the total amount of PCB used by the person; and

(B) other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB.

[As added by: P.L.1-1996, §10.]

IC 13-20-15-5 -------- Regulation of PCBs: labelling of products containing

In addition to the prohibitions prescribed in section 2 of this chapter, a person may not manufacture for sale or sell in Indiana an item, a product, or a material containing a concentration of PCB equal to or greater than one hundred (100) ppm unless:

(1) the PCB or the item, product, or material containing PCB is conspicuously labeled to disclose:

(A) the presence of PCB;

(B) the concentration of PCB; and

(C) other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB;

(2) the person files with the department a written notice of intent to manufacture or sell:

(A) the PCB; or

(B) the item, product, or material containing PCB; and

(3) the person annually files with the department a report detailing:

(A) the total amount of PCB manufactured or sold by the person; and

(B) other information required by rule of the board to protect the public health, safety, and welfare from the toxic effects and environmental dangers of PCB.

[As added by: P.L.1-1996, §10.]

IC 13-20-15-6 -------- Regulation of PCBs: disposal of PCBs or PCB-containing products

A person may not dispose of solid or liquid waste resulting from the use in the person's business of:

(1) PCB; or

(2) an item, a product, or a material containing or that has contained PCB;

except in conformity with rules adopted by the board.

[As added by: P.L.1-1996, §10.]

IC 13-20-15-7 -------- Regulation of PCBs: penalties

(a) A person who violates this chapter is subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

(b) This chapter may be enforced under IC 13-30-3 or IC 13-14-2-6.

[As added by: P.L.1-1996, §10.]

IC 13-20-16. BATTERY RECYCLING

IC 13-20-16-1 -------- Battery recycling: posting of notice required

(a) In each retail establishment in which a retailer sells lead acid batteries, the retailer shall post in a conspicuous place a written notice that bears the following statements:

"Improper disposal of batteries is against the law."

"It is illegal to put used motor vehicle batteries or other vehicle or boat batteries in the trash."

"Recycle your used batteries."

"State law requires us to accept your used battery for recycling if you purchase a new battery from us.".

(b) A notice required by this section must be at least eight and one-half (8.5) inches by eleven (11) inches in size.

(c) A person who knowingly violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-2 -------- Battery recycling: duties of retailer, wholesaler or manufacturer

(a) A retailer, wholesaler, or manufacturer that sells one (1) or more new lead acid batteries to a purchaser shall:

(1) accept from the purchaser, if offered, a number of used lead acid batteries equal to the number of new batteries sold to the purchaser; and

(2) dispose of the used batteries in accordance with section 4, 5, or 6 of this chapter.

(b) A person who violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-3 -------- Battery recycling: possession of used battery for more than 90 days prohibited

A retailer or wholesaler that accepts a used lead acid battery under section 2 of this chapter may not retain possession of the battery for more than ninety (90) days. A person who violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-4 -------- Battery recycling: disposition of used batteries by retailer

(a) A retailer shall dispose of the used lead acid batteries in the retailer's possession by one (1) or more of the following means:

(1) Delivery to a wholesaler or to an agent of a wholesaler.

(2) Delivery to a manufacturer of lead acid batteries.

(3) Delivery to a facility that:

(A) recycles lead acid batteries; or

(B) collects lead acid batteries for delivery to a recycling facility.

(4) Delivery to a facility operated as a secondary lead smelter under a valid permit issued by the department or the United States Environmental Protection Agency.

(b) A person who violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-5 -------- Battery recycling: disposition of used batteries by wholesaler

(a) A wholesaler shall dispose of the used lead acid batteries in the wholesaler's possession by one (1) or more of the following means:

(1) Delivery to a manufacturer of lead acid batteries.

(2) Delivery to a facility that:

(A) recycles lead acid batteries; or

(B) collects lead acid batteries for delivery to a recycling facility.

(3) Delivery to a facility operated as a secondary lead smelter under a valid permit issued by the department or the United States Environmental Protection Agency.

(b) A person who violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-6 -------- Battery recycling: disposition of used batteries by manufacturer

(a) A manufacturer shall dispose of the used lead acid batteries in the manufacturer's possession in Indiana by one (1) or more of the following means:

(1) Delivery to a facility that:

(A) recycles lead acid batteries; or

(B) collects lead acid batteries for delivery to a recycling facility.

(2) Delivery to a facility operated as a second lead smelter under a valid permit issued by the department or the United States Environmental Protection Agency.

(b) A person who violates this section commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-7 -------- Battery recycling: knowing disposal of battery in violation of laws prohibited

A person who knowingly causes or allows:

(1) the placing of a lead acid battery into a container intended for collection and disposal at a facility that is not authorized under IC 13-22 or federal law for operation as a hazardous waste facility; or

(2) the disposal of a lead acid battery in a facility that is not authorized under IC 13-22 or federal law for operation as a hazardous waste facility;

commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-16-8 -------- Battery recycling: disposal of batteries by governmental entities

The state or a political subdivision (as defined in IC 34-6-2-110) shall dispose of used lead acid batteries in the state's or political subdivision's possession by one (1) or more of the following means:

(1) Delivery to a wholesaler or an agent of a wholesaler.

(2) Delivery to a manufacturer of lead acid batteries.

(3) Delivery to a facility that:

(A) recycles used lead acid batteries; or

(B) collects lead acid batteries for delivery to a recycling facility.

(4) Delivery to a facility operated as a secondary lead smelter under a valid permit issued by the department or the United States Environmental Protection Agency.

[As amended by: P.L.1-1998, §106.]

IC 13-20-17. RESTRICTIONS ON BATTERIES CONTAINING MERCURY

IC 13-20-17-1 -------- Restrictions on batteries containing mercury: prohibitions on sale of certain alkaline-manganese batteries

(a) This section does not apply to an alkaline-manganese button cell battery if each button cell does not have more than twenty-five (25) milligrams of mercury.

(b) A person may not:

(1) sell;

(2) offer for sale; or

(3) offer for promotional purposes;

an alkaline-manganese battery that contains mercury that was intentionally introduced if the battery was manufactured after December 31, 1995.

[As added by: P.L.1-1996, §10.]

IC 13-20-17-2 -------- Restrictions on batteries containing mercury: prohibitions on sale of certain zinc-carbon batteries

A person may not:

(1) sell;

(2) offer for sale; or

(3) offer for promotional purposes;

a zinc-carbon battery that contains mercury that was intentionally introduced if the battery was manufactured after December 31, 1995.

[As added by: P.L.1-1996, §10.]

IC 13-20-17-3 -------- Restrictions on batteries containing mercury: prohibitions on sale of button cell, mercuric-oxide batteries

A person may not:

(1) sell;

(2) offer for sale; or

(3) offer for promotional purposes;

a button cell, mercuric-oxide battery if the battery was manufactured after December 31, 1995.

[As added by: P.L.1-1996, §10.]

IC 13-20-17-4 -------- Restrictions on batteries containing mercury: limitations on sale of certain mercuric-oxide batteries

(a) This section does not apply to a button cell, mercuric-oxide battery.

(b) A person may not sell, offer for sale, or offer for promotional purposes a mercuric-oxide battery if the battery was manufactured after December 31, 1995, unless the person does all of the following:

(1) Identifies a collection site that meets all government standards and at which a used mercuric-oxide battery may be recycled or properly disposed.

(2) Informs each of the person's purchasers of mercuric-oxide batteries of the collection site identified in subdivision (1).

(3) Informs each of the person's purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about returning the mercuric-oxide battery for recycling or proper disposal.

[As added by: P.L.1-1996, §10.]

IC 13-20-17-5 -------- Restrictions on batteries containing mercury: penalty for violation

A person who knowingly violates this chapter commits a Class C infraction.

[As added by: P.L.1-1996, §10.]

IC 13-20-17.5. MERCURY AND MERCURY PRODUCTS

IC 13-20-17.5-1 ----- Mercury and mercury products: antiques exempted

This chapter does not apply to antiques.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-2 ----- Mercury and mercury products: mercury-added novelties

(a) This section does not apply to a mercury-added novelty if:

(1) the novelty uses a mercury-added button cell battery to function; and

(2) the only mercury contained in the novelty is found in the mercury-added button cell battery.

(b) After July 1, 2003, a mercury-added novelty may not be:

(1) offered for final sale; or

(2) distributed for promotional purposes;

in Indiana if the offerer or distributor knows or has reason to know that the novelty contains mercury.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-3 ----- Mercury and mercury products: mercury thermometers

(a) This section does not apply to a mercury thermometer or to a thermometer if:

(1) the thermometer uses a mercury-added button cell battery; and

(2) the only mercury contained in the thermometer is found in the mercury-added button cell battery.

(b) Except as provided in subsection (c), after July 1, 2003, a person may sell or supply a mercury fever thermometer to an individual only if:

(1) the person is a pharmacist or a pharmacist's assistant working at a pharmacy; and

(2) the thermometers are stored in such a manner that the pharmacist or the pharmacist's assistant must obtain the thermometer for the individual.

(c) A licensed practitioner of medicine may sell or supply a mercury fever thermometer to an individual.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-4 ----- Mercury and mercury products: use in schools

After July 1, 2003, a public school or nonpublic school may not use or purchase for use in a primary or secondary classroom:

(1) a mercury commodity;

(2) mercury compounds; or

(3) mercury-added instructional equipment and materials;

except measuring devices and thermometers for which no adequate substitute exists for use in laboratories.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-5 ----- Mercury and mercury products: post-July 1, 2003 restrictions

After July 1, 2003, a person may sell or provide a mercury commodity to another person in this state (other than for collection for recycling) only if:

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

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

(A) will use the mercury only:

(i) for medical purposes;

(ii) in dental amalgam dispose-caps;

(iii) for training;

(iv) for research; or

(v) for manufacturing purposes;

(B) understands that mercury is toxic;

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

(D) will not intentionally:

(i) place or cause to be placed; or

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

the mercury commodity in solid waste for disposal or in a wastewater disposal system.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-6 ----- Mercury and mercury products: education programs

(a) The department, and districts in cooperation and with the support of the department, shall implement education programs to provide information to the public concerning:

(1) the reuse and recycling of mercury in:

(A) mercury commodities; and

(B) mercury-added products; and

(2) collection programs available to the public for:

(A) mercury commodities; and

(B) mercury-added products.

(b) Units, in cooperation and with the support of the department, may implement education programs to provide information to the public concerning:

(1) the reuse and recycling of mercury in:

(A) mercury commodities; and

(B) mercury-added products; and

(2) collection programs available to the public for:

(A) mercury commodities; and

(B) mercury-added products.

[As added by: P.L.225-2001, §15.]

IC 13-20-17.5-7 ----- Mercury and mercury products: mercury collection programs

(a) Districts shall implement mercury collection programs for the public and small businesses.

(b) Units may implement mercury collection programs for the public and small businesses.

[As added by: P.L.225-2001, §15.]

IC 13-20-19. MANDATORY CODING OF PLASTIC CONTAINERS

IC 13-20-19-1 -------- Mandatory coding of plastic bottles: applicability

A person may not sell in Indiana:

(1) a plastic bottle with a capacity of at least sixteen (16) fluid ounces; or

(2) a rigid plastic container with a capacity of at least eight (8) fluid ounces;

unless the bottle or container is coded as required under section 2 of this chapter to assist recyclers in sorting the bottle or container by resin composition.

[As added by: P.L.1-1996, §10.]

IC 13-20-19-2 -------- Mandatory coding of plastic bottles: specifics of coding

Each bottle and plastic container described in section 1 of this chapter must be coded. The coding must consist of a three (3) sided triangular arrow with a number in the center and letters underneath. The number and letters must indicate the resin from which the container is made as follows:

(1) One (1) and "PETE" for polyethylene terephthalate.

(2) Two (2) and "HDPE" for high density polyethylene.

(3) Three (3) and "V" for vinyl.

(4) Four (4) and "LDPE" for low density polyethylene.

(5) Five (5) and "PP" for polypropylene.

(6) Six (6) and "PS" for polystyrene.

(7) Seven (7) and "Other" for other materials, including multi-layer materials.

[As added by: P.L.1-1996, §10.]

IC 13-20-19-3 -------- Mandatory coding of plastic bottles: labels of different materials

A bottle or other container with a label or base cup made of a different material than the rest of the container must be coded according to the primary, basic material of the bottle or container.

[As added by: P.L.1-1996, §10.]

IC 13-20-20. HOUSEHOLD HAZARDOUS WASTE GRANT PROGRAM

IC 13-20-20-1 -------- Household hazardous waste grant program: IDEM to provide matching grants

(a) The department shall provide financial assistance to units and districts through matching grants awarded under this chapter for projects involving the collection, recycling, or disposal of household hazardous waste and conditionally exempt small quantity generator waste.

(b) Grants awarded under this chapter shall be funded:

(1) from the hazardous substances response trust fund established by IC 13-25-4-1 if money is available under IC 13-25-4-4; and

(2) from the solid waste management fund established by IC 13-20-22-2.

(c) Units and districts may join in any combination for the purposes of the following:

(1) Implementing a project.

(2) Applying for a grant under this chapter.

[As amended by: P.L.237-1999, §3.]

IC 13-20-20-2 -------- Household hazardous waste grant program: basis for award

A grant may be awarded under this chapter to a unit or district that has developed a household hazardous waste or conditionally exempt small quantity generator waste collection, recycling, or disposal project that does the following:

(1) Provides educational literature describing the hazards associated with household hazardous waste and conditionally exempt small quantity generator waste.

(2) Uses a licensed hazardous waste service to:

(A) collect;

(B) handle;

(C) pack;

(D) transport; or

(E) dispose of;

collected household hazardous waste and conditionally exempt small quantity generator waste.

(3) Allows and encourages participation from all households within a designated household hazardous waste or conditionally exempt small quantity generator waste collection area that is specified in the grant application.

[As amended by: P.L.237-1999, §4.]

IC 13-20-20-3 -------- Household hazardous waste grant program: grant application

(a) After a grant applicant has developed a plan under section 2 of this chapter, the applicant may apply for a grant under this chapter on forms prepared and supplied by the department.

(b) A grant application must include the following:

(1) A statement describing a project's scope of activities and objectives that identifies persons responsible for project planning, coordination, and implementation.

(2) A map specifying the area to be served by the project that includes the locations of household hazardous waste and conditionally exempt small quantity generator waste collection sites.

(3) A description of proposed information and educational activities designed to inform households of the opportunity to participate in the project.

(4) A description of safety and security measures that will be implemented during the project.

(5) A budget showing all estimated project costs that includes ineligible project costs and eligible project costs as described under section 4 of this chapter.

(6) A resolution by the legislative body (as defined in IC 36-1-2-9) of a unit or the board of directors of a district involved in the project that does the following:

(A) Authorizes the project and the grant application.

(B) Expresses the specific intent to carry out all proposed project activities described in the grant application.

(C) Allows department employees to have access to and inspect proposed household hazardous waste and conditionally exempt small quantity generator waste collection sites involved in the project.

(D) Commits the applicant to do the following:

(i) Maintain appropriate records that document all expenditures made during the project.

(ii) Submit to the department a final report describing all project activities, achievements, and problems that compares the actual project to the objectives and activities proposed in the grant application, including samples of all informational and educational brochures prepared and distributed and data on the household participation rates, waste quantities collected by category, documentation of all costs, and recommendations for project improvements.

(E) Contains a timetable for completion of the project that:

(i) does not exceed twenty-four (24) months; and

(ii) includes anticipated dates of information and educational activities, waste collection, and submission of final reports.

(F) Commits the applicant to provide all funding required to implement and administer the project, not including the grant award.

(G) Commits the applicant to develop a proposed plan for a permanent household hazardous waste or conditionally exempt small quantity generator waste program that includes sources of funding and a timetable for implementation.

(H) Commits the applicant to develop a proposed plan for a permanent household hazardous product program designed to educate the public as to nonhazardous and nontoxic substitutes for hazardous household products.

[As amended by: P.L.237-1999, §5.]

IC 13-20-20-4 -------- Household hazardous waste grant program: project costs

(a) Estimated project costs submitted under section 3(b)(5) of this chapter must include the following:

(1) Eligible project costs.

(2) Ineligible project costs.

(b) Project costs that are ineligible for grant funding may not be used to fulfill a grantee's match requirement. A grantee is responsible for all project costs except the costs funded by a grant.

(c) Ineligible project costs include the following:

(1) Costs incurred before the approval of a grant.

(2) Costs incurred more than twenty-four (24) months after a grant has been accepted.

(3) Costs incurred by a grantee that exceed original estimated eligible project costs indicated in a grant application.

(4) Other costs that are not specifically related to a project as determined by the department.

(d) Eligible project costs may be:

(1) used to fulfill the grantee's match requirement; and

(2) funded by the grant.

(e) Project costs that are not ineligible under subsection (c) are eligible project costs for purposes of subsection (d).

[As amended by: P.L.237-1999, §6.]

IC 13-20-20-5 -------- Household hazardous waste grant program: limits on grant award

A grant awarded under this chapter:

(1) may not exceed fifty percent (50%) of the total eligible costs estimated in a grant application; and

(2) must be matched by an applicant's financial or in kind contributions.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-6 -------- Household hazardous waste grant program: payment schedule

(a) When a grantee accepts a grant award, the department shall pay the grantee seventy-five percent (75%) of the grant for the project.

(b) The remaining twenty-five percent (25%) of the grant shall be paid to the grantee after the:

(1) grantee submits the final report to the department; and

(2) department has audited and approved in writing the final expenditures.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-7 -------- Household hazardous waste grant program: documentation required

(a) A grantee shall submit to the department documentation of all project expenditures within:

(1) thirty (30) days after completion of the project; or

(2) twelve (12) months after the grant is awarded;

whichever occurs first.

(b) A grantee shall specify the source of money expended on a project for both ineligible costs and eligible costs.

(c) Unexpended grant money shall be returned to the hazardous substances trust fund within sixty (60) days after the department has:

(1) completed the department's final audit of project expenditures; and

(2) notified the grantee, in writing, of the unexpended amount.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-8 -------- Household hazardous waste grant program: priority of applications

(a) In determining the priority of grant applications under this chapter, the department shall first consider an applicant's demonstrated commitment to an annual household hazardous waste or conditionally exempt small quantity generator waste collection, recycling, or disposal project. The department shall consider evidence of the following in making the department's determination under this subsection:

(1) A resolution by the applicant that the applicable community is committed to undertaking annual action to promote the proper collection, recycling, or disposal of household hazardous waste or conditionally exempt small quantity generator waste.

(2) An educational project sponsored by the applicant concerning the potential dangers associated with household hazardous waste or conditionally exempt small quantity generator waste, including instructions for the proper methods of handling, storage, recycling, or disposal of household hazardous waste or conditionally exempt small quantity generator waste.

(3) Sponsorship or participation in other projects that relate to the collection, recycling, or disposal of household hazardous waste or conditionally exempt small quantity generator waste, including projects developed or sponsored by civic organizations or private foundations.

(4) An educational project by the applicant concerning nonhazardous and nontoxic substitutes for hazardous household products.

(b) If the department determines that one (1) or more applicants demonstrate substantially similar commitment levels under subsection (a), the department shall give priority to the application the department received first.

[As amended by: P.L.237-1999, §7.]

IC 13-20-20-9 -------- Household hazardous waste grant program: multiple applications; reapplying for additional grants

(a) A unit or district may apply for more than one (1) grant under this chapter.

(b) A previous grant recipient under this chapter may reapply for additional grants within the same year only if money is available to the department after awarding grants to all other eligible applicants.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-10 ------ Household hazardous waste grant program: request for exemption

(a) A grant applicant may request an exemption from a requirement under this chapter by submitting a written request to the department.

(b) A request filed under this section must contain a detailed description of the basis for a requested exemption.

(c) The department shall review an exemption request with regard to:

(1) a potential nuisance;

(2) a hazard to public health or safety; or

(3) estimated degradation of the environment;

involved in the exemption request.

(d) An exemption granted by the department must:

(1) be in writing; and

(2) clearly state the reasons for the exemption.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-11 ------ Household hazardous waste grant program: grant termination

(a) The department may terminate a grant awarded under this chapter if the department determines that there:

(1) has been no sustained progress in meeting a timetable established in section 3(b)(6)(E) of this chapter;

(2) is substantial evidence that a grant was obtained by fraud; or

(3) is substantial evidence of gross abuse or corrupt practices in the administration or implementation of a project.

(b) If the department terminates a grant, the grantee shall return the full amount of the grant received.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-12 ------ Household hazardous waste grant program: annual report

(a) Before February 1 of each year, the department shall submit an annual report to the:

(1) governor;

(2) legislative council; and

(3) budget director.

(b) The report must contain the following:

(1) A description of each project funded through grants under this chapter.

(2) A statement of the total amount of money that the department expends through grants under this chapter during the immediately preceding year.

(3) An estimate of the amount of money that is required to meet the eligible grant requests for the current year.

(4) Proposals of recommendations for any changes, in funding or otherwise, to the grant project.

[As added by: P.L.1-1996, §10.]

IC 13-20-20-13 ------ Household hazardous waste grant program: SWMB to adopt rules

The board may adopt rules under this chapter in accordance with IC 4-22-2 and IC 13-14-9.

[As amended by: P.L.237-1999, §8.]

IC 13-20-21. SOLID WASTE FEES

IC 13-20-21-1 -------- Solid waste fees: purpose of chapter

The provisions of this chapter are established to defray the costs of administering the solid waste program.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-2 -------- Solid waste fees: solid waste permit fees established

Notwithstanding fees established under IC 13-16-1, the solid waste permit:

(1) application;

(2) annual operation;

(3) generator; and

(4) disposal;

fees contained in this chapter are established.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-3 -------- Solid waste fees: permit application fees

For solid waste permits, the application fees are as follows:

New Permit or Major Modification	Fee
Sanitary Landfill	$31,300
Construction\Demolition Site	$20,000
Restricted Waste Site	
Type I	$31,300
Type II	$31,300
Type III	$20,000
Processing Facility	
Transfer Station	$12,150
Other	$12,150
Incinerator	$28,650
Waste Tire Storage Registration	$ 500
Waste Tire Processing	$ 200
Waste Tire Transportation	$ 25
Permit Renewal	
Sanitary Landfill	$ 15,350
Construction\Demolition Site	$ 7,150
Restricted Waste Site	
Type I	$ 15,350
Type II	$ 15,350
Type III	$ 7,150
Processing Facility	
Transfer Station	$ 2,200
Other	$ 2,200
Incinerator	$ 5,900
Waste Tire Processing	$ 200
Minor Modification	
Minor Modification	$ 2,500

[As added by: P.L.1-1996, §10.]

IC 13-20-21-4 -------- Solid waste fees: annual operation fees

For solid waste, the annual operation fees are as follows:

	Fee
Sanitary Landfill	
> 500 TPD	$35,000
250-499 TPD	$15,000
100-249 TPD	$ 7,000
<100 TPD	$ 2,000
Construction\Demolition Site	$ 1,500
Restricted Waste Site	
Type I	$35,000
Type II	$25,000
Type III	$10,000

Processing Facility	
Transfer Station	$ 2,000
Other	$ 2,000
Incinerator	
>500 TPD	$35,000
250-499 TPD	$15,000
100-249 TPD	$ 7,000
<100 TPD	$ 2,000
Infectious Waste	
Incinerator (>7 TPD)	$ 5,000
Waste Tire Storage	
Registration	$ 500
Waste Tire Transportation	
Registration	$ 25
Groundwater Compliance	
Sampling (per well)	$ 250

[As added by: P.L.1-1996, §10.]

IC 13-20-21-6 -------- Solid waste fees: disposal fees

(a) For solid waste, the disposal fees are as follows:

	Fee
Solid waste disposed into a municipal solid waste landfill per ton	$ 0.10
Solid waste disposed into a municipal solid waste landfill per ton	$ 0.10
Solid waste disposed into an incinerator per ton	$ 0.05
Solid waste disposed into a construction/ demolition waste site per ton	$ 0.10

(b) There is no solid waste disposal fee for solid waste disposed into a solid waste landfill permitted to accept restricted waste solely generated by the person to which the permit is issued.

[As amended by: P.L.218-2001, §9.]

IC 13-20-21-7 -------- Solid waste fees: submission of application or registration fee

(a) When a person files an application or a registration with the department concerning an activity associated with a fee established by section 3, 4, 5, or 6 of this chapter, the person must remit an application fee or a registration fee to the department.

(b) If a person does not remit the application fee or the registration fee to the department, the department shall deny the person's application or registration.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-8 -------- Solid waste fees: accrual dates

Solid waste annual operation fees begin accruing January 1 of each year. The department shall assess the fees not later than January 15 of that year. A person must remit solid waste annual operation fees or an installment established under IC 13-16-2 to the department not more than thirty (30) days after the date the fees are assessed or on the date the installment is due.

[As amended by: P.L.2-1997, §44.]

IC 13-20-21-9 -------- Solid waste fees: due dates

Solid waste disposal fees must be paid by all solid waste disposal facilities, including sanitary landfills, incinerators, and construction\demolition disposal facilities. Solid waste disposal fees:

(1) for the period of January 1 through June 30 of each year are due on August 1 of that year; and

(2) for the period of July 1 through December 31 of each year are due on February 1 of the following year.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-10 ------ Solid waste fees: penalties

(a) In addition to the penalties described under:

(1) IC 13-30-4-1;

(2) IC 13-30-4-2; and

(3) IC 13-30-5-1;

if a person does not remit a solid waste annual operation fee or an installment established by the department under IC 13-16-2 to the department not more than sixty (60) days after the date the fee is assessed or not more than thirty (30) days after the date the installment is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the solid waste annual operation fee or ten percent (10%) of the installment, whichever is applicable. A delinquency charge is due and payable sixty (60) days after the date the solid waste annual operation fee is assessed or thirty (30) days after the date an installment is due.

(b) If a person does not remit a solid waste annual operation fee or an installment established by the department under IC 13-16-2 and any applicable delinquency charge not more than ninety (90) days after the date the solid waste annual operation fee is assessed or not more than sixty (60) days after the date the installment is due, the department may revoke the person's permit. However, before the department may revoke the permit:

(1) not earlier than sixty (60) days after the date the solid waste annual operation fee is assessed or not earlier than thirty (30) days after the date the installment is due; and

(2) not later than thirty (30) days before the department revokes the permit;

the department must deliver a written notice to the person that describes what fees and delinquency charges are due and indicates that the department may revoke the person's permit for nonpayment after thirty (30) days.

[As amended by: P.L.2-1997, §45.]

IC 13-20-21-11 ------ Solid waste fees: delinquency charge

(a) In addition to the penalties described under:

(1) IC 13-30-4-1;

(2) IC 13-30-4-2; and

(3) IC 13-30-5-1;

if a person does not remit a solid waste disposal fee to the department not more than sixty (60) days after the date the fee is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the solid waste disposal fee. The delinquency charge shall be due and payable sixty (60) days after the date the solid waste disposal fee is due.

(b) If a person does not remit a solid waste disposal fee and any applicable delinquency charge not more than ninety (90) days after the date the solid waste disposal fee is due, the department may revoke the person's permit. However, before the department may revoke the permit:

(1) not earlier than sixty (60) days after the date the solid waste disposal fee is assessed; and

(2) not later than thirty (30) days before the department revokes the permit;

the department must deliver a written notice to the person that describes what fees and delinquency charges are due and indicates that the department may revoke the person's permit for nonpayment after thirty (30) days.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-12 ------ Solid waste fees: groundwater compliance sampling

Groundwater compliance sampling fees established under this chapter apply to groundwater monitoring wells in existence at an operating land disposal facility at the time a solid waste annual operation fee concerning the land disposal facility is assessed.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-13 ------ Solid waste fees: all applicable fees

A person or a facility that is described in more than one (1) fee category under this chapter must pay all applicable fees.

[As added by: P.L.1-1996, §10.]

IC 13-20-21-14 ------ Solid waste fees: payable to IDEM

Fees and delinquency charges collected under this chapter:

(1) are payable to the department; and

(2) shall be deposited in the environmental management permit operation fund established by IC 13-15-11-1.

[As added by: P.L.1-1996, §10.]

IC 13-20-22. STATE SOLID WASTE MANAGEMENT FEES; STATE SOLID WASTE MANAGEMENT FUND

IC 13-20-22-1 -------- Solid waste management fees: amount of fees

(a) Unless the legislative body of a county having a consolidated city elects by ordinance to participate in the rules, ordinances, and governmental structures enacted or created under this chapter, the collection of fees on the disposal of solid waste in a final disposal facility located in that county are exempt until December 2, 2008, from regulation or control under this chapter.

(b) A fee is imposed on the disposal or incineration of solid waste in a final disposal facility in Indiana. Except as provided in section 14 of this chapter, the amount of the fee is as follows:

(1) For solid waste generated in Indiana and delivered to a final disposal facility in a motor vehicle having a registered gross vehicle weight greater than nine thousand (9,000) pounds, fifty cents ($0.50) a ton.

(2) For solid waste generated outside Indiana and delivered to a final disposal facility in a motor vehicle having a registered gross vehicle weight greater than nine thousand (9,000) pounds:

(A) fifty cents ($0.50) a ton; and

(B) if the solid waste management board has adopted rules under subsection (c), an additional amount imposed under the rules.

(3) For solid waste generated in Indiana or outside Indiana and delivered to a final disposal facility in:

(A) a motor vehicle having a registered gross vehicle weight of not more than nine thousand (9,000) pounds; or

(B) a passenger motor vehicle (as defined in IC 9-13-2-123);

fifty cents ($0.50) for each load delivered by the motor vehicle.

(c)The solid waste management board shall adopt rules to establish and impose a fee on the disposal or incineration of solid waste that is:

(1) generated outside Indiana; and

(2) disposed of or incinerated in a final disposal facility in Indiana.

The fee shall be set at an amount necessary to offset the costs incurred by the state or a county, municipality, or township that can be attributed to the importation of the solid waste into Indiana and the presence of the solid waste in Indiana.

(d) Revenue from fees collected under subsection (b)(1) and (b)(2)(A) shall be deposited in the state solid waste management fund established by section 2 of this chapter. Revenue from fees collected under subsection (b)(2)(B) shall be deposited in the hazardous substances response trust fund established by IC 13-25-4-1, except that any part of the revenue that the board finds is necessary to offset costs incurred by counties, municipalities, and townships shall be distributed to solid waste management districts pro rata on the basis of the district's population.

(e) If solid waste has been subject to a fee under this section, the total amount of the fee paid shall be credited against any other fee to which the solid waste may later be subject under this section.

(f) A fee may not be imposed upon material used as alternate daily cover pursuant to a permit issued by the department under 329 IAC 10-20-13.

[As amended by: P.L.2-1998, §49.]

IC 13-20-22-2 -------- Solid waste management fees: solid waste management fund established

(a) The state solid waste management fund is established to provide money for the following:

(1) Programs that provide grants and loans that provide education and promote the following:

(A) Recycling and the use of recycled materials.

(B) Waste reduction.

(C) Management of yard waste.

(2) Providing grants to implement household hazardous waste source reduction or recycling projects.

(3) Providing grants for household hazardous waste and conditionally exempting small quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.

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

(c) The sources of money for the fund are the following:

(1) All fees deposited into the fund under section 12(2) of this chapter.

(2) Accrued interest and other investment earnings of the fund.

(3) Appropriations made by the general assembly.

(4) Gifts and donations from any person to the fund.

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

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

[As amended by: P.L.237-1999, §9.]

IC 13-20-22-2.1 ----- Solid waste management fees: grant policy

(a) The department shall adopt and make available a policy concerning the award of grants under section 2 of this chapter.

(b) The policy must include the following considerations:

(1) No private sector services will be displaced if an equipment grant is awarded.

(2) The economic need of the district must be a consideration in awarding a grant.

[As added by: P.L.45-1997, §10.]

IC 13-20-22-3 -------- Solid waste management fees: amount of money deposited in fund annually appropriated

(a) There is annually appropriated to the fund, for the purposes set forth in section 2(a) of this chapter, the amount of money deposited in the fund from the sources set forth in section 2(c) of this chapter.

(b) The governor and the budget agency must approve expenditures from the fund under section 2(a) of this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-4 -------- Solid waste management fees: owner or operator of a final disposal facility to register with revenue department

An owner or operator of a final disposal facility responsible for collecting the fees imposed under section 1 of this chapter shall register with the department of state revenue. To register with the department of state revenue, the owner or operator must do the following:

(1) Pay a registration fee of twenty-five dollars ($25).

(2) File a verified registration form containing the following:

(A) The registrant's name and address.

(B) The name and address of each final disposal facility owned or operated by the registrant.

(C) Any additional information that the department of state revenue reasonably requires.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-5 -------- Solid waste management fees: registrant may be required to file a surety bond

(a) The department of state revenue may require a registrant under section 4 of this chapter to file a surety bond:

(1) in an amount determined by the department of state revenue of:

(A) not less than two thousand dollars ($2,000); and

(B) not more than three (3) months tax liability for the registrant as estimated by the department of state revenue; and

(2) conditioned upon:

(A) the keeping of records; and

(B) the making of full and complete reports and payments;

as required by this chapter.

(b) If the registrant files a bond, the bond must:

(1) be with a surety company or financial institution approved by the department of state revenue; and

(2) name:

(A) the registrant as the principal; and

(B) the state as the obligee.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-6 -------- Solid waste management fees: registrant may be required to file a financial statement

(a) The department of state revenue may require a registrant under section 4 of this chapter to furnish a current financial statement with the registration form.

(b) After registration, the department of state revenue may require a registrant to periodically furnish a current financial statement. If the registrant's financial condition warrants an increase in the surety bond, the department of state revenue may require the registrant to furnish an increased bond.

(c) The department of state revenue may require an audited financial statement under this section.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-7 -------- Solid waste management fees: revenue department to issue registration cards

The department of state revenue shall issue a registration card to each registrant under section 4 of this chapter who complies with this chapter. The registration card shall be prominently displayed at each place in Indiana where the registrant is engaged in business as an owner or operator of a final disposal facility.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-8 -------- Solid waste management fees: release of surety from liability

(a) Sixty (60) days after making a written request for release to the department of state revenue, the surety of a bond furnished by a registrant under section 5 of this chapter is released from any liability to the state accruing on the bond after the sixty (60) day period. The release does not affect any liability accruing before the expiration of the sixty (60) day period.

(b) The department of state revenue shall promptly notify the registrant furnishing the bond that a release has been requested. The registrant must:

(1) obtain a new bond that meets the requirements of section 5 of this chapter; and

(2) file with the department of state revenue a new bond within the sixty (60) day period.

(c) The department of state revenue shall cancel the registration for failure to submit a new bond within the sixty (60) day period.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-9 -------- Solid waste management fees: cancellation of registration by revenue department

(a) The department of state revenue may, after a hearing, cancel a registration issued to an owner or operator of a final disposal facility if the owner or operator does any of the following:

(1) Files a false monthly report of the information required by this chapter.

(2) Fails or refuses to file a monthly report required by this chapter.

(3) Fails or refuses to pay the full amount of the fee imposed by this chapter on or before the due date established by section 11 of this chapter.

(4) Fails or refuses to comply with IC 6-8.1-5-4.

(5) Knowingly removes or alters a sign posted by the department of state revenue under section 17 of this chapter.

(6) Fails or refuses to have on file a valid bond, as required by section 5 or 8 of this chapter.

(7) Fails to honor a subpoena issued under IC 6-8.1-3-12.

(b) The department of state revenue shall notify the owner or operator at least fifteen (15) days before the date set for the hearing of the proposed cancellation. The notice must be sent by registered mail to the last known address of the owner or operator. The owner or operator may appear at the time and place given in the notice to show cause why the registration should not be canceled.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-10 ------ Solid waste management fees: cancellation of registration at request of registrant

A person registered under this chapter may make a written request to the department of state revenue to cancel the person's registration. The department of state revenue may cancel the registration sixty (60) days from the date of the written request if before cancellation the person has:

(1) paid all fees, penalties, and interest accruing under this chapter or IC 13-9.5-5 (before its repeal); and

(2) surrendered to the department of state revenue the:

(A) registration certificate issued under this chapter or IC 13-9.5-5 (before its repeal); and

(B) any additional copies of the registration.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-11 ------ Solid waste management fees: responsibilities of owner or operator of final disposal facility

(a) The owner or operator of a final disposal facility is responsible for collecting the fees imposed under section 1 of this chapter from persons delivering solid waste to that facility.

(b) Each owner or operator may:

(1) deduct from the fees an amount equal to one percent (1%) of the fees collected; and

(2) retain this amount as compensation for collecting and remitting the fees;

if the fees collected and the reports required under subsection (e) are timely remitted and filed.

(c) If:

(1) the fees collected are remitted; or

(2) the required report is filed;

after the due date, the owner or operator shall remit all fees collected to the department of state revenue.

(d) The owner or operator shall remit the remainder of the fees that the owner or operator collects during a month to the department of state revenue not later than ten (10) days after the last day of the month in which the fees are collected.

(e) The owner or operator of a final disposal facility shall file monthly reports with the department concerning the fees collected under this section. The department shall adopt a form for these reports. An owner or operator shall use the form in reporting to the department.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-12 ------ Solid waste management fees: deposit monthly into hazardous substance response trust fund

Each month the department of state revenue shall deposit the following:

(1) Not less than fifty percent (50%) of the revenue from the fee imposed under section 1(b)(1) of this chapter into the Indiana recycling promotion and assistance fund established in IC 4-23-5.5-14.

(2) Not more than fifty percent (50%) of the revenue from the fee imposed under section 1(b)(1) of this chapter into the fund.

(3) The revenue from the fee imposed under section 1(b)(2) of this chapter into the hazardous substance response trust fund established by IC 13-25-4-1.

[As amended by: P.L.1-1999, §39.]

IC 13-20-22-13 ------ Solid waste management fees: limits on imposition of fee

A fee may not be imposed by the state under section 1 of this chapter on the disposal of solid waste by a person who:

(1) generated the solid waste; and

(2) disposed of the solid waste at a site that is:

(A) owned by the person; and

(B) limited, for purposes of the disposal of solid waste, to use by that person for the disposal of solid waste generated by that person.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-14 ------ Solid waste management fees: agreements with contiguous out-of-state counties; impact on fee imposed

If:

(1) the:

(A) county executive of the county; or

(B) board of directors of the district;

in which a final disposal facility is located has entered into an agreement concerning solid waste management with a governmental unit that is, or that is located within, a county that is contiguous to Indiana but within another state; and

(2) the agreement provides for solid waste generated in that governmental unit to be disposed of in the final disposal facility;

the fee imposed under this chapter upon the disposal in the final disposal facility of solid waste generated in that governmental unit is the fee set forth in section 1(b)(1) of this chapter, not the fee set forth in section 1(b)(2) of this chapter.

[As amended by: P.L.1-1999, §40.]

IC 13-20-22-15 ------ Solid waste management fees: conversion factors for facilities without scales

(a) For purposes of the collection of the fees imposed under section 1 of this chapter, the owner or operator of a final disposal facility that:

(1) receives, on the average, less than two hundred (200) tons of solid waste each day; and

(2) does not have a scale suitable for weighing the solid waste received at the final disposal facility;

may determine the weight of the solid waste received by conversion from the volume of the solid waste.

(b) The owner or operator shall apply the following conversion factors:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-16 ------ Solid waste management fees: fees are not revenues

Fees prescribed by this chapter are not:

(1) revenues (as defined in IC 36-9-31-2) of a facility (as defined in IC 36-9-31-2); or

(2) revenues under:

(A) IC 8-1.5;

(B) IC 13-21-3-13;

(C) IC 13-21-7 through IC 13-21-12;

(D) IC 13-21-14; or

(E) IC 36-9-30.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-17 ------ Solid waste management fees: postings by revenue department prohibiting further solid waste disposal

(a) If any of the following conditions occur, the department of state revenue may post a sign at a solid waste disposal site that prohibits further transactions involving solid waste disposal at the site:

(1) An owner or operator of a final disposal facility becomes delinquent in payment of any amount due under this chapter.

(2) There is evidence that the revenue of an owner or operator of a final disposal facility is in jeopardy.

(3) An owner or operator of a final disposal facility is operating without the registration required by this chapter.

(4) An owner or operator of a final disposal facility is operating without the bond required by this chapter.

(5) An owner or operator of a final disposal facility continues to operate the final disposal facility after the registration of the owner or operator has been canceled under this chapter.

(b) The department of state revenue may require that the sign posted under this section must remain posted until the owner or operator of the final disposal facility does all of the following:

(1) Files all reports and pays in full the fees and penalties imposed by this chapter.

(2) Pays in full the interest and penalties imposed under IC 6-8.1-10-1 and IC 6-8.1-10-2.1.

(3) Obtains the registration required by this chapter.

(4) Provides the bond required by this chapter.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-18 ------ Solid waste management fees: remedies cumulative

The remedies provided by this chapter are cumulative. Action taken by the state may not be construed as an election to pursue a remedy to the exclusion of other remedies.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-19 ------ Solid waste management fees: knowingly or intentionally failing to pay the fee a felony

A person who knowingly or intentionally fails to pay the fee to the department of state revenue under section 11 of this chapter commits a Class D felony.

[As added by: P.L.1-1996, §10.]

IC 13-20-22-20 ------ Solid waste management fees: removal, alteration, defacing or covering sign posted by revenue department a misdemeanor

(a) A person who, without authorization:

(1) removes;

(2) alters;

(3) defaces; or

(4) covers;

a sign posted by the department of state revenue under section 17 of this chapter commits a Class B misdemeanor. However, the offense is a Class D felony if the offense is committed with the intent to evade the fee imposed by this chapter or to defraud the state.

(b) An owner or operator of a final disposal facility shall notify the department of state revenue not later than two (2) days after discovering that a sign posted by the department has been removed, altered, defaced, or covered.

(c) An owner or operator of a final disposal facility who fails to notify the department under subsection (b) commits a Class B misdemeanor.

[As added by: P.L.1-1996, §10.]

IC 13-20-23. MUNICIPAL WASTE DISPOSAL FEES

IC 13-20-23-1 -------- Municipal waste disposal fees: applicability

This chapter applies to townships located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

[As added by: P.L.133-1998, §6.]

IC 13-20-23-2 -------- Municipal waste disposal fees: percentage available for township

A township that has one (1) of the following populations and meets the requirements of section 3 of this chapter is entitled to receive the following percentage of disposal fees paid to the county in which the township is located:

Township Population	Percentage
More than 1,700 but less than 1,800	8%
More than 3,300 but less than 3,500	6%
More than 59,000 but less than 63,000	6%

[As added by: P.L.133-1998, §6.]

IC 13-20-23-3 -------- Municipal waste disposal fees: requirements of township

To receive funds under section 2 of this chapter, the fiscal body of a township must do both of the following:

(1) Adopt a resolution that:

(A) identifies the host agreement that is the subject of the resolution;

(B) states that the township has elected to exercise its entitlement under section 2 of this chapter;

(C) states the percentage of the disposal fees the township elects to receive; and

(D) specifies that the disposal fees will be used to provide fire services within the township.

(2) File the resolution with the county auditor.

[As added by: P.L.133-1998, §6.]

IC 13-20-23-4 -------- Municipal waste disposal fees: resolution

(a) Not more than thirty (30) days after the date a county auditor receives a resolution filed under section 3(2) of this chapter, the county auditor shall review the resolution for compliance with the requirements of sections 2 and 3 of this chapter. If the resolution meets all of the requirements, the county auditor shall:

(1) inform the county fiscal body and the township fiscal body;

(2) accrue disposal fees from the date the resolution is determined to be in compliance with sections 2 and 3 of this chapter under this subsection or subsection (b); and

(3) disburse the accrued disposal fees to the township, in the amount requested, on a quarterly basis.

(b) If the county auditor fails to make a determination concerning a resolution within the time allotted under subsection (a):

(1) the resolution is deemed to be in compliance with the requirements of sections 2 and 3 of this chapter; and

(2) the county auditor shall comply with subsection (a).

[As added by: P.L.133-1998, §6.]

TITLE 13. ENVIRONMENT
IC 13-21. SOLID WASTE MANAGEMENT DISTRICTS

IC 13-21-1. STATE SOLID WASTE MANAGEMENT PLAN

IC 13-21-1-1 --------- State solid waste management plan: duties of commissioner

The commissioner shall do the following:

(1) Adopt the state plan in final form.

(2) Adopt rules under IC 4-22-2 to provide for the plan's implementation.

[As added by: P.L.1-1996, §11.]

IC 13-21-1-2 --------- State solid waste management plan: twenty year plan; priorities

The state plan must provide for solid waste management in Indiana for the twenty (20) years following the adoption of the state plan. The state plan must include the following, in order of priority:

(1) The establishment of voluntary statewide goals for source reduction.

(2) The establishment of criteria for alternatives to final disposal, including the following:

(A) Recycling.

(B) Composting.

(C) The availability of markets.

(3) The establishment of general criteria for the siting, construction, operation, closing, and monitoring of final disposal facilities.

(4) Criteria and other elements to be considered in the adoption of district solid waste management plans.

[As added by: P.L.1-1996, §11.]

IC 13-21-1-3 --------- State solid waste management plan: plan revisions

Revisions of the state plan must be:

(1) developed with the advice of the solid waste planning advisory council established by IC 13-21-2-1; and

(2) implemented using the procedures set forth in section 1 of this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-3. SOLID WASTE MANAGEMENT DISTRICTS

IC 13-21-3-1 --------- Solid waste management districts: adoption of county ordinance

(a) Each county shall, by ordinance of the county executive:

(1) join with one (1) or more other counties in establishing a joint solid waste management district that includes the entire area of all the acting counties; or

(2) designate itself as a county solid waste management district.

(b) An ordinance adopted under subsection (a)(1) must include the approval of an agreement governing the operation of the joint district.

(c) If a county fails to comply with subsection (a) before July 2, 1991, the commissioner shall designate the county as a solid waste management district.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-2 --------- Solid waste management districts: inclusion of all of county territory in district

All of the incorporated and unincorporated territory of a county must be included in the designated county solid waste management district or the joint solid waste management district to which the county belongs.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-3 --------- Solid waste management districts: county to provide copy of ordinance to IDEM

Within thirty (30) days after adopting an ordinance establishing a joint district and approving an agreement governing the operation of the joint district, a county shall provide the commissioner with a copy of the agreement.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-4 --------- Solid waste management districts: appointment of district board

After a county has been designated as a county district or has joined with at least one (1) other county in a joint district, a board of directors shall be appointed.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-5 --------- Solid waste management districts: board membership of county districts

(a) Except as provided in subsections (b) through (d), the board of a county district consists of the following members:

(1) Two (2) members appointed by the county executive from the membership of the county executive.

(2) One (1) member appointed by the county fiscal body from the membership of the fiscal body.

(3) One (1) member:

(A) who is the executive of the municipality having the largest population in the county if that municipality is a city; or

(B) appointed from the membership of the legislative body of a town if the town is the municipality having the largest population in the county.

(4) One (1) member of the legislative body of the municipality with the largest population in the county appointed by the legislative body of that municipality.

(5) One (1) member:

(A) who is the executive of a city in the county that is not the municipality having the largest population in the county; or

(B) who is a member of the legislative body of a town that is not the municipality having the largest population in the county;

and who is appointed by the executive of that county to represent the municipalities in the county other than the municipality having the largest population.

(6) One (1) additional member appointed by the county executive from the membership of the county executive.

(b) If a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) is designated as a county district, the executives of the three (3) cities in the county having the largest populations each serve as a member of the board or may appoint a member of the legislative body of their city to serve as a member of the board. If a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) is designated as a county district, the executives of the two (2) cities in the county having the largest populations each serve as a member of the board. If a county having a population of more than two hundred

thousand (200,000) but less than three hundred thousand (300,000) is designated as a county district, the board of that county district must include the following:

(1) One (1) member of the legislative body of the city having the second largest population in the county, appointed by the president of the city legislative body.

(2) One (1) member of the legislative body of a town located in the county, appointed by the judge of the circuit court in the county.

(c) If a county having a consolidated city is designated a county district, the board of public works established under IC 36-3-5-6 constitutes the board of the county district.

(d) If a county designated as a county district has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the board of the district consists of the following members:

(1) One (1) member appointed by the county executive from the membership of the county executive.

(2) Two (2) members appointed from the county fiscal body appointed from the membership of the county fiscal body.

(3) The executive of each second or third class city or a member of the legislative body of their city appointed by the executive.

(4) One (1) member of the legislative body of each town appointed by the legislative body.

(5) One (1) member of the legislative body of the municipality with the largest population in the county appointed by the legislative body of that municipality.

(6) If a local government unit in the county has an operating final disposal facility located within the unit's jurisdiction, one (1) member of the unit's board of public works appointed by the board of public works.

[As amended by: P.L.110-1998, §1.]

IC 13-21-3-6 --------- Solid waste management districts: board membership of joint districts

(a) Except as provided in subsections (b) through (d), the board of a joint district consists of the following:

(1) One (1) member of the county executive of each participating county.

(2) One (1) member of the county fiscal body of each participating county.

(3) One (1) member:

(A) who is the executive of the municipality having the largest population in the county if that municipality is a city; or

(B) if a town is the municipality having the largest population in the county, who is appointed from the membership of the fiscal body of that town.

(4) One (1) member of the legislative body of the municipality having the largest population in each participating county, appointed by the legislative body of that municipality.

(5) One (1) or more members who are the executives of cities under subsection (b), if applicable.

(6) Additional members appointed by the executive of each participating county from the membership of the executive, as permitted under subsection (c).

(7) One (1) additional member appointed by the executive of the participating county having the largest population from the membership of the executive if the appointments made under subdivisions (1) through (6) result in an even number of members.

(b) If a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000) has joined in a joint district, the executive of the three (3) cities in the county having the largest populations each serve as a member of the board. If a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000) has joined in a joint district, the executive of the

two (2) cities in the county having the largest populations each serve as a member of the board.

(c) An agreement between two (2) or more counties establishing a joint district may allow the executive of each county to appoint a certain number of additional members from the membership of the executive based upon the proportion of each county's population to the population of the entire district.

(d) An agreement among three (3) or more counties establishing a joint district may provide that:

(1) the membership; and

(2) the terms of office of members;

of the board will be determined by the terms of an agreement entered into by the executive of each county governing the operation of the district. All members of a board appointed under this subsection must be elected officials of a county or a municipality.

(e) The board of a joint district established under subsection (d) or IC 13-9.5-2-6(d) (before its repeal) after March 1, 1991:

(1) must include representation from the largest municipality in each county included in the joint district as recommended by the executive of the largest municipality and approved by the legislative body of the largest municipality; and

(2) may include representation from other municipalities in each county included in the joint district as recommended by the executive of a municipality and approved by the legislative body of the municipality.

(f) The board of a joint district may allow a member who is appointed from:

(1) the county executive;

(2) a county fiscal body; or

(3) a municipal legislative body;

to have the body on which the member serves designate an alternate member from that body to participate and exercise the right to vote with the board if the member is unable to attend a meeting.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-7 --------- Solid waste management districts: executive committee of joint district

(a) In:

(1) a joint district; or

(2) a single district having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000);

the board appointed under section 5 of this chapter may elect from the board's membership an executive committee having an odd number of members.

(b) An executive committee elected under subsection (a) for a joint district has only the powers invested in the committee by resolution of the board. An executive committee may exercise any powers of the board under this article that are delegated to the executive committee by resolution of the board.

(c) The board of the joint district may appoint one (1) or more alternates from among the membership of the board to:

(1) participate; and

(2) exercise the power to vote;

with the executive committee if a member of the executive committee is absent.

(d) A meeting of an executive committee may serve as the regularly scheduled monthly meeting of a board as required under IC 13-21-5-2.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-8 --------- Solid waste management districts: term of office of board members

(a) This section does not apply to the members of a board of public works that constitutes the board of a county district under section 5(c) of this chapter.

(b) The term of office of a member of the board of a district who is appointed from the membership of an executive, legislative, or fiscal body under this chapter is coextensive with the member's term of office on that body. The term of office of other appointed members of the board is two (2) years.

(c) All members of the board serve at the pleasure of the appointing authority.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-9 --------- Solid waste management districts: board officers

(a) This section does not apply to a board of public works that constitutes the board of a county district under section 5(c) of this chapter.

(b) The board shall select the following:

(1) A chairperson and vice chairperson from the board's membership.

(2) A controller who is not a member of the board.

(c) If a controller selected by a board under this section is the fiscal officer of a county or municipality, the duties of the controller under a statute or an ordinance are in addition to the duties the controller has while serving as the fiscal officer of the county or municipality.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-10 -------- Solid waste management districts: duties of board controller

(a) A controller selected under section 9 of this chapter shall do the following:

(1) Be the official custodian of all district money.

(2) Be responsible to the board for the fiscal management of the district.

(3) Be responsible for the proper safeguarding and accounting of the district's money.

(4) Subject to subsection (c), issue warrants approved by the board after a properly itemized and verified claim has been presented to the board on a claim docket.

(5) Make financial reports of district money and present the reports to the board for the board's approval.

(6) Prepare the district's annual budget.

(7) Perform any other duties:

(A) prescribed by the board; and

(B) consistent with this chapter.

(b) A controller selected under section 9 of this chapter:

(1) does not exercise any sovereign authority of the state; and

(2) does not hold a lucrative office for purposes of Article 2, Section 9 of the Constitution of the State of Indiana.

(c) The board may, by resolution, authorize the controller to make claim payments for:

(1) payroll;

(2) the state solid waste management fee imposed by IC 13-20-22-1; and

(3) certain specific vendors identified in the resolution;

without the claims being first approved by the board if before payment the claims are approved in writing by the chairperson of the board or in the absence of the chairperson another member of the board designated by the chairperson. The claims shall be reviewed and allowed by the board at the board's next regular or special meeting.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-11 -------- Solid waste management districts: solid waste management advisory committee

(a) The board of each district shall appoint and convene a solid waste management advisory committee of citizens not later than thirty (30) days after the board has been established. The committee must include the following:

(1) Representatives of the solid waste management industry operating in the district.

(2) Representatives of the environmental community and other citizens who are:

(A) knowledgeable about and interested in environmental issues; and

(B) not employed directly or indirectly by the solid waste management industry.

(b) At least fifty percent (50%) of the members of an advisory committee must be made up of the representatives of the environmental community and other citizens. All members of the committee must be residents of the district.

(c) In the resolution establishing an advisory committee, the board shall specify the terms of the members and the purposes of the committee. Each advisory committee shall do the following:

(1) Study the subjects and problems specified by the board and recommend to the board additional problems in need of study and discussion.

(2) If invited by the board to do so, participate, without the right to vote, in the deliberations of the board.

(d) An advisory committee shall report only to the board. Reports of the committee must:

(1) accompany a final district plan when the plan is submitted to the commissioner under IC 13-21-5; and

(2) be made available to members of the public.

(e) An advisory committee may choose to study and report on matters that are not specified by the board if the committee determines a study is warranted.

(f) An advisory committee and board shall conduct at least two (2) joint meetings each year to discuss current and future issues. The advisory committee shall submit into the record at the next meeting of the board advice on the topics discussed at the joint meeting.

(g) An advisory committee shall do the following:

(1) Meet after the first publication of the district's proposed annual budget.

(2) Submit written comments concerning the proposed budget at a public hearing that is held to review the proposed budget.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-12 -------- Solid waste management districts: powers of district

Except as provided in section 14.5 of this chapter, the powers of a district include the following:

(1) The power to develop and implement a district solid waste management plan under IC 13-21-5.

(2) The power to impose district fees on the final disposal of solid waste within the district under IC 13-21-13.

(3) The power to receive and disburse money, if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(4) The power to sue and be sued.

(5) The power to plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for solid waste management.

(6) The power to enter with any person into a contract or an agreement that is necessary or incidental to the management of solid waste. Contracts or agreements that may be entered into under this subdivision include those for the following:

(A) The design, construction, operation, financing, ownership, or maintenance of

facilities by the district or any other person.

(B) The managing or disposal of solid waste.

(C) The sale or other disposition of materials or products generated by a facility.

Notwithstanding any other statute, the maximum term of a contract or an agreement described in this subdivision may not exceed forty (40) years.

(7) The power to enter into agreements for the leasing of facilities in accordance with IC 36-1-10 or IC 36-9-30.

(8) The power to purchase, lease, or otherwise acquire real or personal property for the management or disposal of solid waste.

(9) The power to sell or lease any facility or part of a facility to any person.

(10) The power to make and contract for plans, surveys, studies, and investigations necessary for the management or disposal of solid waste.

(11) The power to enter upon property to make surveys, soundings, borings, and examinations.

(12) The power to:

(A) accept gifts, grants, loans of money, other property, or services from any source, public or private; and

(B) comply with the terms of the gift, grant, or loan.

(13) The power to levy a tax within the district to pay costs of operation in connection with solid waste management, subject to the following:

(A) Regular budget and tax levy procedures.

(B) Section 16 of this chapter.

However, except as provided in section 15 of this chapter, a property tax rate imposed under this article may not exceed eight and thirty-three hundredths cents ($0.0833) on each one hundred dollars ($100) of assessed valuation of property in the district.

(14) The power to borrow in anticipation of taxes.

(15) The power to hire the personnel necessary for the management or disposal of solid waste in accordance with an approved budget and to contract for professional services.

(16) The power to otherwise do all things necessary for the:

(A) reduction, management, and disposal of solid waste; and

(B) recovery of waste products from the solid waste stream;

if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(17) The power to adopt resolutions that have the force of law. However, a resolution is not effective in a municipality unless the municipality adopts the language of the resolution by ordinance or resolution.

(18) The power to do the following:

(A) Implement a household hazardous waste and conditionally exempt small quantity generator (as described in 40 CFR 261.5(a)) collection and disposal project.

(B) Apply for a household hazardous waste collection and disposal project grant under IC 13-20-20 and carry out all commitments contained in a grant application.

(C) Establish and maintain a program of self-insurance for a household hazardous waste and conditionally exempt small quantity generator (as described in 40 CFR 261.5(a)) collection and disposal project, so that at the end of the district's fiscal year the unused and unencumbered balance of appropriated money reverts to the district's general fund only if the district's board specifically provides by resolution to discontinue the self-insurance fund.

(D) Apply for a household hazardous waste project grant as described in IC 13-20-22-2 and carry out all commitments contained in a grant application.

(19) The power to enter into an interlocal cooperation agreement under IC 36-1-7 to obtain:

(A) fiscal;

(B) administrative;

(C) managerial; or

(D) operational;

services from a county or municipality.

(20) The power to compensate advisory committee members for attending meetings at a rate determined by the board.

(21) The power to reimburse board and advisory committee members for travel and related expenses at a rate determined by the board.

(22) In a joint district, the power to pay a fee from district money to the counties in the district in which a final disposal facility is located.

(23) The power to make grants or loans of:

(A) money;

(B) property; or

(C) services;

to public or private recycling programs, composting programs, or any other programs that reuse any component of the waste stream as a material component of another product, if the primary purpose of activities undertaken under this subdivision is to carry out the provisions of this article.

(24) The power to establish by resolution a nonreverting capital fund. A district's board may appropriate money in the fund for:

(A) equipping;

(B) expanding;

(C) modifying; or

(D) remodeling;

an existing facility. Expenditures from a capital fund established under this subdivision must further the goals and objectives contained in a district's solid waste management plan. Not more than five percent (5%) of the district's total annual budget for the year may be transferred to the capital fund that year. The balance in the capital fund may not exceed twenty-five percent (25%) of the district's total annual budget. If a district's board determines by resolution that a part of a capital fund will not be needed to further the goals and objectives contained in the district's solid waste management plan, that part of the capital fund may be transferred to the district's general fund, to be used to offset tipping fees, property tax revenues, or both tipping fees and property tax revenues.

(25) The power to conduct promotional or educational programs that include giving awards and incentives that further the district's solid waste management plan.

(26) The power to conduct educational programs under IC 13-20-17.5 to provide information to the public concerning:

(A) the reuse and recycling of mercury in:

(i) mercury commodities; and

(ii) mercury-added products; and

(B) collection programs available to the public for:

(i) mercury commodities; and

(ii) mercury-added products.

(27) The power to implement mercury collection programs under IC 13-20-17.5 for

the public and small businesses.

[As amended by: P.L.225-2001, §16.]

IC 13-21-3-12.2 ----- Solid waste management districts: counties from 160,000 - 200,000

(a) This section applies to a county having a population of more than one hundred sixty thousand (160,000) but less than two hundred thousand (200,000).

(b) In addition to the powers granted to a district under section 12 of this chapter, a district may make grants or loans of money, property, or services to a public or private program to plant or maintain trees in an area of the district that is a right-of-way, public property, or vacant property.

[As added by: P.L.98-2000, §6.]

IC 13-21-3-13 -------- Solid waste management districts: authority of board

(a) A board may do the following:

(1) Enter into agreements concerning and acquire by any lawful means real property or interests in real and personal property needed for the purposes of this section or IC 13-21-9.

(2) Enter into financing agreements to purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve facilities.

(3) Lease facilities to users or developers with or without an option to purchase.

(4) Sell facilities to users or developers for consideration, which may be paid in installments or otherwise.

(5) Make direct loans to users or developers for the cost of acquisition, construction, or installation of facilities, including real property, machinery, or equipment. If loans are made, the development bonds must be secured by the pledge of one (1) or more bonds or other secured or unsecured debt obligations of the users or developers.

(6) Enter into agreements with users or developers to allow the users or developers to wholly or partially acquire, construct, or modify facilities to be acquired by the district.

(7) Issue waste management development bonds under IC 13-21-9 to do the following:

(A) Accomplish the purposes of this section and IC 13-21-9.

(B) Secure payment of the development bonds as provided in IC 13-21-9.

(b) This section or IC 13-21-9 does not authorize the district's financing of facilities for a developer unless any agreement that exists between a developer and a user is fully disclosed to and approved by the board.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-13.5 ----- Solid waste management districts: year-end financial report

(a) This section does not apply to the following:

(1) A nonreverting capital fund established under section 12(24) of this chapter.

(2) A fund established under IC 13-21-7-8.

(3) The waste management district bond fund established under IC 13-21-7-10.

(4) A fund established to secure the payment of principal and interest under IC 13-21-12-1(12).

(b) At the end of each year the district shall prepare a report that provides the following information:

(1) For each fund that contains district money:

(A) the cash balance at the end of the year;

(B) a list of all encumbrances on the fund that the district is legally obligated to pay;

(C) a copy of documentation that supports each encumbrance listed in clause (B);

(D) the fund balance obtained by subtracting the amount under clause (B) from the amount under clause (A); and

(E) the total expenditures from the fund for the year.

(2) The total of all fund balances calculated under subdivision (1)(D).

(3) The total of all fund expenditures reported under subdivision (1)(E).

(c) The district shall provide the report developed under subsection (b) to the department, the state board of tax commissioners, and the environmental quality service council by February 1 of the year following the year for which the report is made.

[As added by P.L.45-1997, §14.]

IC 13-21-3-14 -------- Solid waste management districts: powers do not include eminent domain, exclusive control

(a) Except as provided in subsection (c) and section 14.5 of this chapter, the powers of a district do not include the following:

(1) The power of eminent domain.

(2) Except as provided in subsection (b), the power to exclusively control the collection or disposal of any solid waste or recyclables within the district by means that include the following:

(A) Franchising.

(B) Establishing a territory or territories within the district in which a person may provide service.

(3) The power to establish the type of service that a person must provide for the collection or disposal of solid waste or recyclables within the district.

(4) The power to establish fees that a person must charge for the collection or disposal of solid waste or recyclables within the district.

(b) If one (1) or more of the governmental entities in a district, at the time of the formation of the district, is a party to a contract providing that the persons contracted with have the exclusive right to collect or dispose of solid waste within the jurisdiction of the governmental entity, the district may enter into an extension of that contract.

(c) Subsection (a) does not apply to activities conducted as part of a household hazardous waste collection and disposal project.

[As amended by: P.L.110-1998, §2.]

IC 13-21-3-14.5 ----- Solid waste management districts: conditions for provision of waste management services

(a) This section does not apply to the following:

(1) The continuation of waste management services that a solid waste district provides with its facilities or work force before March 15, 1996.

(2) Waste management services provided to the district under an agreement entered into by the district before March 15, 1996, with another person until the agreement terminates by its terms or is terminated for cause.

(3) The development, operation, and contracting for the development or operation of a publicly owned solid waste landfill in a county having a population of more than one hundred seven thousand (107,000) but less than one hundred eight thousand (108,000). The operation of the landfill must have begun before July 1, 2001.

(4) A contract entered into between the board and a third party before May 1, 1997, for the development or operation of a solid waste landfill in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). The third party is limited to those parties that submitted pro-

posals to the board under a formal request for proposals that were selected by the board, before December 1, 1995, as finalists in the contract negotiations.

(5) A contract between a board and a third party to operate a facility that is owned by the district and for which construction was substantially complete before March 1, 1996.

(6) Activities conducted as part of household hazardous waste (as defined in IC 13-11-2-104) collection and disposal projects.

(b) Except as provided in subsection (c), a district may not:

(1) undertake to provide waste management services by means of its own work force; or

(2) contract with any person to provide waste management services.

(c) A district may perform the activities described in subsection (b),

(1) if:

(A) the board is able to adopt a resolution under subsection (d); and

(B) a private sector entity is not willing or able to provide waste management services at a reasonable cost to the district or

(2) if the district is requested to do so by a unit of government that performs the activities with the unit's work force.

(d) The board may adopt a resolution determining that the district must either provide waste management services by means of its own work force or contract with a person to provide waste management services, only if the board finds that:

(1) the waste management service is not currently available in the district at a reasonable cost; and

(2) providing the waste management service by means of its own work force or by contract will benefit the public health, welfare, and safety of residents of the district.

The board's determination must be supported with findings of fact.

(e) A district shall provide notice by publication under IC 5-3-1 and at the time of publication serve by first class mail to any person that delivers to the district an annual written request for notices before January 1 of any meeting to consider adoption of a resolution making a preliminary determination that it is necessary for the district to undertake to provide waste management services by means of its own work force or contract with any person to provide waste management services.

(f) Whenever a district evaluates the reasonableness of cost under this section, it shall:

(1) compare the cost of the same level of service provided in the district or in similar demographic areas within Indiana; and

(2) if the district wishes to provide waste management services with its own facilities or work force, the district must disclose the entire cost of providing the service by the district, including the following:

(A) subsidies arising from taxes, fees, grants, or intergovernmental transfers;

(B) in-kind contributions of real estate, interests in real estate, equipment, personnel, or other assets;

(C) discounts; and

(D) tax exemptions.

(g) A resolution adopted under subsection (d) may authorize a district to perform more than one (1) solid waste recycling, collection, or disposal event in the manner described in subsection (b) if:

(1) the duration of each event authorized by the resolution is not more than one (1) day; and

(2) all events authorized by the resolution will take place in one (1) calendar year.

[As amended by: P.L.70-2001, §3.]

IC 13-21-3-15 -------- Solid waste management districts: exception to §12 property tax rate

(a) A district located in a county having a population of more than thirty-one thousand five hundred (31,500) but less than thirty-two thousand (32,000) may appeal to the state board of tax commissioners to have a property tax rate in excess of the rate permitted by section 12 of this chapter. The appeal may be granted if the district establishes that all of the following conditions exist:

(1) The district is in the process of constructing a landfill.

(2) A higher property tax rate is necessary to pay the fees charged by out of county landfills to dispose of solid waste generated in the district during the design and construction phases of the landfill being established by the district.

(b) The procedure applicable to maximum levy appeals under IC 6-1.1-18.5 applies to an appeal under this section. Any additional levy granted under this section:

(1) is not part of the total county tax levy (as defined in IC 6-1.1-21-2); and

(2) may not exceed seven and thirty-three hundredths cents ($0.0733) on each one hundred dollars ($100) of assessed valuation of property in the district.

(c) The state board of tax commissioners shall establish the tax rate if a higher tax rate is permitted.

(d) A property tax rate imposed under this section expires not later than December 31, 1997.

[As amended by: P.L.6-1997, §156.]

IC 13-21-3-16 -------- Solid waste management districts: prerequisites to district board imposition of property taxes

(a) The requirements of this section are in addition to the requirements set forth in IC 6-1.1-18.5-7(b).

(b) To be eligible to include within the district's budget for the following year tax revenue derived from the imposition of a property tax, the first year that a property tax will be imposed and any subsequent year in which the proposed tax levy will increase by five percent (5%) or more, a board must present identical resolutions to each of the county fiscal bodies within the district seeking approval for the use of property tax revenue within the district. The resolution must state the proposed property tax levy and the proposed use of the revenue. The resolution must be stated so that:

(1) a "yes" vote indicates approval of the levy and the proposed use of property tax revenue within the district; and

(2) a "no" vote indicates disapproval of the levy and the proposed use of property tax revenue within the district.

(c) For a resolution described in subsection (b) to be approved by the county fiscal body:

(1) the county fiscal body must record the vote taken on the resolution under subsection (b) before May 1 of the year in which the vote was taken; and

(2) the recorded vote must indicate approval of the use of property tax revenue within the district.

(d) If all of the county fiscal bodies within a district do not record the approval described in subsection (c) before May 1 of the year in which the vote under subsection (b) was taken, the board may not:

(1) impose; or

(2) include within the budget of the board;

a property tax for the year following the year in which the vote was taken.

(e) Notwithstanding subsection (d), after the first year a tax is imposed under this section, the resolution required by subsection (b) for a district that is located in more than two (2) counties need only be approved by a majority of the county fiscal bodies for the counties in which the district is located.

(f) A district may not issue bonds to be repaid, directly or indirectly, with money or property tax revenue of the district until a majority of the members of each of the county fiscal bodies within a district passes a resolution approving the bond issue.

[As amended by: P.L.129-1996, §1.]

IC 13-21-3-17 -------- Solid waste management districts: board may pay for training and membership dues

(a) If a board determines that it is desirable or necessary for employees or members of the board or advisory committee to attend a conference, seminar, or training session that concerns solid waste management or related issues, the board may pay:

(1) applicable registration fees; and

(2) all actual expenses;

of the employees or members who attend the conference, seminar, or training session.

(b) A board may appropriate money necessary to provide membership for the district in state and national:

(1) civic;

(2) educational;

(3) professional; or

(4) governmental;

organizations that are concerned with the betterment and improvement of solid waste management planning and practices.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-18 -------- Solid waste management districts: grants or loans of public funds to districts

The executive of a county or municipality located in a district may, with the approval of the fiscal body of the county or municipality:

(1) grant or loan public money to the district; and

(2) establish procedures:

(A) for awarding grants; and

(B) for the repayment of loans.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-19 -------- Solid waste management districts: delegation of board's authority

(a) The board of a district may delegate any of the board's authority to any board or legislative body of a municipality by resolution. However:

(1) an exercise by a municipality of the taxing power of the district must be ratified by the board of the district; and

(2) if the board of a municipality has been delegated authority under this subsection, the legislative body of the municipality must approve an action of the board of the municipality that involves:

(A) an exercise of the taxing power of the district;

(B) the issuance of bonds under this article or IC 13-9.5 (before its repeal); or

(C) the setting of fees, rates, and charges under this article or IC 13-9.5 (before its repeal).

(b) The board may delegate authority to the board's officers to carry out the directions of the board.

(c) A resolution delegating powers of the board under this section must contain reasonable standards and parameters within which the delegated powers may be exercised.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-20 -------- Solid waste management districts: Indianapolis/Marion County exempted until 12/2/2008

Notwithstanding this chapter, IC 13-21-5, and IC 13-21-13, unless the legislative body of a county having a consolidated city elects by ordinance to participate in the rules, ordinances, and governmental structures enacted or created under this article, the management of solid waste activities and the collection of fees on the disposal of solid waste in a final disposal facility located in that county are exempt until December 2, 2008, from regulation or control under this article.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-21 -------- Solid waste management districts: prerequisites to board adoption of annual budget

Before the board of a district may adopt an annual budget, the budget must be:

(1) approved by the state board of tax commissioners; and

(2) sent to:

(A) the executive; and

(B) the fiscal body;

of each county and municipality located within the district as a matter of record.

[As added by: P.L.1-1996, §11.]

IC 13-21-3-22 -------- Solid waste management districts: contracts with county to collect fees and revenue

(a) This subsection does not apply to the collection of property taxes. The board of a district may contract with a county to collect fees and revenue for a board.

(b) A contract under this section must do all of the following:

(1) Describe the fees and revenue that will be collected.

(2) Describe the responsibilities of the district and the county.

(3) Describe any collection charges that a county will impose to reimburse the county for the administrative expenses of collecting fees and revenue.

(4) Establish the date or conditions under which the agreement expires.

(5) Be in writing.

A contract may include other necessary or appropriate terms.

(c) Before a contract under this section becomes effective:

(1) the county auditor and the county treasurer must consent to the terms of the contract; and

(2) the board of the district and the executive body for the county must approve the contract by resolution in a public meeting.

The written consent of the county auditor and county treasurer must be incorporated by reference into the resolution adopted by the county executive body.

(d) To carry out a contract under this section, a county executive body may establish a collection charge. The charge may not exceed the direct costs of collecting fees and revenue, including an allowance for computer reprogramming and other costs incurred to establish and maintain the collection program. Collection charges received by a county shall be deposited in the county general fund.

(e) Revenue and fees collected by a county shall be deposited in a separate fund and distributed to the district, without an appropriation or a claim, under the terms of the contract.

(f) A county may include a notice of the amount of fees, charges, or other revenue subject to this section in a property tax notice sent to a taxpayer.

(g) A county or the district may collect a delinquent payment subject to this section in the same manner as any general debt may be collected.

[As added by: P.L.1-1996, §11.]

IC 13-21-4. WITHDRAWAL OR REMOVAL OF COUNTIES FROM SOLID WASTE MANAGEMENT DISTRICTS

IC 13-21-4-1 --------- Withdrawal or removal of county from district: requisite procedures must be followed

If:

(1) a county seeks to withdraw from a joint district; or

(2) a joint district seeks to remove a county from the joint district;

the county or the joint district must follow the procedures set forth in this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-2 --------- Withdrawal or removal of county from district: adoption and submission of resolution

(a) If a county seeks to withdraw from a joint district that consists of more than two (2) counties, the county executive must adopt and submit a resolution to the board of the joint district and to the commissioner that specifies the following:

(1) That the county seeks to withdraw from the joint district.

(2) The reasons for the withdrawal.

(b) If a county seeks to withdraw from and dissolve a joint district that consists of only two (2) counties, the county executive must adopt and submit a resolution to the county executive of the other county and to the commissioner that specifies the following:

(1) That the county seeks to withdraw from and dissolve the joint district.

(2) The reasons for the withdrawal and dissolution.

(c) If a joint district that consists of more than two (2) counties seeks to remove a county from the joint district, the county executive of each county that would remain in the joint district after the county is removed must adopt and submit a resolution to the county executive of the county that would be removed and to the commissioner that specifies the following:

(1) That the joint district seeks to remove the county from the joint district.

(2) The reasons for the removal.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-3 --------- Withdrawal or removal of county from district: submission of fiscal impact analysis

(a) A county executive of a county withdrawing from the district or the county executive of each county that would remain in a joint district after a county is removed from the district that adopts and submits a resolution described in section 2 of this chapter shall prepare or pay for the preparation of an analysis concerning the financial impact on:

(1) the joint district; and

(2) each county located in the joint district, including the county that would withdraw or be removed from the joint district;

that would occur if the county withdraws from the joint district or the joint district removes the county.

(b) A copy of the financial impact analysis shall be submitted to:

(1) the county executive of each county involved in the withdrawal or removal of a county from a joint district; and

(2) the commissioner;

not more than ninety (90) days after the date a resolution is adopted under section 2 of this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-4 --------- Withdrawal or removal of county from district: responsibility for legal obligations

(a) Except as provided in subsection (b), if a county withdraws from or is removed from a joint district that consists of more than two (2) counties, the county is responsible for all legal obligations entered into by the joint district before the date the county's withdrawal or removal from the joint district takes effect as if the county were still a member of the joint district. These legal obligations include the following:

(1) Contracts entered into by the joint district.

(2) Repayment of loan agreements entered into by the joint district.

(3) Payment of bonds issued by the joint district.

(4) Any other legal obligation entered into by the joint district.

(b) If a joint district consists of more than two (2) counties, the county executive of the county that withdraws or is removed from the joint district and the board of the joint district may enter into a written agreement that specifies the legal obligations of the county and the joint district after the date the withdrawal or removal of the county takes effect. A copy of the agreement shall be submitted to the commissioner.

(c) If a joint district consists of only two (2) counties:

(1) each county is jointly responsible for all legal obligations entered into by the joint district before the date the joint district is dissolved; and

(2) the county executive of each county shall enter into a written agreement concerning the division of the joint district's assets.

A copy of the agreement shall be submitted to the commissioner.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-5 --------- Withdrawal or removal of county from district: public meeting

After a financial impact analysis described in section 3 of this chapter has been completed and the terms of any agreement have been tentatively agreed to under section 4(b) or 4(c) of this chapter, a public meeting must be held by:

(1) the county executive of each county located in the joint district; and

(2) the board of the joint district;

that concerns the withdrawal or removal of the county from the joint district, the financial impact on the joint district and each county located in the joint district, and the terms of the tentative agreement.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-6 --------- Withdrawal or removal of county from district: county must join or form new district

(a) If a county seeks to withdraw from or the county executives of a joint district desire to remove a county from a joint district, the county must:

(1) designate itself as a new county district;

(2) join one (1) or more other counties to form a new joint district; or

(3) join an existing joint district;

under the procedures set forth in IC 13-21-3.

(b) If a county:

(1) designates itself as a new county district; or

(2) joins one (1) or more other counties to form a new joint district;

the county district or new joint district shall submit a district plan to the commissioner as provided under IC 13-21-5.

(c) If a county joins an existing joint district, the joint district shall amend the joint district's district plan as provided under IC 13-21-5.

(d) If a county withdraws or is removed from a joint district that consists of more than two (2) counties, the joint district shall amend the joint district's district plan as provided under IC 13-21-5.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-7 --------- Withdrawal or removal of county from district: new plan must be adopted before withdrawal

A district plan described under section 6(b) of this chapter must be adopted by the:

(1) county executive of the county located in the new county district; or

(2) county executive of each county located in the new joint district;

before the date the county withdraws or is removed from the joint district.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-8 --------- Withdrawal or removal of county from district: adoption of resolution of removal or dissolution

(a) If all of the provisions described in sections 2 through 7 of this chapter and IC 13-21-5-21 have been satisfied:

(1) the board of a joint district that contains more than two (2) counties:

(A) that seeks to remove a county from the joint district; or

(B) contains a county that seeks to withdraw from the district;

shall adopt a resolution that removes the county from the joint district and reforms the joint district with the remaining counties; and

(2) the board of a joint district that contains only two (2) counties shall adopt a resolution that dissolves the joint district.

(b) A copy of a resolution adopted under subsection (a) shall be submitted to the commissioner.

[As added by: P.L.1-1996, §11.]

IC 13-21-4-9 --------- Withdrawal or removal of county from district: time limit

If all of the provisions described in sections 2 through 8 of this chapter have not been satisfied not later than three hundred sixty-five (365) days after the date:

(1) a county executive; or

(2) the board of a joint district;

adopts a resolution described in section 2 of this chapter, any provision satisfied by a county executive or a board of a county district or joint district is void.

[As added by: P.L.1-1996, §11.]

IC 13-21-5. DISTRICT SOLID WASTE MANAGEMENT PLAN

IC 13-21-5-1 --------- District solid waste management plan: submission

Each district shall adopt and submit to the commissioner for approval a district solid waste management plan that meets:

(1) the requirements of this chapter; and

(2) the criteria and other elements set forth in the state plan.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-2 --------- District solid waste management plan: public meeting; notice; public comments

(a) A district must conduct at least one (1) regularly scheduled public meeting each month before the creation, amendment, or alteration of the district solid waste management plan. The board shall give notice of each public meeting in accordance with IC 5-14-1.5. In addition, a copy of the schedule of regularly scheduled monthly meetings shall annually be submitted for publication to a newspaper of general circulation in each county of the district. The notice:

(1) must be at least two (2) columns wide by five (5) inches long; and

(2) may not be placed in the part of the newspaper where legal notices and classified advertisements appear.

(b) Public comments shall be taken at each board meeting.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-3 --------- District solid waste management plan: public hearing; notice

(a) After considering public comment received during all public meetings held under section 2 of this chapter, the board shall hold a public hearing on the proposed plan before adopting a district plan in final form.

(b) The board shall make the proposed plan available to the public at least thirty (30) days before the date the public hearing is held.

(c) The board shall give public notice of the hearing held under this section.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-4 --------- District solid waste management plan: plan format

(a) The department shall furnish a model format to be used in the preparation of district plans under this chapter.

(b) A district plan adopted before January 1, 1991, may use a format different from the format furnished under subsection (a), but the commissioner may request that such a plan be revised to conform to the model format furnished under subsection (a).

[As added by: P.L.1-1996, §11.]

IC 13-21-5-5 --------- District solid waste management plan: required meetings of advisory committee

(a) An advisory committee established under IC 13-21-3-11 must conduct at least one (1) regularly scheduled public meeting each month before reporting to the board on any matter.

(b) After a board adopts a district plan, the advisory committee appointed by the board shall meet as follows:

(1) At least four (4) times each year.

(2) At the request of the board.

(c) Public comments shall be taken at each advisory committee meeting.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-6 --------- District solid waste management plan: availability of working documents to the public

A board:

(1) must make all working documents available for review by the public for a period of time that allows sufficient time for adequate review before a public meeting of the board; and

(2) shall make updated copies of working documents available to the public on a regular basis.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-7 --------- District solid waste management plan: an other than regularly scheduled public meeting

(a) If the board conducts a meeting other than a regularly scheduled public meeting conducted under section 2 of this chapter:

(1) notice of the meeting must be given in accordance with IC 5-14-1.5-5;

(2) an agenda of the meeting must be posted at least forty-eight (48) hours in advance under IC 5-14-1.5-4; and

(3) the board shall notify a general circulation newspaper in each county that makes up the district of the meeting and the agenda to be discussed.

(b) The notice to the newspaper under this section shall be given by:

(1) first class mail if notice can reasonably be expected to reach the newspaper at least forty-eight (48) hours before the meeting; and

(2) telephone if notice cannot reasonably be expected to reach the newspaper under subdivision (1).

(c) At the meeting, the board may discuss only those matters that were indicated on the meeting agenda prepared under this section.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-8 --------- District solid waste management plan: commissioner has 120 days to act

(a) Based upon the contents of the state plan and on rules adopted by the board, the commissioner shall approve or disapprove each district plan submitted for review under this chapter within one hundred twenty (120) days after the plan is submitted to the commissioner.

(b) If the commissioner fails to act within one hundred twenty (120) days after a district plan is submitted, the district plan is considered approved.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-9 --------- District solid waste management plan: procedure in event of plan disapproval

(a) If the commissioner disapproves a district plan submitted by a board, the commissioner shall promptly:

(1) notify the board of the disapproval of the district plan; and

(2) provide written comments on changes that would make the district plan acceptable.

(b) The district shall do the following:

(1) Revise the district plan.

(2) Resubmit the plan to the commissioner within ninety (90) days after the disapproval of the original district plan.

(c) Before adoption of the revised district plan, the board shall hold a public hearing using the procedures in section 3 of this chapter.

(d) The commissioner shall approve or disapprove a revised district plan within one hundred twenty (120) days after the revised plan is submitted to the commissioner. If the commissioner fails to act within one hundred twenty (120) days after a revised plan is submitted, the revised plan is considered approved.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-10 -------- District solid waste management plan: IDEM to assist counties

The department shall provide information to assist counties to do the following:

(1) Establish districts.

(2) Develop district plans under this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-11 -------- District solid waste management plan: contents of plan

A district plan must include the following:

(1) The results of a demographic study of the district predicting the population of the district:

(A) five (5) years;

(B) ten (10) years; and

(C) twenty (20) years;

after the year the district plan is adopted.

(2) A:

(A) description of the origin, content, and weight or volume of the solid waste to be generated in the district at the time of the development of the district plan; and

(B) projection of the origin, content, and weight or volume of the solid waste to be generated in the district:

(i) five (5) years;

(ii) ten (10) years; and

(iii) twenty (20) years;

after the year the district plan is adopted.

(3) An inventory and description of the following:

(A) The facilities located within the district.

(B) The solid waste management activities taking place within the district.

(4) A statement identifying and assessing solid waste problems that:

(A) exist in the district at the time of the development of the district plan; and

(B) may exist in the district in the future.

(5) A:

(A) projection of the need for; and

(B) description of;

facilities in the district five (5) years, ten (10) years, and twenty (20) years after the year the district plan is adopted.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-12 -------- District solid waste management plan: plan to establish district policy

(a) A district plan must establish a solid waste management policy for the district that reflects the needs of the district and provides an integrated approach to solid waste management that includes the following:

(1) Source reduction.

(2) Alternatives to complete or partial dependence on final disposal facilities, including recycling and composting.

(3) Final disposal facilities.

(b) A district plan must contain a strategy to promote and educate the public regarding the benefits of managing vegetative matter by:

(1) composting;

(2) mulching; and

(3) any other environmentally appropriate manner the board may determine, other than the disposing of vegetative matter in a landfill.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-13 -------- District solid waste management plan: provisions of plan

A district plan must do the following:

(1) Set forth goals and objectives for the district.

(2) Identify alternative means of achieving these goals and objectives based upon the problems and needs of the district.

(3) Set forth a description of the following:

(A) The operational costs and capital costs of implementing the district plan.

(B) The proposed means of financing the implementation of the district plan.

(4) Set forth the basis for setting fees, rates, and charges for use of any facility.

(5) Designate a person to supervise the implementation of the district plan and describe the responsibilities and authority of that person.

(6) Describe the surveillance and enforcement procedures to be implemented to ensure compliance with the district plan.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-14 -------- District solid waste management plan: additional provisions of plan

(a) A district plan must also include provisions for the management and disposal of the following materials for the term of the plan:

(1) Waste tires.

(2) Household hazardous waste.

(3) Used oil.

(4) White goods.

(5) Other classifications of waste provided for in the state plan.

(b) A district plan that sets forth provisions for the management and disposal of materials identified in subsection (a) must comply with all laws and rules governing the management and disposal of those materials.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-15 -------- District solid waste management plan: provisions relating to out-of-state waste

A district plan may, to the extent the provisions are constitutionally permissible, include provisions to restrict or prohibit the disposal within the district of solid waste originating from another state if the district reasonably considers the provisions necessary to accomplish the long range planning goals of the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-16 -------- District solid waste management plan: recognition of existing facilities and agreements

(a) A district plan must consider, in all circumstances, contracts with private persons.

(b) A district plan or amended plan must, where reasonably necessary to effectuate the efficient use of existing permitted final disposal facilities, take account of permitted final disposal facilities in the district that are in operation at the time the district plan is adopted. A district plan or amended plan must incorporate all recycling activities in progress in the district at the time the district plan is adopted or amended.

(c) A district plan may not impose operational requirements on a privately owned or operated facility that differ from operational requirements imposed on a public facility solely because the facility is privately owned or operated.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-17 -------- District solid waste management plan: effect of failure of plan approval

If:

(1) a district fails to submit a district plan to the commissioner under section 1 of this chapter; or

(2) the commissioner disapproves a revised district plan submitted by the district under section 9 of this chapter;

the commissioner may adopt a solid waste management plan for the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-18 -------- District solid waste management plan: amendment of district plan

(a) A district may amend the district's solid waste management plan at any time using the procedures set forth in sections 1 through 7 of this chapter.

(b) A district shall amend its district plan using the procedures set forth in sections 1 through 7 of this chapter if the district decides to implement one (1) of the following programs and the program is not addressed in the district's district plan or the district decides to not implement one (1) of the following programs and the program is addressed in the district's district plan:

(1) A program involving a facility that requires a permit from or registration with the department.

(2) A program involving a facility for processing recyclable materials.

(3) A program for collecting recyclables.

(4) A major education program.

(c) An amended plan prepared under this section:

(1) shall be immediately filed with the commissioner; and

(2) may be implemented after filing unless the commissioner notifies the district in writing within thirty (30) days after the filing that the amended plan fails to comply with the state plan. The written notice of the commissioner must also provide written comments on changes that would make the amended plan acceptable.

(d) An amended district plan prepared under this section shall be filed:

(1) on a form; or

(2) in a format;

provided by the department.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-19 -------- District solid waste management plan: pre-plan mergers of districts

(a) Before a district submits a district plan to the department under this chapter, a district may merge with one (1) or more other districts after the adoption of identical resolutions by the board of each district to be merged.

(b) Upon adoption of identical resolutions under subsection (a), a board for the resulting merged district shall be established using the procedures set forth in IC 13-21-3.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-20 -------- District solid waste management plan: post-plan mergers of districts

(a) After a district submits a district plan to the department under this chapter, a district may merge with one (1) or more other districts after the adoption of identical resolutions by the board of each district to be merged.

(b) Upon adoption of identical resolutions under subsection (a), a board for the resulting merged district shall be established using the procedures set forth in IC 13-21-3.

(c) A merged district shall:

(1) adopt a district plan under sections 1 through 7 of this chapter not later than sixty (60) days after the merger is completed; and

(2) file the district plan with the commissioner.

The new district plan may be an amended version of the previous approved plans submitted under the new district name. A merger under subsection (a) does not take effect until the district plan is filed with the commissioner.

(d) A district plan adopted under this section is considered approved unless the commissioner notifies the district in writing not later than thirty (30) days after the district plan is filed with the commissioner that the district plan fails to comply with the state plan. The notice provided by the commissioner must include comments concerning changes to the district plan that would make the district plan acceptable.

[As added by: P.L.1-1996, §11.]

IC 13-21-5-21 -------- District solid waste management plan: actions of county to opt out of joint district

(a) If a county seeks to withdraw from a joint district or a joint district seeks to remove a county from the joint district under IC 13-21-4 and the county:

(1) designates itself as a county district;

(2) joins into an existing joint district; or

(3) joins with one (1) or more other counties in establishing a new joint district;

the county district or the joint district shall comply with this section.

(b) If a county that withdraws from a joint district designates itself as a county district, the board appointed for the new county district under IC 13-21-3-4 shall file a district plan with the commissioner not later than twenty (20) days after the passage of the ordinance. If the district plan is not filed, the withdrawal of the county from the joint district under IC 13-21-4 is not effective.

(c) If a county that is removed by a joint district designates itself as a county district, the board appointed for the new county district under IC 13-21-3-4 shall file a district plan with the commissioner not later than one hundred twenty (120) days after the passage of the ordinance. If the board fails to file the district plan with the commissioner not later than one hundred twenty (120) days after the passage of the ordinance, the commissioner may adopt a district plan for the new county district.

(d) If a county joins into an existing joint district, the board of the joint district:

(1) must approve the addition of the county to the district;

(2) shall amend the district plan to include the additional county; and

(3) shall file the amended district plan with the commissioner not later than thirty (30) days after the addition of the county to the district. If the amended district plan is not filed, the removal or withdrawal of the county under IC 13-21-4 is not effective.

(e) If a county joins in establishing a new joint district, the board of the new joint district shall, not later than thirty (30) days after:

(1) the adoption of an ordinance establishing the joint district; and

(2) approving an agreement governing the operation of the joint district;

file a new district plan with the commissioner. If the district plan is not filed, the removal or withdrawal of the county under IC 13-21-4 is not effective.

(f) If a county withdraws from a joint district that consists of more than two (2) counties, the board of the joint district shall:

(1) restructure the joint district's board under IC 13-21-3;

(2) amend the district plan under sections 1 through 7 of this chapter; and

(3) submit the amended district plan to the commissioner;

not later than twenty (20) days after the date a new district plan or amended district plan involving the county that withdrew from the joint district is approved under this section.

(g) If a county is removed from a joint district that consists of more than two (2) counties, the board of the joint district shall:

(1) restructure the joint district's board under IC 13-21-3;

(2) amend the district plan under sections 1 through 7 of this chapter; and

(3) submit the amended district plan to the commissioner;

not later than one hundred twenty (120) days after the date a new district plan or amended district plan involving the county that was removed from the joint district is approved under this section.

(h) A district plan adopted under this section is considered approved unless the commissioner notifies the district in writing not later than thirty (30) days after the district plan is filed with the commissioner that the district plan fails to comply with the state plan. The notice provided by the commissioner must include comments concerning changes to the district plan that would make the district plan acceptable.

[As added by: P.L.1-1996, §11.]

IC 13-21-6. CONTRACTS AND AGREEMENTS FOR CONSTRUCTION OR OPERATION OF SOLID WASTE MANAGEMENT FACILITIES

IC 13-21-6-1 --------- Contracts and agreements for solid waste management facilities: total term may not exceed forty years

(a) Notwithstanding any other statute concerning the length, duration, and terms of contracts and agreements, a board may enter into a contract or an agreement with a person, upon terms and conditions as agreed upon, for the:

(1) design;

(2) construction;

(3) operation;

(4) financing;

(5) ownership; or

(6) maintenance;

of a facility for solid waste management in accordance with the requirements and conditions of this chapter.

(b) Before or after the expiration or termination of the term or duration of a contract or an agreement entered into under this chapter or IC 13-9.5-8 (before its repeal), the board, in accordance with the requirements and conditions of this chapter, may periodically enter into amended, extended, supplemental, new, or further contracts or agreements with the same person or any other person for any purpose referred to in this chapter.

(c) A contract, including all amendments, extensions, and supplements, may not exceed a term of forty (40) years.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-2 --------- Contracts and agreements for solid waste management facilities: award maybe by bid or RFQ/RFP

Notwithstanding any other statute, a contract entered into between a board and any person under this chapter may be awarded by the board by:

(1) public bidding in compliance with IC 36-1-12; or

(2) compliance with sections 3 through 8 of this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-3 --------- Contracts and agreements for solid waste management facilities: board may require prequalification of proposers

(a) A board may, by resolution, require that a person that desires to submit a proposal in response to a request for proposals must prequalify as a proposer by submitting information, in response to a request for qualifications, relating to the following:

(1) The experience of the proposer.

(2) The basis on which the proposer purports to be qualified to carry out all work required by a proposed contract.

(3) The financial condition of the proposer.

(b) The board may set minimum requirements regarding these qualifications in a request for qualifications.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-4 --------- Contracts and agreements for solid waste management facilities: prerequisites to issuance of RFP

(a) Before the issuance of a request for proposals under this chapter, the board must do the following:

(1) Adopt a proposed request for proposals by resolution.

(2) Publish a public notice that may contain a request for qualifications if a prequalification process has been adopted under section 3 of this chapter, including the criteria on which proposers may be selected.

(b) The public notice must do the following:

(1) Include the intent to issue a request for proposals.

(2) Designate times and places where the proposed request for proposals may be viewed by the general public.

(3) State the time of commencement of the thirty (30) day period established in this section, which constitutes the event referred to in IC 5-3-1-2.

(c) The board shall allow not more than a thirty (30) day period for the following:

(1) The submission of qualifications, if required.

(2) Comments on the proposed request for proposals.

(d) After the thirty (30) day period described in subsection (c) expires, the board shall do the following:

(1) Select at least one (1) proposer.

(2) Adopt a request for proposals.

(e) Comments may be addressed to the scope or contents of the proposed request for proposals.

(f) The board shall do the following:

(1) Notify each proposer of their selection.

(2) Inform each proposer of the date and place proposalsare to be submitted.

(3) Deliver to each proposer a copy of the request for proposal.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-5 --------- Contracts and agreements for solid waste management facilities: form and content of proposals

(a) The board may do the following:

(1) Prescribe the form and content of proposals.

(2) In the request for proposals, set the maximum allowable cost limits that the board determines to be appropriate.

(b) The proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the board of the proposal.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-6 --------- Contracts and agreements for solid waste management facilities: 30 day limitation

Proposals may not be received before thirty (30) days following notification to the proposers of their selection.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-7 --------- Contracts and agreements for solid waste management facilities: bases for board evaluation of proposals

The board:

(1) shall evaluate proposals received under this chapter with regard to net cost or net revenues; and

(2) in the manner consistent with provisions set forth in the requests for proposals, may evaluate proposals on the basis of additional factors such as the following:

(A) The technical evaluation of facility design.

(B) Net energy efficiency.

(C) Environmental protection.

(D) Overall system reliability.

(E) Financial condition of the proposer.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-8 --------- Contracts and agreements for solid waste management facilities: contract award

(a) The board may:

(1) negotiate with the proposers; and

(2) make a preliminary contract award to any responsible proposer.

(b) The board shall give public notice of a public hearing, which must designate the time and place of a public hearing at which the board will hear comments upon the preliminary contract to be awarded.

(c) Following the public hearing, the board shall make a final contract award to any responsible proposer selected under this chapter based on a determination that the selected proposal is the most responsive to the needs of the district. The final contract award must:

(1) be in the form of a resolution; and

(2) include particularized findings relative to factors evaluated under section 7 of this chapter indicating that:

(A) the district's needs are met by the final contract award; and

(B) the action is in the public interest.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-9 --------- Contracts and agreements for solid waste management facilities: provisions to be included in RFP

Requests for proposals must include the following:

(1) A clear identification and specification of all elements of cost that will become charges to the district, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for proposals for the full lifetime of a proposed contract, including matters such as the following:

(A) Proposals for project staffing.

(B) Implementation of all work tasks.

(C) Carrying out of all responsibility required by the proposed contract.

(D) The cost of planning, design, construction, operation, management, or maintenance of any facility.

(E) The cost of solid waste management.

(2) A clear identification and specification of any revenues that would accrue to the district from the sale of any byproducts or from any other source.

(3) Other information that the board determines to have a material bearing on the board's ability to evaluate a proposal in accordance with this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-6-10 -------- Contracts and agreements for solid waste management facilities: 30 day limit on time to contest the validity of a contract award

An action to contest:

(1) the validity of a contract awarded; or

(2) the procedure by which the contract was awarded;

must be brought within thirty (30) days following the final contract award. After that date, the contract is incontestable for any cause.

[As added by: P.L.1-1996, §11.]

IC 13-21-7. FINANCING: WASTE MANAGEMENT DISTRICT BONDS

IC 13-21-7-1 --------- Waste management district bonds: special taxing district created

(a) A special taxing district is established in each solid waste management district established under IC 13-21-3 or IC 13-9.5-2 (before its repeal) for the purpose of providing persons within the district with solid waste management service.

(b) The special taxing district is coterminous with the territory of the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-2 --------- Waste management district bonds: board authorized to issue

The board may issue waste management district bonds under this chapter for the payment of the cost of the facility. Before authorizing the waste management district bonds, the board may:

(1) accept public bids for the facility; or

(2) adopt a resolution approving a request for proposals under IC 13-21-6.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-3 --------- Waste management district bonds: board resolution

(a) When:

(1) plans and specifications have been prepared according to the public bidding requirements of IC 36-1-12; or

(2) a resolution approving a request for proposals has been adopted by the board;

the board may adopt a resolution declaring that, upon investigation, the board has found it necessary for the public health and welfare, and of public utility and benefit, to construct, modify, or acquire, and maintain if constructed the facility and to acquire the property described for that purpose.

(b) The resolution shall be kept open to inspection by all persons interested in or affected by the acquisition of the property or the construction of the facility.

(c) Upon adoption of the resolution, the board shall give public notice of the adoption and the resolution's purpose. The notice must name a date not later than ten (10) days after the date of the last publication of the notice on which the board will do the following:

(1) Receive or hear remonstrances from persons interested in or affected by the facility.

(2) Determine the public utility and benefit of the facility.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-4 --------- Waste management district bonds: hearing; remonstrances; final action of board

(a) At:

(1) the time fixed for the hearing; or

(2) any time before that;

any person owning real or personal property within the district may file a written remonstrance with the board.

(b) At the hearing, which may be adjourned as necessary, the board shall hear all persons interested in the proceedings and all remonstrances filed.

(c) After considering the remonstrances, the board shall:

(1) take final action determining the public utility and benefit of the proposed proceedings; and

(2) either:

(A) confirm;

(B) modify and confirm; or

(C) rescind;

the resolution.

(d) The final action of the board shall be recorded.

(e) The action of the board is final and conclusive upon all persons. However, any person who:

(1) has remonstrated in writing; and

(2) is aggrieved by the decision of the board;

may take an appeal as provided in section 5 of this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-5 --------- Waste management district bonds: appeal by remonstrator; jurisdiction of court

(a) If the board takes final action confirming the resolution in an original or modified form, a person who has filed a written remonstrance with the board as provided in section 4 of this chapter may appeal to the circuit or superior court of the county in which the person resides.

(b) Within ten (10) days after the final action of the board, the remonstrator must file in the office of the clerk of the court the following:

(1) A copy of the resolution of the board.

(2) The remonstrance.

(3) A surety bond conditioned to pay the costs of the appeal if the appeal is determined against the remonstrator.

(c) The only ground of remonstrance of which the court has jurisdiction on appeal is the question of whether it will be of public utility and benefit to construct, modify, or acquire the proposed facility. The burden of proof is upon the remonstrator. The cause shall be summarily tried by the court without a jury.

(d) The court shall do the following:

(1) Consolidate and hear all remonstrances upon which an appeal are taken as one (1) cause of action.

(2) Hear and determine the cause within thirty (30) days after the time of filing the appeal.

(3) Upon the date fixed for hearing:

(A) hear evidence upon the remonstrances; and

(B) confirm the final action of the board on the resolution or sustain the remonstrance.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-6 --------- Waste management district bonds: certification of resolution and approval to controller

On adopting a resolution ordering the issuance of waste management district bonds, the board shall certify a copy of:

(1) the resolution; and

(2) the approval;

to the controller of the district, who shall prepare the bonds.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-7 --------- Waste management district bonds: recitation of terms and purpose of bonds

(a) The waste management district bonds:

(1) are special obligations of the district; and

(2) are not, in any respect, a corporate obligation or indebtedness of the units that comprise the district.

(b) The waste management district bonds issued under this chapter or IC 13-9.5-9-3 (before its repeal) and the interest on the bonds are payable out of a special tax levied upon all of the property of the district and any other revenues made available for that purpose under this article. The waste management district bonds must recite these terms on the face of the bonds together with the purpose for which the bonds are issued.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-8 --------- Waste management district bonds: use of proceeds from sale of bonds

All proceeds from the sale of waste management district bonds shall be kept as a separate and specific fund to pay the cost of the facility, and none of the proceeds may be used for any other purpose, except as provided in IC 5-1-13 and IC 5-1-14. However, money derived from sources other than the waste management district bond proceeds, such as state or federal grants or other contributions, are not restricted as to application even if the contribution arises for a project financed from waste management district bond proceeds.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-9 --------- Waste management district bonds: special tax levy

(a) For the purpose of raising money to pay waste management district bonds issued under this chapter or IC 13-9.5-9-3 (before its repeal), the board shall levy each year a special tax upon all the real property of the district in the amount and the manner necessary to meet and pay the following:

(1) The principal of the waste management district bonds as the bonds severally mature.

(2) All accruing interest on the bonds.

(b) The tax constitutes the amount of benefits resulting to all of the property in the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-10 -------- Waste management district bonds: collection and use of tax

(a) The tax levied each year shall be certified to the following:

(1) The controller of the district.

(2) The county auditor of each county within the district.

(b) The:

(1) county auditor shall estimate and enter the tax levied and certified upon the tax duplicate; and

(2) county treasurer shall collect and enforce the tax;

in the same manner as county taxes are estimated, entered, collected, and enforced.

(c) As the county treasurer collects the tax, the tax shall be:

(1) transferred to the controller of the district;

(2) kept in a separate fund to be known as the waste management district bond fund; and

(3) applied to the payment of the principal of and interest on the waste management district bonds as the bonds become due and to no other purpose, except as provided in IC 5-1-13 and IC 5-1-14.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-11 -------- Waste management district bonds: net revenue set-aside

(a) In fixing the amount of the necessary levy, the board shall consider:

(1) the amount of net revenues, if any, to be derived from the collection of fees under this article; or

(2) any other net revenues collected under the following:

(A) IC 13-21-3-13.

(B) This chapter.

(C) IC 13-21-8 through IC 13-21-12.

(D) IC 13-21-14.

(b) Instead of making the levy or to reduce the amount of the levy, the board shall annually set aside by resolution the amount of the net revenues to be collected before maturity of the principal and interest of the waste management district bonds payable in the following year.

(c) If the board adopts this resolution under subsection (b), the board may not use any part of the amount set aside out of the net revenues for any purpose other than the payment of waste management district bonds and the interest on the bonds. A proportionate payment of this amount shall be made monthly to the fund.

[As added by: P.L.1-1996, §11.]

IC 13-21-7-12 -------- Waste management district bonds: limit of 6% of net assessed valuation

(a) The district may not issue waste management district bonds under this chapter that are payable by special taxation or fees under IC 13-21-14 in a total amount, including outstanding bonds already issued, exceeding six percent (6%) of the adjusted value of taxable property in the district as determined under IC 36-1-15.

(b) All waste management district bonds issued in violation of this section or IC 13-9.5-9-3(k) (before its repeal) are void.

[As amended by: P.L.6-1997, §157.]

IC 13-21-8. FINANCING: REVENUE BONDS

IC 13-21-8-1 --------- Revenue bonds: authorized

A board may finance the cost of facilities by borrowing money and issuing revenue bonds under this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-8-2 --------- Revenue bonds: board resolution

The issuance of revenue bonds must be authorized by a resolution of the board.

[As added by: P.L.1-1996, §11.]

IC 13-21-8-3 --------- Revenue bonds: provisions of

(a) The revenue bonds:

(1) are special obligations of the district;

(2) are payable solely from and secured by a lien upon the revenues of all or part of the facilities whether or not the facilities are being financed with revenue bonds under this chapter or IC 13-9.5-9-4 (before its repeal), as shall be more fully described in the resolution authorizing the issuance of the revenue bonds; and

(3) including interest, are not:

(A) a debt of the board, the district, or the units that comprise the district; or

(B) a charge, a lien, or an encumbrance, legal or equitable, upon:

(i) the property of the board;

(ii) the property of the district; or

(iii) the revenues of the board or district other than the revenues of the facilities that have been pledged to the payment of the revenue bonds.

(b) Each revenue bond must recite in substance that:

(1) the revenue bond, including interest, is payable solely from the revenues pledged to the bond's payment; and

(2) neither the board or the district is under any obligation to pay the bond, except from those revenues.

[As added by: P.L.1-1996, §11.]

IC 13-21-8-4 --------- Revenue bonds: securing of bonds

(a) The resolution may pledge and assign for the security of the revenue bonds all or part of the revenues or net revenues of the facilities.

(b) To adequately secure the payment of the revenue bonds and the interest on the bonds, the district and the district's officers, agents, and employees shall provide for the covenants and do other acts and things that:

(1) are necessary, convenient, or desirable to secure the revenue bonds; or

(2) may tend to make the revenue bonds more marketable.

[As added by: P.L.1-1996, §11.]

IC 13-21-9. FINANCING: WASTE MANAGEMENT DEVELOPMENT BONDS

IC 13-21-9-1 --------- Waste management development bonds: payment of preliminary expenses

A board may periodically enter into negotiations with one (1) or more persons concerning the terms and conditions of financing facilities. Preliminary expenses in connection with negotiations may be paid from any of the following:

(1) Money furnished by the proposed user or developer.

(2) Grant money.

(3) Money of the board.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-2 --------- Waste management development bonds: public hearing; board resolution

(a) The board shall hold a public hearing on the proposed financing of the facilities after giving public notice.

(b) Upon findings by the board that:

(1) the proposed financing will benefit the health or welfare of the district; and

(2) the proposed financing complies with the purposes and provisions of this article;

the board shall adopt a resolution to approve the financing, including the form and terms of the financing agreement, the waste management development bonds, and the trust indenture, if any.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-3 --------- Waste management development bonds: repayment of bonds

(a) The resolution adopted under section 2 of this chapter may also authorize the issuance of waste management development bonds payable solely from:

(1) revenues and receipts derived from a financing agreement; or

(2) payments made under a guaranty agreement by a developer, user, or any other person.

(b) The waste management development bonds are not in any respect a general obligation of the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-4 --------- Waste management development bonds: financing agreement

(a) A financing agreement must provide for payments in an amount not less than an amount sufficient to pay:

(1) the principal of;

(2) the premium, if any, of; and

(3) interest on;

the waste management development bonds authorized for the financing of the facilities.

(b) The term of a financing agreement may not exceed forty (40) years from the date of any waste management development bonds issued under the agreement. However, a financing agreement does not terminate after forty (40) years if a default under the agreement remains uncured, unless the termination is authorized under the terms of the financing agreement.

(c) If the district retains an interest in the facilities, the financing agreement must require the user or developer to pay all:

(1) costs of maintenance and repair;

(2) taxes;

(3) assessments;

(4) insurance premiums;

(5) trustee's fees; and

(6) any other expenses relating to the facilities;

so that the district will not incur any expenses due to the facilities that are not covered by the payments provided for in the financing agreement.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-5 --------- Waste management development bonds: advances authorized

The district may advance all expenses, premiums, and commissions that the district considers necessary or advantageous in connection with the issuance of bonds issued under this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-6 --------- Waste management development bonds: property tax

(a) The district is exempt from all property taxes on facilities.

(b) Developers and users are liable for property taxes on facilities as provided by law.

(c) This chapter does not deny a tax exemption that a developer or user may have under other laws because of the nature of the facilities or the user.

[As added by: P.L.1-1996, §11.]

IC 13-21-9-7 --------- Waste management development bonds: approvals and permits

The user or developer is responsible for obtaining and maintaining all approvals and permits required for the construction of the facilities under this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-10. FINANCING: REFUNDING OF OUTSTANDING BONDS

IC 13-21-10-1 -------- Refunding of outstanding bonds: board may authorize

If a board finds that a refunding of outstanding bonds would:

(1) be of benefit to the health and welfare of the district; and

(2) comply with the purposes and provisions of this article;

the board may authorize the issuance of bonds under IC 5-1-5 to refund outstanding bonds issued in accordance with this article or IC 13-9.5-9 (before its repeal).

[As added by: P.L.1-1996, §11.]

IC 13-21-11. FINANCING: BORROWING EVIDENCED BY NOTES

IC 13-21-11-1 -------- Borrowing evidenced by notes: authorized

A district:

(1) pending receipt of a grant; or

(2) in anticipation of the issuance of bonds under this article;

may borrow money from any person and evidence the debt by a note or notes executed by the chairperson of the board and the controller of the district and containing the terms and provisions prescribed by the board.

[As added by: P.L.1-1996, §11.]

IC 13-21-11-2 -------- Borrowing evidenced by notes: public or private negotiated sale

An issuance of a note or notes or evidence of indebtedness under this chapter or IC 13-9.5-9-7 (before its repeal) may be sold at a public or private negotiated sale.

[As added by: P.L.1-1996, §11.]

IC 13-21-11-3 -------- Borrowing evidenced by notes: maturity; pledge

A note or notes issued or renewed under this chapter must:

(1) mature not more than five (5) years from the date of issuance of the original note; and

(2) pledge for the payment of the principal and interest the proceeds of the grant or bonds.

[As added by: P.L.1-1996, §11.]

IC 13-21-11-4 -------- Borrowing evidenced by notes: proceeds of notes

The board shall apply the proceeds of a note issued under this chapter or IC 13-9.5-9-7 (before its repeal) to the cost of the facility for which the grant is to be made or bonds issued, although a purchaser of any obligations is not liable for the proper application of the proceeds.

[As added by: P.L.1-1996, §11.]

IC 13-21-11-5 -------- Borrowing evidenced by notes: approval by board resolution

Notes issued under this chapter must be approved by a resolution of the board.

[As added by: P.L.1-1996, §11.]

IC 13-21-12. FINANCING: REQUIREMENTS FOR ISSUANCE OF BONDS GENERALLY

IC 13-21-12-1 -------- Requirements for issuance of bonds generally: technical bond provisions

(a) All bonds issued under this article may:

(1) be issued as serial or term bonds or as a combination of both;

(2) be executed and delivered by the district at any time and from time to time;

(3) bear the date or dates;

(4) bear the maximum interest rates, if fixed rates are used, or specify any manner in which the interest rate will be determined, if variable or adjustable rates are used;

(5) be redeemable before the stated maturities of the bonds on the terms and conditions and at premiums as necessary or advisable;

(6) be issued in any denomination of not less than five thousand dollars ($5,000);

(7) be in a form, either book entry or registered, or both;

(8) carry registration conversion privileges;

(9) be payable in a medium of payment and at a place or places, which may be at any one (1) or more banks or trust companies within or outside Indiana;

(10) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(11) be authenticated in a manner and upon compliance with conditions;

(12) establish reserves from the proceeds of the sale of bonds or from other money, or both, to secure the payment of the principal and interest on the bonds issued under this article or IC 13-9.5-9 (before its repeal);

(13) establish reserves from the proceeds of the sale of bonds or from other money, or both, for extensions, enlargements, additions, replacements, renovations, and improvements to or for the facilities; and

(14) contain other terms and covenants;

as provided in the resolution of the board authorizing the bonds.

(b) The bonds issued under this article may mature at the time or times determined by the board, but not to exceed forty (40) years.

(c) The bonds issued under this article:

(1) may bear either the impressed or facsimile seal of the district; and

(2) shall be:

(A) executed by the manual or facsimile signature of the chairperson of the board; and

(B) attested by the manual or facsimile signature of the district controller;

as long as one (1) of these signatures is manual. However, any signatures may be facsimiles if the bonds are to be manually authenticated by a fiduciary.

(d) The bonds and the interest coupons pertaining to the bonds, if any, issued under this article and IC 13-9.5-9 (before its repeal) are valid and binding obligations of the district for all purposes in accordance with the terms of this article. If before delivery of the bonds and related interest coupons a person whose signature appears on the bonds and related interest coupons has ceased to be an officer of the district, the bonds shall be treated as if the person had continued to be an officer of the district until after delivery.

(e) The bonds issued under this article or IC 13-9.5-9 (before its repeal), other than waste management district bonds issued under IC 13-21-7 or IC 13-9.5-9-3 (before its repeal), may be sold at public or private sale for the price or prices that is provided in the resolution authorizing the issuance of the bonds.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-2 -------- Requirements for issuance of bonds generally: indentures securing bonds

The bonds issued under this article or IC 13-9.5-9 (before its repeal) may be secured by a trust indenture between the district and a corporate trustee, which may be any national or state bank having its principal office in Indiana and having trust powers. The trust indenture or resolution under which the bonds are issued may do the following:

(1) Mortgage the land, interest in land, or the facilities for which the bonds are issued.

(2) Pledge the revenues or any other money, or any part of the revenues or money, to be received by the district.

(3) Contain the provisions for protecting and enforcing the rights and remedies of the bondholders or lenders that may be considered reasonable, including covenants setting forth the duties of the district or board in relation to the construction of the facilities and the custody, safeguarding, application, and investment of all money received or to be received by the district for the facilities financed by the issuance of the bonds.

(4) Provide for the establishment of reserve funds from the bond proceeds or from other sources to the extent authorized.

(5) Set forth the:

(A) rights and remedies of the bondholders and trust; and

(B) provisions restricting the individual rights or actions of bondholders.

(6) Contain provisions regarding the following:

(A) The investment of money.

(B) Sales, exchange, or disposal of property.

(C) The manner of authorizing and making of payments without regard to any general statute relating to these matters.

(7) Provide for the following:

(A) The payment of the proceeds of the sale of bonds to the trustee, officer, bank, or depository that may be determined under the trust indenture or resolution for the custody of the proceeds.

(B) The method of disbursement of the proceeds, with the safeguards and restrictions that are determined.

(8) Provide for the appointment of a receiver by the circuit or superior court of the county under terms and conditions that are considered reasonable.

(9) Contain other provisions that the district considers reasonable and proper for the security of the bondholders.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-3 -------- Requirements for issuance of bonds generally: security exempt from registration

A security issued in connection with a financing under this article, the interest on which is excludable from gross income tax, is exempt from the registration requirements of IC 23.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-4 -------- Requirements for issuance of bonds generally: bonds exempt from taxation

All:

(1) bonds, including grant and bond anticipation notes, issued under this article or IC 13-9.5-9 (before its repeal); and

(2) the interest on the bonds and notes;

are exempt from taxation in accordance with IC 6-8-5.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-5 -------- Requirements for issuance of bonds generally: revenues exempt from taxation

All revenues received by the board or district under this article or IC 13-9.5-9 (before its repeal) are exempt from all taxation.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-6 -------- Requirements for issuance of bonds generally: combined financing options

The facilities or any part of the facilities to be financed under this article may be financed by any combination of one (1) or more of the methods provided for in this article.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-7 -------- Requirements for issuance of bonds generally: 30 day limit on time to contest bonds

An action to:

(1) contest the validity of the bonds; or

(2) prevent the issuance of the bonds;

must be brought within thirty (30) days following the first publication of public notice of the adoption of the resolution authorizing the bonds.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-8 -------- Requirements for issuance of bonds generally: chapter constitutes full authority for bond issuance

(a) This article constitutes full authority for the issuance of bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things by a board, officer, commission, department, agency, or instrumentality of the state is required to issue bonds or to do any act or perform anything under this article except as prescribed by this article.

(b) The:

(1) powers conferred by this article are in addition to and not in substitution for; and

(2) limitations imposed by this article do not affect;

the powers conferred by any other statute.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-9 -------- Requirements for issuance of bonds generally: facility exempt from regulation as a utility

The following are exempt from regulation under IC 8-1-2 and IC 8-1.5:

(1) A facility owned, operated, or financed under this article.

(2) The sale of byproducts from the facility.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-10 ------ Requirements for issuance of bonds generally: covenant of general assembly with bond holders

The general assembly covenants and agrees with the holders of any bonds that as long as any bonds of a district issued under this article or IC 13-9.5-9 (before its repeal) are outstanding and unpaid, the state:

(1) will not limit or alter the rights of the district to:

(A) acquire, construct, reconstruct, improve, enlarge, extend, own, operate, and maintain any project or interest in any project;

(B) establish, maintain, revise, charge, and collect the fees and taxes referred to in this article; and

(C) fulfill the terms of any agreements made with the holders of the bonds; and

(2) will not in any way impair the rights and remedies of the bondholders;

until the bonds, together with interest on the bonds, interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid, met, and discharged.

[As added by: P.L.1-1996, §11.]

IC 13-21-12-11 ------ Requirements for issuance of bonds generally: chapter supplemental

This article is supplemental to all other statutes covering the acquisition, construction, modification, use, and maintenance of facilities for solid waste disposal by a district.

[As added by: P.L.1-1996, §11.]

IC 13-21-13. DISTRICT FINAL DISPOSAL FEES

IC 13-21-13-1 -------- District final disposal fees: authorized

(a) A board may impose fees on the disposal of solid waste in a final disposal facility located within the district. A fee imposed by a board in a county with a population of more than one hundred seven thousand (107,000) and less than one hundred eight thousand (108,000) under this section may not exceed two dollars and fifty cents ($2.50) a ton. A fee imposed by a board in other counties under this section may not exceed:

(1) two dollars and fifty cents ($2.50) a ton; or

(2) the amount of a fee imposed by the board;

(A) under this section; and

(B) in effect on January 1, 1993;

whichever is greater.

(b) The board shall do the following:

(1) Set the amount of fees imposed under this section after a public hearing.

(2) Give public notice of the hearing.

(c) If solid waste has been subject to a district fee under this section, the total amount of the fee that was paid shall be credited against a district fee to which the solid waste may later be subject under this section.

(d) Except as provided in section 4 of this chapter, fees imposed under this chapter shall be imposed uniformly on public facilities and on privately owned or operated facilities throughout the district.

(e) A resolution adopted by a board that establishes fees under this chapter may contain a provision that authorizes the board to impose a penalty of not more than five hundred dollars ($500) per day because of:

(1) nonpayment of fees; or

(2) noncompliance with a condition in the resolution.

(f) A board may not impose fees for material used as alternate daily cover pursuant to a permit issued by the department under 329 IAC 10-20-13.

[As amended by: P.L.45-1997, §15.]

IC 13-21-13-2 -------- District final disposal fees: district solid waste management board

(a) A board that has imposed fees under section 1 of this chapter shall establish and continuously maintain a separate fund under this section to be known as the "_____ district solid waste management fund".

(b) All fees remitted to the district under section 1 of this chapter shall be deposited in the fund.

(c) Money in the fund may be used only for the following purposes:

(1) To pay expenses of administering the fund.

(2) To pay costs associated with the development and implementation of the district plan.

(d) The controller of the district shall administer a fund established under this section. Money in the fund that is not currently needed for the purposes set forth in subsection (c) may be invested in the same manner as other county money may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a district's fiscal year does not revert to:

(1) a county general fund; or

(2) any other fund.

(e) The controller of a district shall:

(1) file an individual surety bond; or

(2) revise an existing bond;

in a sufficient amount determined under IC 5-4-1-18 to reflect the liability associated with the handling of the district's money.

[As added by: P.L.1-1996, §11.]

IC 13-21-13-3 -------- District final disposal fees: responsibilities of owner/operator with respect to

(a) If a board imposes a fee under section 1 of this chapter, the owner or operator of a final disposal facility located within the district is responsible for collecting fees from persons delivering solid waste to the facility. Each owner or operator may do the following:

(1) Deduct from the fees an amount equal to one percent (1%) of the fees collected.

(2) Retain this amount as compensation for collecting and remitting the fees.

(b) The owner or operator shall remit the remainder of the fees the owner or operator collects during a month to the controller not later than ten (10) days after the last day of the month in which the fees are collected.

(c) Each owner or operator of a final disposal facility shall, at the time the collected fees are remitted, furnish to the controller a fee collection report.

[As added by: P.L.1-1996, §11.]

IC 13-21-13-4 -------- District final disposal fees: limits on imposition of fee

A board may not impose a fee under this chapter on the disposal of solid waste by a person that:

(1) generated the solid waste; and

(2) disposes of the solid waste at a site that is:

(A) owned by that person; and

(B) limited, for purposes of the disposal of solid waste, to use by the person for the disposal of solid waste generated by the person.

[As added by: P.L.1-1996, §11.]

IC 13-21-13-5 -------- District final disposal fees: conversion factors for facilities without scales

(a) If fees imposed under section 1 of this chapter are based and charged on each ton of solid waste, the owner or operator of a final disposal facility that:

(1) annually receives, on the average, less than two hundred (200) tons of solid waste each day; and

(2) does not have a scale suitable for weighing the solid waste received at the final disposal facility;

may determine the weight of the solid waste received by conversion from the volume of the solid waste.

(b) An owner or operator described in subsection (a) shall apply the following conversion factors:

(1) Three and three-tenths (3.3) cubic yards of compacted solid waste equals one (1) ton of solid waste.

(2) Six (6) cubic yards of uncompacted solid waste equals one (1) ton of solid waste.

[As added by: P.L.1-1996, §11.]

IC 13-21-13-6 -------- District final disposal fees: fees not revenues

Fees prescribed by this chapter are not:

(1) revenues (as defined in IC 36-9-31-2) of a facility (as defined in IC 36-9-31-2); or

(2) revenues under:

(A) IC 8-1.5;

(B) IC 13-21-3-13;

(C) IC 13-21-7 through IC 13-21-12;

(D) IC 13-21-14; or

(E) IC 36-9-30.

[As added by: P.L.1-1996, §11.]

IC 13-21-14. DISTRICT SOLID WASTE MANAGEMENT FEES

IC 13-21-14-1 -------- District solid waste management fees: establishing additional fees

(a) A board:

(1) may; and

(2) if necessary to pay principal or interest on any bonds issued under this article or IC 13-9.5-9 (repealed), shall;

establish solid waste management fees in addition to fees imposed under IC 13-21-13 or IC 13-9.5-7 (before its repeal) that apply to all persons owning real property or generating solid waste within the district who are benefited by solid waste management, solid waste collection, a facility for solid waste disposal, or a facility for solid waste processing.

(b) The board may change and readjust fees as necessary.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-2 -------- District solid waste management fees: basis of fees

The board may fix the solid waste management fees on the basis of the following:

(1) A flat charge for each residence or building in use in the waste management district.

(2) The weight or volume of the refuse received.

(3) The average number of containers or bags of refuse received.

(4) The relative difficulty associated with the collection or management of the solid waste received.

(5) Any other criteria that the board determines to be logically related to the service.

(6) Any combination of these criteria.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-3 -------- District solid waste management fees: billing

The collection of the fees authorized by this chapter may be effectuated through a periodic billing system.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-4 -------- District solid waste management fees: differing schedules of fees

The board may exercise reasonable discretion in adopting differing schedules of fees based upon variations in the following:

(1) The cost of furnishing the services included within this chapter to various classes of owners of property or of generators of solid waste within the district.

(2) The distance of the property benefited from the facility.

(3) Any other variations the board determines to be logically related to the cost of the service.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-5 -------- District solid waste management fees: procedure for establishment

(a) Fees shall be established only after public notice and a public hearing before the board at which:

(1) all persons using facilities, owning property, or generating solid waste within the district who are benefited by solid waste management; and

(2) other interested persons;

have an opportunity to be heard concerning the proposed fees.

(b) After introduction of a resolution fixing fees and before the resolution is adopted, public notice of the hearing, setting forth the schedule of fees, shall be given. The hearing may be adjourned as necessary.

(c) After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect.

(d) A copy of the schedule of fees established shall be kept:

(1) on file in the office of the board or the controller, secretary, or other recordkeeping officer of the district; and

(2) open to inspection by all interested persons.

(e) The fees established extend to cover any additional territory later served that falls within the same class without the necessity of a hearing or notice.

(f) A change or readjustment of fees may be made in the same manner as the fees were originally established.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-6 -------- District solid waste management fees: action to contest fees

An action to contest:

(1) the validity of the fees adopted; or

(2) the procedure by which the fees were adopted;

must be brought within thirty (30) days following the adoption of the fees under section 5 of this chapter.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-7 -------- District solid waste management fees: use of fees

Fees imposed under this chapter may be used, together with any other revenues, to pay any of the following:

(1) The cost of facilities for solid waste management.

(2) The operation and maintenance of facilities.

(3) The charges that may be pledged to the payment of principal of and interest on waste management district or revenue bonds.

(4) The costs of implementing the district's district plan.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-8 -------- District solid waste management fees: late fees

If a fee established is not paid within the time fixed by the board, the amount, together with:

(1) a penalty of twenty-five dollars ($25); and

(2) a reasonable attorney's fee;

may be recovered in a civil action in the name of the district.

[As added by: P.L.1-1996, §11.]

IC 13-21-14-9 -------- District solid waste management fees: no fees on transfer stations

A district may not exercise its authority under this chapter to impose a fee on the:

(1) owner of real or personal property that is used solely as a transfer station; or

(2) operation of a transfer station.

[As addedby: P.L. 130-1996, §1.]

TITLE 13. ENVIRONMENT
IC 13-22. HAZARDOUS WASTE MANAGEMENT

IC 13-22-1. CONSTRUCTION OF STATUTES

IC 13-22-1-1 --------- Construction of statutes: onsite disposal

IC 13-22-2 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14 may not be construed to prohibit disposal of solid waste or hazardous wastes at the site of production or generation if construction and operation permits have been obtained in accordance with IC 13-22-3.

[As added by: P.L.1-1996, §12.]

IC 13-22-2. REGULATION GENERALLY; ADOPTION OF SPECIFIC RULES

IC 13-22-2-1 --------- Regulation generally; adoption of specific rules: role of IDEM

The department shall regulate and require the proper and safe transportation, treatment, storage, and disposal of hazardous waste that is generated in or transported into Indiana.

[As added by: P.L.1-1996, §12.]

IC 13-22-2-2 --------- Regulation generally; adoption of specific rules: SWMB to adopt rules

The solid waste management board shall adopt rules under IC 4-22-2 to implement this chapter through IC 13-22-8, IC 13-22-11.5, and IC 13-22-13 through IC 13-22-14.

[As amended by: P.L.45-1997, §16 and P.L.128-1997, §4.]

IC 13-22-2-3 --------- Regulation generally; adoption of specific rules: SWMB to adopt rules for determining hazardous waste; hazardous waste list

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 to develop criteria for determining hazardous waste. In developing those criteria, the board shall determine whether any waste to be or being disposed of meets any of the following conditions:

(1) Presents immediate or persistent hazards to humans or wildlife.

(2) Is resistant to natural degradation or detoxification.

(3) Is bioconcentrative, flammable, reactive, toxic, corrosive, or infectious in addition to any other harmful characteristics.

(b) The board shall do the following:

(1) Compile and maintain a listing of wastes that have been determined to be hazardous:

(A) under the criteria described in subsection (a); or

(B) by regulation of the United States Environmental Protection Agency.

(2) Issue the listing by adopting rules under IC 4-22-2. However, the board may by resolution adopt an emergency rule under IC 4-22-2-37.1 to declare any waste determined to be hazardous under this section.

(c) The board shall consider actions taken by adjoining states and the federal government for purposes of uniform criteria relating to the listing and delisting of waste under this section.

(d) The commissioner may exclude a waste produced at a particular generating facility from the listing under subsection (b) if the person seeking exclusion of the waste demonstrates to the satisfaction of the commissioner that the waste does not meet any of the crite-

ria under which the waste was listed as a hazardous waste and:

(1) the person seeking exclusion has already obtained exclusion of the waste from the listing maintained under 40 CFR 261 by the United States Environmental Protection Agency; or

(2) if the department has received authority from the United States Environmental Protection Agency to delist waste under 40 CFR 260.20 and 260.22, the person petitions the commissioner to consider the removal of a waste from the listing, and the commissioner follows the authorized procedure for delisting.

(e) The department shall establish a procedure by which a person may petition the commissioner to consider the removal of a specific waste from the lists maintained under subsection (b).

[As amended by: P.L.45-1997, §17 and P.L.128-1997, §5.]

IC 13-22-2-4 --------- Regulation generally; adoption of specific rules: SWMB to adopt rules regarding transport, treatment, storage and disposal

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 on the proper and safe transportation, treatment, storage, and disposal of hazardous wastes. Whenever possible, the rules adopted under this section must allow for variation in Indiana with regard to population density, climate, and geology.

(b) Rules adopted under this section concerning incinerators used as hazardous waste facilities may establish requirements more stringent than the requirements for hazardous waste incinerators established by regulations adopted by the Administrator of the United States Environmental Protection Agency under the following statutes:

(1) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(2) The federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

[As added by: P.L.1-1996, §12.]

IC 13-22-2-5 --------- Regulation generally; adoption of specific rules: criteria for hazardous waste facilities rules

The rules adopted by the board concerning the construction and operation of hazardous waste facilities must require, without limitation, the following:

(1) Provision of contingency plans for effective containment and control of any emergency condition resulting from an unanticipated occurrence.

(2) Satisfactory proof of the financial capability of the operator and owner of the facility.

(3) Satisfactory submission of a plan for and financial assurance of closure and postclosure monitoring and maintenance of the facility.

(4) Access to adequate testing facilities onsite or offsite to verify the chemical and physical characteristics of the hazardous wastes stored, received, or transferred.

(5) Provision and maintenance of liability insurance by the owner or operator through self-insurance or from an insurer licensed or eligible to insure facilities in Indiana for accidental occurrences in accordance with rules of the board.

(6) Corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a hazardous waste facility for which a permit is sought under IC 13-22-3, regardless of the time at which waste was placed in the unit. The rules must provide that, if corrective action as required under this subdivision cannot be completed at the site of a facility before issuance of the permit, the permit must contain schedules of compliance for any required corrective action.

[As added by: P.L.1-1996, §12.]

IC 13-22-2-6 --------- Regulation generally; adoption of specific rules: SWMB to adopt rules regarding closure and post-closure

The board shall do the following:

(1) Adopt rules under IC 4-22-2 setting standards for closure and postclosure monitoring and maintenance plans.

(2) Include in the rules a requirement for prior notice of closure and a time limit for completion of closure.

[As added by: P.L.1-1996, §12.]

IC 13-22-2-7 --------- Regulation generally; adoption of specific rules: SWMB to adopt rules setting standards for corrective action

The board shall adopt rules under IC 4-22-2 setting standards for corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a hazardous waste facility. The standards must require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility concerned demonstrates to the satisfaction of the commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake that action. The rules adopted under this section apply to the following:

(1) All facilities operating under permits issued under IC 13-22-3 or IC 13-7-8.5 (before its repeal).

(2) All landfills, surface impoundments, and waste piles, including any new units, replacements of existing units, and lateral expansions of existing units, that receive hazardous waste after July 26, 1982.

[As added by: P.L.1-1996, §12.]

IC 13-22-3. PERMITS

IC 13-22-3-1 --------- Permits: IDEM to operate permit program

The department shall operate permit programs for all hazardous waste facilities in accordance with IC 13-15.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-2 --------- Permits: IDEM to issue permits

The department shall issue permits for a hazardous waste facility constructed and operated in compliance with rules adopted by the solid waste management board.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-3 --------- Permits: restrictive covenant required for operation of hazardous waste landfill

(a) Before allowing the operation of a landfill for the disposal of hazardous waste, the commissioner and all the owners of the land upon which the landfill is located must execute and record a restrictive covenant upon the land involved. The department shall file the instrument imposing the restrictive covenant for record in the recorder's office in the county in which the landfill is located.

(b) The covenant must state that:

(1) the land has been or may be used as a landfill for disposal of hazardous waste; and

(2) neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees, may engage in filling, grading, excavating, building, drilling, or mining on the property following the completion and closure of the landfill without authorization of the commissioner.

(c) Before the commissioner grants an authorization for the activities prohibited in the

covenant, the commissioner shall review the following:

(1) The original design of the landfill.

(2) The type of operation.

(3) The hazardous waste deposited there.

(4) The state of decomposition of the hazardous wastes.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-4 --------- Permits: exemptions for onsite transportation certain onsite treatment and recovery

There is no requirement for any of the following:

(1) A manifest for onsite transportation.

(2) A permit for treatment or recovery of hazardous waste generated as a residual or secondary material from a manufacturing process if the waste is:

(A) recycled;

(B) recovered; or

(C) reused;

by the person that generated or utilized the waste.

(3) A permit for the utilization of secondary material under IC 13-22-11.5.

[As amended by: P.L.45-1997, §18 and P.L.128-1997, §6.]

IC 13-22-3-5 --------- Permits: exemption for mining operations

The commissioner may exempt the requirement for a permit for the storage, treatment, processing, or disposal of solid or hazardous wastes by a mining operation if:

(1) the mining operation has a permit under IC 14-34; and

(2) the commissioner determines that the department of natural resources is operating a program of regulation of solid and hazardous wastes derived from mining operations that is equivalent to the regulatory program for those wastes under the environmental management laws.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-6 --------- Permits: closure plan

(a) An application for a permit for a hazardous waste treatment, storage, or disposal facility must include a closure plan. If hazardous waste is to be disposed of at the facility, the application must also include a postclosure monitoring and maintenance plan.

(b) The closure plan required under subsection (a) must include at a minimum the following:

(1) An estimate of the cost of closure.

(2) A description of the method of closure.

(3) Possible uses of the land after closure.

(4) Anticipated time before closure.

(5) An estimate of time to complete closure.

(c) The postclosure monitoring and maintenance plan required under subsection (a) must include at a minimum the following:

(1) An estimate of the cost of postclosure monitoring and maintenance for a period of thirty (30) years.

(2) A description of the system to be employed for security, groundwater and leachate monitoring, sampling analysis, and periodic reporting.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-7 --------- Permits: impact of conviction for violation of environmental laws

An individual, a partnership, a limited liability company, or a corporation who or that has been:

(1) convicted of a violation of the environmental management laws or IC 13-7 (before its repeal); and

(2) fined or imprisoned under IC 13-30-6;

may not be issued a permit to own or operate a hazardous waste facility.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-8 --------- Permits: conditions for PCB incinerator permit

A permit may not be issued under this chapter for the construction or operation of an incinerator for the destruction of PCB at levels established under the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or regulations adopted under the federal Toxic Substances Control Act and operated as a hazardous waste facility if the incinerator:

(1) burns or will burn municipal waste to fuel the incineration process; and

(2) is or will be in a solid waste management district established under IC 13-21-3-1 or IC 13-9.5-2-1 (before its repeal);

unless the solid waste management district has incorporated the incinerator as an active part of the district solid waste management plan submitted by the solid waste management district under IC 13-21-5-1 or IC 13-9.5-4-1 (before its repeal) and approved by the commissioner under IC 13-21-5-8, IC 13-21-5-9, or IC 13-9.5-4-3 (before its repeal).

[As added by: P.L.1-1996, §12.]

IC 13-22-3-9 --------- Permits: PCB incinerators; additional requirements

In addition to any other requirements, a permit may not be issued under this chapter for the construction or operation of a hazardous waste facility to be used for the incineration of PCB or for an ancillary facility required by the incineration process unless the person applying for the permit has demonstrated all of the following:

(1) That the destruction or treatment technology to be used at the proposed hazardous waste facility has been in operation:

(A) at a facility that is equivalent to the proposed hazardous waste facility; and

(B) for a time sufficient to demonstrate that:

(i) ninety-nine and nine thousand nine hundred ninety-nine ten thousandths percent (99.9999%) of the PCB processed at the equivalent facility has been destroyed; and

(ii) a hazardous substance has not been released into another solid, liquid, or gaseous substance by the destruction or treatment technology used in the incineration process.

(2) That monitoring data from an equivalent hazardous waste facility demonstrates that there are no releases from the equivalent facility that alone or in combination with another substance present a risk of any of the following:

(A) An acute or a chronic human health effect.

(B) An adverse environmental effect.

(3) That a plan to:

(A) provide sufficient training, coordination, and equipment for state and local emergency response personnel needed to respond to possible releases of harmful substances from the proposed hazardous waste facility or ancillary facility; and

(B) evacuate persons in the geographic area at risk from the worst possible release of:

(i) the PCB; or

(ii) a substance produced in the destruction or treatment of the PCB;

from the proposed hazardous waste facility or ancillary facility;

has been funded and developed.

[As added by: P.L.1-1996, §12.]

IC 13-22-3-10 -------- Permits: incineration of chemical munitions; demonstration required

In addition to any other requirements, a permit may not be issued under this chapter for the construction or operation of a hazardous waste facility to be used for the destruction or treatment of a chemical munition unless the person applying for the permit has demonstrated all of the following:

(1) That the destruction or treatment technology to be used at the proposed hazardous waste facility has been in operation:

(A) at a facility comparable to the proposed hazardous waste facility; and

(B) for a time sufficient to demonstrate that ninety-nine and nine thousand nine hundred ninety-nine ten thousandths percent (99.9999%) of the chemical munition processed at the comparable facility has been destroyed or treated.

(2) That monitoring data from a comparable hazardous waste facility demonstrates that there are no emissions from the comparable facility that alone or in combination with another substance present a risk of any of the following:

(A) An acute or a chronic human health effect.

(B) An adverse environmental effect.

(3) That a plan to:

(A) provide sufficient training, coordination, and equipment for state and local emergency response personnel needed to respond to possible releases of harmful substances from the proposed hazardous waste facility; and

(B) evacuate persons in the geographic area at risk from the worst possible release of:

(i) the chemical munition; or

(ii) a substance related to the destruction or treatment of the chemical munition;

from the proposed hazardous waste facility;

has been funded and developed.

[As added by: P.L.1-1996, §12.]

IC 13-22-4. MANIFESTS

IC 13-22-4-1 --------- Manifests: SWMB to adopt manifest form

A person that generates hazardous waste that is transported to a:

(1) treatment;

(2) storage; or

(3) disposal;

facility located at a site other than the site where the waste was generated shall use the Uniform Hazardous Waste Manifest form adopted by the United States Environmental Protection Agency for purposes of the transportation of hazardous waste.

(b) In addition to any other information a person is required to enter on the Uniform Hazardous Waste Manifest form described in subsection (a), the person shall enter, in an appropriate place on the form, the waste codes for each hazardous waste in a shipment that is transported to the treatment, storage, or disposal facility.

[As added by: P.L.143-2000, §3.]

IC 13-22-4-2 --------- Manifests: use of manifest form

(a) A generator located in Indiana whose hazardous waste is transported to a treatment, storage, or disposal facility located in another state may use a manifest form prescribed by the law of the other state to meet the requirements of this chapter if the form is compatible with the form described in section 1 of this chapter.

(b) A generator located in a state other than Indiana whose hazardous waste is transported to a treatment, storage, or disposal facility in Indiana must:

(1) use the manifest form described in section 1 of this chapter; and

(2) meet the other requirements of IC 13-22-2 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

[As amended by: P.L.143-2000, §4.]

IC 13-22-4-3.1 ------- Manifests: annual reports due [Effective 1/1/2002]

(a) As used in this section, "acute hazardous waste" has the meaning set forth in IC 13-11-2-1.5.

(b) A person that:

(1) in any one (1) or more calendar months of a calendar year generates:

(A) more than one hundred (100) kilograms but less than one thousand (1,000) kilograms of hazardous waste;

(B) less than one (1) kilogram of acute hazardous waste; or

(C) less than one hundred (100) kilograms of material from the cleanup spillage of acute hazardous waste; or

(2) accumulates at least one thousand (1,000) kilograms of hazardous waste or less than one (1) kilogram of acute hazardous waste;

shall, before March 1 of each year, submit to the department on forms provided by the department a report, containing no more than a compilation of information from the Uniform Hazardous Waste Manifest form described in section 1(a) of this chapter, that summarizes the person's hazardous waste shipments during the previous calendar year.

(c) A person that:

(1) in any one (1) or more calendar months of a calendar year generates:

(A) more than one thousand (1,000) kilograms of hazardous waste;

(B) at least one (1) kilogram of acute hazardous waste; or

(C) at least one hundred (100) kilograms of material from the cleanup spillage of acute hazardous waste;

(2) accumulates at least six thousand (6,000) kilograms of hazardous waste or at least one (1) kilogram of acute hazardous waste; or

(3) is a treatment, storage, or disposal facility;

shall, before March 1 of each year, submit to the department either the biennial report required by the United States Environmental Protection Agency concerning the person's waste activities during the previous calendar year, or an annual report on forms provided by the department, containing no more than a compilation of information from the Uniform Hazardous Waste Manifest form described in section 1(a) of this chapter, that summarizes the person's hazardous waste shipments during the previous calendar year.

[As amended by: P.L.1-2001, §20.]

IC 13-22-5. REJECTION OF HAZARDOUS WASTE

IC 13-22-5-1 --------- Rejection of hazardous waste: rejection of shipment before signing manifest

A hazardous waste facility owner or operator may reject all of a hazardous waste shipment for any reason before signing the manifest.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-2 --------- Rejection of hazardous waste: rejection of shipment after signing manifest

After the manifest is signed, a hazardous waste facility owner or operator may reject all or part of a hazardous waste shipment that:

(1) does not conform to the terms of the agreement under which the hazardous waste facility agrees to manage the hazardous waste;

(2) does not conform to the requirements of the hazardous waste facility's permit;

(3) would require a deviation from the hazardous waste facility's standard operating procedures; or

(4) cannot, with reasonable efforts, be removed from the vehicle or the container in which the hazardous waste was transported.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-3 --------- Rejection of hazardous waste: requirements for rejection under §2

If a hazardous waste facility owner or operator rejects under section 2 of this chapter all or part of a hazardous waste shipment, the hazardous waste facility shall comply with the requirements of this chapter.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-4 --------- Rejection of hazardous waste: rejecting facility under §2 not liable

A hazardous waste facility that rejects all or part of a hazardous waste shipment under section 2 of this chapter is not:

(1) considered a generator of the rejected hazardous waste; and

(2) liable for any rejected part of the hazardous waste shipment under IC 13-25-4.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-5 --------- Rejection of hazardous waste: obligation of generator of rejected shipment

If a hazardous waste facility owner or operator rejects all or part of a shipment of hazardous waste after the owner or operator has signed the manifest, the hazardous waste facility owner or operator shall contact the generator, who shall direct the owner or operator to:

(1) return the rejected shipment to the generator; or

(2) transport the rejected shipment to an alternate hazardous waste facility selected by the generator.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-6 --------- Rejection of hazardous waste: generator of rejected shipment to complete new manifest

(a) If the rejected load is to be returned to a generator, the generator shall complete a new manifest form and comply with all of the standards applicable to generators of hazardous waste except the following:

(1) Line out the word "generator" in Box 3 of the manifest and insert the words "rejecting facility".

(2) Line out the words "designated facility" in Box 9 of the manifest and insert the word "generator".

(3) Write the words "REJECTED LOAD" in large block print and indicate the manifest document number of the original manifest in Box 15 of the rejected load manifest.

(b) The rejected load manifest must accompany the shipment back to the generator. The generator retains all responsibility for transportation of the rejected waste.

[As amended by: P.L.143-2000, §6.]

IC 13-22-5-7 --------- Rejection of hazardous waste: required notations on new manifest by generator of rejected shipment

(a) When the rejected waste and the manifest are received by the generator, the generator shall do the following:

(1) Note any discrepancies in Box 19 of the manifest.

(2) Line out the words "Facility Owner or Operator" in Box 20 of the manifest and insert the words "Receiving generator".

(3) Sign Box 20 of the manifest.

(4) Give a copy of the manifest to the transporter.

(5) Mail a copy of the manifest to the rejecting facility not more than five (5) days after receipt of the shipment and the manifest.

(b) The receiving generator and rejecting facility shall retain copies of the manifest from the rejected load for not less than three (3) years after the date of receipt.

[As amended by: P.L.143-2000, §7.]

IC 13-22-5-8 --------- Rejection of hazardous waste: obligation of rejecting facility re manifest

If the rejecting facility does not receive a copy of the manifest with the handwritten signature of the generator in Box 20 in not more than thirty-five (35) days from the date the rejected waste was accepted for transport back to the generator, the rejecting facility shall comply with the exception reporting requirements applicable to generators of hazardous waste.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-9 --------- Rejection of hazardous waste: retention period for rejected shipment

The generator may retain the hazardous waste at the location of receipt for not more than ninety (90) days following receipt of the rejected load before shipment to a permitted facility. The generator shall manage the waste during the retention period in compliance with all federal and state standards applicable to generators of hazardous waste.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-10 -------- Rejection of hazardous waste: shipment to alternate facility

If the rejected load is to be shipped to an alternate hazardous waste management facility, the generator shall complete the manifest form identifying the generator as the generator and specifying the alternate designated facility. The generator shall forward the manifest to the rejecting facility to accompany the shipment to the alternate facility.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-11 -------- Rejection of hazardous waste: obligation of transporter who has mixed waste fro more than one generator

If hazardous waste from more than one (1) generator is mixed together by the transporter before delivery to the hazardous waste facility, the transporter shall assume all responsibility for proper disposition of the rejected waste, including the responsibility to:

(1) designate an alternate hazardous waste facility; and

(2) assure delivery to that facility.

[As added by: P.L.1-1996, §12.]

IC 13-22-5-12 -------- Rejection of hazardous waste: expiration of chapter; IDEM to adopt rules

(a) This chapter expires upon the earlier of the following:

(1) July 1, 2005.

(2) The date that regulations of the United States Environmental Protection Agency governing the manifesting of rejected loads of hazardous waste become effective.

(b) The department shall adopt rules to implement any regulations referred to under subsection (a)(2) to become effective the date this chapter expires.

[As added by: P.L.1-1996, §12.]

IC 13-22-6. REPORTING REQUIREMENTS

IC 13-22-6-1 --------- Reporting requirements: hazardous waste disposal facility to report monthly to county health board

(a) An owner or operator of a hazardous waste disposal facility must submit each month, to the county board of health of the county in which the facility is located, a report that lists the hazardous wastes disposed of in that facility during the previous month.

(b) The disposal facility may satisfy the requirements of this section by submitting:

(1) photocopies of the facility daily log; or

(2) a copy of any other report listing the hazardous wastesdisposed of in the facility.

[As added by: P.L.1-1996, §12.]

IC 13-22-7. RECORDS

IC 13-22-7-1 --------- Records: of hazardous wastes generated, stored, or disposed of within Indiana; trade secrets

(a) The department shall:

(1) maintain records; and

(2) by means of a system of record keeping, tabulate the volume, nature, and location; of hazardous wastes generated, stored, or disposed of within Indiana.

(b) Because of the potential relationship between hazardous wastes and proprietary processes of hazardous waste producers and operators of hazardous waste facilities, the commissioner shall, in accordance with IC 13-14-11, ensure that trade secrets disclosed to the commissioner or an authorized representative of the department are not otherwise disclosed:

(1) without the consent of the person; or

(2) as required by law.

[As added by: P.L.1-1996, §12.]

IC 13-22-8. FINANCIAL RESPONSIBILITY STANDARDS

IC 13-22-8-1 --------- Financial responsibility standards: SWMB to adopt rules

(a) The solid waste management board shall adopt rules under IC 4-22-2 on standards of financial responsibility for the following:

(1) Closure.

(2) Postclosure monitoring at hazardous waste facilities.

(3) Any required corrective action at those facilities.

(b) The rules adopted under this section must reflect the provisions for financial responsibility prescribed by section 2 of this chapter.

[As added by: P.L.1-1996, §12.]

IC 13-22-8-2 --------- Financial responsibility standards: evidence of financial responsibility

(a) The rules on financial responsibility for monitoring and corrective action at hazardous waste facilities adopted by the board under section 1 of this chapter and IC 4-22-2 must state that evidence of financial responsibility may be provided through one (1) or more of the following:

(1) Insurance.

(2) Guaranty.

(3) A surety bond.

(4) A letter of credit.

(5) Qualification as a self-insurer.

The rules may specify that certain terms, conditions, or defenses are necessary or are unacceptable in a policy or contract through which proof of financial responsibility is to be provided.

(b) If the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement under the federal bankruptcy law, or if no state or federal court could obtain jurisdiction over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is provided may be asserted directly against the guarantor. In an action based upon such a claim, the guarantor may invoke:

(1) all rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator by the claimant; and

(2) all rights and defenses that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor under this section is limited to the aggregate amount in which the guarantor has provided evidence of financial responsibility for the owner or operator of a hazardous waste facility. This section does not limit any other liability of a guarantor to the owner or operator of a hazardous waste facility, such as liability for bad faith in negotiating or in failing to negotiate the settlement of any claim.

[As added by: P.L.1-1996, §12.]

IC 13-22-9. FINANCIAL RESPONSIBILITY FOR OPERATORS OF HAZARDOUS WASTE LANDFILLS, SOLID WASTE LANDFILLS, AND TRANSFER STATIONS

IC 13-22-9-1 --------- Financial responsibility for landfills and transfer stations: applicability

Except as provided in section 8 of this chapter, a person that applies for a permit to operate a:

(1) hazardous waste landfill;

(2) solid waste landfill; or

(3) transfer station;

must establish financial responsibility for the costs of closure and postclosure monitoring and maintenance of the hazardous waste landfill, solid waste landfill, or transfer station.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-2 --------- Financial responsibility for landfills and transfer stations: closure and post-closure coverage

The financial responsibility established under section 1 of this chapter must cover the costs of:

(1) properly closing, in an environmentally sound manner; and

(2) during postclosure, monitoring and maintaining;

the hazardous waste landfill, solid waste landfill, or transfer station.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-3 --------- Financial responsibility for landfills and transfer stations: evidence of

Financial responsibility may be established under section 1 of this chapter by filing one (1) or a combination of the following with the commissioner:

(1) Trust fund agreement.

(2) Surety bond with a standby trust fund agreement.

(3) Letter of credit with a standby trust fund agreement.

(4) Insurance policy with a standby trust fund agreement.

(5) If the person applying for a permit derives less than fifty percent (50%) of the person's gross revenue from waste management, proof that the person meets a financial test established by the board.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-4 --------- Financial responsibility for landfills and transfer stations: amount for a hazardous waste landfill or a solid waste landfill

The amount of financial responsibility a person must establish under section 1 of this chapter for a hazardous waste landfill or a solid waste landfill must:

(1) be the greater of:

(A) fifteen thousand dollars ($15,000) for each acre or part of an acre covered by the hazardous waste landfill or solid waste landfill; or

(B) an amount determined by the commissioner that is sufficient to close the hazardous waste landfill or solid waste landfill in a manner that:

(i) minimizes the need for further maintenance; and

(ii) provides reasonable, foreseeable, and necessary maintenance during postclosure; and

(2) provide assurance of proper postclosure maintenance and monitoring for at least thirty (30) years after the hazardous waste landfill or solid waste landfill has ceased operations.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-5 --------- Financial responsibility for landfills and transfer stations: amount for transfer station

The amount of financial responsibility a person must establish under section 1 of this chapter for a transfer station must:

(1) be the greater of:

(A) four thousand dollars ($4,000) for each acre or part of an acre covered by the transfer station; or

(B) an amount determined by the commissioner that is sufficient to close the transfer station in a manner that:

(i) minimizes the need for further maintenance; and

(ii) provides reasonable, foreseeable, and necessary maintenance during postclosure; and

(2) provide assurance of proper postclosure maintenance for one (1) year after the transfer station has ceased operations.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-6 --------- Financial responsibility for landfills and transfer stations: use by commissioner

The commissioner may use:

(1) a trust fund agreement;

(2) a surety bond;

(3) a letter of credit; or

(4) an insurance policy;

required under this chapter for the closure or postclosure monitoring and maintenance of a hazardous waste landfill, solid waste landfill, or transfer station if the person that files the trust fund agreement, surety bond, letter of credit, or insurance policy does not comply with closure or postclosure requirements.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-7 --------- Financial responsibility for landfills and transfer stations: SWMB to adopt rules

The board shall adopt rules under IC 4-22-2 and IC 13-14-8 to do the following:

(1) Implement this chapter.

(2) Establish criteria to determine the following:

(A) When the closure and postclosure monitoring and maintenance requirements have been met by a person that provides financial responsibility under section 1 of this chapter.

(B) How money in a trust fund agreement, surety bond, letter of credit, or insurance policy provided by a person under section 3 of this chapter may be released to the person when the person meets closure and postclosure requirements.

[As added by: P.L.1-1996, §12.]

IC 13-22-9-8 --------- Financial responsibility for landfills and transfer stations: exemption of certain municipal ash disposal facilities

(a) A municipal corporation that owns or operates a solid waste landfill that:

(1) is used exclusively to dispose of ash; and

(2) complies with construction standards established under:

(A) the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); and

(B) regulations adopted under the federal Resource Conservation and Recovery Act in effect January 1, 1991;

is not required to establish financial responsibility for the costs of closure and postclosure monitoring and maintenance of the solid waste landfill under this chapter if the fiscal body of the municipal corporation adopts a resolution in which the fiscal body elects to practice self-insurance with respect to those costs and commits to the expeditious transfer of money to cover closure and postclosure costs.

(b) A fiscal body adopting a resolution referred to in subsection (a) is not required to:

(1) set aside financial resources for meeting the costs referred to in subsection (a) when the resolution is adopted; or

(2) indicate in the resolution whether financial resources will be set aside to meet those costs.

(c) The amounts set forth in sections 4 through 5 of this chapter do not apply to the practice of self-insurance by a municipal corporation under this section if the fiscal body of the municipal corporation determines in the resolution adopted under this section that the program of self-insurance established by the resolution is adequate to meet the costs of:

(1) closure; and

(2) postclosure monitoring and maintenance;

of the solid waste landfill owned or operated by the municipal corporation.

[As added by: P.L.1-1996, §12.]

IC 13-22-10. HAZARDOUS OR LOW LEVEL RADIOACTIVE WASTE FACILITY SITE APPROVAL

IC 13-22-10-5 -------- Hazardous or low level radioactive waste facility site approval: local zoning approval required; exception

(a) This section does not apply to a person who applied for a certificate of environmental compatibility under IC 13-7-8.6 (before its repeal) before July 1, 1995.

(b) A person who proposes to construct a hazardous waste disposal facility permitted under IC 13-22, a commercial hazardous waste facility permitted under IC 13-22, or a commercial low level radioactive waste facility permitted under IC 13-29-1-6 may not begin construction of the facility until:

(1) the person has obtained all approvals to construct the facility required under applicable zoning ordinances or other zoning laws; or

(2) if the facility is located in an area that is not subject to a zoning ordinance or other zoning law, the person has obtained approval to construct the facility from the county executive of the county in which the facility would be located.

[As amended by: P.L.45-1997, §19.]

IC 13-22-10-23 ------ Hazardous or low level radioactive waste facility site approval: certificate preempts local zoning; limits on actions by local government

(a) A:

(1) certificate of environmental compatibility granted under:

(A) IC 13-7-8.6 (before its repeal); or

(B) this chapter (before the expiration of the sections of this chapter authorizing the hazardous waste facility site approval authority to grant certificates of environmental compatibility) preempts any local government zoning or other land use regulations, laws, or ordinances; and

(2) person obtaining the certificate of environmental compatibility is not required to apply for approval by:

(A) a regional;

(B) a county; or

(C) a municipal;

zoning board or authority.

(b) Local government may not prohibit or unduly restrict:

(1) the transportation of hazardous waste or low level radioactive waste through the local government's area of jurisdiction that is enroute to a facility; or

(2) the:

(A) treatment;

(B) storage; or

(C) disposal;

of hazardous waste or low level radioactive waste at a facility within the jurisdiction of the local government.

[As amended by: P.L.1-2001, §21.]

IC 13-22-11. HAZARDOUS WASTE REDUCTION

IC 13-22-11-1 -------- Hazardous waste reduction: duties of office

(a) The office shall do the following:

(1) Continuously gather information on secondary material utilization or waste reduction practices and technology from sources within and outside Indiana.

(2) Provide information and advice on secondary material utilization or waste reduction in response to a request from a business or business organization that is active in Indiana.

(b) In the absence of a request, the office may, at the direction of the commissioner, present advice on secondary material utilization or waste reduction to a business that:

(1) is active in Indiana; and

(2) in the judgment of the commissioner, could:

(A) significantly reduce;

(B) eliminate; or

(C) avoid;

the generation and disposal of hazardous waste through waste reduction or secondary material utilization under IC 13-22-11.5.

The office shall study the information to be presented with advice under this subsection.

[As amended by: P.L.45-1997, §20 and P.L.128-1997, §7.]

IC 13-22-11-2 -------- Hazardous waste reduction: prioritizing types of businesses

In directing the office to present advice to businesses under section 1(b) of this chapter, the commissioner shall establish a priority among types of businesses according to the following:

(1) The degree or magnitude of waste reduction that could be achieved by a type of business, in comparison to the waste reduction that could be achieved by other businesses.

(2) The financial and technical feasibility of the waste reduction practices and technologies available to various types of businesses.

(3) The statewide waste reduction impact likely to be achieved through presenting advice to a type of business due to the prevalence of that type of business in Indiana.

(4) Any other factors that, in the judgment of the commissioner, may affect the overall effectiveness of the office in promoting waste reduction in Indiana.

[As added by: P.L.1-1996, §12.]

IC 13-22-11-3 -------- Hazardous waste reduction: report

A person who submits a report to the department under 42 U.S.C. 6922(a)(6) may include with the report the information listed under section 4 of this chapter.

[As amended by: P.L.122-1996, §4.]

IC 13-22-11-4 -------- Hazardous waste reduction: information which may be included in report

(a) The following information may be included with the report under section 3 of this chapter for the period covered by the report:

(1) A description of the industrial operation that generated the hazardous waste, including information on the following:

(A) The steps taken in the operation.

(B) The machinery and materials used in the operation.

(C) The inputs and outputs of the operation.

(2) Proposals that would implement waste reduction in the type of industrial operation that generated the hazardous waste.

(3) A statement that the information is accurate to the best of the generator's knowledge.

(4) Any other information the generator desires to provide to the department to obtain voluntary technical assistance from the department.

(b) A person who:

(1) submits information to the department under subsection (a); and

(2) believes that the information or a part of the information is a trade secret or otherwise warrants confidential treatment;

may submit the information under a claim of confidentiality in accordance with IC 13-14-11 and IC 5-14-3-4.

(c) A person who submits information under subsection (a) that is determined to be confidential may not unreasonably withhold permission from the department to disclose to the public general or generic information on waste reduction techniques derived from the submitted information if the disclosure will not divulge:

(1) the trade secret; or

(2) other specific, substantive basis of confidentiality.

[As amended by: P.L.122-1996, §5.]

IC 13-22-11.5. SECONDARY MATERIAL EXEMPTION

IC 13-22-11.5-1 ------ Secondary material exemption: construction of law

This chapter may not be construed:

(1) as allowing a person to exercise less than reasonable precautions in the handling of hazardous secondary materials; or

(2) to be less stringent than federal law.

[As added by: P.L.45-1997, §21.]

IC 13-22-11.5-2 ----- Secondary material exemption: not a solid waste

A secondary material that is not a solid waste as defined under 40 CFR 261.2(e) or is legitimately utilized in an industrial or manufacturing process, except reclamation, with no significant increase in the threat it poses to health or the environment, is not a solid waste.

[As amended by: P.L.128-1997, §8.]

IC 13-22-11.5-3 ----- Secondary material exemption: classification of residue

A residue of the utilization of a secondary material that does not itself qualify as an exempt secondary material is subject to a new determination as to its status as a hazardous waste, and, if listed under IC 13-22-2-3(b), does not retain the listing of the secondary material from which it may have been derived.

[As added by: P.L.45-1997, §21.]

IC 13-22-11.5-4 ------ Secondary material exemption: commissioner to acknowledge recognition

A person may request the commissioner to acknowledge in writing the recognition of a secondary material exemption under this chapter. The commissioner shall respond to the request not later than ninety (90) days after the request is received.

[As added by: P.L.45-1997, §21.]

IC 13-22-11.5-5 ----- Secondary material exemption: is in addition to any other exemption

The exemption from regulation provided in this chapter is in addition to any other exemption from regulation as a solid waste provided in rules adopted by the board.

[As amended by: P.L.2-1998, §53.]

IC 13-22-12. HAZARDOUS WASTE FEES

IC 13-22-12-1 -------- Hazardous waste fees: fees established

Notwithstanding fees established under IC 13-16-1, the hazardous waste:

(1) permit application fees;

(2) annual operation fees; and

(3) prices for purchasing manifests;

contained in this chapter are established.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-2 -------- Hazardous waste fees: application fees

For hazardous waste, the application fees are as follows:

	Fee
New Permit Application	
Land Disposal	$40,600
Incinerator (per unit)	$21,700
Storage	$23,800
Treatment	$23,800
Permit Renewal or Class 3 Modification	
Land Disposal	$34,000
Incinerator	$21,700
Storage	$17,200
Treatment	$17,200
Class 2 Modification	
Class 2 Modification	$ 2,250

[As added by: P.L.1-1996, §12.]

IC 13-22-12-3 -------- Hazardous waste fees: annual operation fees

For hazardous waste, the annual operation fees are as follows:

	Fee
Land Disposal	$37,500
Incinerator (per unit)	$10,000
Storage	$ 2,500
Treatment	$10,000
Generator	$ 1,565
Postclosure Activity	$ 1,500
Groundwater Compliance Sampling at active facilities (per well)	$ 1,000

[As added by: P.L.1-1996, §12.]

IC 13-22-12-5 -------- Hazardous waste fees: fee to be submitted with permit application

(a) When a person files a hazardous waste permit application with the department, the person must remit an application fee to the department.

(b) If a person does not remit an application fee to the department, the department shall deny the person's application.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-6 -------- Hazardous waste fees: accrual; assessment

Hazardous waste annual operation fees begin accruing January 1 each year. The department shall assess the fees not later than January 15 of that year.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-7 -------- Hazardous waste fees: when due

A person must remit a hazardous waste annual operation fee or an installment established by the department under IC 13-16-2 to the department not more than thirty (30) days after the date the fee is assessed or on the date the installment is due.

[As amended by: P.L.2-1997, §46.]

IC 13-22-12-8 -------- Hazardous waste fees: penalties

(a) In addition to the penalties described under:

(1) IC 13-30-4-1;

(2) IC 13-30-4-2; and

(3) IC 13-30-5-1;

if a person does not remit a hazardous waste annual operation fee or an installment established by the department under section 14 of this chapter not more than sixty (60) days after the date the fee is assessed or not more than thirty (30) days after the date the installment is due, the person shall be assessed a delinquency charge equal to ten percent (10%) of the hazardous waste annual operation fee or ten percent (10%) of the installment, whichever is applicable. The delinquency charge is due and payable sixty (60) days after the date the hazardous waste annual operation fee is assessed or thirty (30) days after the date the installment is due.

(b) If a person does not remit a hazardous waste annual operation fee or an installment established by the department under IC 13-16-2 and any applicable delinquency charge not more than ninety (90) days after the date the hazardous waste annual operation fee is assessed or not more than sixty (60) days after the date the installment is due, the department may revoke the person's permit. However, before the department may revoke the permit:

(1) not earlier than sixty (60) days after the date the hazardous waste annual operation fee is assessed or not earlier than thirty (30) days after the date an installment is due; and

(2) not later than thirty (30) days before the department revokes the permit;

the department must deliver a written notice to the person that describes what fees and delinquency charges are due and that indicates that the department may revoke the person's permit for nonpayment after thirty (30) days.

[As amended by: P.L.2-1997, §47.]

IC 13-22-12-9 -------- Hazardous waste fees: facilities subject to

Annual operation fees established under this chapter apply to facilities that:

(1) have received a permit from the department; or

(2) are operating under interim status or otherwise manage hazardous waste subject to regulation under the following:

(A) IC 13-22-2 through IC 13-22-8.

(B) IC 13-22-13 through IC 13-22-14.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-10 ------ Hazardous waste fees: generators subject to

Regardless of a person's rate of generation, a person must pay a generator annual operation fee if the person accumulates more than:

(1) six thousand (6,000) kilograms of hazardous waste; or

(2) one (1) kilogram of acutely toxic waste;

onsite at any time during a year.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-11 ------ Hazardous waste fees: applicability of groundwater compliance sampling fees

Groundwater compliance sampling fees established under this chapter apply to groundwater monitoring wells in existence at an operating land disposal facility at the time an annual operation fee concerning the land disposal facility is assessed.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-12 ------ Hazardous waste fees: fees additive

A person or facility that is described in more than one (1) category under this chapter must pay all applicable fees.

[As added by: P.L.1-1996, §12.]

IC 13-22-12-13 ------ Hazardous waste fees: IDEM to deposit in environmental management permit operation fund

The fees and delinquency charges collected under this chapter:

(1) are payable to the department; and

(2) shall be deposited in the environmental management permit operation fund established by IC 13-15-11-1.

[As added by: P.L.1-1996, §12.]

IC 13-22-13. CORRECTIVE ACTIONS

IC 13-22-13-1 -------- Corrective action: authority of commissioner

If, on the basis of any information, the commissioner determines that there is or has been a release of a hazardous waste or a constituent of a hazardous waste into the environment from a facility authorized to operate under interim status under Section 3005(e) of the federal Solid Waste Disposal Act (42 U.S.C. 6925(e)) or under IC 13-22-3, the commissioner may:

(1) issue an order requiring corrective action or another response measure that the commissioner considers necessary to protect human health or the environment; or

(2) commence a civil action to compel corrective action as described in subdivision (1).

[As added by: P.L.1-1996, §12.]

IC 13-22-13-2 -------- Corrective action: ordering action beyond the boundaries of the facility

Under section 1 of this chapter, the commissioner or a court may order the performance of corrective action beyond the boundaries of the facility from which the release occurs. However, the commissioner may not order corrective action beyond the boundaries of the facility if the owner or operator of the facility demonstrates to the satisfaction of the commissioner that, despite the best efforts of the owner or operator, the owner or operator is unable to obtain the necessary permission to undertake the corrective action.

[As added by: P.L.1-1996, §12.]

IC 13-22-13-3 -------- Corrective action: content of commissioner's order

An order issued by the commissioner under this chapter:

(1) must state with reasonable specificity the nature of the corrective action or other response measure required by the order;

(2) must specify a time for compliance; and

(3) may include a suspension or revocation of authorization for the facility to operate under interim status.

[As added by: P.L.1-1996, §12.]

IC 13-22-14. ENFORCEMENT

IC 13-22-14-1 -------- Enforcement: applicable law

IC 13-22-2 through IC 13-22-8 and IC 13-22-13 shall be enforced under IC 13-30-3.

[As added by: P.L.1-1996, §12.]

IC 13-22-14-2 -------- Enforcement: emergency procedures

IC 13-22-2 through IC 13-22-8 and IC 13-22-13 are subject to the emergency procedures under IC 13-14-10 and IC 13-24-2.

[As added by: P.L.1-1996, §12.]

IC 13-22-14-3 -------- Enforcement: applicable penalties

Violations of IC 13-22-2 through IC 13-22-8 and IC 13-22-13 are subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §12.]

TITLE 13. ENVIRONMENT
IC 13-23. UNDERGROUND STORAGE TANKS

IC 13-23-1. ESTABLISHMENT OF UNDERGROUND STORAGE TANK RELEASE DETECTION, PREVENTION, AND CORRECTION PROGRAM

IC 13-23-1-1 --------- UST release, detection, prevention and correction program: authorization

(a) The department shall establish and operate an underground storage tank release detection, prevention, and correction program under this article according to rules adopted by the solid waste management board.

(b) The department may contract with another state agency to jointly operate the program under a memorandum of agreement that:

(1) may be amended;

(2) must contain the specific duties of the department and the contracting agency; and

(3) is available to the public for inspection.

[As amended by: P.L.131-1997, §2.]

IC 13-23-1-2 --------- UST release, detection, prevention and correction program: board shall adopt rules

(a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 for the establishment and operation of the program established under section 1 of this chapter.

(b) The rules must not be less stringent than the regulations adopted by the Administrator of the United States Environmental Protection Agency under Section 9003 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b, as amended).

(c) The rules adopted under subsection (a) must include the following:

(1) Requirements for maintaining:

(A) a leak detection system;

(B) an inventory control system coupled with tank testing; or

(C) a comparable system or method;

designed to identify releases in a manner consistent with the protection of human health and the environment.

(2) Requirements for maintaining records of any:

(A) monitoring;

(B) leak detection system;

(C) inventory control system or tank testing; or

(D) comparable system.

(3) Requirements for reporting of:

(A) any releases; and

(B) corrective action taken in response to a release.

(4) Requirements for ordering or taking corrective action in response to a release.

(5) Requirements for closure of underground storage tanks to prevent future releases of regulated substances into the environment.

(6) Requirements for maintaining evidence of financial responsibility for:

(A) taking corrective action; and

(B) compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.

(7) Standards of performance for new underground storage tanks.

(8) Requirements for the following:

(A) Providing notice to the department of the existence of operational and nonoperational underground storage tanks, as required under 42 U.S.C. 6991a(a).

(B) Providing the information required on the form prescribed under 42 U.S.C. 6991a(b)(2).

(C) Providing notice, by any person who sells a tank intended to be used as an underground storage tank, to the purchaser of that tank of the owner's notification requirements established by this article and 42 U.S.C. 6991a(a).

[As added by: P.L.1-1996, §13.]

IC 13-23-2. LOCAL ORDINANCES

IC 13-23-2-1 --------- Local ordinances: prohibition

A unit of local government may not enact or enforce an ordinance that is in conflict with any of the following:

(1) This article.

(2) Rules adopted by the fire prevention and building safety commission under this article.

(3) Rules adopted by the board under this article.

[As added by: P.L.1-1996, §13.]

IC 13-23-2-2 --------- Local ordinances: IDEM approval required

A unit of local government may not enact or enforce an ordinance that requires:

(1) a permit;

(2) a license;

(3) an approval;

(4) an inspection; or

(5) the payment of a fee or tax;

for the installation, use, retrofitting, closure, or removal of an underground storage tank unless the department has approved the ordinance or a proposed ordinance in writing.

[As added by: P.L.1-1996, §13.]

IC 13-23-2-3 --------- Local ordinances: IDEM has 90 days to act

If the department does not respond to a request from a unit of local government for approval of an ordinance or a proposed ordinance under section 2 of this chapter not later than ninety (90) days after the request is made, the unit may enact and enforce the ordinance as though the department had given written approval under section 2 of this chapter.

[As added by: P.L.1-1996, §13.]

IC 13-23-2-4 --------- Local ordinances: IDEM authorization of local activities

The commissioner may enter into an agreement with a unit of local government under which the commissioner authorizes the unit of local government to perform activities designed to achieve compliance with this article.

[As added by: P.L.1-1996, §13.]

IC 13-23-3. CERTIFICATION OF UNDERGROUND STORAGE TANK WORKERS

IC 13-23-3-1 --------- Certification of UST workers: state fire marshal to establish certification program

(a) The state fire marshal shall, under rules adopted by the fire prevention and building safety commission under IC 4-22-2, establish a certification program for persons who supervise, manage, or direct underground storage tank:

(1) installation or retrofitting;

(2) testing;

(3) cathodic protection procedures; or

(4) decommissioning.

(b) A person may be certified by the state fire marshal if the person submits evidence to the state fire marshal that the person has successfully completed:

(1) the International Fire Code Institute examination; or

(2) another appropriate examination approved by the state fire marshal.

(c) The state fire marshal may create a supplemental educational library concerning proper installation and closure of underground storage tanks, which includes the American Petroleum Institute's series, "An Education and Certification Program for Underground Storage Tank Professionals."

[As amended by: P.L.67-1996, §4.]

IC 13-23-3-2 --------- Certification of UST workers: requirements for obtaining certification; fire prevention commission to adopt rules; reciprocity

(a) To obtain a certificate under section 1 of this chapter, a person must:

(1) take an examination that is approved;

(2) achieve a passing score on the examination that is established; and

(3) pay any reasonable fees necessary to offset the costs incurred by the state fire marshal in administering the examination and certification procedures that are established;

under rules adopted by the fire prevention and building safety commission.

(b) An examination described under subsection (a) must cover the following subjects:

(1) Relevant rules adopted by the:

(A) board; and

(B) fire prevention and building safety commission;

concerningundergroundstorage tanks.

(2) Any other subjects approved under rules adopted by the fire prevention and building safety commission.

(c) The fire prevention and building safety commission shall adopt rules establishing the following:

(1) The number of times a person who fails an examination described under this section may take the examination again.

(2) The period of time a person who fails an examination described under this section must wait before taking the examination again.

(d) The state fire marshal may, under rules adopted by the fire prevention and building safety commission, certify a person:

(1) under section 1 of this chapter; and

(2) by reciprocity;

if the person is licensed or certified by another state that has certification requirements that are substantially similar to the requirements established under this section.

[As added by: P.L.1-1996, §13.]

IC 13-23-3-3 --------- Certification of UST workers: certification required; revocation

(a) A person described under section 1 of this chapter may not:

(1) install or retrofit;

(2) test;

(3) provide cathodic protection for; or

(4) decommission;

an underground storage tank unless the person has been certified by the state fire marshal.

(b) The state fire marshal may temporarily deny or revoke the certification of a person made under subsection (a) if the person has negligently violated a standard established by the board or the fire prevention and building safety commission concerning the:

(1) installation or retrofitting;

(2) testing;

(3) cathodic protection; or

(4) decommissioning;

of an underground storage tank.

(c) If a person:

(1) has been denied certification; or

(2) had the person's certification revoked under subsection (b) or IC 13-7-20-13.3(b) (before its repeal);

the state fire marshal may certify the person only if the person files a performance bond with the state fire marshal in an amount established by the fire prevention and building safety commission.

(d) If a person who is certified or attempts to become certified under subsection (c) intentionally or negligently violates a standard established by the board or the fire prevention and building safety commission concerning the installation or retrofitting of, testing of, provision of cathodic protection for, or decommissioning of an underground storage tank, the state fire marshal may:

(1) permanently deny the certification of the person; or

(2) permanently revoke the certification of the person.

[As amended by: P.L.67-1996, §5.]

IC 13-23-3-4 --------- Certification of UST workers: expiration date of certification; fire prevention commission to adopt rules for renewal

(a) A certificate issued under section 1 of this chapter expires two (2) years from the date a person successfully completes the examination to qualify to obtain the certificate.

(b) The fire prevention and building safety commission may adopt rules establishing renewal procedures for certificates that expire under subsection (a).

[As amended by: P.L.67-1996, §6.]

IC 13-23-4. FINANCIAL RESPONSIBILITY

IC 13-23-4-1 --------- Financial responsibility: form of

The rules adopted under IC 13-23-1-2(c)(6) may allow evidence of financial responsibility in one (1) or a combination of the following forms:

(1) Insurance.

(2) Guarantee.

(3) Surety bond.

(4) Letter of credit.

(5) Qualification as a self-insurer.

(6) Any other method satisfactory to the commissioner and the Administrator of the United States Environmental Protection Agency.

[As added by: P.L.1-1996, §13.]

IC 13-23-4-2 --------- Financial responsibility: use of certain policy provisions or contract terms

The rules adopted under IC 13-23-1-2(c)(6) may require the use of certain policy provisions or contract terms, including provisions or terms concerning the following:

(1) The minimum amount of coverage required for various classes and categories of underground storage tanks established under section 4 of this chapter.

(2) Conditions or defenses that are necessary or unacceptable in establishing evidence of financial responsibility.

[As added by: P.L.1-1996, §13.]

IC 13-23-4-3 --------- Financial responsibility: less stringent methods for establishing evidence of

(a) The commissioner may provide a method under which the owner or operator of an underground storage tank may establish evidence of financial responsibility as required under sections 1 and 2 of this chapter and 42 U.S.C. 6991b(c)(6) with respect to the part of the potential liability of the owner or operator that is not covered through the excess liability trust fund established by IC 13-23-7-1.

(b) A method provided by the commissioner under this section must be acceptable to the Administrator of the United States Environmental Protection Agency.

(c) A method provided by the commissioner under this section must establish requirements for the establishment of evidence of financial responsibility by a small business petroleum marketer that are less stringent than the requirements applying to a petroleum marketer that owns or operates more than twelve (12) underground storage tanks.

[As amended by: P.L.9-1996, §4.]

IC 13-23-4-4 --------- Financial responsibility: SWMB may require minimum coverage amounts

(a) The rules adopted under IC 13-23-1-2(c)(6) may require a minimum amount of coverage for particular classes or categories of underground storage tanks containing petroleum. Minimum coverage amounts established under this subsection must be at least one million dollars ($1,000,000) for each occurrence, with an appropriate aggregate amount.

(b) The board may by rule set minimum coverage amounts lower than the amount set forth in subsection (a) for underground storage tanks containing petroleum that are:

(1) not located at facilities engaged in the production, refining, or marketing of petroleum; and

(2) not used to handle substantial quantities of petroleum.

(c) In adopting rules establishing classes and categories of underground storage tanks containing petroleum for purposes of this section, the board may consider the following factors:

(1) The:

(A) size, type, location, storage, and handling capacity of underground storage tanks in the class or category; and

(B) volume of petroleum handled by those tanks.

(2) The:

(A) likelihood of release; and

(B) potential extent of damage from any release;

from underground storage tanks in the class or category.

(3) The economic impact of the limits on the owners and operators of each class or category, particularly relating to the small business segment of the petroleum marketing industry.

(4) The availability of methods of financial responsibility in amounts greater than the amount established by this section.

(5) Any other factors that the board considers pertinent.

[As added by: P.L.1-1996, §13.]

IC 13-23-4-5 --------- Financial responsibility: conditions under which commissioner may suspend enforcement of certain financial responsibility requirements

(a) The commissioner, upon the application of any affected person or in the absence of any application, may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks if the commissioner determines that the following conditions exist:

(1) The methods of financial responsibility satisfying the requirements of this article are not generally available for underground storage tanks in that class or category.

(2) Steps are being taken:

(A) to form a risk retention group for the class or category; or

(B) to establish a fund under Section 9004(c)(1) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991c(c)(1), as amended), to be submitted as evidence of financial responsibility.

(b) A suspension of enforcement under this section may not exceed one hundred eighty (180) days. Following a suspension of enforcement under this section, the commissioner may suspend enforcement for additional successive periods of not more than one hundred eighty (180) days if:

(1) the commissioner determines that substantial progress has been made in establishing a risk retention group; or

(2) the owners or operators of underground storage tanks in the class or category demonstrate to the satisfaction of the commissioner that:

(A) the formation of a risk retention group is not possible; and

(B) the state is unable or unwilling to establish a fund as described in subsection (a)(2)(B).

(c) A determination to suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks under subsection (a) or (b) may not be effective until the Administrator of the United States Environmental Protection Agency has made the same determination under Section 9003(d)(5)(D) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b(d)(5)(D), as amended), with respect to the same class or category of underground storage tanks.

[As added by: P.L.1-1996, §13.]

IC 13-23-4-6 --------- Financial responsibility: liability of guarantor in the event of bankruptcy

(a) If:

(1) the owner or operator of an underground storage tank is in bankruptcy, reorganization, or arrangement under the federal bankruptcy law; or

(2) despite the exercise of reasonable diligence, no state or federal court could obtain jurisdiction over an owner or operator likely to be solvent at the time of judgment;

any claim arising from conduct for which evidence of financial responsibility is provided may be asserted directly against the guarantor.

(b) In an action based upon a claim under subsection (a), the guarantor may invoke:

(1) all rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator by the claimant; and

(2) all rights and defenses that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor under this section is limited to the aggregate amount in which the guarantor has provided evidence of financial responsibility for the owner or operator of an underground storage tank. This section does not do any of the following:

(1) Limit any other liability of a guarantor to the owner or operator of an underground storage tank, such as liability for bad faith in:

(A) negotiating; or

(B) failing to negotiate;

the settlement of any claim.

(2) Diminish the liability of any person under the following:

(A) Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607 or 9611).

(B) Any other applicable law.

[As added by: P.L.1-1996, §13.]

IC 13-23-4-7 --------- Financial responsibility: actions not requiring EPA concurrence

The provisions of IC 13-11-2-241(b)(10) and sections 1(6) and 5(c) of this chapter requiring the concurrence of the Administrator of the United States Environmental Protection Agency for an action of the board or commissioner to be effective are nullified if the Administrator grants to the commissioner, under the program approved under Section 9004 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991c, as amended), the authority to take the action without the Administrator's specific concurrence.

[As added by: P.L.1-1996, §13.]

IC 13-23-5. INSTALLATION OF UNDERGROUND STORAGE TANKS

IC 13-23-5-1 --------- Installation of USTs: tanks installed before the effective date of SWMB rules

Subject to section 2 of this chapter, an underground storage tank, whether of single or double wall construction, may not be installed before the effective date of the rules adopted under IC 13-23-1-2 for the purpose of storing regulated substances unless:

(1) the tank will prevent releases due to corrosion or structural failure for the operational life of the tank;

(2) the tank is:

(A) cathodically protected against corrosion;

(B) constructed of noncorrosive material;

(C) steel clad with a noncorrosive material; or

(D) designed to prevent the release or threatened release of any stored substance; and

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored.

[As added by: P.L.1-1996, §13.]

IC 13-23-5-2 --------- Installation of USTs: exception to §1

If soil tests conducted in accordance with:

(1) ASTM Standard G57-78; or

(2) another standard approved by the commissioner as exhibiting the same or a greater degree of reliability and accuracy;

show that soil resistivity in an installation location is at least twelve thousand ohms per centimeter (12,000 ohm/cm), a storage tank without corrosion protection may be installed in that location during the period referred to in section 1 of this chapter.

[As added by: P.L.1-1996, §13.]

IC 13-23-6. UNDERGROUND PETROLEUM STORAGE TANK TRUST FUND

IC 13-23-6-1 --------- Underground petroleum storage tank trust fund: established

The underground petroleum storage tank trust fund is established to provide a source of money for the uses set forth in IC 13-23-13-6.

[As added by: P.L.1-1996, §13.]

IC 13-23-6-2 --------- Underground petroleum storage tank trust fund: sources of money for the fund

The sources of money for the fund are as follows:

(1) Grants made by the United States Environmental Protection Agency to the state under cooperative agreements under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)).

(2) Costs recovered by the state under IC 13-23-13-8 in connection with any corrective action undertaken under IC 13-23-13-2 with respect to a release of petroleum.

(3) Costs recovered by the state in connection with the enforcement of this article with respect to any release of petroleum.

(4) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(5) Penalties imposed under IC 13-23-14 and fifty percent (50%) of penalties imposed under IC 13-23-12 against owners and operators of underground petroleum storage tanks.

(6) Revenue from the underground petroleum storage tank registration fee deposited in the fund under IC 13-23-12-4.

[As added by: P.L.1-1996, §13.]

IC 13-23-6-3 --------- Underground petroleum storage tank trust fund: expenses

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

[As added by: P.L.1-1996, §13.]

IC 13-23-6-4 --------- Underground petroleum storage tank trust fund: duties of treasurer

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

[As added by: P.L.1-1996, §13.]

IC 13-23-6-5 --------- Underground petroleum storage tank trust fund: nonreverting

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

[As added by: P.L.1-1996, §13.]

IC 13-23-7. UNDERGROUND PETROLEUM STORAGE TANK EXCESS LIABILITY FUND

IC 13-23-7-1 --------- Underground petroleum storage tank excess liability trust fund: established

The underground petroleum storage tank excess liability trust fund is established for the following purposes:

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

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

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

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

[As amended by: P.L.14-2001, §4.]

IC 13-23-7-2 --------- Underground petroleum storage tank excess liability fund: sources of money for the trust fund

Sources of money for the trust fund are the following:

(1) Fees and penalties paid under IC 13-23-12.

(2) Appropriations from the general assembly.

(3) Gifts and donations intended for deposit in the fund.

(4) Inspection fees paid under IC 16-44-2.

(5) Bond revenue under IC 4-4-11.2-7(a)(1).

(6) Any other money authorized to be deposited in or appropriated to the trust fund.

[As amended by: P.L.9-1996, §6.]

IC 13-23-7-3 --------- Underground petroleum storage tank excess liability fund: fund administrator

The commissioner or the commissioner's designee shall administer the trust fund.

[As amended by: P.L.9-1996, §7.]

IC 13-23-7-4 --------- Underground petroleum storage tank excess liability fund: expenses

The expenses of administering the provisions of this article that are funded by the trust fund, including:

(1) IC 13-23-8;

(2) IC 13-23-9;

(3) IC 13-23-11; and

(4) IC 13-23-12;

shall be paid from money in the fund.

[As amended by: P.L.14-2001, §5.]

IC 13-23-7-5 --------- Underground petroleum storage tank excess liability fund: duties of treasurer

The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest

that accrues from these investments shall be deposited in the fund. At least one (1) time each year, the treasurer of state shall provide the financial assurance board a report detailing the investments made under this section.

[As amended by: P.L.9-1996, §9.]

IC 13-23-7-6 --------- Underground petroleum storage tank excess liability fund: nonreverting

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

[As amended by: P.L.9-1996, §10.]

IC 13-23-7-7 --------- Underground petroleum storage tank excess liability fund: audit of fund

Not later than December 31, 1996, and every two (2) years thereafter, the state board of accounts shall conduct an audit of the excess liability trust fund.

[As added by: P.L.9-1996, §25.]

IC 13-23-7-8 --------- Underground petroleum storage tank excess liability fund:

On July 1, 1996, the underground petroleum storage tank excess liability fund established by section 1 of this chapter is renamed as the underground petroleum storage tank excess liability trust fund. The petroleum storage tank excess liability trust fund shall be considered a trust fund.

[As added by: P.L.9-1996, §26.]

IC 13-23-8. USE OF MONEY IN EXCESS LIABILITY FUND

IC 13-23-8-1 --------- Use of money in excess liability fund: authorized uses

The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

(1) The payment of the costs allowed under IC 13-23-9-2, excluding:
   (A) liabilities to third parties; and
   (B) the costs of repairing or replacing an underground storage tank;
   arising out of releases of petroleum.

(2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:
   (A) to third parties under IC 13-23-9-3; or
   (B) for reasonable attorney's fees incurred in defense of a third party liability claim.

[As amended by: P.L.14-2001, §6.]

IC 13-23-8-2 --------- Use of money in excess liability fund: formula

Except as provided in section 6 of this chapter, payments under section 1 of this chapter may not exceed two million dollars ($2,000,000) per occurrence for which claims are made under this chapter.

[As amended by: P.L.14-2001, §7.]

IC 13-23-8-3 --------- Use of money in excess liability fund: amount for §2

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; and

(B) is not a double walled underground petroleum storage tank with piping that has secondary containment;

the amount is thirty thousand dollars ($30,000).

(3) 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; and

(B) is a double walled underground petroleum storage tank with piping that has secondary containment;

the amount is twenty-five thousand dollars ($25,000).

[As amended by: P.L.14-2001, §8.]

IC 13-23-8-4 --------- Use of money in excess liability fund: requirements to receive money

(a) Except as provided under subsection (b), and subject to section 4.5 of this chapter, an owner or operator may receive money from the excess liability trust fund under section 1 of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

(1) The owner or operator has complied with the following:

(A) This article or IC 13-7-20 (before its repeal).

(B) Rules adopted under this article or IC 13-7-20 (before its repeal).

A release from an underground petroleum storage tank may not prevent an owner or operator from establishing compliance with this subdivision to receive money from the excess liability fund.

(2) The owner or operator has paid all registration fees that are required under rules adopted under IC 13-23-8-4.5.

(3) The owner or operator has provided the commissioner with evidence of payment of the amount of liability the owner or operator is required to pay under section 2 of this chapter.

(4) A corrective action plan is approved by the commissioner or deemed approved under this subdivision. The corrective action plan for sites with a release from an underground petroleum storage tank that impacts soil or groundwater, or both, is automatically deemed approved only as long as:

(A) the plan conforms with:

(i) 329 IAC 9-4 and 329 IAC 9-5; and

(ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual, including the department's risk integrated system of closure standards; and

(B) the soil and groundwater contamination is confined to the owner's or operator's property.

If the corrective action plan fails to satisfy any of the requirements of clause (A) or (B), the plan is automatically deemed disapproved. If a corrective action plan is disapproved, the claimant may supplement the plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the department's standards in clause (A), the department's standards control. For purposes of this subdivision, if there is a conflict between compliance with the corrective action plan and the board's rules, the board's rules control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

(b) An owner, operator, or transferee of property under subsection (e) is eligible to receive money from the fund before the owner, operator, or transferee has a corrective action plan approved or deemed approved if:

(1) the work for which payment is sought under IC 13-23-9-2 was an initial response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with 329 IAC 9-5; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;

whichever is later.

(c) The amount of money an owner, operator, or transferee of property under subsection (e) is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

(d) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that right to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if the transferor of the property was eligible to receive money under this section with respect to the property.

[As amended by: P.L.14-2001, §9.]

IC 13-23-8-4.5 ------- Use of money in excess liability fund: FAB to adopt rules

The financial assurance board shall adopt rules under IC 4-22-2 to do the following:

(1) Establish standards, procedures, and penalties for submitting or resubmitting a claim under section 1 of this chapter when the owner or operator has failed to:

(A) register an underground petroleum storage tank from which a release has occurred; or

(B) pay all registration fees that are due under IC 13-23-12-1 by the date the fees are due.

(2) Determine eligibility for new owners or operators that acquire ownership or operation of the underground petroleum storage tank as a result of:

(A) a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership and control;

(B) a foreclosure or a deed transferred in lieu of a foreclosure;

(C) the exercise of the person's lien rights; or

(D) an inheritance.

[As amended by: P.L.14-2001, §10.]

IC 13-23-8-5 --------- Use of money in excess liability fund: FAB to adopt rules defining priority of claims

The financial assurance board shall adopt rules under IC 4-22-2 to define the manner in which the priority order of liability claims and loan guaranties is established. The rules must give priority to liability claims associated with releases from underground storage tanks that pose an immediate and significant threat to the environment.

[As added by: P.L.1-1996, §13.]

IC 13-23-8-6 --------- Use of money in excess liability fund: where balance is insufficient

(a) If the balance in the excess liability trust fund is insufficient to pay:

(1) claims under section 1 of this chapter;

(2) necessary personnel and administrative expenses associated with the excess liability trust fund; and

(3) the transfer repayment specified in IC 13-23-15-3;

the department shall cease paying claims.

(b) The department shall then notify each claimant that:

(1) the department may not pay the claim; and

(2) the claimant may not use the excess liability trust fund to satisfy any financial assurance requirements under federal law.

[As amended by: P.L.14-2001, §11.]

IC 13-23-8-7 --------- Use of money in excess liability fund: obligations of state

(a) The department, with respect to payment of claims under section 1 of this chapter, may not discriminate against any claimant. However, subject to this chapter, a claimant does not have an enforceable right to the payment of a claim under this chapter.

(b) This chapter does not create any obligation on the part of the state other than as specifically provided in this article.

[As amended by: P.L.14-2001, §12.]

IC 13-23-8-8 --------- Use of money in excess liability fund: limits

(a) An owner or operator of:

(1) not more than one hundred (100) underground petroleum storage tanks may not receive more than two million dollars ($2,000,000) from the excess liability trust fund during a year; and

(2) more than one hundred (100) underground storage tanks may not receive more than three million dollars ($3,000,000) from the excess liability trust fund during a year.

(b) If the right to receive money from the fund under this chapter is assigned as described in section 4(d) of this chapter, the combined amount of money received by the assignor and the assignee from the excess liability trust fund during a year may not exceed the limits established in subsection (a).

[As amended by: P.L.14-2001, §13.]

IC 13-23-9. PAYMENT FROM EXCESS LIABILITY FUND

IC 13-23-9-1 --------- Payment from excess liability fund: duties of administrator

The administrator of the excess liability trust fund shall process, approve, and deny requests made for payments from the excess liability trust fund under sections 2 and 3 of this chapter.

[As amended by: P.L.14-2001, §14.]

IC 13-23-9-2 --------- Payment from excess liability fund: corrective action claims

(a) To receive money from the excess liability trust fund under IC 13-23-8-1(1), a claimant must:

(1) submit a corrective action plan to the administrator of the excess liability trust fund for the administrator's approval; and

(2) submit a copy of a work receipt for work that has been performed.

(b) If, after receiving a corrective action plan and a work receipt under subsection (a), the administrator determines that:

(1) the corrective action plan may be approved and that the work that has been performed is consistent with the approved corrective action plan;

(2) the work or part of the work that has been performed is reasonable and cost effective;

(3) the work that has been performed concerns the elimination or mitigation of a release of petroleum from an underground storage tank including:

(A) release investigation;

(B) mitigation of fire and safety hazards;

(C) tank removal;

(D) soil remediation; or

(E) ground water remediation and monitoring; and

(4) the claimant is in compliance with the requirements of this article and the rules adopted under this article;

the administrator shall approve the request for money to be paid from the excess liability trust fund for work that has been performed.

(c) The administrator shall develop criteria for determining the cost effectiveness of corrective action. Although not required for payment from the excess liability trust fund, a claimant may seek pre-approval from the administrator stating that the work to be performed is reasonable and cost effective.

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

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

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

(g) If a reason the administrator denies a request made under subsection (b) is for failure to meet the requirements of subsection (b)(1), the administrator shall notify the claimant in writing not later than sixty (60) days after receiving the request. The claimant has thirty (30) days from the receipt of the denial to notify the administrator of the claimant's intention to appeal the denial. If the claimant does not notify the administrator of an intention to appeal in the time provided, further review of the application is not required. If an intention to appeal is submitted within the time provided, the administrator has thirty (30) days after the

receipt of the notice of the intention to appeal to provide the claimant with all additional reasons for the denial or partial denial of the request or to specify that all reasons have been provided. The claimant has thirty (30) days after receiving notification from the administrator of all additional reasons for the denial or partial denial or notice specifying that all reasons have been provided to file a petition for review of the denial or partial denial.

[As amended by: P.L.14-2001, §15.]

IC 13-23-9-3 --------- Payment from excess liability fund: indemnification claims

(a) To receive money from the excess liability trust fund under IC 13-23-8-1(2), a claimant must:

(1) submit to the administrator a request for indemnification of a third party containing any information required by the administrator; and

(2) forward a copy of the request under subdivision (1) to the attorney general for the attorney general's approval.

(b) The attorney general shall approve a request submitted under subsection (a) if the attorney general determines that there is:

(1) a legally enforceable and final judgment against the claimant caused by a release of petroleum that was not entered as a result of:

(A) fraud;

(B) negligence; or

(C) an inadequate defense on the part of the attorney of the claimant; or

(2) a reasonable settlement between the claimant and the third party.

(c) If the attorney general approves a request under subsection (b), the administrator shall approve the request if the claimant is in compliance with the requirements of this article and the rules adopted under this article.

(d) The attorney general shall approve or deny a request submitted under subsection (a) not later than sixty (60) days after the attorney general receives the request.

(e) Not later than seven (7) days after the attorney general has approved a request under this section, the attorney general shall forward a copy of the approved request to the auditor of state.

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

(g) If the attorney general denies a request submitted under this section, the attorney general shall notify the claimant that made the request of the denial not later than ten (10) days after the request has been denied.

[As amended by: P.L.14-2001, §16.]

IC 13-23-9-4 --------- Payment from excess liability fund: appeals

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

[As amended by: P.L.25-1997, §15.]

IC 13-23-9-5 --------- Payment from excess liability fund: neither state nor fund liable for insufficiency in fund balance

If the amount of money in the excess liability trust fund is not sufficient to meet approved claims made against the excess liability trust fund:

(1) the state; and

(2) the excess liability trust fund;

are not liable for the claims.

[As amended by: P.L.9-1996, §24.]

IC 13-23-11. UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

IC 13-23-11-1 -------- UST financial assurance board: created

The underground storage tank financial assurance board is created.

[As added by: P.L.1-1996, §13.]

IC 13-23-11-2 -------- UST financial assurance board: membership

The board consists of the following sixteen (16) members:

(1) The commissioner or the commissioner's designee.

(2) The state fire marshal or the state fire marshal's designee.

(3) The treasurer of state or the treasurer of state's designee.

(4) The commissioner of the department of state revenue or the commissioner's designee.

(5) Twelve (12) individuals appointed by the governor for terms of two (2) years as follows:

(A) One (1) member representing the independent petroleum wholesale distributor-marketer industry.

(B) One (1) member representing the petroleum refiner-supplier industry.

(C) One (1) member representing the service station dealer industry who owns or operates less than thirteen (13) underground petroleum storage tanks.

(D) One (1) member of the financial lending community who has experience with loan guaranty programs.

(E) One (1) member representing the convenience store operator industry.

(F) One (1) member representing environmental interests.

(G) One (1) member representing local government.

(H) Two (2) members representing the general public.

(I) One (1) member representing the independent petroleum retail distributor marketer industry who owns or operates more than twelve (12) underground petroleum storage tanks.

(J) One (1) member representing businesses that own petroleum underground storage tanks and are not engaged in the sale of petroleum.

(K) One (1) member representing the property and casualty insurance industry.

[As amended by: P.L.131-1997, §4.]

IC 13-23-11-3 -------- UST financial assurance board: per diem and travel

(a) Each member of the board who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee is entitled to reimbursement for traveling expenses under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

[As added by: P.L.1-1996, §13.]

IC 13-23-11-4 -------- UST financial assurance board: term; vacancies

(a) If an appointed member of the board is not able to serve the member's full term, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(b) The term of an appointed member of the board continues until the member's successor has been appointed and qualified.

[As added by: P.L.1-1996, §13.]

IC 13-23-11-5 -------- UST financial assurance board: chair

The board, at the board's first meeting of each year, shall elect from among the board's members a chairperson and other officers necessary to transact business.

[As added by: P.L.1-1996, §13.]

IC 13-23-11-6 -------- UST financial assurance board: quorum; meetings

(a) The board must have a quorum to transact business. Nine (9) members constitute a quorum.

(b) An affirmative vote of the majority of members present is required for the board to take action.

(c) The board shall meet upon:

(1) the request of the chairperson; or

(2) the written request of three (3) of the board's members.

(d) A meeting must be held not later than fourteen (14) days after a request is made.

[As amended by: P.L.131-1997, §5.]

IC 13-23-11-7 -------- UST financial assurance board: duties

(a) The board shall do the following:

(1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to carry out the duties of the board under this article.

(2) Take testimony and receive a written report at every meeting of the board from the commissioner or the commissioner's designee regarding the financial condition and operation of the excess liability trust fund including:

(A) a detailed breakdown of contractual and administrative expenses the department is claiming from the excess liability trust fund under IC 13-23-7-1(4); and

(B) a claims statistics report consisting of the status and value of each claim submitted to the fund and claims payments made under IC 13-23-8-1.

The testimony and written report under this subdivision shall be provided at every meeting of the board. However, the testimony and written report are not required more than one (1) time during any thirty (30) day period.

(3) Consult with the department on administration of the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1 in developing uniform policies and procedures for revenue collection and claims administration of the fund.

(b) The department shall consult with the board on administration of the underground petroleum storage tank excess liability trust fund. The consultation must include evaluation of alternative means of administering the fund in a cost effective and efficient manner.

(c) At each meeting of the board, the department shall provide the board with a written report on the financial condition and operation of the underground petroleum storage tank trust fund established under IC 13-23-6-1.

[As amended by: P.L.14-2001, §17.]

IC 13-23-12. FEES

IC 13-23-12-1 -------- Fees: annual registration fee

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under IC 13-23-1-2; or

(2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;

shall pay to the department of state revenue an annual registration fee.

(b) The annual registration fee required by this section is as follows:

(1) Ninety dollars ($90) for each underground petroleum storage tank.

(2) Two hundred forty-five dollars ($245) for each underground storage tank containing regulated substances other than petroleum.

(c) If an underground storage tank consists of a combination of tanks, a separate fee shall be paid for each tank.

[As amended by: P.L.212-1999, §4.]

IC 13-23-12-2 -------- Fees: installment payment of fees

If the total amount of the fees owed under this article exceed five hundred dollars ($500), the fee payer has the option of paying the annual fees in four (4) equal installment payments. The department of state revenue shall establish a payment schedule to implement this section.

[As added by: P.L.1-1996, §13.]

IC 13-23-12-3 -------- Fees: payment of fees

Except as provided by section 2 of this chapter, the fee required by section 1 of this chapter shall be paid annually in accordance with a payment schedule established by the department of state revenue. The fee payment form provided by the department of state revenue must accompany the fee payment.

[As added by: P.L.1-1996, §13.]

IC 13-23-12-4 -------- Fees: duties of department of state revenue; funds for deposit of fees

The department of state revenue shall collect fees paid under this chapter and deposit the fees as follows:

(1) Fees paid in connection with underground petroleum storage tanks shall be deposited as follows:

(A) Forty-five dollars ($45) shall be deposited in the excess liability trust fund.

(B) Forty-five dollars ($45) shall be deposited in the petroleum trust fund.

(2) Fees paid in connection with underground storage tanks used to contain regulated substances other than petroleum shall be deposited as follows:

(A) Forty-five dollars ($45) shall be deposited in the hazardous substances response trust fund.

(B) Two hundred dollars ($200) shall be deposited in the excess liability trust fund.

[As amended by: P.L.212-1999, §5.]

IC 13-23-12-5 -------- Fees: maintenance of fee receipt

(a) The department of state revenue shall provide each person who pays a fee under this chapter with a receipt and a copy of the receipt. The receipt or the copy of the receipt shall be maintained at:

(1) the place of business where the underground storage tank is located; or

(2) if no place of business exists where the tank is located, the place of business or residence of the owner of the tank.

(b) The owner of the tank shall produce the receipt for inspection at the request of any authorized representative of the department or the state fire marshal.

[As added by: P.L.1-1996, §13.]

IC 13-23-12-6 -------- Fees: notification by revenue department

At least thirty (30) days before payment of a fee is due in accordance with the schedule established under section 3 of this chapter, the department of state revenue shall attempt to notify each owner of an underground storage tank who has submitted notification to the department as required under 42 U.S.C. 6991a(a) of the requirements of this chapter.

[As added by: P.L.1-1996, §13.]

IC 13-23-12-7 -------- Fees: penalty for failure to pay fee when due

(a) An owner of an underground storage tank who:

(1) is required to pay the fee under section 1 of this chapter; and

(2) fails to pay the fee when due as established under section 2 of this chapter;

shall be assessed a penalty of not more than two thousand dollars ($2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid.

(b) Except as provided in subsection (c), each penalty assessed under this section and collected from the owner of an underground petroleum storage tank shall be deposited as follows:

(1) Fifty percent (50%) shall be deposited in the petroleum trust fund.

(2) Fifty percent (50%) shall be deposited in the excess liability trust fund.

(c) Penalties assessed under this section and collected from owners of underground storage tanks used to contain regulated substances other than petroleum shall be deposited in the hazardous substances response trust fund.

(d) The penalty set forth in this section is in addition to the penalties that may be imposed under the following:

(1) IC 13-23-14-2.

(2) IC 13-23-14-3.

(3) IC 13-23-14-4.

(4) IC 13-30-4.

(5) IC 13-30-5.

(6) IC 13-30-6.

(7) IC 13-30-8.

[As amended by: P.L.14-2001, §18.]

IC 13-23-13. CORRECTIVE ACTIONS

IC 13-23-13-1 -------- Corrective actions: authority of commissioner to require

(a) The commissioner may, under rules adopted under IC 13-23-1-2:

(1) issue an order under IC 13-14-2-7 or IC 4-21.5-4; or

(2) proceed under IC 13-14-2-6;

to require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of a regulated substance.

(b) If the commissioner determines that the corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, the commissioner may enter into an agreed order with the owner or operator to implement necessary corrective action.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-2 -------- Corrective actions: authority of commissioner to undertake

The commissioner, under rules adopted under IC 13-23-1-2, may undertake corrective action with respect to any release of a regulated substance into the environment from an underground storage tank if:

(1) that action is necessary, in the judgment of the commissioner, to protect human health and the environment; and

(2) at least one (1) of the following conditions exists:

(A) A person cannot be found not later than ninety (90) days after a suspected or confirmed release is identified (or a shorter time necessary to protect human health and the environment) who is:

(i) an owner or operator of the underground storage tank;

(ii) subject to the rules concerning corrective action; and

(iii) capable of properly carrying out corrective action with respect to the release.

(B) An existing situation requires prompt action by the commissioner under this section to protect human health and the environment.

(C) The cost of corrective action at the site of an underground storage tank exceeds the amount of financial responsibility required under IC 13-23-1-2(c)(6), IC 13-23-4-4, and IC 13-23-4-5 and, considering the class or category of underground storage tank from which the release occurred, expenditures by the state are necessary to ensure an effective corrective action.

(D) The owner or operator of the underground storage tank has failed or refused to comply with an order of the commissioner or a judgment of a court of competent jurisdiction under section 1 of this chapter to take corrective action with respect to the release.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-3 -------- Corrective actions: exposure assessment

A corrective action undertaken or required under this chapter may include an exposure assessment. The cost of any exposure assessment undertaken under this chapter may be recovered under section 8 of this chapter as part of the costs of corrective action.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-4 -------- Corrective actions: priorities

In:

(1) issuing orders requiring corrective action under section 1 of this chapter; or

(2) undertaking corrective action under section 2 of this chapter;

the commissioner shall give priority to releases of regulated substances from underground storage tanks that pose the greatest threat to human health and the environment.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-5 -------- Corrective actions: discretion of commissioner

In issuing orders requiring corrective action under section 1 of this chapter or undertaking corrective action under section 2 of this chapter the commissioner may:

(1) require only a limited form of corrective action; and

(2) implement streamlined administrative procedures;

with respect to a release of a regulated substance from an underground storage tank that, in the judgment of the commissioner, poses little or no immediate threat to human health or to the environment.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-5.5 ----- Corrective actions: limitations on liability; contribution

(a) Notwithstanding any other provision of this chapter, a person who is not an owner or operator of an underground storage tank is liable to the state only for corrective action to address a surface spill or overfill of a regulated substance from the underground storage tank that is intentionally caused by the person during the delivery of the regulated substance into the underground storage tank.

(b) A person who is liable for corrective action under subsection (a) is subject to a claim for contribution to corrective action costs arising solely from the surface spill or overfill by a person described in section 8(b)(1) or 8(b)(2) of this chapter. Except as otherwise provided in subsection (c) and (d), an action for contribution under this section may be brought in the same manner and is subject to the same provisions as an action brought under section 8(b) of this chapter.

(c) Before a person brings a contribution action under this section, the person must provide written notice of intent to bring the action by certified mail to:

(1) the department; and

(2) each person allegedly responsible for the surface spill or overfill that occurred during the delivery of a regulated substance into the underground storage tank.

(d) A person that provides notice under subsection (c) may not bring a contribution action if:

(1) the department commences an administrative proceeding or a civil action concerning the alleged surface spill or overfill not later than ninety (90) days after receiving notice under subsection (c)(1); or

(2) the person who receives the notice under subsection (c)(2) agrees in writing, within ninety (90) days after receipt of the notice, to remediate the surface spill or overfill in accordance with the state's rules governing spills and overfills. environment.

[As added by: P.L.212-1999, §6.]

IC 13-23-13-6 -------- Corrective actions: use of money in the petroleum trust fund

The commissioner, under rules adopted under IC 13-23-1-2, may use money in the petroleum trust fund to pay the following costs and expenses associated with underground petroleum storage tanks:

(1) Costs incurred for corrective action conducted under cooperative agreements entered into between the state and the Administrator of the United States Environmental Protection Agency under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)), in accordance with the provisions of the cooperative agreements.

(2) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(3) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions undertaken under section 2 of this chapter.

(4) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-7 -------- Corrective actions: use of money in the hazardous substances response trust fund

The commissioner, under rules adopted under IC 13-23-1-2, may use money in the hazardous substances response trust fund to pay the following expenses associated with underground storage tanks used to contain regulated substances other than petroleum:

(1) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(2) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions.

(3) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-8 -------- Corrective actions: liability of owner or operator of UST; right of contribution

(a) Except where an owner or operator can prove that a release from an underground storage tank was caused solely by:

(1) an act of God;

(2) an act of war;

(3) negligence on the part of the state or the United States government; or

(4) any combination of the causes set forth in subdivisions (1) through (3);

the owner or operator of an underground storage tank is liable to the state for the actual costs of any corrective action taken under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal) involving the underground storage tank and is responsible for undertaking any corrective action, including undertaking an exposure assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by this title or a rule adopted under this title.

(b) A person who:

(1) pays to the state the costs described under subsection (a); or

(2) undertakes corrective action resulting from a release from an underground storage tank, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);

is entitled to receive a contribution from a person who owned or operated the underground storage tank at the time the release occurred. A person who brings a successful action to receive a contribution from an owner or operator is also entitled to receive reasonable attorney's fees and court costs from the owner or operator. An action brought under this subsection may be brought in a circuit or superior court. In resolving a contribution claim, a court may allocate the cost of a corrective action among the parties to the action using equitable factors that the court determines are appropriate.

(c) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of petroleum shall be deposited in the petroleum trust fund.

(d) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of a regulated substance other than petroleum shall be deposited in the hazardous substances response trust fund.

(e) The state may recover corrective action costs under this section in an action commenced under IC 13-14-2-6, IC 13-14-2-7, IC 13-7-5-7 (before its repeal), or IC 13-7-5-8 (before its repeal). An action to recover corrective action costs under this section may be combined, as appropriate, with an action to enforce an order issued under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal) to require corrective action not already undertaken by the commissioner.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-9 -------- Corrective actions: factors

In determining the equities for seeking the recovery of costs under section 8 of this chapter, the commissioner may consider the following:

(1) The amount of financial responsibility required to be maintained under IC 13-23-1-2(c)(6).

(2) The factors considered in establishing that amount for underground storage tanks containing petroleum under IC 13-23-4-4.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-10 ------ Corrective actions: effect of indemnification, hold harmless or insurance agreement

(a) An indemnification agreement, a hold harmless agreement, or other similar agreement or conveyance is not effective to transfer the liability imposed under section 8 of this chapter from:

(1) the owner or operator of an underground storage tank; or

(2) any person who may be liable for a release or threat of release under this article;

to any other person.

(b) This section does not bar an agreement to:

(1) insure;

(2) hold harmless; or

(3) indemnify;

a party to an agreement for any liability under this article.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-11 ------ Corrective actions: subrogation

This chapter does not bar a cause of action that:

(1) an owner or operator;

(2) a guarantor; or

(3) any other person subject to liability under this article;

has or would have, by reason of subrogation or otherwise, against any person.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-12 ------ Corrective actions: information and authorization required of owner or operator to facilitate corrective action by IDEM

(a) For the purpose of enabling the commissioner to take or to assess the need for corrective action under this chapter or to enforce this article, an owner or operator of an underground storage tank, upon the request of an officer, an employee, or a designated representative of the department, shall do the following:

(1) Furnish information relating to the underground storage tank or associated equipment or contents.

(2) Conduct monitoring or testing of the underground storage tank, including associated equipment or contents.

(3) Conduct monitoring or testing of soils, air, surface water, or ground water surrounding the underground storage tank if:

(A) tank testing, using methods that are applicable to but not in excess of federal standards, confirms a release of regulated substance; or

(B) other evidence exists that gives cause for reasonable suspicion that a release has occurred.

(4) Permit, at all reasonable times, the officer, employee, or designated representative to have access to and to copy all records relating to the underground storage tank.

(5) Permit the officer, employee, or designated representative to have access for corrective action.

(b) For the purposes set forth in subsection (a), an officer, an employee, or a designated representative of the department may enter at reasonable times any establishment or other

place where an underground storage tank is located or where a regulated substance may be present due to a release from an underground storage tank to do the following:

(1) Inspect and obtain samples from any person of any regulated substances contained in the underground storage tank.

(2) Conduct monitoring or testing of:

(A) the underground storage tank;

(B) associated equipment or contents; or

(C) surrounding soils, air, surface water, or ground water.

(3) Take corrective action under section 2 of this chapter.

(c) Every action authorized by this section shall be commenced and completed with reasonable promptness.

[As added by: P.L.1-1996, §13.]

IC 13-23-13-13 ------ Corrective actions: remedies not exclusive

(a) This article does not bar the commissioner from using any emergency procurement powers existing under law.

(b) This article does not bar the commissioner from taking any actions authorized under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)).

[As added by: P.L.1-1996, §13.]

IC 13-23-13-14 ------ Corrective actions: lender; participation in management

For purposes of IC 13-11-2-148(e) and IC 13-11-2-150(b), 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 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.

[As added by: P.L.90-1998, §21.]

IC 13-23-13-15 ------ Corrective actions: liability of fiduciary

(a) The liability of a fiduciary under this title for the release or threatened release of a hazardous substance at, from, or in connection with an underground storage tank held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of the person's ownership of an underground storage tank as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the underground storage tank.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the underground storage tank.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, an underground storage tank that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

[As added by: P.L.90-1998, §22.]

IC 13-23-14. ENFORCEMENT AND PENALTIES

IC 13-23-14-1 -------- Enforcement and penalties: enforcement and penalties

(a) This article shall be enforced under IC 13-30-3.

(b) Except as provided in sections 2, 3, and 4 of this chapter, violations of this article are subject to the penalties imposed by the following:

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-6.

(4) IC 13-30-8.

[As added by: P.L.1-1996, §13.]

IC 13-23-14-2 -------- Enforcement and penalties: civil penalties regarding notification

A person who violates a rule adopted under IC 13-23-1-2 by:

(1) knowingly failing to give a required notification; or

(2) submitting false information;

is subject to a civil penalty of not more than ten thousand dollars ($10,000) for each underground storage tank for which a required notification is not given or for which false information is submitted.

[As added by: P.L.1-1996, §13.]

IC 13-23-14-3 -------- Enforcement and penalties: civil penalties regarding requirements or standards

(a) Except as provided in subsection (b), a person who violates:

(1) a requirement or standard set forth in this article; or

(2) a rule adopted under IC 13-23-1-2 other than a violation described in section 2 of this chapter;

is subject to a civil penalty of not more than ten thousand dollars ($10,000) per underground storage tank for each day of violation.

(b) A person is not subject to the civil penalty described in subsection (a) if:

(1) the violation arose from an underground storage tank that is on a brownfield;

(2) the person was not the owner or operator of the underground storage tank when the violation first occurred;

(3) the person does not dispense a regulated substance into or from the underground tank:

(A) for any purpose other than temporary or permanent closure; or

(B) in violation of any federal, state, or local regulations; and

(4) the underground storage tank is brought into compliance with this article not later than one (1) year after the person acquired ownership of the property.

[As amended by: P.L.122-1999, §2 and P.L.119-1999, §14.]

IC 13-23-14-4 -------- Enforcement and penalties: civil penalties for failing to comply with order

A person who fails to comply with an order issued by the commissioner under this article or IC 13-7-20 (before its repeal) after the order becomes effective is subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of continued noncompliance.

[As added by: P.L.1-1996, §13.]

TITLE 13. ENVIRONMENT
IC 13-24. PETROLEUM

IC 13-24-1. PETROLEUM RELEASES

IC 13-24-1-1 --------- Petroleum releases: authority of commissioner to require removal or remedial action

(a) The commissioner may issue an order under:

(1) IC 13-14-2-7;

(2) IC 4-21.5-4; or

(3) IC 4-21.5-3-6;

to require an owner or operator or a responsible person to undertake removal or remedial action with respect to a release of petroleum at a petroleum facility.

(b) If the commissioner determines that the removal or remedial action will be done properly and promptly by the owner, operator, or responsible person, the commissioner may enter into an agreed order with the owner, operator, or responsible person to implement necessary removal or remedial action.

(c) If the commissioner and the owner or operator or the responsible party fail to agree on the appropriate and necessary removal or remedial action to be taken, the dispute shall be resolved under IC 4-21.5.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-2 --------- Petroleum releases: commissioner may undertake removal or remedial action

(a) Except as provided in subsection (c), the commissioner may undertake removal or remedial action with respect to a release of petroleum at a petroleum facility if:

(1) the action is necessary, in the judgment of the commissioner, to protect human health and the environment; and

(2) a person cannot be found not later than ninety (90) days after the suspected or confirmed release is identified who is:

(A) an owner or operator of the petroleum facility or a responsible person; and

(B) capable of properly carrying out removal or remedial action with respect to the release.

(b) In undertaking removal or remedial action under subsection (a), the commissioner shall give priority to releases of petroleum from a petroleum facility that pose the greatest threat to human health and the environment.

(c) The commissioner may undertake or require removal or remedial action with respect to a release of petroleum into the environment if it is determined that an emergency exists under IC 4-21.5-4.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-3 --------- Petroleum releases: exposure assessment

(a) Remedial action undertaken or required under section 1 or 2 of this chapter may include an exposure assessment.

(b) The cost of:

(1) an exposure assessment;

(2) a removal; or

(3) a remedial action;

undertaken under section 2 of this chapter may be recovered under section 4 of this chapter.

[As amended by: P.L.2-1998, §58.]

IC 13-24-1-4 --------- Petroleum releases: liability of owner or operator to state for costs; right to cost recovery; apportionment of costs

(a) Except where an owner or operator can prove that a release from a petroleum facility was caused by:

(1) an act of God;

(2) an act of war;

(3) negligence on the part of a local government, the state government, or the federal government;

(4) except as provided in subsection (b), an act or omission of a responsible person; or

(5) a combination of the causes set forth in subdivisions (1) through (4);

the owner or operator is liable to the state for the reasonable costs of any response or remedial action taken under section 2 of this chapter involving the petroleum facility. A responsible person is liable to the state for the reasonable costs of any response or remedial action taken under section 2 of this chapter involving the petroleum facility.

(b) The owner, operator, or responsible person is entitled to all rights of the state to recover from another responsible person all or a part of the costs described in subsection (a) incurred or paid to the state by the owner, operator, or responsible person in an action brought in a circuit or superior court with jurisdiction in the county in which the release occurred.

(c) Money recovered by the state under this section in connection with a removal or remedial action undertaken with respect to a release of petroleum shall be deposited in the hazardous substances response trust fund.

(d) The state may recover removal or remedial action costs under this section as follows:

(1) Commence an action under IC 13-14-2-6 or IC 13-14-2-7.

(2) Impose a lien under IC 13-25-4-11 on the property on which the removal or the remedial action was undertaken.

(e) In an administrative action brought under this chapter, an environmental law judge shall apportion the costs of a response or a remedial action in proportion to each party's responsibility for a release.

[As amended by: P.L.25-1997, §17.]

IC 13-24-1-5 --------- Petroleum releases: effect of agreements to indemnify, hold harmless or insure; subrogation

(a) An indemnification agreement, hold harmless agreement, or similar agreement or conveyance is not effective to transfer the liability imposed under section 4 of this chapter from:

(1) the owner or operator of a petroleum facility; or

(2) a person who may be liable for a release or threatened release under this chapter;

to another person. However, this subsection does not bar an agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under this chapter.

(b) This section does not bar a cause of action that:

(1) an owner or operator;

(2) a responsible party; or

(3) another person subject to liability under this chapter;

has or would have, by reason of subrogation or otherwise, against any person.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-6 --------- Petroleum releases: duty to provide information and access

(a) To allow the commissioner to take or to assess the need for removal or remedial action under section 1, 2, or 3 of this chapter or to enforce this chapter, an owner, an operator, or a responsible party of a facility, upon the request of an officer, an employee, or a designated

representative of the department, shall:

(1) furnish information relating to the facility or the facility's associated equipment or contents;

(2) conduct testing of the facility or the facility's associated equipment or contents;

(3) conduct testing of:

(A) soils;

(B) air;

(C) surface water; or

(D) ground water;

surrounding the facility if the testing, using methods that are similar to but do not exceed federal standards, confirms a release of petroleum, or if other evidence exists that gives cause for reasonable suspicion that a release has occurred;

(4) allow, at reasonable times, the officer, employee, or designated representative to have access to and to copy records that relate to the release at the facility; and

(5) allow the officer, employee, or designated representative to have access for response, removal, or remedial action under section 2 of this chapter.

(b) For the reasons described under subsection (a), an officer, an employee, or a designated representative of the department may enter, at reasonable times, a site where a facility is located or where petroleum may be present because of a release from a facility to do the following:

(1) Inspect and obtain samples of petroleum contained in the facility from any person.

(2) Conduct testing of:

(A) the facility;

(B) the facility's associated equipment or contents; or

(C) surrounding:

(i) soils;

(ii) air;

(iii) surface water; or

(iv) ground water.

(3) Take removal or remedial action under section 2 of this chapter.

(c) An action authorized under this section shall be commenced and completed with reasonable promptness.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-7 --------- Petroleum releases: expenses payable from fund

The commissioner may use money in the hazardous substances response trust fund to pay the following expenses associated with petroleum facilities:

(1) Expenses incurred by the state for:

(A) a removal or remedial action that is ordered or undertaken under section 2 of this chapter; and

(B) enforcement of this chapter.

(2) Expenses incurred by the state under section 4 of this chapter in recovering the costs of a removal or remedial action.

(3) Administrative expenses and personnel expenses incurred by the state in carrying out this chapter.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-8 --------- Petroleum releases: administrative review

IC 4-21.5 applies to:

(1) determinations;

(2) notices;

(3) hearings; and

(4) appeal determinations;

under this chapter.

[As added by: P.L.1-1996, §14.]

IC 13-24-1-10 -------- Petroleum releases: liability of lender

A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a petroleum facility may be considered to participate in the management (as defined in IC 13-11-2-151.3) of the petroleum at the petroleum facility only if, while the borrower is still in possession of the petroleum facility encumbered by the security interest, the person:

(1) exercises decision making control over the environmental compliance related to the petroleum facility such that the person has undertaken responsibility for the petroleum handling or disposal practices related to the petroleum facility; or

(2) exercises control at a level comparable to that of a manager of the petroleum facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the petroleum facility 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 petroleum facility other than the function of environmental compliance.

[As added by: P.L.90-1998, §22.]

IC 13-24-1-11 -------- Petroleum releases: liability of fiduciary

(a) The liability of a fiduciary under this title for the release or threatened release of petroleum at, from, or in connection with a petroleum facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of:

(1) the person's ownership of the petroleum facility as a fiduciary; or

(2) actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of petroleum if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the petroleum facility.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the petroleum facility.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, a vessel or facility that was contaminated before the

fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

[As added by: P.L.90-1998, §23.]

IC 13-24-2. IMMUNITY FOR OIL DISCHARGE RESPONSE ASSISTANCE

IC 13-24-2-1 --------- Immunity for oil discharge response assistance: applicability

This chapter does not apply to any of the following:

(1) A discharge or a threatened discharge that is not:

(A) into;

(B) on; or

(C) threatening to enter;

the navigable waters of Indiana.

(2) A person who, in providing response assistance, is grossly negligent or engages in willful or wanton misconduct.

(3) Personal injury or wrongful death.

[As added by: P.L.1-1996, §14.]

IC 13-24-2-2 --------- Immunity for oil discharge response assistance: immunity in the course of providing oil discharge response assistance

Notwithstanding any other law, except as provided in section 3 of this chapter and subject to section 4 of this chapter, a person is immune from liability under Indiana law for:

(1) removal costs incurred; or

(2) damage caused;

as a result of an act committed or omission made in the course of providing oil discharge response assistance.

[As added by: P.L.1-1996, §14.]

IC 13-24-2-3 --------- Immunity for oil discharge response assistance: remedies not exclusive

This chapter does not affect or impair:

(1) a cause of action against; or

(2) the liability of;

any responsible party for the original discharge. The responsible party remains liable for any and all damage arising from the discharge, including damage arising from improperly provided response assistance, as otherwise provided by law.

[As added by: P.L.1-1996, §14.]

IC 13-24-2-4 --------- Immunity for oil discharge response assistance: liability of responsible party

A party who is a responsible party with respect to an oil discharge is, in the absence of a defense to liability for the removal costs or damage arising from the discharge, liable for removal costs or damage caused by a person who is immune from liability under section 2 of this chapter.

[As added by: P.L.1-1996, §14.]

TITLE 13. ENVIRONMENT
IC 13-25. HAZARDOUS SUBSTANCES

IC 13-25-1. INDIANA EMERGENCY RESPONSE COMMISSION

IC 13-25-1-1 --------- Indiana emergency response commission: established

The Indiana emergency response commission is established.

[As added by: P.L.1-1996, §15.]

IC 13-25-1-2 --------- Indiana emergency response commission: membership

(a) The commission consists of the following thirteen (13) members:

(1) The commissioner or the commissioner's designee.

(2) The director of the state emergency management agency or the director's designee.

(3) The superintendent of the state police department or the superintendent's designee.

(4) The state fire marshal or the state fire marshal's designee.

(5) Three (3) representatives of business and industry.

(6) Three (3) representatives of the public.

(7) Three (3) representatives of local government.

(b) The governor shall appoint the members provided for in subsection (a)(5) through (a)(7). A member appointed under this subsection serves at the pleasure of the governor.

[As added by: P.L.1-1996, §15.]

IC 13-25-1-3 --------- Indiana emergency response commission: per diem and travel

(a) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b).

(b) Each member of the commission is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

[As added by: P.L.1-1996, §15.]

IC 13-25-1-4 --------- Indiana emergency response commission: chair and vice chair

The governor shall appoint:

(1) a chairman; and

(2) a vice chairman;

of the commission from among the members of the commission.

[As added by: P.L.1-1996, §15.]

IC 13-25-1-5 --------- Indiana emergency response commission: meetings; quorum

(a) The commission shall meet as follows:

(1) At least one (1) time every three (3) months.

(2) At the call of the chairman.

(b) A majority of the members constitutes a quorum for the authority to conduct business.

[As added by: P.L.1-1996, §15.]

IC 13-25-1-6 --------- Indiana emergency response commission: duties

(a) The commission shall do the following:

(1) Encourage and support the development of emergency planning efforts to provide:

(A) state government entities;

(B) local governments; and

(C) the public;

with information concerning potential chemical hazards in Indiana.

(2) Assist the state in complying with the requirements of SARA.

(3) Design and supervise the operation of emergency planning districts in Indiana.

(4) Gather and distribute information needed for effective emergency response planning.

(b) A local emergency planning committee shall do the following:

(1) Satisfy the requirements of SARA.

(2) Prepare and submit a roster of committee members to the commission at least one (1) time each year.

(3) Meet at least two (2) times, on separate days, every six (6) months.

(4) Prepare and submit the report required under IC 6-6-10-8.

[As amended by: P.L.92-2001, §2.]

IC 13-25-1-7 --------- Indiana emergency response commission: receipt of funding authorized

The commission may receive:

(1) appropriations;

(2) grants;

(3) donations;

(4) equipment;

(5) supplies; and

(6) services;

from a public or a private source to assist the commission in implementing this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-2. EMERGENCY PLANNING AND NOTIFICATION

IC 13-25-2-1 --------- Emergency planning and notification: transportation and transportation related storage exempted

Except as provided in sections 6 and 7 of this chapter, this chapter does not apply to:

(1) the transportation; or

(2) storage incident to transportation;

of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas.

[As amended by: P.L.63-1996, §2.]

IC 13-25-2-2 --------- Emergency planning and notification: substances and facilities subject to these requirements

(a) A substance is subject to this chapter if the substance is on the list published under 42 U.S.C. 11002(a)(2).

(b) Except as provided in section 6 of this chapter, a facility is subject to this chapter if a substance on the list referred to in subsection (a) is present at the facility in an amount that exceeds the threshold planning quantity established for the substance.

(c) For purposes of emergency planning, the Indiana emergency response commission may designate additional facilities that are subject to this chapter if the designation is made after public notice and opportunity for comment. The commission shall notify a facility affected by a designation under this section.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-3 --------- Emergency planning and notification: facility's notification requirement

(a) The owner or operator of a facility subject to this chapter shall notify the commission that the facility is subject to this chapter.

(b) If:

(1) a substance on the list of substances referred to in section 2(a) of this chapter becomes present at a facility in an amount that exceeds the threshold planning quantity established for the substance; or

(2) there is a revision of the list referred to in section 2(a) of this chapter and the facility has present a substance on the revised list that exceeds the threshold planning quantity established for the substance;

the owner or operator of the facility shall notify the commission and the appropriate local emergency planning committee that the facility is subject to this chapter not later than sixty (60) days after the acquisition of the substance or the revision of the list.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-4 --------- Emergency planning and notification: commission to notify EPA administrator

The commission shall notify the administrator of the facilities subject to this chapter by notifying the administrator of:

(1) each notification received from a facility under section 3 of this chapter; and

(2) each facility designated by the commission under section 2(c) of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-5 --------- Emergency planning and notification: local emergency plan

(a) A local emergency planning committee shall complete the preparation or review and update of a local emergency plan in accordance with this section before October 17 of each year. The local emergency planning committee shall review the plan:

(1) at least one (1) time each year; and

(2) more frequently if required by a change in circumstances in the community or at a facility.

(b) A local emergency planning committee shall:

(1) evaluate the need for resources necessary to develop, implement, and exercise the local emergency plan; and

(2) make recommendations with respect to additional resources that may be required and the means for providing the additional resources.

(c) A local emergency plan must include the following:

(1) Identification of the following:

(A) Facilities subject to this chapter that are within the emergency planning district.

(B) Routes likely to be used for the transportation of substances on the list of extremely hazardous substances.

(C) Additional facilities contributing to or subjected to additional risk due to the proximity of the facilities to facilities subject to this chapter, including hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators who shall make determinations necessary to implement the local emergency plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to:

(A) persons designated in the local emergency plan; and

(B) the public;

that a release has occurred consistent with the emergency notification requirements of section 7 of this chapter.

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by the release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to this chapter and an identification of the persons responsible for the equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) For each facility subject to this chapter:

(1) the owner or operator of the facility shall notify:

(A) the emergency planning committee; or

(B) the commission if there is no emergency planning committee;

of a facility representative who will participate in the emergency planning process as a facility emergency coordinator;

(2) the owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at the facility as the changes occur or are expected to occur; and

(3) upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to the emergency planning committee necessary for developing and implementing the emergency plan.

(e) After completion or update of a local emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the local emergency plan to the commission. The commission shall review the local emergency plan and make recommendations to the local emergency planning committee on revisions of the local emergency plan that may be necessary to ensure coordination of the local emergency plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, the review may not delay implementation of the local emergency plan.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-6 --------- Emergency planning and notification: required release notifications

(a) This section does not apply to any release that results in exposure to persons solely within the site or sites on which a facility is located.

(b) If:

(1) a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored; and

(2) the release requires a notification under 42 U.S.C. 9603(a);

the owner or operator of the facility shall immediately provide notice as described in section 7 of this chapter.

(c) If a release of an extremely hazardous substance that is on the list referred to in section 2 of this chapter occurs from a facility at which a hazardous chemical is produced, used, or stored and the release is not subject to the notification requirements under 42 U.S.C. 9603(a), the owner or operator of the facility shall immediately provide notice as described in section 7 of this chapter if the release:

(1) is not a federally permitted release (as defined in 42 U.S.C. 9601(10));

(2) is in an amount that exceeds a quantity that the administrator has determined by regulation requires notice; and

(3) occurs in a manner that would require notification under 42 U.S.C. 9603(a).

(d) If a release of a substance that is not on the list referred to in section 2 of this chapter occurs at a facility at which a hazardous chemical is produced, used, or stored, and the release requires notification under 42 U.S.C. 9603(a), the owner or operator shall provide notice as follows:

(1) If a reportable quantity has been established for the substance under 42 U.S.C. 9602(a), the owner or operator shall provide the notice as described in section 7 of this chapter.

(2) If a reportable quantity has not been established for the substance under 42 U.S.C. 9602(a), the owner or operator shall provide the notice as described in section 7 of this chapter for any release of at least one (1) pound of the substance.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-6.5 ------- Emergency planning and notification: IDEM responsibilities re stakeholders

(a) The department shall work with interested stakeholders, including the federal government, the general public, members of the general assembly, and businesses, to evaluate the feasibility of simplifying and expediting notification under IC 13-25-2-6. Options to be evaluated include:

(1) connecting persons required to provide notice under IC 13-25-2-6 with the National Response Center; and

(2) recommending any appropriate changes in federal law.

(b) The department shall implement an option evaluated under subsection (a) if the option:

(1) is practical to implement;

(2) is technically feasible;

(3) is economically feasible;

(4) is protective of human health and the environment; and

(5) would adequately serve persons required to provide notice under IC 13-25-2-6.

(c) The department shall provide a toll free long distance telephone line through which a person required to provide notice under IC 13-25-2-6 may contact the office described in IC 13-13-3-1 of this chapter.

[As added by: P.L.126-1996, §5.]

IC 13-25-2-7 --------- Emergency planning and notification: notification procedure

(a) The owner or operator of the facility shall give the notice required by section 6 of this chapter immediately after the release to the following:

(1) The community emergency coordinator for the appropriate local emergency planning committees for any area likely to be affected by the release.

(2) The commission.

(3) The state emergency planning commission of any other state likely to be affected by the release.

(b) If a substance that is subject to the reporting requirements under this section is being transported or is being stored incident to being transported, the notice requirements of this section may be satisfied by:

(1) dialing the local 911 emergency telephone number; or

(2) if a local 911 emergency telephone number is not available, calling the telephone operator.

(c) The notice required by section 6 of this chapter must include each of the following to the extent known at the time of the notice and if no delay in responding to the emergency results:

(1) The chemical name or identity of any substance involved in the release.

(2) An indication of whether the substance is on the list referred to in section 2 of this chapter.

(3) An estimate of the quantity of any substance that was released into the environment.

(4) The time and duration of the release.

(5) The medium or media into which the release occurred.

(6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release, including evacuation, unless the information is readily available to the community emergency coordinator under the local emergency plan.

(8) The name and telephone number of persons to be contacted for additional information.

(d) As soon as practicable after a release that requires notice by section 6 of this chapter, the owner or operator shall provide written follow-up emergency notices that include and update the information required by this section, including additional information with respect to the following:

(1) Actions taken to respond to and contain the release.

(2) Any known or anticipated acute or chronic health risks associated with the release.

(3) If appropriate, advice regarding medical attention necessary for exposed individuals.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-8 --------- Emergency planning and notification: material safety data sheets

(a) The owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act shall submit a material safety data sheet for each chemical or, preferably, a list of chemicals described in subsection (b) to each of the following:

(1) The appropriate local emergency planning committee.

(2) The commission.

(3) The fire department that has jurisdiction over the facility.

(b) The list of chemicals referred to in subsection (a) includes the following:

(1) A list of the hazardous chemicals for which a material safety data sheet is required under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act grouped:

(A) in categories of health and physical hazards as set forth in the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act; or

(B) in other categories as the administrator may establish under 42 U.S.C. 11021.

(2) The chemical name or the common name of each chemical as provided on the material safety data sheet.

(3) Any hazardous component of each chemical as provided on the material safety data sheet.

(c) An owner or operator may meet the requirements of this section with respect to a hazardous chemical that is a mixture by doing one (1) of the following:

(1) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture that is a hazardous chemical. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet or one (1) listing of the element or compound is necessary.

(2) Submitting a material safety data sheet for, or identifying on a list, the mixture.

(d) If an owner or operator of a facility submits a list of chemicals under subsection (a), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to the committee.

(e) A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 14 of this chapter. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 14 of this chapter.

(f) The initial material safety data sheet or list required by this section with respect to a hazardous chemical shall be provided not later than three (3) months after the date the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act.

(g) A revised sheet shall be provided to a local emergency planning committee not later than three (3) months after the date of a discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a).

[As added by: P.L.1-1996, §15.]

IC 13-25-2-9 --------- Emergency planning and notification: submission of inventory form and tier I information

(a) The owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act shall prepare and submit an emergency and hazardous chemical inventory form to each of the following:

(1) The appropriate local emergency planning committee.

(2) The commission.

(3) The fire department that has jurisdiction over the facility.

(b) The inventory form containing tier I information as described in subsection (e):

(1) shall be submitted before March 1 of each year; and

(2) must contain data with respect to the preceding year;

unless an owner or operator provides, before March 1 and with respect to the same year, tier II information as described in section 10(a) of this chapter to the recipients described in subsection (a).

(c) An owner or operator may meet the requirements of this section and section 10 of this chapter with respect to a hazardous chemical that is a mixture by doing one (1) of the following:

(1) Providing information on the inventory form on each element or compound in the

mixture that is a hazardous chemical. If more than one (1) mixture has the same element or compound, only one (1) listing on the inventory form for the element or compound at the facility is necessary.

(2) Providing information on the inventory form on the mixture.

(d) A hazardous chemical for which a material safety data sheet or a listing is required by section 8 of this chapter is subject to this section and section 10 of this chapter.

(e) An inventory form must contain the following tier I information in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act:

(1) An estimate in ranges of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding year.

(2) An estimate in ranges of the average daily amount of hazardous chemicals in each category present at the facility during the preceding year.

(3) The general location of hazardous chemicals in each category.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-10 -------- Emergency planning and notification: inventory form and tier II information

(a) An inventory form must provide the following additional tier II information for each hazardous chemical present at the facility only upon request and in accordance with subsection (b):

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(2) An estimate in ranges of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.

(3) An estimate in ranges of the average daily amount of the hazardous chemical present at the facility during the preceding year.

(4) A brief description of the manner of storage of the hazardous chemical.

(5) The location at the facility of the hazardous chemical.

(6) An indication of whether the owner of the facility elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 14 of this chapter.

(b) Upon the request of:

(1) the commission;

(2) a local emergency planning committee; or

(3) a fire department with jurisdiction over a facility;

the owner or operator of a facility shall provide tier II information as described in subsection (a) to the person making the request. A request must be made with respect to a specific facility.

(c) A state or local official acting in the official's capacity may have access to tier II information by submitting a request to the commission or a local emergency planning committee. Upon receipt of a request for tier II information, the commission or committee shall request the facility owner or operator to provide the tier II information and make the information available to the official.

(d) A person may make a request to the commission or a local emergency planning committee for tier II information relating to the preceding year with respect to a facility. The request must be in writing and must be made with respect to a specific facility.

(e) Any tier II information that the commission or a local emergency planning committee possesses shall be made available to a person making a request under this section in accordance with section 14 of this chapter. If the commission or local emergency planning committee does not possess the tier II information requested, the commission or local emer-

gency planning committee shall request the facility owner or operator to:

(1) provide the tier II information with respect to a hazardous chemical that a facility has stored in an amount of at least ten thousand (10,000) pounds present at the facility at any time during the preceding year; and

(2) make the information available in accordance with section 14 of this chapter;

to the person making the request.

(f) For tier II information that is not in the possession of the commission or a local emergency planning committee with respect to a hazardous chemical that a facility has stored in an amount that is less than ten thousand (10,000) pounds at the facility at any time during the preceding year, a request from a person must include a statement specifying the general need for the information. The commission or local emergency planning committee may request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of the person, the commission or local emergency planning committee shall make the information available in accordance with section 14 of this chapter to the person.

(g) The commission or a local emergency planning committee shall respond to a request for tier II information under this section not later than seven (7) days after the date the request is received.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-11 -------- Emergency planning and notification: obligations of owner or operator to fire department

Upon the request of the fire department that has jurisdiction over a facility that files an inventory form under section 9 of this chapter, the owner or operator of the facility shall:

(1) allow the fire department to conduct an onsite inspection of the facility; and

(2) provide to the fire department specific location information on hazardous chemicals at the facility.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-12 -------- Emergency planning and notification: conditions for withholding chemical identification

A person required under section 5(d)(2), 5(d)(3), 8, 9, 10, or 11 of this chapter to submit information to any other person may withhold from the information the specific chemical identity, including the chemical name and other specific identification as provided in 42 U.S.C. 11042 and regulations adopted by the administrator under 42 U.S.C. 11042.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-13 -------- Emergency planning and notification: fulfilling requests of health professionals

(a) An owner or operator of a facility that is subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide the specific chemical identity, if known, of a hazardous chemical or extremely hazardous substance to any health professional who requests the information in writing if the health professional provides a written statement of need under this section and a written confidentiality agreement under subsection (e). The written statement of need must specify that the health professional has a reasonable basis to suspect that:

(1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned; and

(3) knowledge of the specific chemical identity of the chemical will assist in diagnosis or treatment.

After receiving a written request under this subsection, the owner or operator to whom the request is made shall promptly provide the requested information to the health professional. Except as provided under subsection (e), the authority to withhold the specific chemical

identity of a chemical under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided under this subsection.

(b) An owner or operator of a facility that is subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide a copy of a material safety data sheet or an inventory form, including the specific chemical identity, if known, of a hazardous chemical or extremely hazardous substance to any treating physician or nurse who requests the information if the physician or nurse determines that:

(1) a medical emergency exists;

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately after receiving a request under this subsection, the owner or operator to whom the request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet or an inventory form under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided to a treating physician or nurse under this subsection. A written confidentiality agreement or statement of need is not required as a precondition of the disclosure. However, the owner or operator disclosing the information may require a written confidentiality agreement in accordance with subsection (e) and a statement setting forth the items listed in subdivisions (1) through (3) as soon as circumstances permit.

(c) An owner or operator of a facility subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide the specific chemical identity, if known, of a hazardous chemical or an extremely hazardous substance to any health professional, including a physician, toxicologist, or epidemiologist who:

(1) is a local government employee or a person under contract with the local government; and

(2) requests the information in writing and provides a written statement of need under subsection (d) and a written confidentiality agreement under subsection (e).

After receiving a written request under this subsection, the owner or operator to whom the request is made shall promptly provide the requested information to the local health professional. Except as provided in subsection (e), the authority to withhold the specific chemical identity of a chemical under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided under this subsection.

(d) The written statement of need described in subsection (c) must describe with reasonable detail at least one (1) of the following health needs for the information:

(1) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(2) To conduct or assess sampling to determine exposure levels of various population groups.

(3) To conduct periodic medical surveillance of exposed population groups.

(4) To provide medical treatment to exposed individuals or population groups.

(5) To conduct studies to determine the health effects of exposure.

(6) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(e) A person who obtains information under subsection (a) or (c) shall, in accordance with subsection (a) or (c), agree in a written confidentiality agreement that the person will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing the information. This subsection does not preclude the parties to a confidentiality agreement from pursuing any remedy to the extent permitted by law.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-14 -------- Emergency planning and notification: availability of information to public; annual notice

(a) An emergency response plan, material safety data sheet, list of chemicals described in section 8(b) of this chapter, inventory form, and follow-up emergency notice shall be made available to the general public during normal working hours at the location or locations designated by the commission or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of sections 9 through 10 of this chapter, the commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 10(a) of this chapter to be contained in an inventory form as tier II information.

(b) A local emergency planning committee shall annually publish a notice in local newspapers stating that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice must:

(1) state that follow-up emergency notices may subsequently be issued; and

(2) announce that members of the public who desire to review:

(A) an emergency response plan;

(B) a material safety data sheet;

(C) an inventory form; or

(D) a follow-up notice;

may do so at the location designated under subsection (a).

[As added by: P.L.1-1996, §15.]

IC 13-25-2-15 -------- Emergency planning and notification: authority of citizen to bring civil action

(a) A person may commence a civil action on the person's behalf against the following:

(1) An owner or operator of a facility, for failure to do any of the following:

(A) Submit a follow-up emergency notice under section 7(d) of this chapter.

(B) Submit a material safety data sheet or a list under section 8 of this chapter.

(C) Complete and submit an inventory form under section 9 of this chapter containing tier I information as described in section 9 of this chapter unless the requirement does not apply under section 9(b) of this chapter.

(2) The commission, for failure to provide a mechanism for public availability of information in accordance with section 14 of this chapter.

(3) The commission, for failure to respond to a request for tier II information under section 10 of this chapter not later than one hundred twenty (120) days after the date the request is received.

(b) An action under subsection (a) against an owner or operator of a facility must be brought in a court having jurisdiction.

(c) A court has jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to:

(1) enforce the requirement concerned; and

(2) impose any civil penalty provided for violation of the requirement.

(d) An action may not be commenced under subsection (a)(1)(A) until at least sixty (60) days after the date the plaintiff gives notice of the alleged violation to the state and the alleged violator. Notice must be given in the manner prescribed by the administrator under regulations adopted under 42 U.S.C. 11001 et seq.

(e) An action may not be commenced under subsection (a)(1)(B) or (a)(1)(C) until at least sixty (60) days after the date the plaintiff gives notice to the commission that the plaintiff will commence the action. Notice must be given in a manner prescribed by the administrator under regulations adopted under 42 U.S.C. 11001 et seq.

(f) An action may not be commenced under subsection (a) against an owner or operator of a facility if the administrator has commenced and is diligently pursuing an administrative order or a civil action to:

(1) enforce the requirement concerned; or

(2) impose a civil penalty under 42 U.S.C. 11001 et seq.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-16 -------- Emergency planning and notification: authority of state or local unit to bring civil action

The state or a unit of local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(1) Provide notification to the emergency response commission under section 3 of this chapter.

(2) Submit a material safety data sheet or a list under section 8 of this chapter.

(3) Make available information requested under section 8 of this chapter.

(4) Complete and submit an inventory form under section 9 of this chapter containing tier I information unless the requirement does not apply under section 9(b) of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-17 -------- Emergency planning and notification: authority of commission or committee to bring civil action

The commission or a local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to:

(1) provide information under section 5(d) of this chapter; or

(2) submit tier II information under section 10 of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-2-18 -------- Emergency planning and notification: court award; remedies not exclusive; intervention

(a) A court, in issuing a final order in an action brought under section 15, 16, or 17 of this chapter, may award costs of litigation, including reasonable attorney's fees and expert witness fees, to the prevailing or the substantially prevailing party if the court determines that the award is appropriate.

(b) Sections 15, 16, and 17 of this chapter do not restrict or expand any right that a person may have under federal or state law to seek enforcement of a requirement or to seek other relief.

(c) In an action brought under section 15, 16, or 17 of this chapter, the state, if the state is not a party, may intervene as a matter of right.

(d) In an action brought under section 15, 16, or 17 of this chapter, a person may intervene as a matter of right if:

(1) the person has a direct interest that is or may be adversely affected by the action; and

(2) the disposition of the action may impair or impede the person's ability to protect that interest;

unless the state shows that the person's interest is adequately represented by existing parties to the action.

[As added by: P.L.1-1996, §15.]

IC 13-25-3. RESPONSIBLE PROPERTY TRANSFER LAW

IC 13-25-3-1 --------- Responsible property transfer law: IDEM to provide relevant information within its possession upon request

(a) In response to an inquiry from a person in connection with this chapter, the department shall provide information that is in the department's possession concerning whether a property meets any of the descriptions set forth in IC 13-11-2-174.

(b) Neither:

(1) the state;

(2) the department; nor

(3) an employee of the department who answers an inquiry under this section;

is liable in a civil action on the grounds that information provided under this section was incomplete or erroneous.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-2 --------- Responsible property transfer law: disclosure document; waiver of 30 day period

(a) Except as provided in subsections (b) and (c), a transferor of property shall deliver a disclosure document to each of the other parties to a transfer of property at least thirty (30) days before the transfer. The disclosure document must be in the form set forth in section 7 of this chapter and must include the information elicited by that form. However, the signature of the transferee is not required on the disclosure document delivered to a party involved in the transfer of property as a lender.

(b) If all of the other parties to a transfer of property waive the thirty (30) day deadline set forth in subsection (a) in written waivers that indicate that the parties are aware of the purpose and intent of the disclosure document, the transferor is not required to deliver the disclosure document to the other parties thirty (30) days before the transfer of the property. However, the transferor shall deliver a disclosure document that meets the requirements set forth in subsection (a) to each of the other parties to the transfer of property on or before the date on which the transfer of property is to become final.

(c) If a party involved in a transfer of property as a lender is not identified to the transferor at least thirty (30) days before the transfer, the thirty (30) day deadline set forth in subsection (a) does not apply to the delivery of a disclosure document by the transferor to that lender. However, if a lender is identified to a transferor less than thirty (30) days before the transfer, the transferor shall deliver a disclosure document to the lender immediately after the lender is identified to the transferor.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-3 --------- Responsible property transfer law: effect of disclosure of previously unknown environmental defects

If the disclosure document delivered by the transferor to another party to the transfer of property under section 2 of this chapter reveals one (1) or more environmental defects in the property that were previously unknown to the other party, the other party is relieved of an obligation to:

(1) accept the transfer of the property; or

(2) finance the transfer of the property.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-4 --------- Responsible property transfer law: effect of failure to timely deliver disclosure document where 30 day waiver not obtained

(a) If a transferor:

(1) fails to deliver a disclosure document meeting the requirements set forth in section 2 of this chapter to one (1) or more other parties to the transfer of property before the deadline set forth in section 2(a) of this chapter; and

(2) does not obtain a waiver under section 2(b) of this chapter;

a party that did not receive a disclosure document may demand a disclosure document from the transferor.

(b) A party who demands a disclosure document under this section may void an obligation to accept the transfer of the property or to finance the transfer of the property if:

(1) the party does not receive a disclosure document not later than ten (10) days after demanding a disclosure document; or

(2) the party receives a disclosure document not later than ten (10) days after demanding the disclosure document but the disclosure document reveals one (1) or more environmental defects in the property that were previously unknown to the party.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-5 --------- Responsible property transfer law: effect of failure to timely deliver disclosure document where 30 day waiver was obtained

(a) If a transferor:

(1) obtains a waiver under section 2(b) of this chapter; but

(2) fails to deliver a disclosure document meeting the requirements set forth in section 2 of this chapter to one (1) or more of the other parties to the transfer of property before the date on which the transfer is scheduled to become final;

a party that did not receive a disclosure document may demand a disclosure document from the transferor.

(b) Subject to section 6 of this chapter, a party who demands a disclosure document under this section may void an obligation to accept the transfer of the property or to finance the transfer of the property if:

(1) the party does not receive a disclosure document not later than ten (10) days after demanding a disclosure document; or

(2) the party receives a disclosure document not later than ten (10) days after demanding the disclosure document but the disclosure document reveals one (1) or more environmental defects in the property that were previously unknown to the party.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-6 --------- Responsible property transfer law: obligation may not be voided after property transfer

A party to a transfer of property may not void an obligation to:

(1) accept the transfer of the property; or

(2) finance the transfer of property under sections 3 through 5 of this chapter;

after the transfer of property has taken place.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-7 --------- Responsible property transfer law: disclosure document form

A disclosure document delivered by a transferor of property under this chapter must follow this form:

A WARNING TO THE PARTIES TO A TRANSFER OF PROPERTY: It is highly unlikely that the single act of reading this document would be found to constitute "all appropriate inquiry into the previous ownership and uses of the property" so as to protect you against liability under the "innocent purchaser" provision of the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(35)(B). You are strongly encouraged not only to read this document carefully but also to take all other actions necessary to the exercise of due diligence in your inquiry into the previous ownership and uses of the property.

ENVIRONMENTAL DISCLOSURE DOCUMENT FOR
TRANSFER OF REAL PROPERTY

For Use By County Recorder's Office

County
Date
Doc. No.
Vol.
Page
Rec'd by:

The following information is provided under IC 13-25-3, the Responsible Property Transfer Law.

I. PROPERTY IDENTIFICATION

A. Address of property: _____
Street
_____
City or Town Township

Tax Parcel Identification No. (Key Number): _____

B. Legal Description:

Section ___ Township ____ Range ____

Enter or attach complete legal description in this area: _____
_____

LIABILITY DISCLOSURE

Transferors and transferees of real property are advised that their ownership or other control of such property may render them liable for environmental cleanup costs whether or not they caused or contributed to the presence of environmental problems in association with the property.

C. Property Characteristics:

Lot Size _____ Acreage _____

Check all types of improvement and uses that pertain to the property:

____ Apartment building (6 units or less)
____ Commercial apartment (over 6 units)
____ Store, office, commercial building
____ Industrial building
____ Farm, with buildings
____ Other (specify)

II. NATURE OF TRANSFER

		Yes	No
A.	(1) Is this a transfer by deed or other instrument of conveyance of fee title to property?	___	___
	(2) Is this a transfer by assignment of over 25% of beneficial interest of a land trust?	___	___
	(3) A lease exceeding a term of 40 years?	___	___
	(4) A collateral assignment of beneficial interest?	___	___
	(5) An installment contract for the sale of property?	___	___
	(6) A mortgage or trust deed?	___	___
	(7) A lease of any duration that includes an option to purchase?	___	___

B. (1) Identify Transferor:

_____

Name and Current Address of Transferor

_____

Trust No.

Name and Address of Trustee if this is a transfer of beneficial interest of a land trust.

_____

(2) Identify person who has completed this form on behalf of the Transferor and who has knowledge of the information contained in this form:

_____

Name, Position (if any),Telephone No.and Address

C. Identify Transferee:

_____

Name and Current Address of Transferee

III. ENVIRONMENTAL INFORMATION

A. Regulatory Information During Current Ownership

1. Has the transferor ever conducted operations on the property which involved the generation, manufacture, processing, transportation, treatment, storage, or handling of a “hazardous substance”, as defined by IC 13-11-2-98? This question does not apply to consumer goods stored or handled by a retailer in the same form and approximate amount, concentration, and manner as they are sold to consumers, unless the retailer has engaged in any commercial mixing (other than paint mixing or tinting of consumer sized containers), finishing, refinishing, servicing, or cleaning operations on the property.

Yes ___
No ___

2. Has the transferor ever conducted operations on the property which involved the processing, storage, or handling of petroleum, other than that which was associated directly with the transferor's vehicle usage?

Yes ___
No ___

3. Has the transferor ever conducted operations on the property which involved the generation, transportation, storage, treatment, or disposal of "hazardous waste", as defined in IC 13-11-2-99(a)?

Yes ___
No ___

4. Are there any of the following specific units (operating or closed) at the property that are used or were used by the transferor to manage hazardous wastes, hazardous substances, or petroleum?

	YES	NO
Landfill	___	___
Surface Impoundment	___	___
Land Application	___	___
Waste Pile	___	___
Incinerator	___	___
Storage Tank (Above Ground)	___	___
Storage Tank (Underground)	___	___
Container Storage Area	___	___
Injection Wells	___	___
Wastewater Treatment Units	___	___
Septic Tanks	___	___
Transfer Stations	___	___
Waste Recycling Operations	___	___
Waste Treatment Detoxification	___	___
Other Land Disposal Area	___	___

If there are "YES" answers to any of the above items and the transfer of property that requires the filing of this document is other than a mortgage or trust deed or a collateral assignment of beneficial interest in a land trust, you must attach to the copies of this document that you file with the county recorder and the department of environmental management a site plan that identifies the location of each unit.

5. Has the transferor ever held any of the following in regard to this real property?

(A) Permits for discharges of wastewater to waters of Indiana. Yes __ No __

(B) Permits for emissions to the atmosphere. Yes __ No __

(C) Permits for any waste storage, waste treatment, or waste disposal operation. Yes __ No __

6. Has the transferor ever discharged any wastewater (other than sewage) to a publicly owned treatment works? Yes __ No __

7. Has the transferor been required to take any of the following actions relative to this property? Yes __ No __

(A) Filed an emergency and hazardous chemical inventory form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11022). Yes __ No __

(B) Filed a toxic chemical release form pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023). Yes__ No __

8. Has the transferor or any facility on the property or the property been the subject of any of the following state or federal governmental actions?

(A) Written notification regarding known, suspected, or alleged contamination on or emanating from the property. Yes __ No __

(B) Filing an environmental enforcement case with a court or the solid waste management board for which a final order or consent decree was entered. Yes __ No __

(C) If the answer to question (B) was Yes, then indicate whether or not the final order or decree is still in effect for this property. Yes __ No __

9. Environmental Releases During Transferor's Ownership.

(A) Has any situation occurred at this site which resulted in a reportable "release" of any

hazardous substances or petroleum as required under state or federal laws? Yes __ No __

(B) Have any hazardous substances or petroleum which were released come into direct contact with the ground at this site? Yes __ No __

If the answer to question (A) or (B) is Yes, have any of the following actions or events been associated with a release on the property?

____Use of a cleanup contractor to remove or treat materials including soils, pavement, or other surficial materials?

____Assignment of in-house maintenance staff to remove or treat materials including soils, pavement, or other surficial materials?

____Sampling and analysis of soils?

____Temporary or more long term monitoring of groundwater at or near the site?

____Impaired usage of an onsite or nearby water well because of offensive characteristics of the water?

____Coping with fumes from subsurface storm drains or inside basements?

____Signs of substances leaching out of the ground along the base of slopes or at other low points on or immediately adjacent to the site?

(C) Is there an environmental defect (as defined in IC 13-11-2-70) on the property that is not reported under question (A) or (B)? Yes __ No __

If the answer is Yes, describe the environmental defect:

_____
_____
_____
_____
_____

10. Is the facility currently operating under a variance granted by the commissioner of the Indiana department of environmental management?

Yes __
No __

11. Has the transferor ever conducted an activity on the site without obtaining a permit from the U.S. Environmental Protection Agency, the commissioner of the department of environmental management, or another administrative agency or authority with responsibility for the protection of the environment, when such a permit was required by law?

Yes __
No __

If the answer is Yes, describe the activity:

_____
_____
_____
_____
_____

12. Is there any explanation needed for clarification of any of the above answers or responses?

_____
_____
_____
_____

B. Site Information Under Other Ownership Or Operation

1. Provide the following information about the previous owner or about any entity or person to whom the transferor leased the property or with whom the transferor contracted for the management of the property:

Name:_____
_____
Type of business _____
or property usage _____
_____

2. If the transferor has knowledge, indicate whether the following existed under

prior ownerships, leaseholds granted by the transferor, other contracts for management or use of the property:

	YES	NO
Landfill	___	___
Surface Impoundment	___	___
Land Application	___	___
Waste Pile	___	___
Incinerator	___	___
Storage Tank (Above Ground)	___	___
Storage Tank (Underground)	___	___
Container Storage Area	___	___
Injection Wells	___	___
Wastewater Treatment Units	___	___
Septic Tanks	___	___
Transfer Stations	___	___
Waste Recycling Operations	___	___
Waste Treatment Detoxification	___	___
Other Land Disposal Area	___	___

IV. CERTIFICATION

A. Based on my inquiry of those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true and accurate.

_____

TRANSFEROR (or on behalf of Transferor)

B. This form was delivered to me with all elements completed on

_____ 19 ___

_____.

TRANSFEREE (or on behalf of Transferee)

[As added by: P.L.1-1996, §15.]

IC 13-25-3-8 --------- Responsible property transfer law: recording of disclosure document and filing with IDEM

(a) Not more than thirty (30) days after the effective date of a transfer of property that requires the preparation of a disclosure document under this chapter:

(1) the transferor or transferee shall record the disclosure document in the office of the county recorder of the county in which the property is located; and

(2) the transferor shall file a copy of the disclosure document with the department.

(b) If a site plan must be attached to the disclosure document under section 7 of this chapter, the site plan shall be recorded and filed under subsection (a) along with the disclosure document to which the site plan must be attached.

(c) The transferor and transferee are jointly responsible for recording a disclosure document in the county recorder's office under this section. However, the recording of a disclosure document by one (1) person referred to in this subsection discharges the responsibility of the other person.

(d) A disclosure document recorded in the county recorder's office or filed with the department:

(1) is a public record under IC 5-14-3; and

(2) must be available for inspection and copying during normal business hours.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-9 --------- Responsible property transfer law: recording of document reporting elimination of environmental defect

(a) If a disclosure document recorded under section 8(a)(1) of this chapter reports the existence of an environmental defect on a property, a person who has a financial interest in the property may record, in the same county recorder's office in which the disclosure document is recorded, a document that reports that the environmental defect has been eliminated from the property.

(b) A professional engineer registered under IC 25-31-1 who does not have a financial interest in the property must certify a document filed under this section.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-10 -------- Responsible property transfer law: failure to deliver disclosure document

A transferor who fails to deliver a disclosure document to a party in violation of section 2 of this chapter commits a Class B infraction.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-11 -------- Responsible property transfer law: knowingly making false statements in disclosure document

A transferor who knowingly makes a false statement in a disclosure document delivered under this chapter commits a Class A infraction. Each day that the transferor knows of the falsity of the statement made in the disclosure document but fails to correct that statement through the filing, recording, and delivery of a corrected disclosure statement constitutes a separate infraction.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-12 -------- Responsible property transfer law: failure to file disclosure document

(a) Except as provided in subsection (b), a person who:

(1) is responsible for filing a disclosure document in the office of the county recorder under section 8(a)(1) and 8(c) of this chapter; and

(2) fails to record the disclosure document;

commits a Class A infraction.

(b) The failure of a transferee to record a disclosure document within the period allowed under section 8(a) of this chapter is not an infraction under this section if the disclosure document:

(1) was not delivered to the transferee within the time allowed under section 2 of this chapter; or

(2) contains one (1) or more false statements about substantive matters.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-13 -------- Responsible property transfer law: exceptions relating to mortgage loans

(a) The duties imposed by this chapter are subject to the exceptions set forth in this section.

(b) A buyer of property who finances the purchase of the property through a mortgage

loan is not required under section 2, 4, or 5 of this chapter to deliver a disclosure document to the mortgagee that provides the mortgage loan.

(c) A person who lends money and takes a mortgage on property to secure the loan is not required under section 8 of this chapter to:

(1) record a disclosure document concerning the property in the office of the county recorder of the county in which the property is located; or

(2) file a copy of the disclosure document with the department.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-14 -------- Responsible property transfer law: prosecutor may order compliance

In an action based on an alleged commission of an infraction defined in sections 10 through 12 of this chapter, the prosecuting attorney may obtain an order requiring the defendant to comply with this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-3-15 -------- Responsible property transfer law: action for consequential damages

A party to a transfer of property may bring a civil action against another party to the transfer of property to recover consequential damages based upon a violation of this chapter. In an action brought under this section, a party may recover reasonable costs and attorney's fees.

[As added by: P.L.1-1996, §15.]

IC 13-25-4. HAZARDOUS SUBSTANCES RESPONSE TRUST FUND

IC 13-25-4-1 --------- Hazardous substances response trust fund: established

(a) The hazardous substances response trust fund is established. The purpose of the fund is to accumulate and maintain a source of money for the following purposes:

(1) Financing contracts or cooperative agreements between the state and the President of the United States under Section 104 of CERCLA (42 U.S.C. 9604).

(2) Providing state assistance in the form of supplies, materials, services, and equipment to:

(A) prevent the release of a hazardous substance or contaminant; or

(B) control, contain, isolate, neutralize, remove, store, or dispose of any hazardous substance or contaminant already released into or on the air, land, or waters of Indiana.

(3) Financing response actions that are:

(A) undertaken or authorized by the commissioner with respect to sites in Indiana; and

(B) considered by the commissioner to be necessary to protect the public health or welfare or the environment from the release or threatened release of a hazardous substance or contaminant.

(4) Paying expenses related to releases of regulated substances other than petroleum from underground storage tanks under IC 13-23-13-7.

(5) Paying administrative and personnel expenses incurred by the state in responding to releases or threats of releases of hazardous substances or contaminants.

(6) Paying claims for the reimbursement of necessary response costs incurred by persons that have received preauthorization from the commissioner for reimbursement.

(7) Providing grants for household hazardous waste and conditionally exempt small

quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.

(8) Paying administrative and personnel expenses incurred by the department in implementing and administering household hazardous waste and conditionally exempt small quantity generator waste collection, recycling, or disposal projects under IC 13-20-20.

(9) Transferring funds to the environmental remediation revolving loan fund established by IC 13-19-5-2.

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

[As amended by: P.L.237-1999, §10.]

IC 13-25-4-2 --------- Hazardous substances response trust fund: sources of funding

The sources of money for the fund are the following:

(1) Revenue produced by the levy under IC 6-6-6.6.

(2) Any payment to the state or the fund as:

(A) reimbursement for amounts expended by the state in a response action; or

(B) a settlement or judgment stemming from a lawsuit by the state or federal government to recover amounts expended by the state in a response action, including recoveries under section 10 of this chapter.

(3) Accrued interest and other investment earnings of the fund.

(4) Fees paid under IC 13-23-12-4(2) and penalties paid under IC 13-23-12-7 by owners and operators of underground storage tanks used to contain regulated substances other than petroleum.

(5) Appropriations made by the general assembly and gifts and donations from private and public entities intended for deposit in the fund.

(6) Grants and other payments made by the United States government under:

(A) the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) in relation to regulated substances other than petroleum; or

(B) CERCLA.

(7) Money received from responsible parties under agreements under section 23 of this chapter for response actions at specific sites.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-3 --------- Hazardous substances response trust fund: duties of state treasurer

The treasurer of state shall invest the assets of the fund:

(1) as a whole; and

(2) in the investments that are authorized by the Constitution of the State of Indiana and state laws.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-4 --------- Hazardous substances response trust fund: fund expenditures

(a) The department shall do the following:

(1) Prepare an annual budget to provide for administrative and personnel expenses from the fund.

(2) Submit the budget to the budget committee in accordance with IC 4-12-1.

(b) The general assembly must appropriate the money in the fund to be used for administrative and personnel expenses before expenditure of the money. The commissioner shall order all other expenditures from the fund with the approval of the governor and the budget agency.

(c) Not more than four hundred fifty thousand dollars ($450,000) of the fund is available to the department each year to fund grants awarded under IC 13-20-20, exclusive of administrative and personnel expenditures authorized by section 1(a)(8) of this chapter.

[As amended by: P.L.237-1999, §11.]

IC 13-25-4-5 --------- Hazardous substances response trust fund: access to records and property

(a) This section applies to the following:

(1) A person that stores, treats, or disposes of hazardous substances.

(2) If necessary to ascertain facts not available at the site or facility where the hazardous substances are located, a person that generates, transports, or otherwise handles or has handled hazardous substances.

(b) To assist in determining the need for corrective action under IC 13-22-13 or removal or remedial action under this chapter in connection with a hazardous substance, a person described in subsection (a) shall:

(1) upon request of an officer, an employee, or a designated agent of the department, furnish information relating to the hazardous substances referred to in subsection (a)(1) or (a)(2); and

(2) permit the officer, the employee, or the designated agent of the department at any reasonable time to have access to and to copy all records relating to the hazardous substances referred to in subsection (a)(1) or (a)(2).

[As added by: P.L.1-1996, §15.]

IC 13-25-4-6 --------- Hazardous substances response trust fund: right of entry, inspection and sampling

(a) For the purpose of assisting in determining the need for corrective action under IC 13-22-13 or removal or remedial action in connection with a hazardous substance under this chapter, an officer, an employee, or a designated agent of the department may:

(1) enter at reasonable times any establishment or other place:

(A) where hazardous substances are or have been generated, stored, treated, or disposed of; or

(B) from which hazardous substances have been transported; and

(2) inspect and obtain samples of:

(A) any hazardous substance;

(B) containers or labeling for hazardous substances; or

(C) soil, surface water, ground water, or other environmental media.

(b) Each inspection under subsection (a)(2) must be commenced and completed with reasonable promptness. If the officer, the employee, or the representative of the department conducting the inspection obtains any samples, before leaving the premises the officer, the employee, or the representative shall give to the owner, the operator, or the person in charge of the premises:

(1) a receipt describing the sample obtained; and

(2) if requested, a portion or a duplicate of each sample equal in volume of weight to the portion retained.

(c) If an analysis is made of samples obtained in an inspection under subsection (a)(2), a copy of the results of the analysis shall be furnished promptly to the owner, the operator, or the person in charge of the premises inspected.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-7 --------- Hazardous substances response trust fund: SWMB to adopt rules for prioritizing sites

The solid waste management board shall adopt rules establishing criteria for determining the commissioner's priorities in selecting hazardous substance response sites. Until these rules have been adopted, the commissioner shall give priority to those sites presenting a significant threat to public health and environment.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-8 --------- Hazardous substances response trust fund: CERCLA §107(a) liability; defenses; exception for lender, fiduciary or creditor; exception for political subdivisions

(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 Section 107(b) of CERCLA (42 U.S.C. 9607(b)) 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, a lender, a secured or unsecured creditor, or 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) A political subdivision (as defined in IC 36-1-2-13) 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 acquired an interest in the property:

(1) under IC 6-1.1-24 or IC 6-1.1-25, bankruptcy, abandonment, or other circumstances in which the political subdivision involuntarily acquired an interest in the property; or

(2) to conduct remedial actions on a brownfield;

after the hazardous substance was disposed of or placed on, in, or at the property.

[As amended by: P.L.90-1998, §24.]

IC 13-25-4-8.2 ------- Hazardous substances response trust fund: liability of lender; participation in management

A person that is a lender and that holds evidence of ownership primarily to protect a security interest in a vessel or facility may be considered to participate in the management (as defined in IC 13-11-2-151.4) of the hazardous substance at the facility only if, while the

borrower is still in possession of the vessel or facility encumbered by the security interest, the person:

(1) exercises decision making control over the environmental compliance related to the vessel or facility such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

(2) exercises control at a level comparable to that of a manager of the vessel or facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the vessel or facility 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 vessel or facility other than the function of environmental compliance.

[As added by: P.L.90-1998, §25.]

IC 13-25-4-8.4 ------- Hazardous substances response trust fund: liability of fiduciary; limitations

(a) The liability of a fiduciary under this title for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable under this title independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

(d) A fiduciary is not liable in its personal capacity under this title for any of the following:

(1) Undertaking or directing another person to undertake a response action under 42 U.S.C. 9607(d)(1) or under the direction of an on-scene coordinator designated under the National Contingency Plan.

(2) Undertaking or directing another person to undertake other lawful means of addressing a hazardous substance in connection with the vessel or facility.

(3) Terminating the fiduciary relationship.

(4) Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying, or enforcing the term or condition.

(5) Monitoring or undertaking at least one (1) inspection of the vessel or facility.

(6) Providing financial advice or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary.

(7) Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship.

(8) Administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began.

(9) Declining to take any of the actions referred to in subdivisions (2) through (8).

(e) This section does not apply to a person if the person:

(1) acts in a capacity other than:

(A) a fiduciary capacity; or

(B) a beneficiary capacity;

and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation and incidental benefits permitted under other applicable law.

(f) This section does not preclude a claim against the assets of the estate or trust administered by:

(1) the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

(g) This section does not:

(1) affect the rights, immunities, or other defenses that are available under:

(A) this title; or

(B) other law that is applicable to a person subject to this chapter; or

(2) create:

(A) any liability for a person; or

(B) a private right of action against a fiduciary or any other person.

[As added by: P.L.90-1998, §26.]

IC 13-25-4-9 --------- Hazardous substances response trust fund: IDEM authorized to pursue judicial and administrative actions to compel response

(a) The commissioner may proceed in court, by appropriate action, to:

(1) compel a responsible person to undertake a removal or remedial action with respect to a release or threatened release of a hazardous substance from a facility or site in Indiana; or

(2) obtain an order to enter upon private or public property to carry out an appropriate response under the environmental management laws if the commissioner cannot identify or locate another person responsible for carrying out the response who:

(A) is willing to carry out the response and capable of doing so; or

(B) can be compelled to carry out the response under subdivision (1).

(b) The commissioner may issue an administrative order for the purpose set forth in subsection (a)(1).

[As added by: P.L.1-1996, §15.]

IC 13-25-4-10 -------- Hazardous substances response trust fund: IDEM cost recovery actions; treble damages

(a) The commissioner may proceed in the appropriate court to recover costs and damages for which a responsible person is liable to the state under any of the following:

(1) Section 107 of CERCLA (42 U.S.C. 9607).

(2) Section 8 of this chapter.

(3) This section.

(b) In addition to the recovery allowed under subsection (a) and the civil penalty provisions of IC 13-30-4-1 and IC 13-30-4-2, a person that:

(1) is liable for a release or threat of release of a hazardous substance; and

(2) fails, without sufficient cause, to properly provide removal or remedial action upon order of a court under section 9 of this chapter;

is liable for punitive damages.

(c) The commissioner may commence a civil action against a person described in subsection (b) to recover punitive damages. In the action, the commissioner may seek and the court may grant an award of punitive damages against a person described in subsection (b) for up to three hundred percent (300%) of the total costs incurred by the department as a result of that person's failure to properly provide removal or remedial action upon the order

of a court. However, any recovery in the action is subject to offset by the amount of any civil penalty paid by the person under IC 13-30-4-1 and IC 13-30-4-2 based upon the release, the threatened release, or the person's failure to properly provide removal or remedial action.

(d) Costs, damages, and punitive damages awarded under this section shall be deposited in the fund.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-11 -------- Hazardous substances response trust fund: state lien to secure payment of response costs

After a response is initiated under:

(1) section 9 of this chapter; or

(2) IC 13-24-1;

the state may impose a lien on the property on which the response is undertaken. The lien may secure the payment to the state of an amount of money equal to the amount expended from the fund under section 1(a)(3) of this chapter to finance the response.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-12 -------- Hazardous substances response trust fund: perfection of lien

For a lien arising under section 11 of this chapter to be perfected, notice of the lien must be filed in the office of the county recorder of the county in which the real property subject to the lien is located. Before notice of a lien may be filed in the office of the county recorder, the department shall provide notice of the intention to file the lien as provided by section 19 of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-13 -------- Hazardous substances response trust fund: notice of filing of lien

The department shall provide notice of the filing of a lien to the owner of the property if the owner can be identified. If the owner of record cannot be identified, the department shall notify the tenant or other person having control of the property.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-14 -------- Hazardous substances response trust fund: duties of county recorder re lien

When a notice of a lien arising under section 11 of this chapter is presented to the county recorder for filing, the county recorder shall enter the lien appropriately in the entry book and in the miscellaneous record. The entries made under this section must show the following:

(1) The date of filing.

(2) The book and page number or instrument number.

(3) The name of the person named in the notice.

(4) A legal description of the property if appropriate.

(5) A serial number or other identifying number given in the notice.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-15 -------- Hazardous substances response trust fund: recording of certificate of discharge as release of lien

(a) Subject to subsection (b), when a certificate of discharge of a lien arising under section 11 of this chapter or IC 13-7-8.7-10.7 (before its repeal) is:

(1) issued by an employee or a designated agent of the department; and

(2) presented for filing in the office of the county recorder of the county where the notice of lien was filed;

the county recorder shall record the certificate of discharge as a release of the lien.

(b) To be recorded under this section, the certificate must refer to the county recorder's book and page number or instrument number under which the lien was recorded.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-16 -------- Hazardous substances response trust fund: additional duties of county recorder re release of lien

When recording a release of a lien under section 15 of this chapter, the county recorder shall inscribe, in the margin of each entry made to record the lien under section 14 of this chapter, a reference to the place where the release is recorded.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-17 -------- Hazardous substances response trust fund: effect of properly recorded certificate of discharge

Upon:

(1) the recording of the certificate of discharge as a release under section 15 of this chapter; and

(2) the inscribing of the references to the release under section 16 of this chapter;

a certificate of discharge of a lien arising under section 11 of this chapter operates as a full discharge and satisfaction of the lien unless the references to the release inscribed under section 15 of this chapter specifically note the release as a partial lien release.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-18 -------- Hazardous substances response trust fund: term of lien

A lien created under section 11 of this chapter or IC 13-7-8.7-10.7 (before its repeal) continues until the earlier of the following:

(1) The full discharge and satisfaction of the lien.

(2) The expiration of a ten (10) year period from the date of the creation of the lien unless an action to foreclose the lien is pending.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-19 -------- Hazardous substances response trust fund: notice duties of IDEM re imposition of lien

(a) At least thirty (30) days before notice of a lien arising under this chapter may be filed under section 12 of this chapter, the department must send a written notice:

(1) to the owner of the real property that would be subject to the lien; or

(2) if the owner of record cannot be identified, to the tenant or other person having control of the real property;

of the date on which the state intends to impose a lien under section 11 of this chapter.

(b) The department shall provide the county recorder of the county in which the real property that would be subject to the lien is located with a copy of the written notice described in subsection (a).

[As added by: P.L.1-1996, §15.]

IC 13-25-4-20 -------- Hazardous substances response trust fund: hearing on imposition of lien

(a) Before the date on which the state intends to impose a lien on real property under section 11 of this chapter, the owner of the real property may request that a hearing be conducted under IC 4-21.5. A hearing conducted under this section and IC 4-21.5 shall be limited to determining if there is probable cause to believe that:

(1) a removal or a remedial action was conducted on the real property under:

(A) this chapter; or

(B) IC 13-24-1; and

(2) if the removal or the remedial action was conducted under this chapter, the owner of the real property would be subject to liability under 42 U.S.C. 9607 (Section 107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act).

(b) For the purposes of a hearing conducted under this section and IC 4-21.5, an environmental law judge is the ultimate authority.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-21 -------- Hazardous substances response trust fund: determination of commissioner on lien

If an owner requests a hearing under section 20 of this chapter, the state may not impose a lien on the owner's real property under section 11 of this chapter until the commissioner determines after the hearing that there is probable cause to believe that:

(1) a removal or a remedial action was conducted on the real property under this chapter or IC 13-24-1; and

(2) if the removal or the remedial action was conducted under this chapter, the owner of the real property would be subject to liability under 42 U.S.C. 9607 (Section 107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act).

[As added by: P.L.1-1996, §15.]

IC 13-25-4-22 -------- Hazardous substances response trust fund: retrieval by IDEM of county's notice of lien

If the department provides a county recorder with a copy of a written notice under section 19(b) of this chapter, the department shall retrieve the copy of the written notice from the county recorder on the date a lien is imposed on the real property described in the written notice. However:

(1) if:

(A) a hearing is not held under section 20 of this chapter and IC 4-21.5; and

(B) a lien is not imposed:

(i) on the real property described in the notice; and

(ii) by the date indicated in the notice;

the department shall retrieve the copy of the notice on the day after the date the lien was to be imposed on the real property; or

(2) if:

(A) a hearing is held under section 20 of this chapter and IC 4-21.5; and

(B) a lien is not imposed on the real property described in the notice;

the department shall retrieve the copy of the notice on the day after the date the commissioner determines that a lien may not be imposed on the real property.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-23 -------- Hazardous substances response trust fund: mixed funding agreements

(a) The commissioner may enter into an agreement with one (1) or more potentially responsible persons concerning removal and remedial action at a site in Indiana. An agreement entered into under this section may call for one (1) or more parties, at the party's own expense, to conduct any response action at a site if the commissioner determines that the action called for in the agreement will be performed properly.

(b) An agreement entered into under this section may provide that the commissioner will:

(1) reimburse one (1) or more parties for certain costs of the actions that those parties have agreed to perform under the agreement; or

(2) perform a part of the response action called for in the agreement.

Money from the fund may be used for the reimbursement. An agreement may provide for the commissioner to pay interest on the principal amount to be reimbursed. Money from the fund may be used to pay the interest.

(c) The commissioner may not enter into an agreement subject to subsection (b) if, in the commissioner's opinion, there is not a reasonable likelihood of recovering:

(1) the amount of the reimbursement agreed to under subsection (b); and

(2) other costs incurred by the department in the response action;

unless the commissioner determines that the agreement is nonetheless in the public interest.

(d) After entering into an agreement that provides for reimbursement under subsection (b), the commissioner shall make every reasonable effort to recover the amount of the reimbursement under section 10 of this chapter from persons other than the parties.

(e) An agreement entered into under this section may be established:

(1) in an administrative order issued by the commissioner; or

(2) by a consent decree entered in an appropriate court.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-24 -------- Hazardous substances response trust fund: restrictive covenant requirement

(a) This section applies to real property that is:

(1) the site of an existing or former hazardous waste facility that is or was subject to regulation under:

(A) IC 13-22-2 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or

(B) Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. 6921 through 6939e); or

(2) a site:

(A) on which a hazardous substance has been:

(i) deposited;

(ii) stored; or

(iii) disposed of; and

(B) that is or was listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) in accordance with Section 116 of CERCLA (42 U.S.C. 9616);

if more than an insignificantly small amount of a hazardous substance remains on or beneath the surface of that property after the partial or final closure of a hazardous waste facility located on the property or the completion of a remedial action on the property under CERCLA or this chapter.

(b) The owner of real property described in subsection (a) shall execute and record, in the office of the county recorder of the county in which the property is located, a restrictive covenant applying to the property if the commissioner determines that a restrictive covenant meeting the requirements set forth in subsection (c) is necessary to protect the public health or welfare or the environment from unreasonable risk of future exposure to a hazardous substance.

(c) A restrictive covenant required under this section must:

(1) to the extent feasible, describe:

(A) the identity, quantity, and location of every hazardous substance:

(i) deposited;

(ii) stored;

(iii) disposed of; or

(iv) placed;

on the property; and

(B) the extent to which each hazardous substance remains on the property; and

(2) incorporate the conditions and restrictions that the commissioner considers necessary to assure that the future use of the property will not disturb the final cover, any liners, or any components of the hazardous substance containment system on the property, or disturb the function of the monitoring system on the property, unless the commissioner finds that the disturbance:

(A) is necessary to the proposed use of the property and will not increase the potential hazards to human health or to the environment; or

(B) is necessary to mitigate a threat to human health or to the environment.

(d) If a change of conditions or advancements in science or technology permit an alteration in the conditions and restrictions imposed by a restrictive covenant required by this section that would not increase the potential hazards to human health or to the environment, the commissioner, upon written request by the owner of the real property, may authorize the filing of a supplemental recording recognizing a change in the restrictive covenant in the office of the county recorder to reflect the change in the conditions and restrictions.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-25 -------- Hazardous substances response trust fund: annual report on progress of remedial actions

Before January 1 of each year, the commissioner shall make a report concerning the progress of remedial actions commenced under this chapter to the following:

(1) The governor.

(2) The standing committees of the house of representatives and the senate concerned with the environment.

(3) The board.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-26 -------- Hazardous substances response trust fund: state or local permit not required for certain actions

A state or local permit may not be required for the part of a removal or remedial action that is conducted entirely at the site of the release or threatened release of a hazardous substance if the removal or remedial action is selected and carried out in compliance with:

(1) this chapter; and

(2) IC 13-25-5.

[As added by: P.L.1-1996, §15.]

IC 13-25-4-27 -------- Hazardous substances response trust fund: contribution protection

(a) This chapter does not affect an action or a claim, including a claim for contribution, that a person who implements or completes an approved response action has or may have against a third party.

(b) A person who implements or completes an approved response action under this chapter may not be held liable for claims or contribution concerning matters addressed in the response action.

[As added by: P.L.1-1996, §15.]

IC 13-25-5. VOLUNTARY REMEDIATION OF HAZARDOUS SUBSTANCES AND PETROLEUM

IC 13-25-5-1 --------- Voluntary remediation: RCRA obligations

(a) This chapter is intended to provide an alternative procedure to assure compliance with the law and to encourage the voluntary remediation of hazardous substances and petroleum.

(b) This section does not affect a person's legal obligations set forth in 42 U.S.C. 6901 et seq. regardless of a person's participation in this chapter.

[As amended by: P.L.59-1997, §16.]

IC 13-25-5-2 --------- Voluntary remediation: application submission

(a) A person who desires to participate in the voluntary remediation program under this chapter must submit an application and a fee to the department as described under subsection (c).

(b) Except as provided under section 5(c) of this chapter, any information submitted to the division of the department responsible for reviewing and making determinations on applications under this chapter is confidential between the applicant and the department until the applicant and the commissioner sign a voluntary remediation agreement.

(c) An application submitted under this section must meet the following conditions:

(1) Be on a form provided by the department.

(2) Contain the following:

(A) General information concerning:

(i) the person;

(ii) the site; and

(iii) other background information;

as requested by the department.

(B) An environmental assessment of the actual or threatened release of the hazardous substance or petroleum at the site.

(3) Be accompanied by an application fee of one thousand dollars ($1,000). However, a political subdivision is not required to submit an application fee under this section.

(d) A fee collected under this section shall be deposited in the voluntary remediation fund established by section 21 of this chapter.

[As amended by: P.L.59-1997, §17.]

IC 13-25-5-3 --------- Voluntary remediation: environmental assessment; content

An environmental assessment described under section 2(c)(2)(B) of this chapter must include the following:

(1) A legal description of the site.

(2) The physical characteristics of the site.

(3) The operational history of the site to the extent the history is known by the applicant.

(4) Information that the applicant is aware of concerning:

(A) the nature and extent of any relevant contamination; and

(B) relevant releases;

at the site and immediately contiguous to the site.

(5) Relevant information the applicant is aware of concerning the potential for human exposure to contamination at the site.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-4 --------- Voluntary remediation: determination of eligibility

Not more than thirty (30) days after receiving:

(1) an application; and

(2) an application fee;

under section 2 of this chapter, the department shall determine if the applicant is eligible to participate in the voluntary remediation program under this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-5 --------- Voluntary remediation: rejection of application

(a) The department may reject an application submitted under section 2 of this chapter only for one (1) or more of the following reasons:

(1) A state or federal enforcement action that concerns the remediation of the hazardous substance or petroleum described in the application is pending.

(2) A federal grant requires an enforcement action at the site.

(3) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment.

(4) The application is not complete.

(b) If an application is rejected under subsection (a)(4), the department, not more than forty-five (45) days after the department receives the application, shall provide the applicant with a list of all information needed to make the application complete. If the department fails to comply with this subsection, the application shall be considered completed for the purposes of this chapter.

(c) If the department rejects an application, the department shall do the following:

(1) As described under IC 4-21.5-3-4(b) and IC 4-21.5-3-4(c), notify the applicant that the department rejected the application.

(2) Explain the reason the department rejected the application.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-6 --------- Voluntary remediation: appeal of rejection; refund of fee

(a) If an applicant's application is rejected under section 5 of this chapter, the applicant may do the following:

(1) Appeal the department's decision under IC 4-21.5.

(2) If the application is rejected because the application is not complete, submit a completed application without submitting an additional application fee.

(b) If an applicant's application is rejected and the applicant:

(1) does not appeal the rejection; or

(2) loses an appeal concerning the rejection;

the department shall refund the unexpended part of the applicant's application fee.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-7 --------- Voluntary remediation: submission of work plan

(a) If the department determines an application is eligible under section 4 of this chapter, the applicant may submit:

(1) a proposed voluntary remediation investigation plan to the department;

(2) a proposed voluntary remediation work plan to the department; or

(3) a voluntary remediation work plan for a completed remediation project to the department.

(b) A proposed voluntary remediation work plan must include the following:

(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work to be performed by the applicant to determine the nature and extent of the actual or threatened release.

(2) A proposed statement of work to accomplish the remediation in accordance with guidelines established by the department.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of the proposed remediation project.

(B) Descriptions of sampling and analysis.

(C) Health and safety considerations.

(D) Community relations and community comment in planning, cleanup objectives, and implementation processes.

(E) Data management and record keeping.

(F) A proposed schedule concerning the implementation of all tasks set forth in the proposed statement of work.

(c) A voluntary remediation work plan for a completed remediation project must include the following:

(1) Detailed documentation of the investigation conducted by the applicant in preparing the proposed voluntary remediation work plan and a description of the work performed by the applicant to determine the nature and extent of the actual or threatened release.

(2) A statement of work performed to accomplish the remediation in accordance with rules or guidelines established by the department.

(3) Plans concerning the following:

(A) Quality assurance for the implementation of and, if appropriate, plans for future oversight of the remediation project.

(B) Descriptions of sampling and analysis conducted before and after the remediation is performed.

(C) Health and safety considerations.

(D) Community comment.

(E) Data management and record keeping.

(F) Criteria used to determine remediation levels and remediation methodology.

(4) Other information the department determines is necessary to evaluate the work plan and determine if the remediation objectives have been achieved.

[As amended by: P.L.59-1997, §18.]

IC 13-25-5-8 --------- Voluntary remediation: voluntary remediation agreement

(a) Before the department evaluates a proposed voluntary remediation work plan, the applicant who submitted the work plan and the commissioner must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan. A voluntary remediation agreement must include the following:

(1) Provisions for the following:

(A) A requirement that the department provide the applicant with an itemized list of estimated costs the department may incur under this chapter.

(B) The recovery of all reasonable costs that:

(i) are incurred by the department in the review and oversight of the work plan;

(ii) are attributable to the voluntary remediation agreement; and

(iii) exceed the fee submitted by the applicant under section 2 of this chapter.

(C) A schedule of payments to be made by the applicant to the department to recover the costs to the department.

(2) A mechanism to resolve disputes arising from the evaluation, analysis, and oversight of the implementation of the work plan, including any of the following:

(A) Arbitration.

(B) Adjudication under IC 4-21.5.

(C) A dispute resolution procedure provided under the Indiana Rules of Court.

(3) A provision concerning the indemnification of the parties.

(4) A provision concerning retention of records.

(5) A timetable for the department to do the following:

(A) Reasonably review and evaluate the adequacy of the work plan.

(B) Make a determination concerning the approval or rejection of the work plan.

(6) A provision concerning applicable interagency coordination.

(7) A provision specifying the proposed remediation objectives to be achieved on the site, as described in section 8.5 of this chapter.

(8) The requirement that the applicant submit to the department a proposed voluntary remediation work plan:

(A) not later than one hundred eighty (180) days after the date the voluntary remediation agreement is signed; or

(B) after a longer period if the extension is agreed to by the department and the applicant.

(9) Any other conditions considered necessary by the commissioner or the applicant concerning the effective and efficient implementation of this chapter.

(b) If an agreement is not reached between an applicant and the commissioner within a reasonable time after good faith negotiations have begun between the applicant and the commissioner:

(1) the applicant or the commissioner may withdraw from the negotiations; and

(2) the department shall refund the unexpended part of the applicant's application fee.

[As amended by: P.L.59-1997, §19.]

IC 13-25-5-8.5 ------- Voluntary remediation: work plan remediation objectives

(a) A voluntary remediation work plan must specify the remediation objectives for the site.

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

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

(2) an assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:

(A) Expected future use of the site.

(B) Measurable risks to human health, natural resources, or the environment based on the:

(i) activities that take place; and

(ii) environmental impact;

on the site.

(c) If the:

(1) nature and extent of the hazardous substance or petroleum is adequately characterized under the voluntary remediation work plan; and

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

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

(B) the risk based levels developed under subsection (d);

additional action is not necessary to protect human health or the environment.

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

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

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

(3) Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors.

[As added by: P.L.59-1997, §20.]

IC 13-25-5-9 --------- Voluntary remediation: evaluation of work plan

(a) After the commissioner and an applicant have signed a voluntary remediation agreement described under section 8 of this chapter, the department or a person under contract with the department shall do the following:

(1) Review and evaluate the site and the affected area surrounding the site.

(2) Review and evaluate the documentation of the investigation and feasibility study conducted by the applicant or the applicant's representative for accuracy and thoroughness.

(3) Review and evaluate the proposed voluntary remediation work plan for quality, efficiency, and safety based on guidelines established by the department.

(4) Make a recommendation to the commissioner concerning whether the commissioner should:

(A) approve;

(B) modify and approve; or

(C) reject;

the proposed voluntary remediation work plan.

(b) At any time during the evaluation of a proposed voluntary remediation work plan, the commissioner or the department may request that an applicant submit additional or corrected information to the department. An applicant may:

(1) comply with the request; or

(2) withdraw the applicant's proposed voluntary remediation work plan from consideration.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-10 -------- Voluntary remediation: IDEM actions on work plan

Subject to section 11 of this chapter, after receiving a recommendation under section 9 of this chapter, the commissioner shall:

(1) approve;

(2) modify and approve; or

(3) reject;

the proposed voluntary remediation work plan.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-11 -------- Voluntary remediation: public comment period; public hearing

(a) Before the commissioner approves or rejects a proposed voluntary remediation work plan under section 10 of this chapter, the commissioner must:

(1) notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan;

(2) provide that a copy of the proposed voluntary remediation work plan be placed in at least one (1) public library in a county affected by the work plan; and

(3) publish a notice requesting comments concerning the proposed voluntary remediation work plan.

(b) A comment period of at least thirty (30) days must follow publication of a notice under this section. During a comment period, interested persons may do the following:

(1) Submit written comments to the commissioner concerning the proposed voluntary remediation work plan.

(2) Request a public hearing concerning the proposed voluntary remediation work plan.

(c) If the commissioner receives at least one (1) written request, the commissioner may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to approve or reject the work plan. The commissioner shall consider all written comments and public testimony.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-12 -------- Voluntary remediation: notification of rejection of proposed work plan; appeal

If the commissioner rejects a proposed voluntary remediation work plan under section 10 of this chapter:

(1) the commissioner shall, under applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), notify the applicant and specify the reasons for rejecting the work plan; and

(2) the applicant may appeal the commissioner's decision under IC 4-21.5.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-13 -------- Voluntary remediation: notification of approval of work plan

If the commissioner approves or modifies and approves a proposed voluntary remediation work plan under this chapter, the commissioner shall notify the applicant in writing, under the applicable provisions set forth in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), of the following:

(1) That the voluntary remediation work plan has been approved or modified and approved.

(2) The date:

(A) the applicant may begin implementing the work plan; and

(B) by which the work plan must be completed.

(3) The applicant's right to appeal the commissioner's decision under IC 4-21.5.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-14 -------- Voluntary remediation: notification by applicant of intent to proceed

If an applicant who submitted an approved voluntary remediation work plan desires to proceed with the implementation of the work plan, the applicant must notify the commissioner in writing not more than sixty (60) days after the work plan is approved that the applicant:

(1) intends to proceed with the implementation of the work plan; and

(2) agrees to the starting and completion dates set forth by the commissioner under section 13(2) of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-15 -------- Voluntary remediation: IDEM oversight of work plan implementation

If an applicant who submitted an approved voluntary remediation work plan proceeds with the work plan, the department or a person under contract with the department shall do the following:

(1) Oversee and review the implementation of the voluntary remediation work plan.

(2) Make regular reports to the commissioner concerning the remediation.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-16 -------- Voluntary remediation: certificate of completion; recording

(a) If the commissioner determines that an applicant has successfully completed a voluntary remediation work plan approved under this chapter, the commissioner shall certify that the work plan has been completed by issuing the applicant a certificate of completion.

(b) The issuance of a certificate of completion under this section is a final agency action for purposes of IC 4-21.5.

(c) A person who receives a certificate under this section shall attach a copy of the certificate to the recorded deed that concerns the property on which the remediation took place.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-17 -------- Voluntary remediation: notification of non-successful completion

If the commissioner determines that an applicant has not successfully completed a voluntary remediation work plan approved under this chapter, the commissioner shall notify the applicant of this determination under IC 4-21.5.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-18 -------- Voluntary remediation: covenant not to sue

(a) If the commissioner issues a certificate to a person under section 16 of this chapter, the governor shall also provide the person with a covenant not to sue for any liability, including future liability, or a claim resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

(b) A covenant not to sue issued under this section bars suit against:

(1) a person who received the certificate of completion under section 16 of this chapter; or

(2) any other person who receives the certificate of completion:

(A) through a legal transfer of the certificate of completion; or

(B) by acquiring property to which the certificate of completion applies;

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

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

(1) was present on property that was involved in an approved and completed voluntary remediation work plan; and

(2) was not known to the commissioner at the time the commissioner issued the certificate of completion under section 16 of this chapter.

(d) Except as:

(1) provided under federal law; or

(2) agreed to by a federal governmental entity;

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

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

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

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

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

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

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

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

[As amended by: P.L.59-1997, §21.]

IC 13-25-5-19 -------- Voluntary remediation: basis for IDEM withdrawing approval of work plan; appeal

(a) This chapter does not prohibit or limit the commissioner from withdrawing the commissioner's approval of a voluntary remediation work plan at any time during the implementation of the work plan if:

(1) the person implementing the work plan fails substantially to comply with the terms and conditions of:

(A) the voluntary remediation work plan; or

(B) a voluntary remediation agreement; or

(2) a hazardous substance or petroleum becomes an imminent and substantial threat to human health or the environment.

(b) The withdrawal of the approval of a voluntary remediation work plan may be appealed under IC 4-21.5.

[As amended by: P.L.59-1997, §22.]

IC 13-25-5-20 -------- Voluntary remediation: contribution protection

(a) This chapter does not affect an action or a claim, including a claim for contribution, that a person who implements or completes an approved voluntary remediation work plan has or may have against a third party.

(b) A person who implements or completes an approved voluntary remediation work plan under this chapter is not liable for claims for contribution concerning matters addressed in:

(1) the work plan; or

(2) a certificate of completion issued to the person under section 16 of this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-21 -------- Voluntary remediation: voluntary remediation fund established

(a) The voluntary remediation fund is established to provide a source of money for the department to implement this chapter.

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

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

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

(e) The sources of money for the fund are as follows:

(1) Fees paid under section 2 of this chapter.

(2) Appropriations made by the general assembly.

(3) Gifts and donations intended for deposit in the fund.

(4) Transfers under section 22 of this chapter from the environmental management special fund established by IC 13-14-12-1.

[As added by: P.L.1-1996, §15.]

IC 13-25-5-23 -------- Voluntary remediation: SWMB may adopt rules

The board may adopt rules under IC 4-22-2 and IC 13-14-8 to implement this chapter. The rules may include interim or final remediation standards or provisions limiting the liability of lenders associated with persons involved in voluntary remediation projects under this chapter.

[As added by: P.L.1-1996, §15.]

IC 13-25-6. REIMBURSEMENT FOR HAZARDOUS MATERIALS EMERGENCY ACTION

IC 13-25-6-1 --------- Reimbursement of hazardous materials emergency action: applicability

This chapter does not apply to an occurrence involving the release or imminent release of less than twenty-five (25) pounds of active ingredient of a substance or a combination of substances that meets all of the following conditions:

(1) Was commercially produced and sold as a fertilizer, fungicide, herbicide, or pesticide.

(2) Is, at the time of the occurrence, in the possession of an individual who acquired the substance or combination of substances with the intent to use the substance for the purpose intended by the commercial producer:

(A) in a dwelling owned or occupied by the individual;

(B) in the yard adjacent to or surrounding a dwelling owned or occupied by the individual; or

(C) on a farm owned or operated by the individual.

[As added by: P.L.1-1996, §15.]

IC 13-25-6-2 --------- Reimbursement of hazardous materials emergency action: requirement of responsible parties to reimburse

The persons who are responsible parties in connection with a hazardous materials emergency shall reimburse:

(1) an emergency response agency; or

(2) the governmental entity served by an emergency response agency;

for reasonable and necessary expenses incurred by the emergency response agency in taking emergency action at or near the scene of the hazardous materials emergency.

[As added by: P.L.1-1996, §15.]

IC 13-25-6-3 --------- Reimbursement of hazardous materials emergency action: reimburseable expenses

(a) Reimbursement is available under this chapter for expenses, except for expenses of a type that the agency normally incurs in responding to emergencies that do not involve hazardous materials, that are incurred in taking emergency action by an emergency response agency other than a fire department that is described in subsection (b).

(b) Reimbursement is available under this chapter and IC 36-8-12.2 for expenses that are incurred in taking emergency action by a fire department that:

(1) is established under IC 36-8-2-3 or IC 36-8-13-3(a)(1); and

(2) employs:

(A) both full-time paid members and volunteer members; or

(B) only full-time paid members.

[As amended by: P.L.33-2001, §1.]

IC 13-25-6-4 --------- Reimbursement of hazardous materials emergency action: non-reimburseable expenses

Reimbursement for expenses is not available under this chapter if those expenses may be reimbursed by the federal government under Section 123 of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9623).

[As added by: P.L.1-1996, §15.]

IC 13-25-6-5 --------- Reimbursement of hazardous materials emergency action: filing an action for reimbursement

An emergency response agency or a governmental entity may obtain reimbursement under this chapter by filing an action for reimbursement in a court of general jurisdiction of:

(1) a county in which a hazardous materials emergency arose; or

(2) the county in which the unit that established the fire department is located, if the emergency response agency is a fire department that:

(A) is established by a unit under IC 36-8-2-3 or IC 36-8-13-3(a)(1); and

(B) employs:

(i) both full-time paid members and volunteer members; or

(ii) only full-time paid members.

[As amended by: P.L.33-2001, §2.]

TITLE 13. ENVIRONMENT
IC 13-26. REGIONAL WATER, SEWAGE, AND SOLID WASTE DISTRICTS

IC 13-26-1. PURPOSES OF REGIONAL DISTRICTS

IC 13-26-1-1 --------- Purposes of regional districts: purposes listed

Any area may be established as a regional water, sewage, or solid waste district under this article for one (1) or more of the following purposes:

(1) To provide a water supply for domestic, industrial, and public use to users inside and outside the district.

(2) To provide for the collection, treatment, and disposal of sewage inside and outside the district.

(3) To provide for the collection, treatment, and disposal of solid waste and refuse inside and outside the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-1-2 --------- Purposes of regional districts: petition to alter purposes or plan

(a) At any time after the creation of a district, the district, after motion by the district's board, may file a petition with the department requesting the approval of the department permitting the district to:

(1) increase or add to the district's purposes or modify the district plan approved by the department; or

(2) abandon or surrender all or part of a purpose or plan approved by the department.

(b) The department may:

(1) approve;

(2) modify and approve; or

(3) reject;

a request received under this section.

[As added by: P.L.1-1996, §16.]

IC 13-26-2. ESTABLISHMENT OF REGIONAL DISTRICTS

IC 13-26-2-1 --------- Establishment of regional districts: filing of petition

The establishment of a regional district may be initiated only by a petition filed with the department. A copy of the petition shall also be filed not later than ten (10) days after the filing with the department in the office of the executive of each governmental entity having territory within the proposed district.

[As amended by: P.L.133-1997, §1.]

IC 13-26-2-2 --------- Establishment of regional districts: who may file

(a) The petition may be filed by any representative of one (1) or more eligible entities involved after being authorized by the fiscal body of the petitioning eligible entity or entities included in the plan of the proposed district,

(b) If the proposed district includes:

(1) a state park or recreational area, forest land, or a reservoir; or

(2) land owned, leased, or controlled by the department of natural resources;

the petition may be joined or filed by any representative of that department after having been authorized by the natural resources commission, with the approval of the executive of

the county containing the territory of the district.
[As amended by: P.L.133-1997, §2.]

IC 13-26-2-3 --------- Establishment of regional districts: requirements of petition

A petition to establish a district under this chapter must state the following:

(1) The proposed name of the district.

(2) The place in which the district's principal office is to be located.

(3) The following information:

(A) The need for the proposed district.

(B) The purpose to be accomplished.

(C) How the district will be conducive to the public health, safety, convenience, or welfare, including a specific statement of how:

(i) water supply, for a water district;

(ii) sewage collection, disposal, and treatment, for a sewage district; or

(iii) solid waste disposal, recovery, or treatment, for a solid waste district;

is currently being provided.

(D) Whether there is any outstanding indebtedness for the purpose proposed in the proposed district, including a statement as to how the current situation creates or adds to pollution or health hazards or impedes development in the area.

(4) An accurate description of the territory to be included in the district, which does not have to be given by metes and bounds or by legal subdivisions. The territory does not have to be contiguous, but the territory must be so situated that the public health, safety, convenience, or welfare will be promoted by the establishment as a single district of the territory described.

(5) The petitioner's recommendations on:

(A) the manner of selection;

(B) the number; and

(C) the term, not exceeding four (4) years;

of the members of the board of trustees.

(6) The plan for financing the cost of the operations of the district until the district is in receipt of revenue from the district's operations or proceeds from the sale of bonds.

(7) Estimates of the following:

(A) The costs of accomplishing the purpose of the district.

(B) The costs of operating and maintaining the works.

(C) The sources of the funding of these costs.

(D) The rates and charges that will be required.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-4 --------- Establishment of regional districts: IDEM to determine whether the petition complies

Upon the filing of a petition to establish a district under this chapter, the department shall determine whether the petition complies with the requirements of this chapter as to form and content. The department:

(1) may not declare a petition void because of alleged defects; and

(2) may, in subsequent proceedings at any time, permit the petition to be amended in form or substance.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-5 --------- Establishment of regional districts: appointment of hearing officer

Upon the determination of the department that a sufficient petition has been filed in accordance with this chapter, the commissioner shall appoint a hearing officer, who does not have to be a state employee. If the hearing officer is not a full-time state employee, the hearing officer is entitled to be paid reasonable:

(1) expenses; and

(2) per diem;

for each day or part of a day in actual attendance at a meeting or hearing or in performance of duties. The reasonable per diem and expenses are valid claims against the department.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-6 --------- Establishment of regional districts: notice of hearing

(a) Except as provided in section 9 of this chapter, the hearing officer shall fix a time and place inside or within ten (10) miles of the proposed district for the hearing on any matter for which a hearing is authorized under this chapter.

(b) The hearing officer shall make a reasonable effort to provide notice of the hearing as follows:

(1) By publication of notice two (2) times each week for two (2) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, in the district. The publication of notice must, at a minimum, include a legal notice and a prominently displayed three (3) inches by five (5) inches advertisement.

(2) By certified mail, return receipt requested, mailed at least two (2) weeks before the hearing to the following:

(A) The fiscal and executive bodies of each county with territory in the proposed district.

(B) The executive of all other eligible entities with territory in the proposed district.

(C) The state and any of its agencies owning, controlling, or leasing land within the proposed district, excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation.

(D) Each sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 respecting territory in the proposed district.

(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each freeholder within the proposed district.

(4) By including the date on which the hearing is to be held and a brief description of:

(A) the subject of the petition, including a description of the general boundaries of the area to be included in the proposed district; and

(B) the locations where copies of the petition are available for viewing.

[As amended by: P.L.1-2001, §22.]

IC 13-26-2-7 --------- Establishment of regional districts: standing to file objection and testify on petition

A person or an eligible entity that resides or lies in or partially resides or lies in an area affected by the establishment of a district:

(1) may, on or before the date set for the cause to be heard, file a written objection to the granting of the requests made in the petition; and

(2) may be heard at the hearing.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-8 --------- Establishment of regional districts: hearing officer findings and recommendations

(a) After the hearing on the petition for the establishment of the proposed district, which may be adjourned periodically, the hearing officer shall make findings on the petition and other relevant facts and recommendations as to whether:

(1) the petition should be:

(A) approved;

(B) approved with modifications; or

(C) denied; and

(2) a district should be established.

(b) If the recommendation is in the affirmative, the recommendation must also include recommendations on:

(1) the manner of the selection or appointment;

(2) the number; and

(3) the terms;

of the board.

(c) The description of the territory to be included in a district may not include territory in a municipality that has, by ordinance or resolution filed with the department, exercised the option not to be included in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-9 --------- Establishment of regional districts: IDNR petition; waiver of notice

(a) If the department of natural resources has filed a petition, the commissioner may waive the requirement for notice and hearing provided in section 6 of this chapter.

(b) If the commissioner waives the notice and hearing requirement, the hearing officer shall give written notice by certified mail under section 6 of this chapter. Each recipient of notice has thirty (30) days from the mailing of the notice within which to file objections or material with the hearing officer.

(c) The hearing officer shall then proceed to make findings and recommendations as provided in section 8 of this chapter, based upon any material:

(1) received by the hearing officer; or

(2) obtained at the hearing officer's discretion through the hearing officer's own investigation.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-10 -------- Establishment of regional districts: commissioner's determination and order

(a) If the commissioner determines that the findings show that the establishment of a recommended district:

(1) complies with the conditions of this chapter for establishment of a district; and

(2) appears capable of accomplishing the purpose or purposes in an economically feasible manner;

the commissioner shall issue an order directing that the district be established as an independent municipal corporation with a name and for the purposes designated in the order.

(b) An order must do the following:

(1) Provide for the selection or appointment and terms of offices, not to exceed four (4) years, of the board.

(2) Provide requirements for sufficient bond for all officers, trustees, or employees having power to dispense money of the district.

(3) If an eligible entity with territory in the district has a public water or solid waste sewer system, contain provisions protecting the investments of the entities and protecting the rights of the holders of bonds or other obligations issued to provide money for the system.

(4) Direct the district to file a detailed plan for the initial project of the district not later than nine (9) months after the date of the preliminary order or within a further time that the department from time to time orders.

[As added by: P.L.1-1996, §16.]

IC 13-26-2-11 -------- Establishment of regional districts: review of order

An order for the establishment of a district is subject to review as provided in IC 4-21.5-5.

[As added by: P.L.1-1996, §16.]

IC 13-26-3. DISTRICTS ESTABLISHED UNDER PRIOR LAW

IC 13-26-3-1 --------- Districts established under prior law: chapter applicable to certain court ordered district

(a) A district established in accordance with IC 19-3-1 (before its repeal) by an order of the court before February 17, 1972, as a special district for any purpose provided in:

(1) IC 13-3-2 (before its repeal); or

(2) this article;

is considered to be a district under this article.

(b) Orders of the court and acts of the board of directors are valid if permitted by this article. The district shall function as a district the same as if the district were established under this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-4. BOARD OF TRUSTEES OF REGIONAL DISTRICTS

IC 13-26-4-1 --------- Board of trustees of regional districts: membership

The board of trustees of a district is the governing body of the district. A board may consist of:

(1) three (3);

(2) five (5);

(3) seven (7); or

(4) nine (9);

trustees.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-2 --------- Board of trustees of regional districts: election of board

An order establishing a district may provide for the board to be elected by the voters in the district from districts or wards or from the district at large. Elections and provisions for filling vacancies must be in accordance with IC 3, with the commissioner or the commissioner's designees performing the functions of the election officials.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-3 --------- Board of trustees of regional districts: appointment of board

Instead of electing the board, an order establishing a district may provide for appointments to the board by the elected executive or legislative officers of the eligible entities having territory in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-4 --------- Board of trustees of regional districts: provision that governor may appoint trustees

If:

(1) a district will include territory in more than one (1) county;

(2) a county executive has filed a petition for a district including territory owned, leased, or controlled by the department of natural resources; or

(3) the department of natural resources has filed a petition;

the order establishing the district may provide that the governor appoints any number of trustees, but less than one-half (1/2) of the total.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-5 --------- Board of trustees of regional districts: municipal appointees

If a plan also contemplates that sewage treatment for the district will be provided in cooperation with a municipality, the order must provide that:

(1) at least one (1) trustee shall be appointed by the executive of the municipality; and

(2) at least:

(A) one (1) trustee shall be appointed by the fiscal body; and

(B) one (1) trustee shall be appointed by the executive;

of the county having the largest amount of territory in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-6 --------- Board of trustees of regional districts: residence of trustee

An appointed trustee does not have to be a resident of the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-4-7 --------- Board of trustees of regional districts: per diem and travel

(a) The board of a district may provide for the payment of not more than fifty dollars ($50) per day to members of the board for each day or major part of a day devoted to the work of the district.

(b) Members of the board are entitled to receive an amount for travel expenses equal to the amount paid to state employees for expenses incurred in the performance of their duties.

(c) Payments made to board members under subsections (a) and (b) shall be made from the general fund of the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-5. POWERS AND DUTIES OF REGIONAL DISTRICTS

IC 13-26-5-1 --------- Powers and duties of regional districts: authority

Upon:

(1) the declaration of the commissioner organizing a district;

(2) the qualification of the board; and

(3) the election of a president, a treasurer, and a secretary;

the district may exercise in the district's own name, as a municipal corporation, all the rights, powers, and duties conferred upon the district by this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-5-2 --------- Powers and duties of regional districts: powers

A district may do the following:

(1) Sue or be sued.

(2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.

(3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.

(4) Adopt, amend, and repeal the following:

(A) Bylaws for the administration of the district's affairs.

(B) Rules and regulations for the following:

(i) The control of the administration and operation of the district's service and facilities.

(ii) The exercise of all of the district's rights of ownership.

(5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.

(6) Assume in whole or in part any liability or obligation of:

(A) a person;

(B) a nonprofit water, sewage, or solid waste project system; or

(C) an eligible entity;

including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.

(7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:

(A) The payment of the expenses of the district.

(B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.

(C) The payment of principal or interest on the district's obligations.

(D) To fulfill the terms of agreements made with:

(i) the purchasers or holders of any obligations; or

(ii) a person or an eligible entity.

(8) Except as provided in section 2.5 of this chapter, require connection to the district's sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:

(A) there is an available sanitary sewer within three hundred (300) feet of the property line; and

(B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice.

(9) Provide by ordinance for reasonable penalties for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

(C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

(A) The distribution or purification of water.

(B) The collection or treatment of sanitary sewage.

(C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain.

(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

(A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and

(B) the cost is determined by the board to be less than that of purchase or condemnation;

the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

[As amended by: P.L.193-2001, §2.]

IC 13-26-5-2.5 ------- Powers and duties of regional districts: conditions for exemption from sewer connection requirement

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

(b) Subject to subsection (d) and except as provided in subsection (e), a property owner is exempt from the requirement to connect to a district's sewer system and to discontinue use of a septic tank soil absorption system if the following conditions are met:

(1) The property owner's septic tank soil absorption system was installed not more than five (5) years before the district's sewer system's anticipated connection date.

(2) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.

(3) The property owner, at the property owner'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 property owner, the property owner may appeal the denial to the board of the local health department. The decision of the board is final and binding.

(4) The property owner 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 (3); within the time limits set forth in subsection (g).

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

(d) A property owner 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 three (3) years beginning on the date 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.

(e) The district may require a property owner who qualifies for the exemption under this section to discontinue use of a septic tank soil absorption system and connect to the district's sewer system if the district credits the unamortized portion of the original cost of the property owner's septic tank soil absorption system against the debt service portion of the customer's monthly bill. The amount that the district must credit under this subsection is determined in STEP TWO of the following formula:

STEP ONE: Multiply the original cost of the property owner's septic tank soil absorption system by a fraction, the numerator of which is ninety-six (96) months minus the

age in months of the property owner's septic system, and the denominator of which is ninety-six (96) months.

STEP TWO: Determine the lesser of four thousand eight hundred dollars ($4,800) or the result of STEP ONE.

The district shall apportion the total credit amount as determined in STEP TWO against the debt service portion of the property owner's monthly bill over a period to be determined by the district, but not to exceed twenty (20) years, or two hundred forty (240) months.

(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 property owners:

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

(2) that the property owner 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 property owner must:

(1) within sixty (60) days after the date of the written notice given to the property owner under subsection (f), notify the district in writing that the property owner 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 (b)(3).

[As added by: P.L.193-2001, §3.]

IC 13-26-5-3 --------- Powers and duties of regional districts: rules, resolutions and ordinances

(a) The board may by rules and resolutions provide the following:

(1) The procedure for the board's actions.

(2) The manner of selection of the board's president, treasurer, and secretary and other officers or employees of the district, including the titles, terms of office, compensation, duties, number, and qualifications.

(3) Any other lawful subject necessary to the operation of the district and the exercise of the power granted.

(b) The board must adopt an ordinance by a majority vote to take action of a legislative nature. Proposed ordinances may be read by title only unless a trustee requests a reading in full.

(c) A majority of the board or the officers of the board or employees of the district that are authorized by the board may take action of an administrative or executive nature.

[As added by: P.L.1-1996, §16.]

IC 13-26-5-4 --------- Powers and duties of regional districts: authorized rulemaking

(a) The board may adopt and enforce rules for the following purposes:

(1) To accomplish the purpose of a district.

(2) To protect the works, improvements, and properties, both real and personal, that the district owns.

(3) To secure the best results from the construction, operation, and maintenance of works, improvements, and properties.

(4) To prevent damage by the misuse of the works, improvements, or properties by:

(A) the pollution or misuse of the waters in the district or of the sewerage system; or

(B) the improper disposal of solid waste.

(b) The board may adopt and enforce rules under subsection (a) that are necessary and advisable to do the following:

(1) Protect and preserve the works, improvements, and properties owned or controlled by the district, prescribe the manner of use by any person, and preserve order in and adjacent to the works.

(2) Prescribe the manner:

(A) in which ditches, sewers, pipelines, or other works should be adjusted to or connected with the works of the district; and

(B) of waste disposal in the district.

(3) Prescribe the permissible uses of the water supply and the manner of distribution and prevent the pollution or unnecessary waste of the water supply.

(4) Prohibit or regulate the discharge into the sewers of the district of liquid or solid waste detrimental to the works and improvements.

(c) Rules must be:

(1) consistent with:

(A) statutes; and

(B) the rules of the solid waste management board or the water pollution control board; and

(2) maintained and open to inspection in the office of the district.

(d) The board may enforce by injunction or other legal remedy rules adopted under this section. The board may remove a harmful or improper construction or obstruction or may close an opening or connection made improperly or in violation of the rules. A person that willfully fails to comply with the rules is liable for damage caused by the failure and for the cost of restoring or replacing construction damaged.

[As added by: P.L.1-1996, §16.]

IC 13-26-5-5 --------- Powers and duties of regional districts: contracting

The board or an officer or employee designated by the board may contract for the following:

(1) The purchase of supplies in accordance with IC 5-22.

(2) Labor for a work in accordance with IC 36-1-12.

[As amended by: P.L.49-1997, §48.]

IC 13-26-5-6 --------- Powers and duties of regional districts: power of condemnation

(a) Subject to subsection (b), the board may condemn for the use of the district public or private land, easements, rights, rights-of-way, franchises, or other property within or outside the district required by the district for the accomplishment of the district's purposes according to the statutory procedure for the appropriation of land or other property taken by an eligible entity.

(b) The power of condemnation by a district under this article may not be exercised against a sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 until the expiration of twelve (12) years after the granting of the certificate of territorial authority.

[As added by: P.L.1-1996, §16.]

IC 13-26-5-7 --------- Powers and duties of regional districts: contracts to supply water or treat district sewage and solid waste

(a) Exclusive of building a sewage treatment plant, solid waste disposal or recovery system, or installing a supply of water, a district that desires to own, acquire, construct, equip, improve, enlarge, extend, operate, and maintain a works may proceed under this article if the district first contracts for:

(1) a supply of water;

(2) the required treatment of the sewage emanating from the district's works; or

(3) the disposition of solid waste generated within the district.

(b) A governmental or private body owning and operating facilities for water supply, sewage, or solid waste disposal, recovery, or treatment may contract to supply water or treat all or part of the sewage and solid waste of a district. The contracts:

(1) must be authorized by ordinance; and

(2) are subject to approval by the department.

(c) All bonds issued under this article or IC 13-3-2 (before its repeal) by a district contracting for:

(1) water supply;

(2) sewage or solid waste disposal; or

(3) recovery treatment service;

under this section are payable before the expiration date of the contract and districts may contract for the term of the bonds, including a term or terms beyond the last maturity of the bonds.

[As added by: P.L.1-1996, §16.]

IC 13-26-5-8 --------- Powers and duties of regional districts: payment of obligations

A district may make contracts or incur obligations only if the contracts or obligations are payable solely from:

(1) the money provided under this article; or

(2) federal, state, or other grants or contributions.

[As added by: P.L.1-1996, §16.]

IC 13-26-6. DISTRICT PLAN

IC 13-26-6-1 --------- District plan: plan contents

A district plan for the operation of the district must include:

(1) engineering reports;

(2) plans and specifications; and

(3) a feasibility study in a form that the department requires.

[As added by: P.L.1-1996, §16.]

IC 13-26-6-2 --------- District plan: IDEM approval and authorization

If the department approves a district plan, the department shall authorize the district to proceed.

[As added by: P.L.1-1996, §16.]

IC 13-26-6-3 --------- District plan: IDEM disapproval

If the department disapproves a district plan, the department may recommend revisions and authorize the district to proceed with a revised plan.

[As added by: P.L.1-1996, §16.]

IC 13-26-6-4 --------- District plan: dissolution of district

If:

(1) the department determines that the project or operation of the district is not economically feasible, fair, or reasonable; or

(2) the district fails to file a plan for the operation of the district within the time prescribed by the department;

the department may declare the district dissolved and enter an order for the distribution of all assets owned by the district after the payment of liabilities.

[As added by: P.L.1-1996, §16.]

IC 13-26-7. PAYMENT OF DISTRICT EXPENSES

IC 13-26-7-1 --------- Payment of district expenses: financial records

Each district must keep proper records showing the district's finances.

[As added by: P.L.1-1996, §16.]

IC 13-26-7-2 --------- Payment of district expenses: advance funding

A local, state, or federal agency or person may advance or give a district money to be used by the district for the following purposes:

(1) The preparation of a plan for the operation of the district.

(2) Other purposes of the district until the district is in receipt of revenue from its operations or proceeds from the sale of bonds.

[As added by: P.L.1-1996, §16.]

IC 13-26-7-3 --------- Payment of district expenses: repayment of advance from revenues

When a district receives revenue for its operations or proceeds from the sale of bonds, the district shall repay any money advanced to the advancing agency in the manner agreed.

[As added by: P.L.1-1996, §16.]

IC 13-26-7-4 --------- Payment of district expenses: interest of entity in assets of dissolved district

If the commissioner orders a district dissolved as permitted in IC 13-26-6-4, the interest an entity has in the assets of the district is limited to those assets remaining after the payment of all other liabilities of the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-8. ADDITION OF TERRITORY TO REGIONAL DISTRICTS

IC 13-26-8-1 --------- Addition of territory to regional districts: filing by eligible entity

After the establishment of a district, an eligible entity whose territory is not wholly included within the district may file an application with the district setting forth the following:

(1) A general description of the territory the eligible entity desires to have included in the district.

(2) The necessity for the inclusion of the territory in the district.

(3) That inclusion of the territory in the district will be conducive to the public health, safety, convenience, or welfare.

(4) That it will be practical and feasible for the territory to be included in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-8-2 --------- Addition of territory to regional districts: inclusion by board approval

If an application is approved by a majority of the board, the territory described in the application becomes part of the district. The district shall then notify the department of the inclusion of the additional territory in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-8-3 --------- Addition of territory to regional districts: failure of board approval; petition to IDEM

(a) If an application fails to receive the approval of a majority of the board not later than sixty (60) days after the filing of the application with the district, the entity filing the application may file a petition with the department as described in IC 13-26-2 requesting the order of the department to include the territory described in the application within the district.

(b) Upon the filing of a petition, the department shall proceed in the same manner that is set forth in IC 13-26-2, IC 13-26-4, IC 13-26-6, and IC 13-26-7.

[As added by: P.L.1-1996, §16.]

IC 13-26-9. TERRITORIAL AUTHORITY OF SEWAGE DISPOSAL COMPANIES

IC 13-26-9-1 --------- Territorial authority of sewage disposal companies: activities not affected

This article does not limit the following:

(1) The formation and operation under IC 8-1-2-89 of a sewage disposal company to provide sewage disposal service to a territory lying in the territory of a district.

(2) The granting of a certificate of territorial authority under IC 8-1-2-89 encompassing a part of the territory within the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-9-2 --------- Territorial authority of sewage disposal companies: conditions

The granting of a certificate of territorial authority to a sewage disposal company under IC 8-1-2-89 for a territory lying in the territory of a district may be conditioned upon the following requirements:

(1) That the sewage disposal company connect the company's collection system to the collection system of a district when the district has extended to within three hundred (300) feet of the territorial area of the sewage disposal company a system sufficient to provide reasonable and adequate service to the territorial area.

(2) That the sewage disposal company contribute the company's collection system to the district instead of all connection charges that could otherwise be imposed under this article upon:

(A) the sewage disposal company; or

(B) those parcels and lots served by the collection system of the sewage disposal company that have been contributed by the company to the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-9-3 --------- Territorial authority of sewage disposal companies: certain companies exempt

A sewage disposal company that is subject to the jurisdiction of the Indiana utility regulatory commission under IC 8-1-2-89, and all of the territory lying in the area to which the company holds a certificate of territorial authority, is exempt from all ordinances and rules adopted by the board, except those ordinances and rules pertaining to maintenance and operation, until:

(1) the connection is made to the sewerage system of the district; and

(2) the district begins to provide service within the area covered by the certificate of territorial authority.

[As added by: P.L.1-1996, §16.]

IC 13-26-10. BONDS

IC 13-26-10-1 -------- Bonds: revenue bonds authorized

A district may obtain money for the payment of the costs of the works or an improvement, enlargement, or extension of the works by the issuance of revenue bonds of the district. The principal and interest of the revenue bonds must be paid solely from the net revenues of the works.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-2 -------- Bonds: obligations issued to federal government

A district obtaining a loan from the federal government or an agency of the federal government may issue obligations under this article to the federal government or agency to evidence the indebtedness without advertising for or receiving bids. The obligations:

(1) are payable solely from the net revenues of the works; and

(2) may be made of equal priority or subordinate to other revenue bonds issued or to be issued under this article or IC 13-3-2 (before its repeal).

[As added by: P.L.1-1996, §16.]

IC 13-26-10-3 -------- Bonds: form of revenue bonds

Revenue bonds may:

(1) bear interest, at a rate or rates not exceeding the maximum determined by the board, that is payable annually or at shorter intervals;

(2) mature at a time or times to be determined by ordinance; and

(3) be made redeemable before maturity at the option of the district, to be exercised by the board, at not more than the par value and a premium not exceeding five percent (5%) under terms and conditions that are fixed by the ordinance authorizing the issuance of the bonds.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-4 -------- Bonds: principal and interest

The principal and interest of revenue bonds may be made payable in any lawful medium. The ordinance must do the following:

(1) Determine the form of the bonds, including the interest coupons, if any, to be attached.

(2) Fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be any bank or trust company within or outside Indiana.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-5 -------- Bonds: conditions

(a) The revenue bonds must contain a statement on the face of the bonds that the district is not obligated to pay the bonds or the interest on the bonds except from the special fund provided from the net revenues of the works.

(b) All bonds are negotiable instruments.

(c) The bonds and interest are exempt from all state, county, and municipal taxation.

(d) The bonds may be registered in the name of the owner:

(1) as to principal alone; or

(2) as to both principal and interest.

Fully registered bonds may be made convertible to coupon bonds at the option of the registered owner.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-6 -------- Bonds: execution

The:

(1) president of the board shall execute; and

(2) secretary of the board shall attest;

the bonds and coupons. The coupons must bear facsimile signature.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-7 -------- Bonds: sale of bonds

(a) Subject to subsection (b), the treasurer of the district shall sell the revenue bonds in a manner and at a price that is determined to be in the best interests of the district.

(b) If the bonds are sold at public sale, the bonds shall be sold in accordance with IC 5-1-11 as IC 5-1-11 applies to counties.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-8 -------- Bonds: surplus or deficit in revenue

(a) A surplus of revenue bond proceeds over the cost of the works shall be paid into the sinking fund provided by this article.

(b) If the proceeds of the bonds, by error of calculation or otherwise, are less than the cost of the works, additional bonds may in the same manner be issued to provide the amount of the deficit. Unless otherwise provided in:

(1) the ordinance authorizing the issuance of the bonds first issued; or

(2) the trust indenture authorized by this article or IC 13-3-2 (before its repeal);

the additional bonds are considered to be of the same issue and are entitled to payment from the same fund, without preference or priority of the bonds first issued.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-9 -------- Bonds: temporary revenue bonds

Before the preparation of the definite revenue bonds, temporary revenue bonds under the same restrictions may be issued with or without coupons, exchangeable for definite revenue bonds upon the issuance of the latter.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-10 ------ Bonds: fund to finance construction

The fund to finance the construction of any of the self-liquidating works authorized by this article may be obtained from a federal or state agency.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-11 ------ Bonds: action to contest validity

An action to contest the validity of bonds issued under this article or IC 13-3-2 (before its repeal) must be brought not later than ten (10) days after the advertised sale date of the bonds.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-12 ------ Bonds: additional bonds

Subject to an ordinance or trust indenture pertaining to outstanding bonds, additional bonds payable from the revenues of the works may be authorized and issued in accordance with this article for the purpose of improving, enlarging, or extending works acquired or constructed under this article or IC 13-3-2 (before its repeal).

[As added by: P.L.1-1996, §16.]

IC 13-26-10-13 ------ Bonds: trust indenture

The board may secure the revenue bonds by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana. However, a trust indenture may not convey or mortgage all or any part of the works.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-14 ------ Bonds: provisions of trust indenture

The ordinance authorizing the revenue bonds and fixing the details of the revenue bonds may provide that the trust indenture contain reasonable and lawful provisions for protecting and enforcing the rights and remedies of the bondholders, including covenants setting forth the duties of the district and the board in relation to the following:

(1) The construction or acquisition of the works.

(2) The improvement, operation, repair, and maintenance of the works.

(3) The issuance of bonds, including the custody, safeguarding, and application of all money.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-15 ------ Bonds: security given by contractor

The ordinance may also provide that the works shall be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns, or nominees. The original bond purchasers, successors, assigns, or nominees may be given the right to require that the security given by:

(1) contractors; and

(2) any depository of the proceeds of bonds or revenues of the works or other money pertaining to the works;

be satisfactory to the purchasers, successors, assigns, or nominees.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-16 ------ Bonds: rights and remedies of the bondholders

The trust indenture may set forth the rights and remedies of the bondholders or trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-17 ------ Bonds: provisions for payment bond proceeds and revenues

Unless this article otherwise provides, the board may provide by ordinance or in the trust indenture for the payment of:

(1) the proceeds of the sale of the bonds; and

(2) the revenues of the works;

to the officer, board, or depository that the board determines for the custody of the money and for the method of disbursement, with safeguards and restrictions that the board determines.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-18 ------ Bonds: sinking fund

(a) At or before the time of issuance of the revenue bonds, the board shall by ordinance create a sinking fund for the payment of the following:

(1) The bonds.

(2) The interest on the bonds.

(3) The charges of banks or trust companies for making payment of the bonds or interest.

(b) The board shall set aside and pledge the net revenues of the works remaining after the payment of the reasonable expense of operation, repair, and maintenance of the works for payment of the:

(1) principal of and interest on all bonds payable from the revenues of the works, to the extent necessary for that purpose; and

(2) necessary fiscal agency charges for paying the principal and interest of the bonds.

(c) The ordinance may also provide for the accumulation of reasonable reserves in the sinking fund:

(1) as a margin for safety and a protection against default; and

(2) for the payment of premiums upon bonds retired by call or purchase as provided by this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-10-19 ------ Bonds: protection and enforcement of rights by civil action

(a) The holder of revenue bonds or attached coupons and the trustee, if any, except to the extent the rights given may be restricted by the ordinance authorizing issuance of the bonds or by the trust indenture, may, by civil action, protect and enforce rights granted:

(1) by this article or IC 13-3-2 (before its repeal); or

(2) under the ordinance or trust indenture;

to be performed by the district issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for services provided by the works.

(b) If there is failure to pay the principal or interest on any of the revenue bonds on the date named for payment, and upon application by a bondholder or a trustee, any court having jurisdiction to appoint receivers shall appoint a receiver to administer the works on behalf of the district and the bondholders or trustee. A receiver may do the following:

(1) Charge and collect rates sufficient to provide for the payment of the expenses of operation, repair, and maintenance.

(2) Pay any revenue bonds and interest outstanding.

(3) Apply the revenues in conformity with this article and the ordinance or trust indenture.

[As added by: P.L.1-1996, §16.]

IC 13-26-11. RATES AND CHARGES

IC 13-26-11-1 -------- Rates and charges: basis for waterworks

The rates and charges for a waterworks may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water consumed.

(3) The size of the meter or connection.

(4) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(5) A combination of these or other factors that the board determines is necessary to establish just and equitable rates and charges.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-2 -------- Rates and charges: basis for sewage works

The rates or charges for a sewage works may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish just and equitable rates or charges.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-3 -------- Rates and charges: basis for solid waste disposal and recovery systems

The rates or charges for solid waste disposal and recovery systems may be determined based on the following:

(1) A flat charge for each residence or building in use in the district.

(2) On the weight of the refuse received.

(3) On the hazardous character of the waste received.

(4) On a combination of the weight and hazardous character of the waste received.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-4 -------- Rates and charges: discretion in

The rates and charges for services of a water, sewer, or solid waste disposal or recovery system do not have to be uniform throughout the district or for all users. The board may exercise reasonable discretion in:

(1) adopting different schedules of rates and charges; or

(2) making classifications in schedules of rates and charges:

(A) based upon variations in the costs of furnishing the services, including capital expenditures required, to various classes of users or to various locations in the district; or

(B) where there are variations in the number of users in various locations in the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-5 -------- Rates and charges: billing and collection

A district may bill and collect rates and charges for the services to be provided after the contract for construction of a sewage works has been let and actual work commenced in an amount sufficient to meet the interest on the revenue bonds and other expenses payable before the completion of the works.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-6 -------- Rates and charges: property benefiting from sewage works

Unless the board finds and directs otherwise, the sewage works are considered to benefit every:

(1) lot;

(2) parcel of land; or

(3) building;

connected or to be connected under the terms of an ordinance requiring connections with the sewer system of the district as a result of construction work under the contract. The rates or charges shall be billed and collected accordingly.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-7 -------- Rates and charges: charge for connections

(a) If a district constructs sewers or water mains as a part of the construction of the works that are suitable for use as a local or lateral sewer or main by abutting or adjoining property, the district may charge for the connection on the basis of the pro rata cost of construction of a local or lateral sewer or water main sufficient to serve the property.

(b) Each property owner must agree to pay for the connection in making an application for service. If payment is not made as agreed, the payment constitutes a lien on the property for which the connection is made.

(c) The proceeds of the connection charges may be handled as:

(1) net revenues of the works; or

(2) payments toward the cost of construction or future improvements.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-8 -------- Rates and charges: charges for the use of and the service provided by a works

(a) The board shall, by ordinance, establish just and equitable rates or charges for the use of and the service provided by a works. The rates or charges are payable by the owner of each lot, parcel of land, or building that:

(1) is connected with and uses a works; or

(2) in any way uses or is served by a works.

(b) The board may periodically change and readjust the rates or charges as provided in this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-9 -------- Rates and charges: just and equitable rates and charges

(a) Just and equitable rates and charges are those that produce sufficient revenue to:

(1) pay all expenses incident to the operation of the works, including maintenance cost, operating charges, upkeep, repairs, and interest charges on bonds or other obligations;

(2) provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds; and

(3) provide adequate money to be used as working capital, as well as money for making improvements, additions, extensions, and replacements.

(b) Rates and charges too low to meet the financial requirements described in subsection (a) are unlawful. The initial rates and charges established after notice and hearing under this article are prima facie just and equitable.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-10 ------ Rates and charges: revenue of the works

Revenue collected under sections 8 through 14 of this chapter is revenue of the works.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-11 ------- Rates and charges: initial rates or charges

The initial rates or charges may be established only after a public hearing at which all:

(1) the users of the works and owners of property served or to be served; and

(2) others interested;

have an opportunity to be heard concerning the proposed rates or charges.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-12 ------ Rates and charges: notice of hearing on

After introduction of the ordinance initially fixing rates or charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates or charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in each of the counties with territory in the district. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-13 ------ Rates and charges: ordinance establishing

(a) The ordinance establishing the initial rates or charges, either as:

(1) originally introduced; or

(2) modified and amended;

shall be passed and put into effect after the hearing.

(b) A copy of the schedule of the rates and charges established must be:

(1) kept on file in the office of the district; and

(2) open to public inspection.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-14 ------ Rates and charges: extending to cover additional premises

(a) The rates or charges established for a class of users of property served shall be extended to cover any additional premises served after the rates or charges are established that are in the same class, without the necessity of hearing or notice.

(b) A change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established.

[As added by: P.L.1-1996, §16.]

IC 13-26-11-15 ------ Rates and charges:

(a) A district authority is established in each regional sewage district established under IC 13-26.

(b) The district authority of a regional sewage district consists of the following:

(1) In the case of a regional sewage district located in one (1) county:

(A) except as provided in clause (B), the county executive of that county; or

(B) if the members of the county executive are trustees of the regional sewage district, the members of the county fiscal body.

(2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member, appointed by that member's county executive, from each county in which the district is located. However, a person who serves on the board of trustees of a district may not be a member of the district authority.

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2001, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the freeholder's objection.

(d) If a petition meeting the requirements of subsection (b) is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter. The district authority, by a majority vote, shall:

(1) sustain the ordinance establishing the rates and charges;

(2) sustain the petition; or

(3) make any other ruling appropriate in the matter.

(g) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

[As added by: P.L.193-2001, §4.]

IC 13-26-12. LIENS FOR RATES OR CHARGES

IC 13-26-12-1 -------- Liens for rates or charges: rates are liens

The rates made, assessed, or established under this article against:

(1) a lot;

(2) a parcel of land; or

(3) a building;

that is connected with and uses the works of the district are a lien against the lot, parcel of land, or building.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-2 -------- Liens for rates or charges: attachment; precedence

Except as provided in sections 5 and 6 of this chapter, a lien attaches at the time of the recording of the list in the county recorder's office as provided in IC 13-26-13. The lien:

(1) is superior to and takes precedence over all other liens except the lien for taxes; and

(2) shall be enforced under this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-3 -------- Liens for rates or charges: delinquency; penalty; attorney fees

If rates or charges are not paid within the time fixed by the board, the rates or charges become delinquent and a penalty of ten percent (10%) of the amount of the rates or charges attaches to the rates or charges. The board may recover:

(1) the amount due;

(2) the penalty; and

(3) a reasonable attorney's fee;

in a civil action in the name of the district.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-4 -------- Liens for rates or charges: collection

The rates or charges, together with the penalty, are collectible in the manner provided by this article.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-5 -------- Liens for rates or charges: enforcement against subsequent owner

(a) A rate or charge is not enforceable as a lien against a subsequent owner of property unless the lien for the rate or charge was recorded with the county recorder before the conveyance to the subsequent owner.

(b) If the property is conveyed before the lien can be filed, the officer of the district who is charged with the collection of the rate or charge shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received not later than one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-6 -------- Liens for rates or charges: notification of owner

(a) This section applies whenever the owner of the property has notified the general office of the district by certified mail with return receipt requested of the address to which the owner's notice is to be sent.

(b) A lien does not attach against a lot, parcel of land, or building occupied by someone other than the owner unless the officer of the district who is charged with the collection of rates or charges notifies the owner of the property after the rates or charges have become sixty (60) days delinquent.

[As added by: P.L.1-1996, §16.]

IC 13-26-12-7 -------- Liens for rates or charges: release of lien

(a) The district shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser.

(b) The demand must state the following:

(1) That the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner.

(2) That the purchaser has not been paid by the seller for the delinquent fees.

[As added by: P.L.1-1996, §16.]

IC 13-26-13. ENFORCEMENT OF DELINQUENCIES

IC 13-26-13-1 -------- Enforcement of delinquencies: fees or penalties due and unpaid for at least 90 days

This chapter applies only to fees or penalties that have been due and unpaid for at least ninety (90) days.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-2 -------- Enforcement of delinquencies: enforcement of payments; preparation of list

The officer of the district who is charged with the collection of the rates or charges shall enforce payment of the rates or charges. The officer shall, not more than two (2) times in a year, prepare a list of the delinquent rates or charges, including the amount of the penalty, that are enforceable under this chapter. The list must include the following:

(1) The name of each owner of each lot or parcel of real property on which the rates or charges have become delinquent.

(2) The description of the premises as shown by the records of the office of the county auditor.

(3) The amount of the rates or charges, together with the amount of the penalty.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-3 -------- Enforcement of delinquencies: recording of list

(a) The officer shall record a copy of the list in the office of the county recorder.

(b) The county recorder shall charge a fee for recording the list in accordance with the fee schedule established in IC 36-2-7-10.

(c) After recording the list, the officer shall mail to each property owner on the list a notice stating that a lien against the owner's property has been recorded.

(d) This subsection applies only to a county that does not contain a consolidated city. A service charge of five dollars ($5), which is in addition to the recording fee charged under this section and section 6 of this chapter, shall be added to each delinquent rate or charge that is recorded.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-4 -------- Enforcement of delinquencies: Marion county

(a) This section applies only to a county containing a consolidated city.

(b) Using the lists prepared and recorded under sections 2 and 3 of this chapter, the officer shall certify to the county auditor a list of the liens that remain unpaid according to the following schedule:

(1) Liens recorded on or after August 1 of the preceding year and before February 1 of the current year shall be certified before March 1 of each year for collection in May of the same year.

(2) Liens recorded on or after February 1 of the current year and before August 1 of the current year shall be certified before September 1 of each year for collection in November of the same year.

(c) The county and the officers and employees of the county are not liable for any material error in the information on the list.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-5 -------- Enforcement of delinquencies: other counties

(a) This section only applies to a county that does not contain a consolidated city.

(b) Using the lists prepared and recorded under sections 2 and 3 of this chapter:

(1) after April 1 of the preceding year; and

(2) before April 1 of the current year;

the officer shall before June 1 of each year certify to the county auditor a list of the liens that remain unpaid for collection in the next November.

(c) The county and the officers and employees of the county are not liable for any material error in the information on this list.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-6 -------- Enforcement of delinquencies: release of recorded lien

(a) The officer shall release a recorded lien when the:

(1) delinquent rates or charges;

(2) penalties;

(3) service charges; and

(4) recording fees;

have been fully paid.

(b) The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-7 -------- Enforcement of delinquencies: certification fee and other charges

(a) This subsection applies to a county that does not contain a consolidated city. On receipt of the list under section 5 of this chapter, the county auditor shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which rates or charges are delinquent. The certification fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the:

(1) delinquent rates or charges;

(2) penalties;

(3) service charges;

(4) recording fees; and

(5) certification fees;

that are due not later than the due date of the next November installment of property taxes.

(b) This subsection applies to a county having a consolidated city. On receipt of the list under section 4 of this chapter, the county auditor shall enter on the tax duplicate the:

(1) delinquent fees;

(2) penalties;

(3) service charges; and

(4) recording fees;

that are due not later than the due date of the next installment of property taxes.

(c) The county treasurer shall include any unpaid charges for the:

(1) delinquent rate or charge;

(2) penalty;

(3) service charge;

(4) recording fee; and

(5) certification fee;

to each owner of each lot or parcel of property at the time the next cycle's property tax installment is billed.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-8 -------- Enforcement of delinquencies: after June 1 of each year

(a) This section does not apply to a county containing a consolidated city.

(b) After June 1 of each year, the officer may not collect or accept:

(1) delinquent rates or charges;

(2) penalties;

(3) service charges;

(4) recording fees; or

(5) certification fees;

from property owners whose property has been certified to the county auditor.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-9 -------- Enforcement of delinquencies: collection of unpaid money by county treasurer

If a:

(1) delinquent rate or charge;

(2) penalty;

(3) service charge;

(4) recording fee; or

(5) certification fee;

is not paid, the county treasurer shall collect the unpaid money in the same way that delinquent property taxes are collected.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-10 ------ Enforcement of delinquencies: at the time of each semiannual tax settlement

(a) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all:

(1) rates or charges;

(2) fees; and

(3) penalties;

that have been collected.

(b) The county auditor shall:

(1) deduct the service charges and certification fees collected by the county treasurer; and

(2) pay to the officer the remaining fees and penalties due the district.

(c) The county treasurer shall:

(1) retain the service charges and certification fees that have been collected; and

(2) deposit the charges and fees in the county general fund.

[As added by: P.L.1-1996, §16.]

IC 13-26-13-11 ------ Enforcement of delinquencies: unrecorded charges; removal from tax rolls

(a) This section applies to a:

(1) rate or charge;

(2) penalty; or

(3) service charge;

that was not recorded before a recorded conveyance.

(b) The:

(1) rate or charge;

(2) penalty; or

(3) service charge;

shall be removed from the tax roll for a purchaser who, in the manner prescribed by IC 13-26-12-7, files a verified demand with the county auditor.

[As added by: P.L.1-1996, §16.]

IC 13-26-14. FORECLOSURE OF LIENS

IC 13-26-14-1 -------- Foreclosure of liens: authorized

A district may, as an additional or alternative remedy, foreclose a lien established by this article as a means of collection of rates or charges, including the penalty on the rates or charges.

[As added by: P.L.1-1996, §16.]

IC 13-26-14-2 -------- Foreclosure of liens: amounts recoverable

(a) In all actions brought to foreclose the liens, the district is entitled to recover the following:

(1) The amount of the rates or charges.

(2) The penalty on the rates or charges.

(3) A reasonable attorney's fee.

(b) The court shall order that the sale be made without relief from valuation or appraisement statutes.

[As added by: P.L.1-1996, §16.]

IC 13-26-14-3 -------- Foreclosure of liens: applicable laws

Except as otherwise provided by this article, in all actions to foreclose the liens:

(1) the laws concerning municipal public improvement assessments; and

(2) the rights, remedies, procedure, and relief granted the parties to the action;

apply.

[As added by: P.L.1-1996, §16.]

TITLE 13. ENVIRONMENT
IC 13-27. INDUSTRIAL POLLUTION PREVENTION AND SAFE MATERIALS

IC 13-27-2. DIVISION OF POLLUTION PREVENTION AND TECHNICAL ASSISTANCE

IC 13-27-2-1 --------- Division of pollution prevention and technical assistance: established

A division of pollution prevention is established within the department.
[As added by: P.L.1-1996, §17.]

IC 13-27-2-2 --------- Division of pollution prevention and technical assistance: assistant commissioner

The commissioner shall appoint an assistant commissioner to head the division.
[As added by: P.L.1-1996, §17.]

IC 13-27-2-3 --------- Division of pollution prevention and technical assistance: employees

The commissioner shall hire employees of the division.
[As added by: P.L.1-1996, §17.]

IC 13-27-2-4 --------- Division of pollution prevention and technical assistance: liaison advisory panels

(a) The commissioner may appoint liaison advisory panels to assist the division in the functions of the division. Individual panels must include members representing different areas of interest in and potential support of pollution prevention and environmentally related technical assistance, including the following:

(1) Industry.

(2) Education.

(3) Environmental and public interest groups.

(4) State government.

(5) Local government officials associated with state programs for pollution prevention.

(6) Organized labor.

(b) A member of a liaison advisory panel is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.
[As added by: P.L.1-1996, §17.]

IC 13-27-2-5 --------- Division of pollution prevention and technical assistance: responsibilities

The commissioner and the assistant commissioner, through coordinated effort, shall do the following:

(1) Periodically review state environmental programs and projects for their ability and progress in promoting multimedia industrial pollution prevention.

(2) Assist the division of air, the division of water, and the division of solid and hazardous waste management in identifying, within planned and existing regulatory programs of the department, obstacles to pollution prevention and opportunities to

promote and assist in pollution prevention, including the following:

(A) Encouraging regulatory flexibility to afford businesses the opportunity to develop or implement pollution prevention technologies and practices.

(B) Performing pollution prevention impact analyses of administrative rules before proposed rules are published and before final adoption.

(C) Exploring permanent funding for the program.

(3) Promote increased coordination between the divisions of the department and between the department and other governmental regulatory programs with responsibilities and duties relating to toxic materials and environmental wastes, including, to the fullest extent possible, the following:

(A) Joint planning processes.

(B) Joint research and studies.

(C) Joint public hearings.

(D) Joint hazard assessments.

(E) Joint environmental and workplace impact statements.

(F) Joint pollution prevention impact analyses for existing and proposed administrative rules.

(4) Develop policies and programs to reduce the following by means of industrial pollution prevention:

(A) Generation of municipal wastes.

(B) Generation of household hazardous wastes and pollutants.

(C) Use of toxic materials in consumer products.

(5) Provide general information about, and actively publicize the advantages of and developments in, pollution prevention and the requirements of this article.

(6) Assist businesses that seek information, guidance, planning assistance, or recommendations for pollution prevention by providing technical information to those businesses at production or commercial locations.

(7) Work with existing environmental regulatory programs to make use of existing information gathering systems that may assist the division in assessing the progress of pollution prevention statewide.

(8) Grant or deny applications for pollution prevention grants under section 10 of this chapter.

(9) Provide source reduction and recycling technical assistance and administer the Indiana recycling grants program established under IC 13-20-22-2.

[As amended by: P.L.2-1997, §50.]

IC 13-27-2-6 --------- Division of pollution prevention and technical assistance: assisting other programs

The division shall assist other governmental regulatory programs in devising:

(1) standards;

(2) administrative rules; and

(3) permits;

based on goals and principles of pollution prevention.

[As added by: P.L.1-1996, §17.]

IC 13-27-2-7 --------- Division of pollution prevention and technical assistance: commissioner may seek unified reporting and permitting authority

To facilitate the use and coordination of reporting requirements, the commissioner may seek unified reporting and permitting authority from the United States Environmental Pro-

tection Agency with respect to federal toxic material, waste management, and pollution control laws and regulations in effect on January 1, 1990, including the following:

(1) The federal Clean Air Act (42 U.S.C. 7401 et seq.).

(2) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(3) The federal Toxic or Hazardous Substance Control Act (15 U.S.C. 2601 et seq.).

(4) The federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(5) The federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.).

[As added by: P.L.1-1996, §17.]

IC 13-27-2-8 --------- Division of pollution prevention and technical assistance: coordinated efforts

The commissioner and the clean manufacturing technology board established by IC 13-27.5-1 shall coordinate their efforts in the implementation of the grants program under IC 13-27-2-10 and the pilot projects under IC 13-27-2-11.

[As amended by: P.L.124-1997, §17.]

IC 13-27-2-9 --------- Division of pollution prevention and technical assistance: state information clearinghouse

(a) To:

(1) promote pollution prevention statewide by all industries and companies; and

(2) assist in obtaining information on the progress of multimedia reduction of environmental wastes and related environmental policies and programs;

the commissioner shall establish and operate a state information clearinghouse for pollution prevention.

(b) The commissioner shall use the clearinghouse established under this section to do the following:

(1) Collect and compile the following:

(A) Information from organizations receiving grants under this article.

(B) Information from the published technical literature.

(2) Mount active outreach and educational programs to further the development and adoption of principles and techniques of pollution prevention.

(c) The clearinghouse established under this section must include data on the operation and effectiveness of industry pollution prevention programs. The division shall permit and facilitate free use of this data by businesses, governmental agencies, and the general public. A business may not be required to submit information of a proprietary nature to the clearinghouse or to a governmental program funded under this article.

(d) The division shall provide information for the clearinghouse established under this section.

[As amended by: P.L.124-1997, §18.]

IC 13-27-2-10 -------- Division of pollution prevention and technical assistance: grants

(a) The commissioner may award grants to support and sustain pollution prevention, including clean manufacturing through reductions in the use of toxic materials in production and commerce.

(b) Subject to subsection (a), the commissioner may award grants for any purpose the commissioner considers appropriate, including the following:

(1) Grants to nonprofit organizations to establish free or low cost technical assistance programs to supplement the activities of the Indiana clean manufacturing and safe materials institute established under IC 13-27.5-2.

(2) Grants to assist:

(A) trade associations that represent manufacturers;

(B) business organizations;

(C) labor organizations; and

(D) educational institutions;

in developing training materials and making those training materials available to workers for in-plant use that will foster clean manufacturing.

(3) Grants to assist:

(A) industry;

(B) business organizations;

(C) educational institutions;

(D) labor organizations; and

(E) local units of government;

in establishing programs or materials to train and assist personnel in developing methods to measure and plan for pollution prevention.

(4) Grants to assist industry or business organizations, local units of government, and educational institutions in creating programs to train and certify:

(A) environmental auditors;

(B) engineers; and

(C) industrial hygienists;

to identify, evaluate, and implement pollution prevention measures and alternatives in audits, plans, and programs.

(5) Grants to any organization for generic research and development, pilot tests, and demonstration projects that:

(A) involve commonly used manufacturing processes or materials; and

(B) will produce results that will be of use to manufacturers other than manufacturers that may be involved in the research and development, pilot tests, or demonstration projects.

(c) The commissioner may require that a grantee provide matching money for a grant awarded under this section.

(d) Grant money awarded under this section may not be spent for capital improvements or equipment.

(e) The money for grants awarded under this section must come from money appropriated to the department for the purposes of this section.

(f) The commissioner shall consult with the Indiana clean manufacturing and safe materials institute established by IC 13-27.5-2 in the implementation of this section.

[As amended by: P.L.104-1998, §5.]

IC 13-27-2-11 -------- Division of pollution prevention and technical assistance: pilot projects

(a) The division shall sponsor pilot projects to develop and demonstrate innovative techniques for clean manufacturing. The results of pilot projects sponsored under this section shall be made available for use by the public. However, information about a pilot project that is considered proprietary by a manufacturer involved in the pilot project may not be disclosed to the public.

(b) The division shall consult with the Indiana clean manufacturing and safe materials institute established by IC 13-27.5-2 in the implementation of this section.

[As amended by: P.L.124-1997, §20.]

IC 13-27-2-12 -------- Division of pollution prevention and technical assistance: education and training programs

The commissioner may provide for the establishment of education and training programs in pollution prevention techniques at schools and universities in Indiana.

[As added by: P.L.1-1996, §17.]

IC 13-27-2-13 -------- Division of pollution prevention and technical assistance: additional commissioner duties

The commissioner may:

(1) order all hearings and investigations necessary for the administration of this article; and

(2) advise and assist other governmental units on matters of planning or program administration within the scope of the commissioner's powers, duties, and objectives under this article.

[As added by: P.L.1-1996, §17.]

IC 13-27-6. STATE REPORT REGARDING POLLUTION PREVENTION

IC 13-27-6-1 --------- State report concerning pollution prevention: required annually

Each year the commissioner shall prepare and submit to the governor and the general assembly a report regarding the pollution prevention information gathered under this article, including:

(1) a description of the operations and activities of the programs under this article; and

(2) recommendations the commissioner has for legislative action.

[As added by: P.L.1-1996, §17.]

IC 13-27-6-2 --------- State report concerning pollution prevention: contents

The report required by this chapter must include at least the following:

(1) A quantitative assessment of statewide pollution prevention progress among all types of industries.

(2) An identification of regulations and government policies that are inhibiting pollution prevention and opportunities in existing regulatory programs to promote and assist in pollution prevention, including reductions in the use of toxins in production and commerce.

(3) An assessment of how programs under this article have promoted and assisted pollution prevention and the costs and benefits to government and industry of those programs.

(4) A statement concerning the identification of opportunities and development of priorities for research and development in pollution prevention techniques, economic analyses, and management techniques useful in supporting pollution prevention. The state report may not include information considered by a business to be a trade secret of that business.

(5) Recommendations concerning incentives and policies needed to:

(A) encourage investment in research and development in pollution prevention; and

(B) make greater use of programs established under this article.

[As added by: P.L.1-1996, §17.]

IC 13-27-6-3 --------- State report concerning pollution prevention: opportunity for public comment on draft

(a) Before the commissioner submits a report to the governor and the general assembly under section 1 of this chapter, the commissioner shall make a draft version of the report available for at least forty-five (45) days for comment by the:

(1) public; and

(2) liaison advisory panels established under IC 13-27-2.

(b) The final report must respond to public comments submitted during the comment period.

[As added by: P.L.1-1996, §17.]

IC 13-27-7. IMPLEMENTATION OF POLLUTION PREVENTION PROGRAMS

IC 13-27-7-1 --------- Implementation of pollution prevention programs: participation voluntary

Programs developed under this article are to be implemented based on voluntary participation by businesses. Businesses may not be required to comply with any program developed under this article.

[As added by: P.L.1-1996, §17.]

IC 13-27-7-2 --------- Implementation of pollution prevention programs: effect of IDEM policies on participating businesses

(a) Guidance documents, technical assistance manuals, and policies developed or used in implementing programs under this article are not binding on participating businesses.

(b) Subject to subsection (e), the air pollution control board, the water pollution control board, the solid waste management board, or the department may not do the following:

(1) Subject to IC 13-14-1-11.5, incorporate documents, manuals, or policies developed under this article into rules adopted under IC 4-22-2.

(2) Adopt rules under IC 4-22-2 requiring business implementation of pollution prevention practices or of clean manufacturing by means of any of the following:

(A) Permit conditions.

(B) Enforcement actions.

(C) Other department actions.

(c) Subsection (b) only applies to pollution prevention as defined in this title.

(d) Subsection (b) does not apply to authority granted under federal law to implement pollution prevention as defined under any of the following:

(1) Federally delegated air, water, solid waste, and other programs.

(2) Guidance documents developed to implement programs described in subdivision (1).

(3) Programs established under IC 13-20-3, IC 13-20-22, or IC 13-21.

(e) The department shall do the following:

(1) Present pollution prevention as an option to businesses in any of the following:

(A) Permit conditions.

(B) Enforcement actions.

(C) Other department actions.

(2) Direct manufacturers to the clean manufacturing technology and safe materials institute for technical assistance in clean manufacturing.

[As amended by: P.L.124-1997, §21.]

IC 13-27-7-3 --------- Implementation of pollution prevention programs: emphasis of programs

Programs implemented by the division:

(1) must encourage pollution prevention; and

(2) may not discourage the use of recycling or treatment techniques determined to be acceptable for pollution that has not been prevented.

[As added by: P.L.1-1996, §17.]

TITLE 13. ENVIRONMENT
IC 13-27.5. CLEAN MANUFACTURING TECHNOLOGY AND SAFE MATERIALS

IC 13-27.5-1. CLEAN MANUFACTURING TECHNOLOGY BOARD

IC 13-27.5-1-1 ------- Clean manufacturing technology board: established

The clean manufacturing technology board is established.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-2 ------- Clean manufacturing technology board: membership

(a) The board consists of thirteen (13) members.

(b) The commissioner and the president of the Indiana economic development council established under IC 4-3-14 shall serve as ex officio nonvoting members of the board. The commissioner or the president may in writing designate a technical representative to serve as a nonvoting member of the board when the commissioner or the president is absent from a meeting of the board.

(c) The governor shall appoint eleven (11) members of the board as follows:

(1) Two (2) representatives of public or private universities in Indiana, one (1) of whom must have expertise in occupational health and the workplace environment.

(2) Three (3) representatives of manufacturers, including one (1) representative of small manufacturers.

(3) One (1) representative of a statewide environmental organization.

(4) One (1) representative of organized labor.

(5) One (1) representative of the public.

(6) One (1) representative of county government.

(7) One (1) representative of municipal government.

(8) One (1) representative who must have expertise in occupational health and the workplace environment.

(d) To be appointed as a member of the board under subsection (c), an individual must demonstrate a knowledge of policy or of technical matters concerning multimedia clean manufacturing.

(e) Neither individual appointed to the board under subsection (c)(1) may represent a university that is selected to establish the Indiana clean manufacturing technology and safe materials institute under IC 13-27.5-3.

[As amended by: P.L.248-2001, §1.]

IC 13-27.5-1-3 ------- Clean manufacturing technology board: term of members

(a) The term of office of an appointed member of the board:

(1) is four (4) years; and

(2) continues until the member's successor is appointed and qualified.

(b) If a vacancy occurs in the appointed membership of the board, the governor shall appoint a member to fill the vacancy for the remainder of the unexpired term and to serve at the pleasure of the governor.

[As amended by: P.L.248-2001, §2.]

IC 13-27.5-1-4 ------- Clean manufacturing technology board: legislative advisers

(a) The president pro tempore of the senate shall appoint two (2) members of the senate as nonvoting advisers to the board. Senators of the same political party may not serve as advisers under this section at the same time.

(b) The speaker of the house of representatives shall appoint two (2) members of the house as nonvoting advisers to the board. Representatives of the same political party may not serve as advisers under this section at the same time.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-5 ------- Clean manufacturing technology board: per diem and travel

(a) The commissioner and the president of the economic development council serve on the board without additional compensation.

(b) An appointed member of the board or an adviser is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). An appointed member of the board or an adviser is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the duties of the member or adviser as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-6 ------- Clean manufacturing technology board: chair

The governor shall appoint one (1) member of the board to serve as chairperson. The chairperson shall do the following:

(1) Act as the executive and operating officer of the board.

(2) Determine the time and place of meetings.

(3) Preside at meetings.

(4) Carry out the policy decisions of the board.

(5) Perform all other duties and functions assigned by the board or by law.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-7 ------- Clean manufacturing technology board: meetings of board

(a) The board shall meet at least quarterly.

(b) The meetings of the board shall be held in accordance with IC 5-14-1.5.

[As amended by: P.L.248-2001, §3.]

IC 13-27.5-1-8 ------- Clean manufacturing technology board: public comments at meetings

(a) The chairperson of the board shall afford any person attending a public meeting of the board an adequate opportunity to comment through the oral or written presentation of facts or argument.

(b) All written comments submitted to the board shall be maintained and made available for public inspection.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-9 ------- Clean manufacturing technology board: conduct of board meetings

(a) A majority of the members of the board constitutes a quorum for doing business.

(b) A majority vote of the body is required for passage of any matter put to a vote.

(c) The board shall establish procedures and requirements governing the conduct of the board's meetings.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-10 ----- Clean manufacturing technology board: duties of board

The board shall do the following:

(1) Assess the progress of the institute in implementing this article.

(2) Appoint the director of the institute.

(3) Provide consultation and recommendations to the commissioner on the implementation of the grants program under IC 13-27-2-10 and pilot projects under IC 13-27-2-11.

(4) Provide a forum for discussion and deliberation on matters pertaining to the implementation of this article.

(5) Receive public complaints and inquiries concerning the implementation of this article.

(6) Periodically review grant proposals and the grants program operated under IC 13-27-2 and assess their effectiveness. An assessment of the grants program shall be incorporated into the report submitted by the institute under IC 13-27.5-2-9.

(7) Review the annual report submitted by the director.

(8) Direct the institute to cooperate with the department in the implementation of the grants program operated under IC 13-27-2-10 and the pilot projects under IC 13-27-2-11.

(9) Receive, expend, and account for state money made available for the purposes of this chapter.

(10) Apply for and accept gifts and grants, which must be administered as public money, made for the purposes of this chapter.

(11) Enter into lawful agreements as required as a condition for receiving gifts, grants, or other money for the purposes of this chapter.

(12) Approve the institute's proposed biennial budget request.

(13) Prepare and file with the budget agency a separate written statement required under IC 4-12-1-7 for each of the following:

(A) the board; and

(B) the institute.

(14) At public meetings concerning the budget, present in conjunction with the director and the university selected to establish and operate the institute, the biennial budget request of:

(A) the board; and

(B) the institute.

(15) Designate at least two (2) members of the board to participate in each meeting between the department and the institute regarding budget or policy decisions.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-11 ----- Clean manufacturing technology board: board directives to institute

The board, on the board's own initiative or at the request of the public, may direct the institute to study and formulate recommendations on particular issues and problems that arise concerning the implementation of this article.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-1-12 ----- Clean manufacturing technology board: addititional board directives to institute

The board may direct the institute to:

(1) conduct research studies and programs;

(2) collect and analyze data; and

(3) prepare reports, charts, and tables.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2. INDIANA CLEAN MANUFACTURING TECHNOLOGY AND SAFE MATERIALS INSTITUTE

IC 13-27.5-2-1 ------- Indiana clean manufacturing technology and safe materials institute: establishment

A university or nonprofit corporation located in Indiana shall establish and operate the Indiana clean manufacturing technology and safe materials institute under this article.

IC 13-27.5-2-2 ------- Indiana clean manufacturing technology and safe materials institute: selection of institute

(a) The board shall select a university or nonprofit corporation to establish the institute. A university or nonprofit corporation that:

(1) is located in Indiana; and

(2) submits an application to the board;

must be considered for selection under this section.

(b) The board's selection of a university or nonprofit corporation shall be based on an objective application of criteria relating to the suitability of the university or nonprofit corporation as the establishing entity and site for the institute. The board shall adopt guidelines:

(1) governing the application and selection process; and

(2) setting forth the criteria to be applied in making the selection.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-3 ------- Indiana clean manufacturing technology and safe materials institute: statement of services of institute

The university or nonprofit corporation selected to establish and operate the institute shall submit to the board a statement indicating the types of services, programs, and priorities related to pollution prevention that the institute will offer.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-4 ------- Indiana clean manufacturing technology and safe materials institute: biennial budget request

The university or nonprofit corporation selected to establish and operate the institute shall, in cooperation with the director, develop and submit to the board for approval the institute's biennial budget request.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-5 ------- Indiana clean manufacturing technology and safe materials institute: duties

(a) The institute:

(1) shall establish cooperative programs; and

(2) may contract duties authorized by the board;

with public and private colleges and universities designed to augment the implementation of this article. However, the institute shall maintain administrative and policy control over the work contracted under subdivision (2).

(b) The institute may establish fees, tuitions, or other financial charges for the programs of the institute.

(c) The institute shall do the following through the institute's programs:

(1) Develop and provide curriculum and training on clean manufacturing for:

(A) students and faculty;

(B) employees of the division;

(C) manufacturing managers; and

(D) employees of manufacturers.

(2) Engage in research, development, and demonstration of techniques and methods for clean manufacturing, including the following:

(A) An assessment of the impact of adopting the methods on the environment, public health, and work exposure.

(B) Assessments of the impact on profitability and employment within affected manufacturing companies and industries.

(3) Provide waste generators an opportunity to develop clean manufacturing plans.

(4) Develop methods to measure clean manufacturing progress at the plant level and the company level on the basis of reduction in waste generation and changes in toxic materials use relative to production output for specific wastes. This subdivision may not be construed to require a manufacturer to reveal the trade secrets of the manufacturer.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-6 ------- Indiana clean manufacturing technology and safe materials institute: programs for clean manufacturing planners

(a) The institute shall establish and operate a planning program for individuals who desire to be qualified as clean manufacturing planners. Public and private colleges and universities located in Indiana may establish and operate programs for qualifying clean manufacturing planners. To ensure consistent training procedures, the institute shall provide a curriculum plan for qualifying clean manufacturing planners to colleges and universities that do not operate the institute.

(b) The programs established under this section shall be designed to train auditors to be qualified to:

(1) assist manufacturers and manufacturer organizations in the development and implementation of the most up-to-date clean manufacturing techniques and practices; and

(2) prepare and review clean manufacturing plans referred to in IC 13-27.5-3.

(c) The institute shall qualify as a clean manufacturing planner an individual who has successfully completed a clean manufacturing planning program.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-7 ------- Indiana clean manufacturing technology and safe materials institute: developing techniques for assessing programs

The institute shall:

(1) assist governmental agencies, manufacturers, and manufacturer organizations in developing methods and measurement techniques for assessing progress in clean manufacturing per unit of output; and

(2) explore the development of personal computer software for these purposes.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-8 ------- Indiana clean manufacturing technology and safe materials institute: training of inspectors

If requested by the commissioner, the institute may assist in the training of inspectors and other key personnel employed by the division or the department in clean manufacturing concepts, methods, and technology.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-9 ------- Indiana clean manufacturing technology and safe materials institute: annual report

(a) Before January 1 of each year, the institute shall prepare and submit to:

(1) the governor;

(2) the board;

(3) the commissioner; and

(4) the general assembly;

a report on the institute's operations and activities under this chapter including the status, funding, and results of all projects.

(b) The report must do the following:

(1) Include recommendations the institute has for legislation.

(2) Identify state and federal economic and financial incentives that can best accelerate and maximize the research, development, demonstration, and support of clean manufacturing technologies and practices.

(3) Include an assessment by the institute of the grants program administered by the department under IC 13-27-2.

(4) Include a proposed work plan for the following year.

(5) Identify state and federal policies that may serve as disincentives to the adoption of clean manufacturing technologies and practices by manufacturers.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-10 ----- Indiana clean manufacturing technology and safe materials institute: coordination of activities

(a) The activities and policies of the institute must address specific problems involving a particular situation or condition affecting a manufacturer at production locations.

(b) The activities of the institute must be coordinated with the activities of other public and private programs that provide managerial and technical assistance to manufacturers, including programs operated by public and private educational institutions. The institute may make grants to public or private persons or associations to establish and operate elements of the program or to advance the goals of the institute's program.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-11 ----- Indiana clean manufacturing technology and safe materials institute: memorandum of understanding

The:

(1) board;

(2) institute; and

(3) department;

may enter into a written memorandum of understanding describing the responsibilities of the board, the institute, and the department in coordinating grants under IC 13-27-2-10 and pilot projects under IC 13-27-2-11.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-12 ----- Indiana clean manufacturing technology and safe materials institute: provision of experts

(a) The institute may provide experts for:

(1) onsite technical assistance;

(2) economic advice; and

(3) other managerial advice;

to manufacturers and industries needing assistance, including advice on planning for clean manufacturing and advice on clean manufacturing audits.

(b) The institute may assist a manufacturer as provided in subsection (a) to implement inprocess recycling techniques that involve onsite recycling processes that:

(1) return a potential environmental waste directly to a production unit from which the waste originated using mechanical means that are an integral part of the production unit of concern;

(2) are based on the production schedule of the production unit of concern; and

(3) are consistent with accepted engineering practices.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-13 ----- Indiana clean manufacturing technology and safe materials institute: studies

(a) The institute may conduct and publish studies regarding development and implementation of national, state, and local governmental policies and programs concerning the following:

(1) Clean manufacturing.

(2) Related policies and programs.

(b) Studies conducted under this section must review activities described in section 7 of this chapter by addressing the following:

(1) Clarity and scope of definitions used in a policy.

(2) Institutional features of a program.

(3) Key policy instruments used to implement a policy or program, including the following:

(A) Information policy concerning the following:

(i) Chemical usage and waste data and data on industry location and characteristics.

(ii) Economic, organizational, and technological characteristics and dynamics of manufacturers or other institutions.

(B) Analytic policy concerning assessment of diffusion and innovation of clean manufacturing technologies and strategies, including those involving reducing the use of toxics.

(C) Education and assistance policy activities concerning the following:

(i) Outreach programs.

(ii) Training programs.

(iii) University based programs.

(iv) Analysis of planning requirements.

(v) Other similar activities.

(D) Economic policy activities concerning positive and negative economic incentives and disincentives for clean manufacturing.

(E) Regulatory policy activities concerning regulatory intervention designed to achieve expeditious or more comprehensive industrial clean manufacturing, including the following:

(i) Clean manufacturing regulatory review.

(ii) Regulatory concessions for reducing the use of toxics.

(iii) Expanded regulatory coverage of harmful materials.

(iv) Enhanced enforcement.

(4) Program funding.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-14 ----- Indiana clean manufacturing technology and safe materials institute: multimedia programs

The institute shall:

(1) conduct studies to identify problems encountered by manufacturers and governments attempting to implement multimedia clean manufacturing or related programs; and

(2) recommend policies and programs to address these problems.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-15 ----- Indiana clean manufacturing technology and safe materials institute: additional institute authority

(a) The institute may do the following:

(1) Establish programs for the study of private and nongovernmental clean manufacturing or related initiatives, proposals, and programs.

(2) Review and assess national and international clean manufacturing technology innovation and diffusion.

(3) Develop and promote involvement in studies concerning aspects of clean manufacturing that have an effect on changing institutions and values.

(4) Recommend clean manufacturing policy instruments and concepts.

(5) Develop curriculum to be used in elementary and secondary school programs.

(6) Establish and operate a state information clearinghouse for clean manufacturing to do the following:

(A) Promote clean manufacturing statewide among all industries and companies.

(B) Assist in obtaining information on the progress of multimedia reduction of environmental wastes and related environmental policies and programs.

(b) The institute shall permit and facilitate free use of data gathered under subsection (a) by manufacturers, governmental agencies, and the general public. A manufacturer may not be required to submit information of a proprietary nature to the clearinghouse.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-2-16 ----- Indiana clean manufacturing technology and safe materials institute: public release of information

(a) Except as provided in subsection (c), the institute shall make any:

(1) study;

(2) report;

(3) assessment; or

(4) analysis;

prepared by the institute under sections 11 through 13 of this chapter available to the public.

(b) The institute may provide any document described in subsection (a):

(1) free of charge; or

(2) at a reduced charge;

to a person that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(c) The institute may not make information concerning a particular manufacturer available to the public through:

(1) a study;

(2) a report;

(3) an assessment; or

(4) an analysis;

conducted under sections 11 through 13 of this chapter unless the manufacturer has provided the institute written approval for the public release of the information.
[As added by: P.L.124-1997, §22.]

IC 13-27.5-3. MULTIMEDIA CLEAN MANUFACTURING PLANS

IC 13-27.5-3-1. Multimedia clean manufacturing plans: development encouraged

The Indiana clean manufacturing technology and safe materials institute established under this article shall encourage manufacturers to develop multimedia clean manufacturing plans.
[As added by: P.L.124-1997, §22.]

IC 13-27.5-3-2. Multimedia clean manufacturing plans: technical assistance manual

The institute shall develop a technical assistance manual for clean manufacturing planning. The manual shall be designed to provide criteria to assist manufacturers in the preparation of multimedia clean manufacturing plans. The manual must provide assistance in the following clean manufacturing actions:

(1) Identification of the types and quantities of the toxic materials that:

(A) enter or exit each production process, operation, storage area, product, and pollution control system at the facility; or

(B) are transported from the facility as a waste or in a waste;

presented in the form of a mass balance calculation.

(2) Assessment of the applicability, for each production process or operation in which a toxic material is used, of each of the following approaches for clean manufacturing and reduction in the use of toxic materials:

(A) Input change, which refers to replacing a toxic material used in a production unit with a nontoxic or less toxic material.

(B) Product reformulation, which refers to changing the design, specification, or composition of an existing end product to reduce the need for toxic materials.

(C) Production process redesign, which refers to:

(i) developing or using production units of a different design or type; or

(ii) upgrading, modernizing, or renovating production unit equipment;

to reduce the need for toxic materials.

(D) Operational improvement, which refers to techniques such as:

(i) improved housekeeping practices;

(ii) system adjustments;

(iii) product and process inspections; and

(iv) the use of production unit control equipment or methods.

[As added by: P.L.124-1997, §22.]

IC 13-27.5-3-3. Multimedia clean manufacturing plans: additional requirements for technical assistance manual

(a) The manual developed by the institute under this chapter:

(1) may only address clean manufacturing; and

(2) must encourage a manufacturer that is preparing a multimedia clean manufacturing plan to consider the feasibility of all of the following options:

(A) Input change.

(B) Product reformulation.

(C) Production process change.

(D) Operational improvement.

(b) The manual developed under this chapter must state that recycling is not a means of clean manufacturing.

[As added by: P.L.124-1997, §22.]

TITLE 13. ENVIRONMENT
IC 13-28. TECHNICAL ASSISTANCE AND VOLUNTARY COMPLIANCE

IC 13-28-1. OFFICE OF VOLUNTARY COMPLIANCE

IC 13-28-1-1 --------- Office of voluntary compliance: established

An office of voluntary compliance is established within the department.

[As added by: P.L.1-1996, §18.]

IC 13-28-1-2 --------- Office of voluntary compliance: purpose

The purpose of the office is the following:

(1) To assist regulated entities in achieving regulatory compliance.

(2) To promote cooperation between the department and regulated entities.

[As added by: P.L.1-1996, §18.]

IC 13-28-1-3 --------- Office of voluntary compliance: boards may adopt rules

Each of the regulatory boards within the department may adopt rules under IC 4-22-2 as required to implement the compliance program described in this article.

[As added by: P.L.1-1996, §18.]

IC 13-28-2. VOLUNTARY COMPLIANCE FUND

IC 13-28-2-1 --------- Voluntary compliance fund: established; purpose of fund

The voluntary compliance fund is established for the purpose of providing money for the following:

(1) Starting, operating, and staffing the office of voluntary compliance established by IC 13-28-1-1.

(2) Costs of voluntary compliance programs established under this article.

[As added by: P.L.1-1996, §18.]

IC 13-28-2-2 --------- Voluntary compliance fund: administration of fund

(a) The treasurer of state shall administer the fund.

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

[As added by: P.L.1-1996, §18.]

IC 13-28-2-3 --------- Voluntary compliance fund: sources of fund

The fund consists of the following:

(1) Transfers under IC 13-10-1-6 (repealed) from the environmental management special fund established by IC 13-14-12-1.

(2) Appropriations made by the general assembly.

(3) Gifts and donations intended for deposit in the fund.

(4) Federal grants or money available for deposit into the fund.

[As added by: P.L.1-1996, §18.]

IC 13-28-2-4 --------- Voluntary compliance fund: duties of treasurer; fund nonreverting

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

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

[As added by: P.L.1-1996, §18.]

IC 13-28-2-5 --------- Voluntary compliance fund: appropriation

Money in the fund is appropriated to the department to carry out the purposes specified in section 1 of this chapter. Money appropriated under this section is not subject to allotment by the budget agency.

[As added by: P.L.1-1996, §18.]

IC 13-28-3. TECHNICAL AND COMPLIANCE ASSISTANCE PROGRAM

IC 13-28-3-1 --------- Technical and compliance assistance program: IDEM to establish

The department shall establish a technical and compliance assistance program.

[As added by: P.L.1-1996, §18.]

IC 13-28-3-2 --------- Technical and compliance assistance program: responsibilities of program

(a) The assistance program established under this chapter shall do the following:

(1) Designate an individual to serve as a liaison and ombudsman to the regulated community to assist the regulated community with specific regulatory or permit matters pending with the department.

(2) Provide assistance to new and existing businesses and small municipalities in identifying:

(A) applicable environmental rules and regulations; and

(B) permit requirements;

that apply to new and existing businesses and small municipalities.

(3) Develop and distribute educational materials regarding:

(A) environmental requirements;

(B) compliance methods;

(C) voluntary environmental audits;

(D) pollution control technologies; and

(E) other compliance issues;

including standardized forms and procedures for completing permit applications.

(4) Provide public outreach and training sessions in cooperation with representatives of the business and municipal communities regarding existing and future state and federal environmental requirements.

(5) Develop and operate a clearinghouse to respond to inquiries from businesses and municipalities concerning applicable environmental rules, regulations, and requirements.

(6) Provide technical assistance concerning pollution control techniques to local and state governmental entities and businesses and distribute educational materials regarding pollution prevention developed by the pollution prevention division established by IC 13-27-2-1.

(7) Provide administrative and technical support for the compliance advisory panel established by section 6 of this chapter.

(8) Conduct other activities as required to:

(A) improve regulatory compliance; and

(B) promote cooperation and assistance in meeting environmental requirements.

(b) The assistance program may establish limited onsite assistance to provide compliance information to a small business or small municipality, subject to the confidentiality provisions of section 4 of this chapter. The assistance program may use money from the environmental management special fund to implement this subsection. The assistance program may limit the number of inspections per year and restrict onsite assistance to specific programs.

[As added by: P.L.1-1996, §18.]

IC 13-28-3-3 --------- Technical and compliance assistance program: annual report

(a) The department shall prepare an annual report of the activities conducted under this chapter.

(b) The annual report must include the following:

(1) The number and types of inquiries the program received.

(2) The services provided by the program.

(c) The annual report shall be distributed to the following:

(1) The governor.

(2) The environmental quality service council.

[As added by: P.L.1-1996, §18.]

IC 13-28-3-4 --------- Technical and compliance assistance program: confidentiality

Inquiries made to the program and activities and documents of the program that identify or describe an individual facility or operation are confidential, unless a clear and immediate danger to the public health or environment exists. Information concerning inquiries, activities, and documents of the program that identify or describe an individual facility or operation may not be made available for use by other divisions of the department without the consent of the person who:

(1) made the inquiry;

(2) participated in the activity; or

(3) provided the document.

[As added by: P.L.1-1996, §18.]

IC 13-28-3-5 --------- Technical and compliance assistance program: contracting for services

The department may contract with another entity to provide some or all of the services required by this chapter.

[As added by: P.L.1-1996, §18.]

IC 13-28-3-6 --------- Technical and compliance assistance program: compliance advisory panel established

(a) The compliance advisory panel is established to carry out the duties established under Section 507 of the federal Clean Air Act (42 U.S.C. 7661f). The panel consists of seven (7) members designated and appointed as follows:

(1) Two (2) members appointed by the governor who are not owners or representatives of owners of small business stationary sources to represent the public.

(2) Four (4) members of the general assembly who are owners of or who have an interest in small business stationary sources, including:

(A) two (2) members appointed by the president pro tempore of the senate with the advice of the minority leader of the senate; and

(B) two (2) members appointed by the speaker of the house of representatives with the advice of the minority leader of the house of representatives.

(3) One (1) member appointed by the commissioner.

(b) The following restrictions apply to political party membership of panel members appointed under subsection (a):

(1) The two (2) members of the senate appointed to the panel may not be members of the same political party.

(2) The two (2) members of the house of representatives appointed to the panel may not be members of the same political party.

(c) The terms of the members of the panel are as follows:

(1) Except as provided in subdivision (3), the term of a member appointed to the panel by the senate or house of representatives expires upon the expiration of the term the member is serving in the senate or house of representatives when the member was appointed to the panel.

(2) Except as provided in subdivision (3), the term of a member appointed to the panel by the governor or the commissioner is four (4) years.

(3) The term of a member appointed to the panel who is a member of the senate or house of representatives continues until the member's successor to the panel is appointed.

(d) A vacancy on the panel for a position under subsection (a) shall be filled through appointment by the appointing authority. An appointment under this subsection is for the remainder of the unexpired term.

(e) Per diem and expenses for members of the panel are as follows:

(1) A member of the panel appointed under subsection (a)(1) who is not a state employee is entitled to receive:

(A) the minimum salary per diem provided by IC 4-10-11-2.1(b); and

(B) reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(2) A member of the panel appointed under subsection (a)(2) is entitled to receive the same per diem, mileage, and travel allowances paid to a member of the general assembly serving on an interim study committee established by the legislative council.

(3) A member of the panel appointed under subsection (a)(3) serves on the panel without additional compensation.

(f) The chairman of the legislative council shall appoint a legislative member of the compliance advisory panel to serve as chairman of the panel. The individual appointed under this subsection serves at the pleasure of the chairman of the legislative council.

[As added by: P.L.1-1996, §18.]

IC 13-28-4. VOLUNTARY ENVIRONMENTAL AUDITS

IC 13-28-4-1 --------- Voluntary environmental audits: privilege; applicability

(a) The privilege created by this section does not apply to criminal investigations or proceedings. Environmental audit reports are admissible in criminal investigations or proceedings.

(b) Except as provided in section 2 of this chapter, an environmental audit report:

(1) is privileged; and

(2) is not admissible as evidence in a civil or an administrative legal action, including enforcement actions under IC 13-30-3.

[As amended by: P.L.224-1999, §12.]

IC 13-28-4-2 --------- Voluntary environmental audits: basis for compelling disclosure in non-criminal proceeding

(a) In a civil or an administrative proceeding, a court of record, after an in camera review, shall require disclosure of material for which the privilege described in section 1 of this chapter is asserted if the court determines that both subdivisions (1) and (2) apply:

(1) The environmental audit report was first issued after July 1, 1994.

(2) One (1) of the following applies:

(A) The privilege is asserted for a fraudulent purpose.

(B) The material is not subject to the privilege.

(C) The material is subject to the privilege and the material shows evidence of noncompliance with:

(i) this title or a rule or standard adopted by one (1) of the boards;

(ii) a determination, a permit, or an order issued by the commissioner under this title; or

(iii) the federal, regional, or local counterpart of item (i) or (ii);

and the person claiming the privilege did not promptly initiate and pursue appropriate efforts to achieve compliance with reasonable diligence.

(b) If the noncompliance described in subsection (a)(2)(C) constitutes a failure to obtain a required permit, the person is considered to have made appropriate efforts to achieve compliance if the person filed an application for the required permit not later than ninety (90) days after the date the person became aware of the noncompliance.

[As added by: P.L.1-1996, §18.]

IC 13-28-4-4 --------- Voluntary environmental audits: burden of proof

(a) A party asserting the privilege described in section 1 of this chapter has the burden of proving that the party may exercise the privilege.

(b) A party asserting the privilege described in section 1 of this chapter has the burden of establishing evidence that the person made appropriate efforts to achieve compliance as described in section 2(b) of this chapter if the evidence indicates that the person was in noncompliance as described in section 2(a)(2)(C) of this chapter.

(c) A party seeking disclosure of material in an environmental audit report under section 2(a)(2)(A) of this chapter has the burden of proving that the privilege is being asserted for a fraudulent purpose.

[As amended by: P.L.224-1999, §13.]

IC 13-28-4-6 --------- Voluntary environmental audits: relevance required

Upon making a determination under section 2 of this chapter, the court may compel the disclosure of only those parts of an environmental audit report that are relevant to issues in dispute in the proceeding.

[As amended by: P.L.224-1999, §14.]

IC 13-28-4-7 --------- Voluntary environmental audits: waiver

(a) Subject to subsections (b) and (c), the privilege described in section 1 of this chapter does not apply to the extent that the privilege is waived:

(1) expressly; or

(2) by implication;

by the owner or operator who prepared the environmental report or caused the report to be prepared.

(b) A party that submits an environmental audit report to the department waives any privilege to which the party would otherwise be entitled under this chapter. If the department determines under IC 5-14-3-4(a) that part of an environmental audit report is excepted

from IC 5-14-3-3, then that part of the environmental audit report may not be disclosed by a public agency unless access to the report is required by a state or federal statute or is ordered by a court as provided under IC 5-14-3-4(a).

(c) When the department or a prosecuting attorney obtains, reviews, or uses an environmental audit report in a criminal proceeding, the administrative or civil evidentiary privilege created by this chapter is not waived or eliminated for any other purpose.

[As amended by: P.L.224-1999, §15.]

IC 13-28-4-8 --------- Voluntary environmental audits: stipulations

The parties to a legal action may at any time stipulate to the entry of an order that directs that specific information contained in an environmental audit report is or is not subject to the privilege provided under section 1 of this chapter.

[As added by: P.L.1-1996, §18.]

IC 13-28-4-9 --------- Voluntary environmental audits: limitations

(a) The privilege described in section 1 of this chapter does not apply to the following:

(1) Documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to a regulatory agency under:

(A) this title;

(B) a rule or standard adopted under this title;

(C) a determination, a permit, or an order made or issued by the commissioner under this title; or

(D) any other federal, state, or local law, permit, or order.

(2) Information obtained by observation, sampling, or monitoring by any regulatory agency.

(3) Information obtained from a source independent of the environmental audit.

(b) This section does not allow the regulatory agency to adopt a rule or a permit condition for the purpose of circumventing the privilege established in this chapter by requiring disclosure of a report of a voluntarily conducted audit.

[As added by: P.L.1-1996, §18.]

IC 13-28-4-10 -------- Voluntary environmental audits: disclaimer

This chapter does not limit, waive, or abrogate the scope or nature of any statutory or common law privilege, including the following:

(1) The work product doctrine.

(2) The attorney client privilege.

[As added by: P.L.1-1996, §18.]

IC 13-28-4-11 -------- Voluntary environmental audits: IDEM responsibilities

(a) The department shall maintain statistics on the use of environmental audit reports in department compliance and enforcement activities, including statistics on:

(1) the number of times the reports are disclosed to the department;

(2) the number and types of violations disclosed to the

department through the reports;

(3) the civil penalties collected for the violations; and

(4) the time necessary for the violations to be corrected.

The department shall report annually to the environmental quality service council on the use of environmental audit reports.

(b) The department shall propose an enforcement policy, pursuant to IC 13-14-1-11.5, that provides relief from civil penalties for a voluntary disclosure that results from an inter-

nal environmental audit. In developing this enforcement policy, the department shall consider similar policies implemented by:

(1) the United States Environmental Protection Agency; and

(2) states contiguous to Indiana.

(c) The department shall report annually to the environmental quality service council on the use and effectiveness of the enforcement policy.

[As added by: P.L.224-1999, §16.]

IC 13-28-5. SMALL BUSINESS STATIONARY SOURCE TECHNICAL ASSISTANCE PROGRAM

IC 13-28-5-1 --------- Small business stationary source technical assistance program: establishment of

The department shall establish a small business stationary source technical assistance program as required under Section 507 of the federal Clean Air Act (42 U.S.C. 7661f).

[As added by: P.L.1-1996, §18.]

IC 13-28-5-2 --------- Small business stationary source technical assistance program: responsibilities of program

The program must provide the following:

(1) Education, training, and information on permit and compliance requirements of the federal Clean Air Act (42 U.S.C. 7401 et seq.).

(2) Standardized forms and procedures for completing permit applications.

(3) An ombudsman for small businesses.

[As added by: P.L.1-1996, §18.]

IC 13-28-5-3 --------- Small business stationary source technical assistance program: role of ombudsman

The ombudsman described in section 2 of this chapter shall assist as necessary each small business that applies for assistance with the following:

(1) Specific regulatory matters pending before the department.

(2) Permit applications.

[As added by: P.L.1-1996, §18.]

IC 13-28-5-4 --------- Small business stationary source technical assistance program: to be part of the technical and compliance assistance program

The department may establish the technical and environmental compliance assistance program required by this chapter as part of the technical and compliance assistance program established under IC 13-28-3.

[As added by: P.L.1-1996, §18.]

TITLE 13. ENVIRONMENT
IC 13-29. INTERSTATE COMPACTS

IC 13-29-1. MIDWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

IC 13-29-1-1 --------- Midwest interstate compact on low-level radioactive waste: policy and purpose

ARTICLE I. POLICY AND PURPOSE

There is created the Midwest Interstate Low-Level Radioactive Waste Compact.

The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b to 42 U.S.C. 2021j), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the Congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low-level radioactive waste is handled most efficiently on a regional basis; and, that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

a. It is the policy of the party states to enter into a regional low-level radioactive waste disposal compact for the purpose of:

1. Providing the instrument and framework for a cooperative effort;
2. Providing sufficient facilities for the proper disposal of low-level radioactive waste generated in the region;
3. Protecting the health and safety of the citizens of the region;
4. Limiting the number of facilities required to effectively and efficiently dispose of low-level radioactive waste generated in the region;
5. Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;
6. Ensuring that the costs, expenses, liabilities, and obligations of low-level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;
7. Ensuring that the obligations of low-level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;
8. Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low-level radioactive waste; and
9. Ensuring the environmentally sound, economical, and secure disposal of low-level radioactive wastes.

b. Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. expeditious enforcement of federal rules, regulations and laws;
2. imposition of sanctions against those found to be in violation of federal rules, regulations and laws; and
3. timely inspection of their licensees to determine their compliance with these rules, regulations and laws.

[As amended by: P.L.131-1996, §2.]

IC 13-29-1-2 --------- Midwest interstate compact on low-level radioactive waste: definitions

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "care" means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. "close", "closed", or "closing" means that the compact facility with respect to which any of those terms is used has ceased to accept waste for disposal. "Permanently closed" means that the compact facility with respect to which the term is used has ceased to accept waste because it has operated for twenty years or a longer period of time as authorized by Article VI(i) of this compact, its capacity has been reached, the Commission has authorized it to close pursuant to Article III(h)(7) of this compact, the host state of such facility has withdrawn from the compact or had its membership revoked, or this compact has been dissolved.

c. "commission" means the Midwest Interstate Low-Level Radioactive Waste Commission.

d. "compact facility" means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the Commission.

e. "development" includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of such a facility to fulfill its obligations as a host state.

f. "disposal," with regard to low-level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States Nuclear Regulatory Commission or the licensing agreement state.

g. "disposal plan" means the plan adopted by the Commission for the disposal of waste within the region.

h. "facility" means a parcel of land or site, together with the structures, equipment and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low-level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

i. "final decision" means a final action of the Commission determining the legal rights, duties, or privileges of any person. "Final decision" does not include preliminary, procedural, or intermediate actions by the Commission, actions regulating the internal administration of the Commission, or actions of the Commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the Commission.

j. "generator" means a person who first produces low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research, or other industrial or commercial activity. If the person who first produced an item or quantity of waste cannot be identified, "generator" means the person first possessing the waste who can be identified.

k. "host state" means any state which is designated by the Commission to host a compact facility or has hosted a compact facility.

l. "long-term care" means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

m. "low-level radioactive waste" or "waste" means radioactive waste that is not classi-

fied as high-level radioactive waste and that is class A, B, or C low-level radioactive waste as defined in 10 CFR 61.55, as that section existed on January 26, 1983. "Low-level radioactive waste" or "waste" does not include any such radioactive waste that is owned or generated by the United States Department of Energy; by the United States Navy as a result of the decommissioning of its vessels; or as a result of any research, development, testing, or production of any atomic weapon.

n. "operates", "operational", or "operating" means that the compact facility with respect to which any of those terms is used accepts waste for disposal.

o. "party state" means any eligible state that enacts this compact into law, pays any eligibility fee established by the Commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked again becomes a party state if it is readmitted to membership in this compact pursuant to Article VIII(a) of this compact. "Party state" includes any host state. "Party state" also includes any statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

p. "person" means any individual, corporation, association, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. "Person" also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

q. "region" means the area of the party states.

r. "site" means the geographic location of a facility.

s. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

t. "storage" means the temporary holding of waste.

u. "treatment" means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

v. "waste management", "manage waste", "management of waste", "management", or "managed" means the storage, treatment, or disposal of waste.

[As amended by: P.L.131-1996, §3.]

IC 13-29-1-3 --------- Midwest interstate compact on low-level radioactive waste: the commission

ARTICLE III. THE COMMISSION

a. There is created the Midwest Interstate Low-Level Radioactive Waste Commission. The Commission consists of one voting member from each party state. The Governor of each party state shall notify the Commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each Commission member shall be the responsibility of the member's respective state.

b. Each Commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the Commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the Commission how to vote or not vote on matters before the Commission.

c. The Commission shall elect annually from among its members a chairperson. The Commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under Article VI(o) of this compact and procedures which substantially conform with the provisions of the Federal Administrative Procedure Act (5 U.S.C. ss. 500 to 559) in regard

to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The Commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other Commission member.

e. All meetings of the Commission shall be open to the public with reasonable advance notice. The Commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all Commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The Commission may establish advisory committees for the purpose of advising the Commission on any matters pertaining to waste management.

g. The office of the Commission shall be in a party state. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the Commission in its bylaws. The staff shall serve at the Commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the Commission.

h. The Commission may do any or all of the following:

1. Appear as an intervenor or party in interest before any court of law or any federal, state or local agency, board or commission in any matter related to waste management. In order to represent its views, the Commission may arrange for any expert testimony, reports, evidence or other participation.
2. Review any emergency closing of a compact facility, determine the appropriateness of that closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.
3. Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.
4. Approve the disposal of naturally occurring and accelerator produced radioactive material at a compact facility. The Commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the Commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may, at any time, rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator produced radioactive material that has been approved for disposal at a compact waste facility pursuant to Article III(h)(4) of this compact.
5. Enter into contracts in order to perform its duties and functions as provided in this compact.
6. When approved by the Commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:
   a. Import for disposal within the region, waste generated outside the region.
   b. Export for disposal outside the region, waste generated inside the region.
   c. Dispose of waste generated within the region at a facility within the region that is not a compact facility.
7. Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by Article VI(i) of this compact. Such a closing requires the affirmative vote of a majority of the Commission,

including the affirmative vote of the member from the state in which the affected compact facility is located.

i. The Commission shall do all of the following:

1. Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the Commission.
2. Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to Article IV of this compact a regional disposal plan which designates host states for the establishment of needed compact facilities.
3. Adopt an annual budget.
4. Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive characteristics, or both, of the waste to be disposed of at the facility during the period set forth in Article VI(i) of this compact.
5. Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.
6. Establish and implement procedures for making payments from the remedial action fund provided for in Article III(p) of this compact.
7. Establish and implement procedures to investigate any complaint joined in by two or more party states regarding another party state's performance of its obligations under this compact.
8. Adopt policies promoting source reduction and the environmentally sound treatment of waste in order to minimize the amount of waste to be disposed of at compact facilities.
9. Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling, and treatment of waste.
10. Prepare annual reports regarding the volume and characteristics of waste projected to be disposed of at compact facilities.

j. Funding for the Commission shall be provided as follows:

1. When no compact facility is operating, the Commission may assess fees to be collected from generators of waste in the region. The fees shall be reasonable and equitable. The Commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.
2. When a compact facility is operating, funding for the Commission shall be provided through a surcharge collected by the host state as part of the fee system provided for in Article VI(j) of this compact. The surcharge to be collected by the host state shall be determined by the Commission and shall be reasonable and equitable.
3. In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:
   a. cover the annual budget of the Commission;
   b. provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility;

c. provide moneys for deposit in the remedial action fund established pursuant to Article III(p) of this compact; and

d. provide moneys to be added to an inadequately funded long-term care fund as provided in Article VI(o) of this compact.

k. Financial statements of the Commission shall be prepared according to generally accepted accounting principles. The Commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the Commission. The audit report shall be made a part of the annual report of the Commission required by Article III of this compact.

l. The Commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof) or interstate agency, or from any institution, person, firm, or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the Commission together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

m. The Commission is a legal entity separate and distinct from the party states. Members of the Commission and its employees are not personally liable for actions taken by them in their official capacity. The Commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the Commission under Article III(h)(6) of this compact. Nothing in Article III(m) of this compact relieves the Commission of its obligations under Article III of this compact or under contracts to which it is a party. Any liabilities of the Commission are not liabilities of the party states.

n. Final decisions of the Commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

1. Every final decision shall be made at an open meeting of the Commission. Before making a final decision, the Commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the Commission's reasons for making the decision.

2. Before making a final decision, the Commission may conduct an adjudicatory hearing on the proposed decision.

3. Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the Commission's office is located not later than sixty days after issuance of the Commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the Commission. Within five days after receiving a copy of the petition, the Commission shall mail a copy of it to each party state and to all other persons who have notified the Commission of their desire to receive copies of such petitions. Any failure of the Commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in Article III(n)(3) of this compact, standing to obtain judicial review of final decisions of the Commission and the form and scope of the review are subject to and governed by 5 U.S.C.A. 706.

4. If a party state seeks judicial review of a final decision of the Commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

a. Imposes financial penalties on a party state.

b. Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the Commission under Article

III(h)(6) of this compact.

c. Terminates the designation of a party state as a host state.

d. Revokes the membership of a party state in this compact.

e. Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under Article VIII(e) of this compact.

Any such trial de novo of the facts shall be governed by the federal Rules of Civil Procedure and the federal Rules of Evidence.

5. Preliminary, procedural, or intermediate actions by the Commission that precede a final decision are subject to review only in conjunction with review of the final decision.

6. Except as provided in Article III(n)(5) of this compact, actions of the Commission that are not final decisions are not subject to judicial review.

o. Unless approved by a majority of the Commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

1. Import waste generated outside the region for management within the region.

2. Export waste generated within the region for disposal outside the region.

3. Manage waste generated outside the region at a facility within the region.

4. Dispose of waste generated within the region at a facility within the region that is not a compact facility.

p. The Commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long-term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the Commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to so notify the Commission does not limit the rights of the party state under Article III(p) of this compact.

If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under Article VII(g) of this compact. Generators who provide the required indemnification have the rights of contribution provided in Article VII(g) of this compact. Article III(p) of this compact applies to any remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

q. If the Commission makes payment from the remedial action fund provided for in Article III(p) of this compact, the Commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Such reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

r. If this compact is dissolved, all moneys held by the Commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Any remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

[As amended by: P.L.131-1996, §4.]

IC 13-29-1-4 --------- Midwest interstate compact on low-level radioactive waste: regional disposal plan

ARTICLE IV. REGIONAL DISPOSAL PLAN

The Commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of waste generated within the region. In adopting a regional waste disposal plan, the Commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which are projected to be necessary to dispose of waste generated within the region.

b. Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the Commission shall consider all of the following:

1. The health, safety, and welfare of the citizens of the party states.
2. The existence of compact facilities within each party state.
3. The minimization of waste transportation.
4. The volumes and types of wastes projected to be generated within each party state.
5. The environmental impacts on the air, land and water resources of the party states.
6. The economic impacts on the party states.

c. Conduct such hearings, and obtain such reports, studies, evidence and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility.

d. Prepare a draft disposal plan and any update thereof, including procedures, criteria, and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the Commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the Commission's response to public and party state comment. *[As amended by: P.L.131-1996, §5.]*

IC 13-29-1-5 --------- Midwest interstate compact on low-level radioactive waste: rights and obligations of party states

ARTICLE V. RIGHTS AND OBLIGATIONS OF PARTY STATES

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Except for waste attributable to radioactive material or waste imported into the region in order to render the material or waste amenable to transportation, storage, disposal, or recovery, or in order to convert the waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under Article VI(j) of this compact and to the provisions contained in Articles VI(l), VI(s), VIII(d), IX(d), and X of this compact. All party states have an equal right of access to any facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, subject to the provisions of Articles VI(l), VI(s), VIII(d), and X of this compact.

c. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the Commission under Article III(h)(6) of this compact, is suspended, no waste generated within its borders by any person shall be disposed of at any such facility during the period of the suspension.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this section shall be

construed to require a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission.

e. Each party state shall provide to the Commission any data and information the Commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the Commission.

f. If, notwithstanding the sovereign immunity provision in Article VII(f)(1) and the indemnification provided for in Articles III(p), VI(o), and VII(g) of this compact, a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in Article VII(f)(1) and not described in Article VII(f)(2) of this compact, the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had its membership in this compact revoked. The Commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

The pro rata obligations provided for in Article V(f) of this compact do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

g. If the party states make payment pursuant to Article V(f) of this compact, the surcharge or fee provided for in Article III(j) of this compact shall be used to collect the funds necessary to reimburse the party states for those payments. The Commission shall determine the time period over which reimbursement shall take place.

[As amended by: P.L.131-1996, §6.]

IC 13-29-1-6 --------- Midwest interstate compact on low-level radioactive development, operation and closing of compact facilities

ARTICLE VI. DEVELOPMENT, OPERATION, AND CLOSING OF COMPACT FACILITIES

a. Any party state may volunteer to become a host state, and the Commission may designate that state as a host state.

b. If not all compact facilities required by the regional disposal plan are developed pursuant to Article VI(a) of this compact, the Commission may designate a host state.

c. After a state is designated a host state by the Commission, it is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in Article VI(c) of this compact. The obligation set forth in Article VI(c) of this compact is contingent upon the discharge by the Commission of its obligation set forth in Article III(i)(5) of this compact.

d. If a party state designated as a host state fails to discharge the obligations imposed upon it by Article VI(c) of this compact, its host state designation may be terminated by a two-thirds vote of the Commission with the member from the host state of any then operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of Article VIII(d) of this compact.

e. Any party state designated as a host state may request the Commission to relieve that state of the responsibility to serve as a host state. Except as set forth in Article VI(d) of this compact, the Commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the Commission that are consistent with any applicable federal criteria, no feasible potential compact facility site exists within its borders. A party state relieved of its host state responsibility shall repay to the Commission any funds provided to that state by the Commission for the devel-

opment of a compact facility, and also shall pay to the Commission the amount the Commission determines is necessary to ensure that the Commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the Commission with respect to the financial loss of the other party states shall be distributed forthwith by the Commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay to the Commission, for deposit in the remedial action fund, an amount the Commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

f. The host state shall select the technology for the compact facility. If requested by the Commission, information regarding the technology selected by the host state shall be submitted to the Commission for its review. The Commission may require the host state to make changes in the technology selected by the host state if the Commission demonstrates that the changes do not decrease the protection of air, land, and water resources and the health and safety of all people who may be affected by the facility. If requested by the host state, any Commission decision requiring the host state to make changes in the technology shall be preceded by an adjudicatory hearing in which the Commission shall have the burden of proof.

g. A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close, or provide long-term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the contractor for any costs, liabilities, and expenses incurred by the host state resulting from the development, construction, operation, closing, or long-term care of a compact facility.

h. To the extent permitted by federal and state law, a host state shall regulate and license any facility within its borders and ensure the long-term care of that facility.

i. A host state shall accept waste for disposal for a period of twenty years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the Commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by Article VI(l)(4) of this compact, the twenty year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the Commission.

j. A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the Commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility including, but not limited to, operation, closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. The fee system also shall be used to collect the surcharge provided in Article III(j)(2) of this compact. The fee system shall include incentives for source reduction and shall be based on the hazard of the waste as well as the volume.

k. A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

l. The development of subsequent compact facilities shall be as follows:

1. No compact facility shall begin operating until the Commission designates the host state of the next compact facility.
2. The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

a. Within three years, enact legislation providing for the development of the next compact facility.

b. Within seven years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

c. Within eleven years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

If a host state fails to take any of these actions within the specified time, all waste generated by any person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the action is taken. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of Articles VI(d) and VIII(d) of this compact.

3. Within fourteen years after any compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to Articles VI(d) and VIII(d) of this compact. In addition, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under Article VI(i) of this compact shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, until the license is obtained. Denial of access may be rescinded by the Commission, with the member from the host state of the then operating compact facility voting in the affirmative.

4. If twenty years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to Articles VI(d) and VIII(d) of this compact. If at the time the capacity of the then operating compact facility has been reached, or twenty years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, without the consent of any other party state or the Commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. In addition, during such period, at the sole option of the host state of the then operating compact facility, all waste generated by any person within any party state that has not fully discharged its obligations under Article VI(i) of this compact shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the

affirmative. The provisions of Article VI(l)(4) of this compact shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the Commission as authorized in Article VI(i) of this compact, or inconsistent with Article VI(p) or (q) of this compact.

5. During any period that access is denied for waste disposal pursuant to Article VI(l)(2), (3), or (4) of this compact, the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the Commission determines is reasonably necessary to ensure that the host state, or any agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

6. The Commission may modify any of the requirements contained in Articles VI(l)(2) and (3) of this compact if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The Commission may adopt such a finding by a two-thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land and water resources and the health and safety of all people who may be affected by the facility. A host state that has an emergency closing of a compact facility shall notify the Commission in writing within three working days of its action and shall, within thirty (30) working days of its action, demonstrate justification for the closing.

n. A party state that has fully discharged its obligations under Article VI(i) of this compact shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations under Article VI(i) of this compact or has been relieved under Article VI(e) of this compact of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the Commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the Commission the amount to be collected through the fee system for deposit into the fund. If, one hundred eighty days after such proposal is made to the Commission, the host state and the Commission have not agreed, either the Commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in Article VI(o) of this compact and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the Commission determines the long-term care fund established with respect to that facility is not adequate to pay for all long-term care for that facility, the Commission shall collect and pay over to the host state of the closed facility, for deposit into the long-term care fund, an amount determined by the Commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the facility. If a long-term care fund is exhausted and long-term care expenses for the facility with respect to which the fund was created have been reasonably incurred by the host state of the facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in Article VII(g) of this compact. Generators that provide indemnification shall have contribution rights as provided in Article VII(g) of this compact.

p. A host state that withdraws from the compact or has its membership revoked shall

immediately and permanently close any compact facility located within its borders, except that the Commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

q. If this compact is dissolved, the host state of any then operating compact facility shall immediately and permanently close the facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

1. The host state shall pay to the other party states the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long-term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the facility, provided that a host state that has fully discharged its obligations under Article VI(i) of this compact shall not be required to make such payment.
2. The host state shall physically segregate waste disposed of at the facility after this compact is dissolved from waste disposed of at the facility before this compact is dissolved.
3. The host state shall indemnify and hold harmless the other party states from all costs, liabilities, and expenses, including reasonable attorneys' fees and expenses, caused by operating the facility after this compact is dissolved, provided that this indemnification and hold harmless obligation shall not apply to costs, liabilities, and expenses resulting from the activities of a host state as a generator of waste.
4. Moneys in the long-term care fund established by the host state that are attributable to the operation of the facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining, or repairing that portion of the facility used for the disposal of waste before this compact is dissolved. Such moneys and investment earnings, and any moneys added to the long-term care fund through a distribution authorized by Article III(r) of this compact, also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

r. Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The Commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the Commission.

s. Waste may be accepted for disposal at a compact facility only if the generator of the waste has signed, and there is on file with the Commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

1. Any cost of a remedial action described in Article III(p) of this compact that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.
2. Any expense for long-term care described in Article VI(o) of this compact that, due to exhaustion of the long-term care fund, is not paid as set forth in that provision.
3. Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, or any other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending any action for such damages. This indemnification shall not extend to liability based on any of the following:

   a. The activities of the party states as generators of waste.

b. The obligations of the party states to each other and the Commission imposed by this compact or other contracts related to the disposal of waste under this compact.

c. Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the Commission with the member from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no such contribution obligation. The Commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by Article VII(g) of this compact.

[As amended by: P.L.131-1996, §7.]

IC 13-29-1-7 --------- Midwest interstate compact on low-level radioactive waste: other laws and regulations

ARTICLE VII. OTHER LAWS AND REGULATIONS

a. Nothing in this compact:

1. Abrogates or limits the applicability of any act of the Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;
2. Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;
3. Prohibits any generator from storing or treating, on its own premises, waste generated by it within the region;
4. Affects any administrative or judicial proceeding pending on the effective date of this compact;
5. Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;
6. Affects the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or successor agencies or federal research and development activities as described in 42 U.S.C. 2021;
7. Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders;
8. Requires a party state to enter into any agreement with the U.S. Nuclear Regulatory Commission; or
9. Limits, expands, or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the United States government as "below regulatory concern" or otherwise exempt from federal regulation.

b. If a court of the United States finally determines that a law of a party state conflicts

with this compact, this compact shall prevail to the extent of the conflict. The Commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the Commission.

c. Except as authorized by this compact, no law, rule or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in Articles III(m) and VII(f) of this compact, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to persons, property, or the environment resulting from the development, construction, operation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, or any other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

e. Except as provided in 28 U.S.C. 1251(a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. Article VII(e) of this compact does not apply to proceedings within the jurisdiction of state or federal regulatory agencies nor to judicial review of proceedings before state or federal regulatory agencies. Article VII(e) of this compact shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

f. For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

1. A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property, or the environment resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact. This applies whether the claimed liability of the party state or employee is based on common law, statute, rule, or regulation.
2. The sovereign immunity granted in Article VII(f)(1) of this compact does not apply to any of the following:
    a. Actions based upon the activities of the party states as generators of waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.
    b. Actions based on the obligations of the party states to each other and the Commission imposed by this compact, or other contracts related to the disposal of waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.
    c. Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

g. If in any action described in Article VII(f)(1) and not described in Article VII(f)(2) of this compact, it is determined that, notwithstanding Article VII(f)(1) of this compact, a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in Article VI(s)(3) of this compact, the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under Article VII(g) of this compact shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of con-

tribution based upon equitable principles, and generators shall have rights of contribution against any other person responsible for such damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate any waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the Commission shall have no contribution obligation under Article VII(g) of this compact. Article VII(g) of this compact shall not be construed as a waiver of the sovereign immunity provided for in Article VII(f)(1) of this compact.

h. The sovereign immunity of a party state provided for in Article VII(f)(1) of this compact shall not be extended to any private contractor assigned responsibilities as authorized in Article VI(g) of this compact.

[As amended by: P.L.131-1996, §8.]

IC 13-29-1-8 --------- Midwest interstate compact on low-level radioactive waste: eligible parties; termination

ARTICLE VIII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, SUSPENSION OF ACCESS, ENTRY INTO FORCE, AND TERMINATION

a. Any state may petition the Commission to be eligible for membership in the compact. The Commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the Commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the Commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the commission.

b. The Commission is formed upon the appointment of Commission members and the tender of the membership fee payable to the Commission by three party states. The Governor of the first state to enact this compact shall convene the initial meeting of the Commission. The Commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the Commission and implement the provision of this compact.

c. A party state that has fully discharged its obligations under Article VI(i) of this compact or has been relieved under Article VI(e) of this compact of its responsibilities to serve as a host state may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the Commission. Withdrawal takes effect on the date specified in the Commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in Article VIII(e) of this compact continue until they are fulfilled.

d. Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, the right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact suspended, or its membership in the compact revoked by a two-thirds vote of the Commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of any then operating compact facility votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in Article VIII(e) of this compact, continue until they are fulfilled. The chairperson of the Commission shall

transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's waste disposal rights, or imposition of financial penalties immediately following the vote of the Commission to the governor of the affected party state, governors of all the other party states, and the Congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under Article VI of this compact forthwith shall repay to the Commission the portion of the funds provided to that state by the Commission for the development, construction, operation, closing, or long-term care of a compact facility that the Commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of waste disposed of at the facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the Commission the amount the Commission determines would have been paid under the fee system established by the host state of the facility to dispose of at the facility the estimated volume of waste generated in the withdrawing or revoked party state that would have been disposed of at the facility from the time of withdrawal or revocation until the time the facility is closed. Any funds so paid to the Commission shall be distributed by the Commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of waste at the facility. Any person receiving such funds from the Commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the Commission an amount the Commission determines to be necessary to cover all other costs and damages incurred by the Commission and the remaining party states as a result of the withdrawal or revocation. The intention of Article VIII(e) of this compact is to eliminate any decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. Article VIII(e) of this compact shall be construed and applied so as to effectuate this intention.

f. Any party state whose right to have waste generated within its borders disposed of at compact facilities is suspended by the Commission shall pay to the host state of the compact facility to which access has been suspended the amount the Commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by the Congress. The consent given to this compact by the Congress shall extend to any future admittance of new party states and to the power of the commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator-produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the Congress. To the extent required by Section (4)(D) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, every five years after this compact has taken effect, the Congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact, the suspension of waste disposal rights, the termination of a party state's designation as a host state, or the revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

i. This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

1. Through unanimous agreement of all party states expressed in duly enacted legislation; or
2. Through withdrawal of consent to this compact by the Congress under Article I, Section 10 of the United States Constitution, in which case dissolution shall take place one hundred twenty days after the effective date of the withdrawal of consent.

Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in Articles VI(o) and VI(q)(4) of this compact, the contractual obligations in Article V(f) of this compact, the indemnification obligations and contribution rights in Articles VI(o), VI(s), and VII(g) of this compact, and the operation rights and indemnification and hold harmless obligations in Article VI(q) of this compact shall remain in force notwithstanding dissolution of this compact.

[As amended by: P.L.131-1996, §9.]

IC 13-29-1-9 --------- Midwest interstate compact on low-level radioactive waste: penalties and enforcement

ARTICLE IX. PENALTIES AND ENFORCEMENT

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

c. The Commission, an affected party state, or both may obtain injunctive relief, recover damages, or both to prevent or remedy violations of this compact.

d. Each party state acknowledges that the transport into a host state of waste packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter, or collector responsible for the violation, or suspension or revocation of access to the compact facility in the host state by any generator, transporter, or collector responsible for the violation.

e. Each party state has the right to seek legal recourse against any party state which acts in violation of this compact.

f. This compact shall not be construed to create any cause of action for any person other than a party state or the Commission. Nothing in Article IX(f) of this compact shall limit the right of judicial review set forth in Article III(n)(3) of this compact or the rights of contribution set forth in Articles III(p), VI(o), VI(s), and VII(g) of this compact.

[As amended by: P.L.131-1996, §10.]

IC 13-29-1-10 -------- Midwest interstate compact on low-level radioactive waste: severability and construction

ARTICLE X. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have waste generated within its borders disposed of at compact facilities, or any noncompact facility made available to the region by any agreement entered into by the Commission pursuant to Article III(h)(6) of this compact, shall be suspended until the appropriation is obtained.

[As amended by: P.L.131-1996, §11.]

IC 13-29-1-11 -------- Midwest interstate compact on low-level radioactive waste: Indiana member

(a) The governor shall appoint a person to serve as the Commission member representing Indiana. The Commission member appointed by the governor serves a four (4) year term, at the pleasure of the governor.

(b) If the Commission member representing the state of Indiana:

(1) dies;

(2) resigns; or

(3) is removed from office;

before the expiration of the member's term, the governor shall appoint a new Commission member to serve the remainder of the unexpired term.

(c) The governor may appoint an alternate to act on behalf of the Commission member when the Commission member is absent.

[As added by: P.L.1-1996, §19.]

IC 13-29-1-12 -------- Midwest interstate compact on low-level radioactive waste: per diem and travel

(a) A Commission member or alternate appointed by the governor under section 11 of this chapter is entitled to the following:

(1) The minimum salary per diem as provided in IC 4-10-11-2.1(b) while performing duties under this chapter.

(2) Reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Per diems and expenses under this section shall be paid from money appropriated to the department of environmental management.

[As added by: P.L.1-1996, §19.]

IC 13-29-1-13 -------- Midwest interstate compact on low-level radioactive waste: SWMB to adopt rules

The solid waste management board shall adopt under IC 4-22-2 the rules necessary to implement this chapter.

[As added by: P.L.1-1996, §19.]

IC 13-29-1-14 -------- Midwest interstate compact on low-level radioactive waste: class D felony

A person who knowingly or intentionally commits any of the violations listed in section 3(o) of this chapter commits a Class D felony. However, notwithstanding IC 35-50-2-7(a), a person who is convicted of a Class D felony under this section may, in addition to the term of imprisonment established under IC 35-50-2-7(a), be fined not more than fifty thousand dollars ($50,000) for each day of violation.

[As amended by: P.L.131-1996, §12.]

IC 13-29-1.1. FEES

IC 13-29-1.1-1 ------- Fees: applicability

This chapter does not apply to attorney's fees.

[As added by: P.L. 131-1996, §1.]

IC 13-29-1.1-2 ------- Fees: fee assessment under IC 13-29-1

Only the midwest interstate low-level radioactive waste commission or the host state (as defined in IC 13-11-2-103) may assess a fee allowed under IC 13-29-1.

[As added by: P.L. 131-1996, §1.]

IC 13-29-2. OHIO RIVER VALLEY WATER SANITATION COMPACT

IC 13-29-2-1 --------- Ohio river valley sanitation compact: the agreement

The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of Indiana as a party thereto and signatory state, namely:

Whereas, A substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio river; and

Whereas, The rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas, The control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;

Now Therefore, The states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, and West Virginia do hereby covenant and agree as follows:

Article 1.

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the Ohio river basin which flow through, into, or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such state to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article 2.

The signatory states hereby create a district to be known as the "Ohio River Valley Water Sanitation District", hereinafter called the district, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio river, or its tributaries.

Article 3.

The signatory states hereby create the "Ohio River Valley Water Sanitation Commission", hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the congress of the United States.

Article 4.

The commission shall consist of three (3) commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three (3) commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the laws of the state from which he shall be appointed. The commissioners

representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

Article 5.

The commission shall elect from its number a chairman and vice chairman and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert, and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications, and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one (1) or more offices within the district for the transaction of its business, and may meet at any time or place. One (1) or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory states as may be duly constituted for that purpose.

On or before the first day of December of each year, the commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof.

Article 6.

It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into those portions of the Ohio River and its tributary waters which form boundaries between or are contiguous to two (2) or more signatory states, or which flow from one (1) signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five percent (45 percent) of the total suspended solids: Provided, That in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article 1, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the commission after investigation, due notice, and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article 1, to such degree as may be determined to be necessary by the commission after investigation, due notice, and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one (1) state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at

least equal to the condition of the waters of the interstate stream immediately above the confluence.

The commission is hereby authorized to adopt, prescribe, and promulgate rules, regulations, and standards for administering and enforcing the provisions of this article.

Article 7.

Nothing in this compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

Article 8.

The commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The commission shall draft and recommend to the governors of the various signatory states uniform legislation dealing with the pollution of rivers, streams, and waters and other pollution problems within the district. The commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial, and other waste. The commission shall, more than one (1) month prior to any regular meeting of the legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of his compact.

Article 9.

The commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio river or any other river, stream, or water, any part of which constitutes any part of the boundary line between any two (2) or more of the signatory states, or into any stream any part of which flows from any portion of one (1) signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified, or treated or otherwise disposed of. The commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation, or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory states; and no such order upon a municipality, corporation, person, or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person, or other entity to comply with any such order issued against it or him by the commission and any court of general jurisdiction or any United States district court in any of the signatory states shall have the jurisdiction, by mandamus, injunction, specific performance, or other form of remedy, to enforce any such order against any municipality, corporation, or other entity domiciled or located within such state or whose discharge of the waste takes place within or adjoining such state, or against any employee, department, or subdivision of such municipality, corporation, person, or other entity: Provided, however, such court may review the order and affirm, reverse, or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The commission or, at its request, the attorney general or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

Article 10.

The signatory states agree to appropriate for the salaries, office, and other administrative expenses, their proper proportion of the annual budget as determined by the commission

and approved by the governors of the signatory states, one-half (1/2) of such amount to be prorated among the several states in proportion to their population within the district at the last preceding federal census, the other half to be prorated in proportion to their land area within the district: Provided, that the total cost to the state of Indiana be limited to the appropriation specifically mentioned in section 5 of this bill.

Article 11.

This compact shall become effective upon ratification by the legislatures of a majority of the states located within the district and upon approval by the Congress of the United States; and shall become effective as to any additional states signing thereafter at the time of such signing.

In Witness Whereof, The various signatory states have executed this compact through their respective compact commissioners.

The state of Indiana hereby consents that the state of Virginia may become a party to and a signatory state of the aforesaid compact as fully as if it had been expressly named herein.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-2 --------- Ohio river valley sanitation compact: commission defined

"Commission", for purposes of sections 5 through 7 of this chapter, refers to the Ohio River Valley Water Sanitation Commission.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-3 --------- Ohio river valley sanitation compact: commissioner defined

"Commissioner", for purposes of sections 5 through 7 of this chapter, means a member of the Ohio River Valley Water Sanitation Commission.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-4 --------- Ohio river valley sanitation compact: compact defined

"Compact", for purposes of sections 5 through 7 of this chapter, refers to the Ohio River Valley Water Sanitation Compact.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-5 --------- Ohio river valley sanitation compact: Indiana commissioners

(a) In pursuance of Article 4 of the Ohio River Valley Water Sanitation Compact, there are three (3) members of the Ohio River Valley Water Sanitation Commission from Indiana.

(b) The governor shall appoint two (2) commissioners, each of whom must be a resident and citizen of Indiana. The term of one (1) of the two (2) commissioners first appointed is three (3) years and the term of the other commissioner is six (6) years. The successors shall be appointed by the governor for terms of six (6) years each. Each commissioner holds office until a successor is appointed and qualified. Vacancies occurring in the office of a commissioner from any reason or cause shall be filled by appointment by the governor for the unexpired term.

(c) The third commissioner from Indiana is the commissioner of the department of environmental management ex officio. The term of the ex officio commissioner terminates at the time the individual ceases to hold the office of commissioner of the department of environmental management, and the commissioner's successors as a commissioner are the commissioner's successors as the commissioner of the department of environmental management.

(d) With the exception of the issuance of any order under Article 9 of the compact, the ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in the commissioner's department or office the power to be present and participate, including voting, as the commissioner's representative or substitute at any meeting of or hearing by or other proceeding of the commission.

(e) The terms of each of the initial three (3) members begin at the date of the appointment of the two (2) appointive commissioners if the compact has gone into effect in accordance with Article 11 of the compact. If the compact has not gone into effect, the terms begin upon

the date upon which the compact becomes effective in accordance with Article 11 of the compact.

(f) The governor may remove a commissioner from office upon charges and after a hearing but the commissioner shall be given the opportunity to be heard.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-6 --------- Ohio river valley sanitation compact: powers

(a) There is granted to the commission and the commissioners all the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact in every way. All officers of the state shall do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of the compact in every way. It is the policy of the state to perform and carry out the compact and to accomplish the purposes of the compact. All officers, bureaus, departments, and persons of and in the state government or administration of the state shall, at convenient times and upon request of the commission:

(1) furnish the commission with information and data possessed by any of them; and

(2) aid the commission by loan of personnel or other means lying within their legal powers respectively.

(b) The courts of general jurisdiction of the state have the jurisdiction specified in Article 9 of the compact, and the office of the attorney general or any other law enforcing officer of the state may institute any action for the enforcement of the orders of the commission as specified in Article 9 of the compact.

[As added by: P.L.1-1996, §19.]

IC 13-29-2-7 --------- Ohio river valley sanitation compact: powers supplemental to those in compact

Any powers granted to the commission by this chapter shall be construed as in aid of and supplemental to and not as a limitation upon any of the powers vested in the commission by any of the following:

(1) Other laws of the state.

(2) The laws of any of the other states in the compact other than Indiana.

(3) The United States Congress.

(4) The terms of the compact.

[As added by: P.L.1-1996, §19.]

TITLE 13. ENVIRONMENT
IC 13-30. ENFORCEMENT AND LEGAL ACTIONS

IC 13-30-1. STANDING TO SUE FOR DECLARATORY AND EQUITABLE RELIEF IN THE NAME OF THE STATE

IC 13-30-1-1 --------- Standing to sue: who has standing

Under this chapter:

(1) the attorney general;

(2) a state, city, town, county, or local agency or officer vested with the authority to seek judicial relief;

(3) a citizen of Indiana; or

(4) a corporation, a limited liability company, a partnership, or an association maintaining an office in Indiana;

may bring an action for declaratory and equitable relief in the name of the state of Indiana against an individual, a partnership, a copartnership, a firm, a company, a corporation, a limited liability company, an association, a joint stock company, a trust, an estate, a state agency or an officer of the state, a city, a town, a county, a local governmental unit, an agency, or an official of a city, a town, a county, a local governmental unit, or an agency, or any other legal entity or their legal representative, agent, or assigns for the protection of the environment of Indiana from significant pollution, impairment, or destruction.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-2 --------- Standing to sue: notice as condition precedent to action

(a) A citizen, a partnership, a corporation, a limited liability company, an association, or a public officer or agency, as a condition precedent to maintaining an action, must give notice in writing by registered or certified mail to:

(1) the department of natural resources;

(2) the department; and

(3) the attorney general.

(b) The attorney general shall promptly notify all state administrative agencies having jurisdiction over or control of the pollution, impairment, destruction, or protection of the environment for which relief is sought.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-3 --------- Standing to sue: prerequisites to maintaining action

(a) An individual or entity that is identified in section 1(2) through 1(4) of this chapter and that brings an action under section 1 of this chapter may not maintain the action unless:

(1) none of the agencies that receives notice of the action under section 2 of this chapter:

(A) commences an administrative proceeding or a civil action on the alleged pollution, impairment, or destruction not later than ninety (90) days after receiving notice under section 2 of this chapter; or

(B) takes steps not later than ninety (90) days after receiving notice under section 2 of this chapter to have a criminal prosecution commenced on the alleged pollution, impairment, or destruction; or

(2) the agency that commences an administrative proceeding or a civil action on the alleged pollution, impairment, or destruction does not diligently pursue the administrative proceeding or civil action after the administrative proceeding or civil action is commenced.

(b) The agency does not have to be joined as a party in an action under this section.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-4 --------- Standing to sue: appeal from agency's action

If the administrative agency that has jurisdiction and that is given notice by the attorney general under section 2 of this chapter:

(1) holds a hearing; and

(2) makes a final determination;

after receiving the notice, an appeal from the agency's action may be taken in the manner prescribed by law.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-5 --------- Standing to sue: intervention

In an administrative, a licensing, or any other proceeding, and in an action for judicial review of an administrative, a licensing, or any other proceeding that is made available by law:

(1) the attorney general;

(2) a state, city, town, county, or local agency or officer vested with the authority to seek judicial relief;

(3) a citizen of Indiana; or

(4) a corporation, a limited liability company, a partnership, or an association maintaining an office in Indiana;

shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct, programs, or products that may have the effect of significantly impairing, polluting, or destroying the environment of Indiana.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-6 --------- Standing to sue: feasible and prudent alternative

In the administrative, licensing, or other procedure, the agency shall consider the alleged significant impairment, pollution, or destruction of the environment of Indiana. A program, a product, or conduct that:

(1) has; or

(2) is reasonably likely to have;

the effect of impairing, polluting, or destroying the environment may not be authorized, approved, or permitted to continue if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-7 --------- Standing to sue: judicial review

In an action for judicial review of proceedings described in section 4 of this chapter, the court shall, in addition to other duties imposed upon the court by law, grant review of claims that the conduct, program, or product under review:

(1) has impaired, significantly polluted, or destroyed the environment of Indiana; or

(2) is reasonably likely to impair, significantly pollute, or destroy the environment of Indiana.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-8 --------- Standing to sue: burden of petitioner and respondent

(a) In an action under this chapter, whenever the petitioner has made a prima facie showing that the conduct of the respondent has or is reasonably likely to impair, pollute, or destroy the environment of Indiana, the respondent has the burden of establishing the following:

(1) If there is an applicable rule adopted by a state agency setting standards for pollution, impairment, or destruction, or for antipollution devices, the respondent has

the burden of establishing compliance with the rule, which constitutes a prima facie defense to petitioner's claim.

(2) If there is not an applicable rule, the respondent has the burden of establishing that:

(A) there is no feasible and prudent alternative; and

(B) the conduct, program, or product at issue is consistent with and reasonably required for the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of the environment from pollution, impairment, or destruction.

(b) Upon the respondent establishing the proof under subsection (a):

(1) the respondent is considered to have rebutted the prima facie showing; and

(2) the petitioner has the burden of going forward with the evidence.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-9 --------- Standing to sue: venue of action

An action under this chapter must be brought in a circuit or superior court in the county in which the significant pollution, impairment, or destruction is alleged to have occurred.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-10 -------- Standing to sue: master or referee

The court may appoint a master or referee, who must be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs of the master or referee may be apportioned to the parties if the interests of justice require.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-11 -------- Standing to sue: relief available

The court may:

(1) grant temporary and permanent equitable relief; or

(2) impose the conditions upon the respondent that are required to protect the environment of the state from pollution, impairment, and destruction.

[As added by: P.L.1-1996, §20.]

IC 13-30-1-12 -------- Standing to sue: failure to intervene in proceeding; effect thereof

(a) In an action in which a petitioner or an intervenor seeking judicial adjudication as provided by this chapter has failed to intervene in an administrative, a licensing, or other similar proceeding, the court may:

(1) remit the petitioner or intervenor to the proceeding for amplification of the record in the proceeding; and

(2) order the granting of intervention and the granting of review in the proceeding as provided in of this chapter.

(b) However, if:

(1) intervention was available in the proceeding; and

(2) the petitioner or intervenor seeking judicial adjudication under this chapter willfully and inexcusably refused intervention in the proceeding;

the court may dismiss the action with prejudice to the petitioner or intervenor.

[As added by: P.L.1-1996, §20.]

IC 13-30-2. PROHIBITED ACTS

IC 13-30-2-1 --------- Prohibited acts: acts prohibited

A person may not do any of the following:

(1) Discharge, emit, cause, allow, or threaten to discharge, emit, cause, or allow any contaminant or waste, including any noxious odor, either alone or in combination with contaminants from other sources, into:

(A) the environment; or

(B) any publicly owned treatment works;

in any form that causes or would cause pollution that violates or would violate rules, standards, or discharge or emission requirements adopted by the appropriate board under the environmental management laws.

(2) Increase the quantity or strength of a discharge of contaminants into the waters or construct or install a sewer or sewage treatment facility or a new outlet for contaminants into the waters of Indiana without prior approval of the department.

(3) Deposit any contaminants upon the land in a place and manner that creates or would create a pollution hazard that violates or would violate a rule adopted by one (1) of the boards.

(4) Deposit or cause or allow the deposit of any contaminants or solid waste upon the land, except through the use of sanitary landfills, incineration, composting, garbage grinding, or another method acceptable to the solid waste management board.

(5) Dump or cause or allow the open dumping of garbage or of any other solid waste in violation of rules adopted by the solid waste management board.

(6) Dispose of solid waste in, upon, or within the limits of or adjacent to a public highway, state park, state nature preserve, or recreation area or in or immediately adjacent to a lake or stream, except:

(A) in proper containers provided for sanitary storage of the solid waste; or

(B) as a part of a sanitary landfill operation or other land disposal method approved by the department.

(7) Construct, install, operate, conduct, or modify, without prior approval of the department, any equipment or facility of any type that may:

(A) cause or contribute to pollution; or

(B) be designed to prevent pollution.

However, the commissioner or the appropriate board may approve experimental uses of any equipment, facility, or pollution control device that is considered necessary for the further development of the state of the art of pollution control.

(8) Conduct any salvage operation or open dump by open burning or burn, cause, or allow the burning of any solid waste in a manner that violates either:

(A) the air pollution control laws; or

(B) the rules adopted by the air pollution control board.

(9) Commence construction of a proposed hazardous waste facility without having first:

(A) filed an application for; and

(B) received;

a permit from the department.

(10) Commence or engage in the operation of a hazardous waste facility without having first obtained a permit from the department.

(11) Deliver any hazardous waste to a hazardous waste facility that:

(A) is not approved; or

(B) does not hold a permit from the department.

(12) Cause or allow the transportation of a hazardous waste without a manifest if a manifest is required by law.

(13) Violate any:

(A) condition;

(B) limitation; or

(C) stipulation;

placed upon a certificate of environmental compatibility by the hazardous waste facility site approval authority or any other provision of IC 13-22-10.

(14) Apply or allow the application of used oil to any ground surface, except for purposes of treatment in accordance with a permit issued by the department under any of the following:

(A) IC 13-15, except IC 13-15-9.

(B) IC 13-17-11.

(C) IC 13-18-18.

(D) IC 13-20-1.

(15) Commence construction of a solid waste incinerator without first obtaining a permit from the department under IC 13-20-8.

(16) Commence operation of a solid waste incinerator without first obtaining the approval of the department under IC 13-20-8.

[As added by: P.L.1-1996, §20.]

IC 13-30-2-2 --------- Prohibited acts: water pollution treatment or control facility or sanitary sewer

(a) A person, excluding a municipality, who owns or operates a water pollution treatment or control facility or sanitary sewer may not offer to provide service or allocate a sewer tap to a person without:

(1) having the capacity to provide the service or allocation; and

(2) reserving the capacity to provide the service or allocation;

to the property owner to whom the offer or allocation was made.

(b) A person who violates subsection (a) who:

(1) issued a written letter of intent or commitment to provide service or allocate a sewer tap to a property owner;

(2) failed to reserve the capacity to provide the service or tap; and

(3) as a result of failing to reserve that capacity, adversely affected the value of property of a property owner to whom the letter of intent was issued;

is liable for damages to the property owner.

(c) In an action brought by a property owner under this section, the damages are equal to the value of the property as the property would have appreciated in value but for the failure of the property to have been provided sewer service or a sewer tap.

(d) Notwithstanding IC 34-11-1-2, a property owner who has a continuing claim under this section may assert that claim until May 15, 1997.

[As amended by: P.L.1-1998, §107.]

IC 13-30-3. INVESTIGATION OF VIOLATIONS; ADMINISTRATIVE PROCEEDINGS AND ORDERS

IC 13-30-3-1 --------- Investigation of violations; administrative proceedings and orders: basis for initiation of investigation

The commissioner or a designated member of the staff of the department may initiate an investigation on receipt of information of an alleged violation of any of the following:

(1) Environmental management laws.

(2) Air pollution control laws.

(3) Water pollution control laws.

(4) IC 36-9-30-35.

(5) A rule or standard adopted under the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-2 --------- Investigation of violations; administrative proceedings and orders: alternatives where possible violation disclosed

If an investigation discloses a possible violation, the commissioner shall proceed under:

(1) section 3 of this chapter; or

(2) first section 3 of this chapter and then section 4 of this chapter.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-3 --------- Investigation of violations; administrative proceedings and orders: written notification and offer of agreed order

(a) The commissioner shall:

(1) notify the alleged violator in writing that the commissioner believes a violation may exist; and

(2) offer the alleged violator an opportunity to enter into an agreed order providing for:

(A) the actions required to correct the violation; and

(B) if appropriate, the payment of a civil penalty.

(b) The commissioner is not required to extend the offer under subsection (a)(2) for more than sixty (60) days.

(c) An alleged violator may enter into an agreed order without admitting that the violation occurred.

(d) A notification under this section does not constitute a notice of violation for purposes of IC 14-34-3-3(20).

(e) If an agreed order is not entered into, the commissioner may proceed under section 4 of this chapter to issue a notice and order.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-4 --------- Investigation of violations; administrative proceedings and orders: notice and order

(a) The commissioner shall issue written notice, by certified mail with return receipt requested, addressed to the alleged violator at the alleged violator's last known place of residence or place of business.

(b) The notice must:

(1) specify the provision of:

(A) the environmental management laws;

(B) the air pollution control laws; or

(C) the water pollution control laws; or

(D) the rule;

allegedly being violated;

(2) include:

(A) a statement of:

(i) the manner in which; and

(ii) the extent to which;

the alleged violation exists; and

(B) an order under sections 10 through 12 of this chapter:

(i) requiring that the alleged violator take specific action to correct the violation;

(ii) assessing a civil penalty under IC 13-30-4-1, IC 13-30-4-2, and section 11 of this chapter for the violation; or

(iii) containing the substance of both item (i) and item (ii); and

(3) include a brief description of the procedure for requesting review under IC 4-21.5.

(c) A copy of the notice and order may also be sent to a local governmental unit that is a party to the action.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-5 --------- Investigation of violations; administrative proceedings and orders: effective date of order; review of order

(a) Except as otherwise provided in:

(1) a notice issued under section 4 of this chapter; or

(2) a law relating to emergency orders;

an order of the commissioner under this chapter takes effect twenty (20) days after the alleged violator receives the notice, unless the alleged violator requests under subsection (b) a review of the order before the twentieth day after receiving the notice.

(b) To request a review of the order, the alleged violator must:

(1) file a written request with the office of environmental adjudication under IC 4-21.5-7; and

(2) serve a copy of the request on the commissioner.

(c) If a review of an order is requested under this section, the office of environmental adjudication established under IC 4-21.5-7 shall review the order under IC 4-21.5.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-6 --------- Investigation of violations; administrative proceedings and orders: agreed order before final order by office of environmental adjudication

If an alleged violator who has requested a review of an order of the commissioner under section 5 of this chapter agrees to resolve the controversy concerning the order in a manner satisfactory to the commissioner before a final order is issued by the office of environmental adjudication, the commissioner may approve an agreed order based on the agreement.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-7 --------- Investigation of violations; administrative proceedings and orders: final order; judicial review

A final order of an environmental law judge is subject to judicial review under IC 4-21.5-5.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-8 --------- Investigation of violations; administrative proceedings and orders: complainant may proceed against alleged violator if IDEM does not

(a) A person who has filed a complaint under IC 13-30-1 may proceed against the alleged violator if the department does not:

(1) commence:

(A) an administrative proceeding; or

(B) a civil action;

on the alleged pollution, impairment, or destruction not later than ninety (90) days after receiving notice under IC 13-30-1-2;

(2) take steps not later than ninety (90) days after receiving notice under IC 13-30-1-2 to have a criminal prosecution commenced on the alleged pollution, impairment, or destruction; or

(3) diligently pursue:

(A) an administrative proceeding; or

(B) a civil action;

concerning the alleged pollution, impairment, or destruction after the administrative proceeding or civil action is commenced.

(b) The department does not have to be joined as a party in an action under this section.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-9 --------- Investigation of violations; administrative proceedings and orders: burden on the complainant

In hearings under this chapter, the burden is on the complainant to show the alleged violation.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-10 -------- Investigation of violations; administrative proceedings and orders: commissioner's role

In accordance with the procedure set forth in this chapter, the commissioner shall:

(1) issue and enter an order; or

(2) make any other determination;

that the commissioner considers appropriate.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-11 -------- Investigation of violations; administrative proceedings and orders: commissioner's order

An order of the commissioner under this chapter may do any of the following:

(1) Include a direction to cease and desist from violations of the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

(D) A rule adopted by one (1) of the boards.

(2) Impose monetary penalties in accordance with the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

(3) Mandate corrective action, including corrective action to be taken beyond the boundaries of the area owned or controlled by the person to whom the order is directed, to alleviate the violation.

(4) Revoke a permit or condition or modify the terms of a permit.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-12 -------- Investigation of violations; administrative proceedings and orders: performance bond

If an order of the commissioner allows time during which to correct a violation, the order may provide for the posting of a performance bond with surety or security acceptable to the department to assure the correction of the violation within the time prescribed in the order.

[As added by: P.L.1-1996, §20.]

IC 13-30-3-13 -------- Investigation of violations; administrative proceedings and orders: preconditions to enforcement against landowner on whose land solid waste has been dumped

(a) Except as provided in subsection (c), an enforcement action may not be taken under this chapter for a violation of IC 13-30-2-1(5) against a landowner on whose land garbage or other solid waste, except hazardous waste, has been illegally dumped without the landowner's consent unless the commissioner has made a diligent and good faith effort to identify, locate, and take enforcement action against a person who appears likely to have committed or caused the illegal dumping.

(b) A landowner described in subsection (a) who in good faith provides information to the commissioner concerning:

(1) a name;

(2) an address; or

(3) any other evidence of a responsible person's identity found in garbage or other solid waste dumped on the landowner's land;

is not liable to a person for an action taken by the commissioner against the person as a result of the information provided the landowner.

(c) The commissioner may include the owner of land on which a violation of IC 13-30-2-1(5) has apparently occurred as a party in any enforcement action against a person who allegedly committed the violation of IC 13-30-2-1(5) so that the commissioner may order the landowner to allow the alleged violator access to the land to remove and dispose of the solid waste allegedly dumped on the land in violation of IC 13-30-2-1(5).

(d) A landowner on whose land garbage or other solid waste has been illegally dumped without the landowner's consent may, in addition to any other legal or equitable remedy available to the landowner, recover from the person responsible for the illegal dumping:

(1) reasonable expenses incurred by the landowner in disposing of the garbage or other solid waste; and

(2) reasonable attorney's fees.

[As added by: P.L.1-1996, §20.]

IC 13-30-4. CIVIL PENALTIES

IC 13-30-4-1 --------- Civil penalties: penalty not to exceed $25,000 per day

(a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who violates:

(1) any provision of:

(A) environmental management laws;

(B) air pollution control laws;

(C) water pollution control laws;

(D) IC 13-18-14-1; or

(E) a rule or standard adopted by one (1) of the boards; or

(2) any determination, permit, or order made or issued by the commissioner under:

(A) environmental management laws or IC 13-7 (before its repeal);

(B) air pollution control laws or IC 13-1-1 (before its repeal); or

(C) water pollution control laws or IC 13-1-3 (before its repeal);

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

(b) The department may:

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

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

[As added by: P.L.1-1996, §20.]

IC 13-30-4-2 --------- Civil penalties: additional penalty not to exceed $500 per hour of violation

(a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who:

(1) is named in or directed by an emergency order under IC 13-14-10-1; and

(2) violates the order;

is liable for an additional civil penalty not to exceed five hundred dollars ($500) per hour of violation.

(b) The additional civil penalty described in subsection (a) shall be assessed in an action brought by the commissioner in any court with jurisdiction.

[As added by: P.L.1-1996, §20.]

IC 13-30-4-3 --------- Civil penalties: waiver of civil penalties

(a) The department may waive up to one hundred percent (100%) of a civil penalty imposed on a business for a minor violation of:

(1) a requirement of environmental management laws;

(2) a rule adopted by a board; or

(3) any determination, permit, or order made or issued by the commissioner.

(b) The department may not waive any part of a civil penalty under this section if the violation:

(1) endangers or causes damage to public health or the environment;

(2) is intentional, willful, or criminal;

(3) is of a requirement for which the department has previously issued a notice or warning of violation, for this or a prior violation, to the business required to correct the violation; or

(4) is not corrected within ninety (90) days after the date the business required to correct the violation notifies the department of the violation under subsection (c). The department may extend the ninety (90) day period for not more than an additional ninety (90) days.

(c) To seek a waiver of a civil penalty under this section, the business required to correct the violation must submit to the department a written report of the violation for which a waiver is sought. The report must be submitted to the department before an inspection by the department that discloses the violation or the issuance of a notice or warning of violation.

(d) The boards may adopt rules to implement this section.

[As amended by: P.L.123-1996, §15.]

IC 13-30-4-4 --------- Civil penalties: determining eligibility for waiver

To determine eligibility for a waiver under section 3 of this chapter, a business required to correct a violation may contact the technical and compliance assistance program established under IC 13-28-3. The confidentiality provision in IC 13-28-3-4 applies to the contact.

[As added by: P.L.1-1996, §20.]

IC 13-30-5. INFRACTIONS

IC 13-30-5-1 --------- Infractions: interference with inspection or investigation

Except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who obstructs, delays, resists, prevents, or interferes with:

(1) the department; and

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

in the performance of an inspection or investigation performed under IC 13-14-2-2 commits a Class C infraction. Each day of violation of this section constitutes a separate infraction.

[As added by: P.L.1-1996, §20.]

IC 13-30-6. OFFENSES

IC 13-30-6-1 --------- Offenses: intentional, knowing or reckless violation

(a) A person who intentionally, knowingly, or recklessly violates:

(1) environmental management laws;

(2) air pollution control laws;

(3) water pollution control laws;

(4) a rule or standard adopted by one (1) of the boards; or

(5) a determination, a permit, or an order made or issued by the commissioner under environmental management laws or IC 13-7 (before its repeal);

commits a Class D felony.

(b) Notwithstanding IC 35-50-2-7(a), a person who is convicted of a Class D felony under this section (or IC 13-7-13-3(a) before its repeal) may, in addition to the term of imprisonment established under IC 35-50-2-7(a), be punished by:

(1) a fine of not less than five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000) per day of violation; or

(2) if the conviction is for a violation committed after a first conviction of the person under this section (or IC 13-7-13-3(a) before its repeal), a fine of not more than one hundred thousand dollars ($100,000) per day of violation.

[As amended by: P.L.112-2000, §4.]

IC 13-30-6-2 --------- Offenses: knowingly making false document or rendering inaccurate results

(a) A person who:

(1) knowingly makes a false statement, representation, or certification in an application, a record, a report, a plan, or other document filed or required to be maintained under environmental management laws; or

(2) falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under environmental management laws;

commits a Class B misdemeanor.

(b) Notwithstanding IC 35-50-3-3, a person who is convicted of a Class B misdemeanor under this section may, in addition to the term of imprisonment established under IC 35-50-3-3, be punished by a fine of not more than ten thousand dollars ($10,000).

[As added by: P.L.1-1996, §20.]

IC 13-30-6-3 --------- Offenses: knowingly transporting, disposing, misrepresenting, etc., hazardous waste

(a) A person who knowingly:

(1) transports any hazardous waste to a facility that does not have an operation permit or approval to accept the waste;

(2) disposes, treats, or stores any hazardous waste without having obtained a permit for the waste; or

(3) makes a false statement or representation in an application, a label, a manifest, a record, a report, a permit, or other document filed, maintained, or used under environmental management laws with regard to hazardous waste;

commits a Class D felony.

(b) Notwithstanding IC 35-50-2-7(a), a person who is convicted of a Class D felony under this section may, in addition to the term of imprisonment established under IC 35-50-2-7(a), be punished by:

(1) a fine of not less than two thousand five hundred dollars ($2,500) and not more than fifty thousand dollars ($50,000) for each day of violation; or

(2) if the conviction is for a violation committed after a first conviction of the person under this section, IC 13-30-6-1, IC 13-30-6-2, or IC 13-7-13-3 (before its repeal), a fine of not more than one hundred thousand dollars ($100,000) per day of violation.

[As amended by: P.L.112-2000, §5.]

IC 13-30-6-4 --------- Offenses: prosecution of responsible corporate officer

A responsible corporate officer may be prosecuted for a violation of section 1, 2, or 3 of this chapter in accordance with IC 35-41-2-4.

[As added by: P.L.1-1996, §20.]

IC 13-30-6-5 --------- Offenses: exception

IC 35-50-2-7(b) does not apply to the Class D felonies described in sections 1 and 3 of this chapter.

[As added by: P.L.1-1996, §20.]

IC 13-30-6-6 --------- Offenses: intentionally transporting, disposing, treating or storing hazardous waste in violation of law

(a) Except as provided in section 7 of this chapter, a person who intentionally:

(1) transports;

(2) disposes;

(3) treats; or

(4) stores;

hazardous waste in violation of environmental management laws commits a Class D felony.

(b) Notwithstanding IC 35-50-2-7(a), a person who is convicted of a Class D felony under this section may, in addition to the term of imprisonment established under IC 35-50-2-7(a), be fined not more than fifty thousand dollars ($50,000) for each day of violation.

[As added by: P.L.1-1996, §20.]

IC 13-30-6-7 --------- Offenses: court judgment

If a person has committed a violation of section 6 of this chapter, the court may enter a judgment of conviction under this chapter. The court shall enter in the record, in detail, the reason for the court's action whenever the court exercises the power granted in this section.

[As added by: P.L.1-1996, §20.]

IC 13-30-7. MINOR VIOLATIONS BY CERTAIN BUSINESSES

IC 13-30-7-1 --------- Minor violations by certain businesses: civil penalty limited to $500

Except as provided in sections 3 and 4 of this chapter, if:

(1) the department determines that a business has committed a minor violation:

(A) of:

(i) environmental management laws;

(ii) a rule or standard adopted by a board; or

(iii) any determination, permit, or order made or issued by the commissioner;

(B) that does not present an immediate or reasonably foreseeable danger to the public health or environment; and

(C) that does not include a violation of:

(i) a numerical limitation or a numerical standard contained in environmental management laws or a rule or standard adopted by a board applicable to a business required to correct the violation before disclosure of the violation;

(ii) a term or condition of a determination, permit, or order made or issued by the commissioner to a business required to correct the violation before disclosure of the violation, unless the term or condition incorporates a limitation, standard, work practice, or other requirement by reference and does not specify the limitation, standard, work practice, or other requirement; or

(iii) a requirement under environmental management laws or a rule adopted by a board to possess a permit; the business required to correct the violation has not more than ninety (90) days after the date the property owner receives the written summary of the inspection under this section to correct the violation; and

(2) the:

(A) business:

(i) corrects the violation; or

(ii) commences substantial steps to correct the violation, including submitting permit applications, securing financing, or ordering equipment;

within the ninety (90) day period described in subdivision (1); or

(B) business corrects the violation within an additional ninety (90) day period under section 3 of this chapter;

the department's enforcement action is limited to the assessment of a civil penalty in an amount not to exceed five hundred dollars ($500).

[As amended by: P.L.123-1996, §16.]

IC 13-30-7-2 --------- Minor violations by certain businesses: basis for IDEM decreasing the $500 penalty

The department may decrease the penalty provided in section 1 of this chapter based on:

(1) a good faith effort or cooperation of a business required to correct a violation before or after disclosure of the violation;

(2) the ability of a business required to correct the violation to pay the penalty;

(3) an agreement that a business required to correct a violation will offset the payment of a civil penalty by a project that:

(A) has clearly identifiable and quantifiable environmental benefits; and

(B) is not otherwise required under federal, state, or local law, rules, or regulations; or

(4) other mitigating factors within the discretion of the department.

[As added by: P.L.1-1996, §20.]

IC 13-30-7-3 --------- Minor violations by certain businesses: extension of 90 day period to correct a violation

If:

(1) a violation under section 1 of this chapter cannot be corrected; or

(2) substantial steps to correct the violation cannot be taken;

within ninety (90) days, the department may extend the correction period for one (1) additional ninety (90) day period.

[As added by: P.L.1-1996, §20.]

IC 13-30-7-4 --------- Minor violations by certain businesses: applicability of chapter

Section 1 of this chapter does not apply if the department determines that an alleged violation under section 1 of this chapter:

(1) is disclosed after a business receives a notice of violation from the department for an alleged violation of the same or similar requirement;

(2) is a criminal offense under environmental management laws; or

(3) is committed intentionally or knowingly.

[As added by: P.L.1-1996, §20.]

IC 13-30-7-5 --------- Minor violations by certain businesses: annual report by IDEM

(a) Before March 2 of each year, the department shall:

(1) file a report with the governor concerning any business required to correct a violation under section 1 of this chapter during the preceding year; and

(2) make the report available for public inspection.

(b) The report must include a summary of:

(1) violations;

(2) corrections for violations; and

(3) penalties;

imposed for each business.

[As added by: P.L.1-1996, §20.]

IC 13-30-7-6 --------- Minor violations by certain businesses: section 1 not exclusive

A business required to correct a violation that is subject to section 1 of this chapter may elect to resolve an enforcement action in the same manner as a business required to correct a violation that is not subject to section 1 of this chapter.

[As added by: P.L.1-1996, §20.]

IC 13-30-7-7 --------- Minor violations by certain businesses: boards to adopt rules

The boards shall adopt rules under IC 4-22-2 to administer this chapter.

[As added by: P.L.1-1996, §20.]

IC 13-30-8. FORFEITURE OF VEHICLES

IC 13-30-8-1 --------- Forfeiture of vehicles: used to transport hazardous waste

A vehicle that is used to transport hazardous waste in the commission of an offense described in IC 13-30-6-6 is subject to forfeiture under IC 34-24-1.

[As amended by: P.L.1-1998, §108.]

IC 13-30-9. ENVIRONMENTAL LEGAL ACTIONS

IC 13-30-9-1 --------- Environmental legal actions: applicability

This chapter applies to actions brought by the state or a private person. However, this chapter does not apply to an action brought by the state if the action arises from a site that:

(1) is listed on the National Priorities List for hazardous substance response sites (40 CFR 300 et seq.);

(2) scores at least twenty-five (25) under the Indiana scoring model under 329 IAC 7; or

(3) is deemed by the commissioner to pose an imminent threat to human health or the environment.

[As added by: P.L.59-1997, §23.]

IC 13-30-9-2 --------- Environmental legal actions: basis of action

A person may bring an environmental legal action against a person who caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment to recover reasonable costs of a removal or remedial action involving the hazardous substances or petroleum.

[As added by: P.L.59-1997, §23.]

IC 13-30-9-3 --------- Environmental legal actions: allocation of costs

(a) In resolving an environmental legal action, a court shall allocate the costs of the removal or remedial action in proportion to the acts or omissions of each party, without regard to any theory of joint and several liability, using legal and equitable factors that the court determines are appropriate, including the following:

(1) The degree of care exercised by each party with respect to the release of the hazardous substance or petroleum caused or contributed to by each party.

(2) The amount and characteristics of the hazardous substance or petroleum that was released.

(3) The risks posed by the hazardous substance or petroleum based on the use of the site at the time the hazardous substance or petroleum was released into the environment and the cost effectiveness of the removal or remedial action to address the risks.

(4) Whether a party's acts or omissions violated a federal, state, or local statute, rule, regulation, or ordinance.

(5) The extent to which each party exercised actual and direct managerial control over the site where the hazardous substance or petroleum was released at the time of the release.

(6) Whether an award of reasonable costs, including attorney's fees, to a party involved in the environmental legal action is appropriate.

(7) Other equitable factors, including unjust enrichment, that the court determines are appropriate.

(b) Notwithstanding subsection (a), if parties have entered into a contract that allocates the costs or responsibility for the removal or remedial action, the terms of the contract control the allocation of costs between the parties to the contract. However, the terms of a contract may not affect the recovery of costs by the state unless the state is a signatory to the contract.

[As added by: P.L.59-1997, §23.]

IC 13-30-9-4 --------- Environmental legal actions: recovery of unrecovered costs

If the commissioner is not able to recover the total costs of a removal or remedial action from the responsible parties under this chapter, the unrecovered costs may be paid from the

hazardous substances response trust fund established under IC 13-25-4-1.
[As added by: P.L.59-1997, §23.]

IC 13-30-9-5 --------- Environmental legal actions: defenses

A defendant in an environmental legal action may assert defenses provided by law or equity, including a defense that damages suffered by the person who brought the environmental legal action were caused in whole or in part by a nonparty.
[As added by: P.L.59-1997, §23.]

IC 13-30-9-6 --------- Environmental legal actions: recovery of costs of UST release

In an action to recover costs associated with a release from an underground storage tank, a person may bring the action under:

(1) this chapter; or

(2) IC 13-23-13-8.

A person may not bring the action under both this chapter and IC 13-23-13-8.
[As added by: P.L.59-1997, §23.]

IC 13-30-9-7 --------- Environmental legal actions: effect of covenant not to sue

Notwithstanding any provision of this chapter, a person that receives a covenant not sue under IC 13-25-5-18 is exempt from suit as provided in IC 13-25-5-18.
[As added by: P.L.59-1997, §23.]

IC 13-30-9-8 --------- Environmental legal actions: litigation filed before February 28, 1998

This chapter may not be construed to affect any litigation filed before February 28, 1998, under IC 13-23-13.
[As added by: P.L.59-1997, §23.]

TITLE 24. STATUTES CONCERNING CONSUMER SALES WHICH ARE RELEVANT TO IDEM

IC 24-5-17. ENVIRONMENTAL MARKETING CLAIMS

IC 24-5-17-1 --------- Environmental marketing claims: policy of state

It is the policy of the state to discourage deceptive environmental advertising claims.
[As added by: P.L.13-1991, §2.]

IC 24-5-17-2 --------- Environmental marketing claims: representations which constitute a violation

(a) This chapter applies to a person who represents in advertising or on the label or package of a consumer good that the consumer good the person manufactures or distributes, or its package, is not harmful to or is beneficial to the natural environment by terms such as the following:

(1) Environmental choice.

(2) Ecologically, earth, or environmentally friendly.

(3) Ecologically or environmentally sound.

(4) Ecologically or environmentally safe.

(5) Environmentally "lite".

(6) Green product.

(7) Any term or terms similar to the other terms listed in this chapter.

(b) It is a violation of this chapter for any person to represent that any consumer good which the person manufactures or distributes or its package is "ozone friendly", "biodegradable", "compostable", "photodegradable", "recyclable", or "recycled" unless that consumer good or its package meets the definitions contained in this chapter or meets definitions established in trade regulations or guides adopted by the Federal Trade Commission or in enforceable regulations adopted by another federal agency expressly for the purpose of establishing standards for environmental advertising or representations.
[As added by: P.L.13-1991, §2.]

IC 24-5-17-3 --------- Environmental marketing claims: biodegradable defined

As used in this chapter, "biodegradable" means that material has the proven capability to decompose in less than one (1) year in the most common environment where the material is usually disposed through natural biological processes into nontoxic carbonaceous soil, water, or carbon dioxide.
[As added by: P.L.13-1991, §2.]

IC 24-5-17-4 --------- Environmental marketing claims: compostable defined

As used in this chapter, "compostable" means that material will decompose into a soil-like material in less than one (1) year under controlled biological circumstances.
[As added by: P.L.13-1991, §2.]

IC 24-5-17-5 --------- Environmental marketing claims: consumer goods defined

As used in this chapter, "consumer goods" means an article that is used or bought for use primarily for personal, family, or household purposes.
[As added by: P.L.13-1991, §2.]

IC 24-5-17-6 --------- Environmental marketing claims: ozone friendly defined

As used in this chapter, "ozone friendly" or any similar term that connotes that stratospheric ozone is not being depleted through use or production of the product means that a chemical or material released into the environment as a result of the use or production of a

product will not migrate to the stratosphere and cause unnatural and accelerated deterioration of ozone.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-7 --------- Environmental marketing claims: package defined

As used in this chapter, "package" means the coating, covering, container, or wrapping used during a product's life cycle, including any outer container, wrapping, or label used in the retail display of any consumer goods.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-8 --------- Environmental marketing claims: photodegradable defined

As used in this chapter, "photodegradable" means that material has the proven capability to decompose within one (1) year into nontoxic carbonaceous soil, water, or carbon dioxide in the most common environment where the material is usually disposed through physical processes such as exposure to heat and light.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-9 --------- Environmental marketing claims: recyclable defined

As used in this chapter, "recyclable" means that a material or product can be redeemed or returned at an identifiable recycling location for the purpose of returning the material to the economic mainstream in the form of raw material for new, reused, or reconstituted materials which meet quality standards necessary to be used in the marketplace.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-10 -------- Environmental marketing claims: recycled defined

As used in this chapter, "recycled" means that an article contains at least ten percent (10%) by weight of postconsumer or post manufacture material.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-11 -------- Environmental marketing claims: representations by a wholesaler or retailer

For purposes of this chapter, a wholesaler or retailer is not considered to have made a representation if the wholesaler or retailer does not initiate a representation by placing the representation on a package.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-12 -------- Environmental marketing claims: maintenance of information and documentation supporting the validity of the representation

A person shall maintain in written form in the person's records the following information and documentation supporting the validity of the representation:

(1) The reasons why the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, or disposal of the consumer good.

(3) Any measures that the person has taken to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Any violations of federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether the consumer good is recycled, recyclable, biodegradable, photodegradable, compostable, or ozone friendly.

[As added by: P.L.13-1991, §2.]

IC 24-5-17-13 -------- Environmental marketing claims: making the supporting information and documentation available to IDEM

Upon the written request of the department of environmental management established by IC 13-13-1-1 or the office of the attorney general created under IC 4-6-1-2, a person shall fully disclose to the requesting office, within the limits of all applicable laws, the information and documentation maintained by the person under section 12 of this chapter. The requesting office shall make the information and documentation disclosed under this section available for public inspection and copying at its offices.

[As amended by: P.L.1-1996, §79.]

IC 24-5-17-14 -------- Environmental marketing claims: knowing violation a deceptive act; private right to damages

(a) A person who knowingly violates this chapter commits a deceptive act that is subject to remedies and penalties under IC 24-5-0.5.

(b) A person who suffers actual damages from a violation of this act may bring an action to recover the actual damage plus attorney's fees.

[As added by: P.L.13-1991, §2.]

TITLE 25. STATUTES CONCERNING THE REGULATION OF PROFESSIONS WHICH ARE RELEVANT TO IDEM

IC 25-31-1. REGULATION OF ENGINEERS AND LAND SURVEYORS

IC 25-31-1-19 -------- Requirement of certification of public works projects by registered professional engineer: not applicable to plans or specifications submitted to IDEM in certain cases

(a) A county, city, town, township, school corporation, or other political subdivision of this state may not engage in the construction or maintenance of any public work involving the practice of engineering for which plans, specifications, and estimates have not been prepared, certified, and sealed by, and the construction and maintenance executed under the direct supervision of, a professional engineer. Any contract executed in violation of this section is void.

(b) An official of this state, or of any city, town, county, township, or school corporation, charged with the enforcement of any law, ordinance, or rule relating to the design, construction, or alteration of buildings or structures may not use or accept or approve any plans or specifications that have not been prepared by, or under the supervision of and certified by, a registered professional engineer. This subsection does not apply:

(1) to plans or specifications prepared by, or under the supervision of and certified by, an architect who is registered under IC 25-4-1;

(2) to structures and construction listed in IC 22-15-3-3(a); or

(3) to plans or specifications contained in a registration, license, or permit application, including an application for an initial permit, the renewal of a permit, the modification of a permit, or a variance from a permit submitted to the commissioner of the department of environmental management under IC 13, unless the permit is for the approval of plans or specifications for construction for which a professional engineer's seal is required by operation of either state or federal law, rule, or regulation. This subsection does not require a professional engineer's seal for an application for an air quality construction permit under 326 IAC 2-1-3.

This section shall not be construed as to abridge or otherwise affect the powers of any state board or department to issue rules governing the safety of buildings or structures.

(c) All maps required to show the underground workings of any mine in Indiana must be prepared, certified, and sealed by a professional engineer or land surveyor.

[As amended by: P.L.246-1995, §1.]

IC 25-31-1-34 -------- Prohibition against unwarranted use of "engineer" in job title: not applicable to a position filled by IDEM

(a) This section does not apply to a job position filled by the department of environmental management.

(b) Unless a job position is filled by a professional engineer, the state or a political subdivision (as defined in IC 36-1-2-13) may not use the word "engineer" in the position's job title.

[As amended by: P.L.16-1994, §9.]

TITLE 32. STATUTES CONCERNING PROPERTY WHICH ARE RELEVANT TO IDEM

IC 32-1-5. MARKETABLE TITLE

IC 32-1-5-2 ---------- Marketable title subject to all interests of IDEM in land used for the disposal of hazardous wastes arising from the recording of a restrictive covenant under state RCRA requirements

Such marketable record title shall be subject to:

(a) All interests and defects which are inherent in the muniments of which such chain of record title is formed. However, a general reference in such muniments, or any of them, to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction, or other interest.

(b) All interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of fifty (50) years or more, in accordance with section 4 of this chapter.

(c) The rights of any person arising from adverse possession or adverse user, if the period of such adverse possession or adverse user was in whole or in part subsequent to the effective date of the root of title.

(d) Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started. However, such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section 3 of this chapter.

(e) The exceptions stated in section 6 of this chapter as to rights of reversioners in leases, as to rights of any lessee in and to any lease, and as to easements and interests in the nature of easements.

(f) All interests of the department of environmental management in land used for the disposal of hazardous wastes arising from the recording of a restrictive covenant under IC 13-22-3-3.

[As amended by: P.L. 1-1996, §80.]

TITLE 34. STATUTES CONCERNING CIVIL PROCEDURE WHICH ARE RELEVANT TO IDEM

IC 34-6-2. DEFINITIONS [FOR PURPOSES OF IC 34-30-6]

IC 34-6-2-36 --------- Definitions for purposes of IC 34-30-6: "emergency" defined

"Emergency", for purposes of IC 34-30-6, means an occurrence or an imminent threat of an occurrence that involves a hazardous substance or compressed gas and that creates the possibility of harm to any person, to property, or to the environment.

[As added by: P.L. 1-1998, §1.]

IC 34-6-2-52 --------- Definitions for purposes of IC 34-30-6: "hazardous substance" defined

"Hazardous substance", for purposes of IC 34-30-6, means:

(1) a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission; or

(2) any substance that may be potentially hazardous to any person, to property or to the environment.

[As added by: P.L. 1-1998, §1.]

IC 34-6-2-75(b) ------ Definitions for purposes of IC 34-30-6: "loss" defined

(b) "Loss", for purposes of IC 34-30-6, means injury to or death of a human being or damage to property or to the environment.

[As added by: P.L. 1-1998, §1.]

IC 34-6-2-103(g) ---- Definitions for purposes of IC 34-30-6: "person" defined

"Person", for purposes of IC 34-30-6, means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

[As added by: P.L. 1-1998, §1.]

IC 34-30-6. ENVIRONMENT: IMMUNITY FROM LIABILITY FOR CERTAIN HAZARDOUS DISCHARGES

IC 34-30-6-1 --------- Immunity from liability for certain hazardous discharges: immunity

Except as provided in section 2 of this chapter, a person is not liable for any loss that results from an action taken or lack of an action by that person:

(1) during an emergency; and

(2) with intent to prevent or minimize harm from the emergency.

[As added by: P.L. 1-1998, §26.]

IC 34-30-6-2 --------- Immunity from liability for certain hazardous discharges: exception

This chapter does not apply to a person:

(1) whose act or omission caused in whole or in part the emergency and who would otherwise be liable for the emergency;

(2) whose act or omission constituted gross negligence or willful or wanton misconduct; or

(3) who receives payment, or is an employee of a person who receives payment, for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency.

Payment does not include reimbursement for expenses.

[As added by: P.L. 1-1998, §26.]

TITLE 36. STATUTES CONCERNING LOCAL GOVERNMENT WHICH ARE RELEVANT TO IDEM

IC 36-1-4. GOVERNMENT OF CITIES AND TOWNS GENERALLY

IC 36-1-4-7.5 --------- Indemnification by counties or municipalities relating to environmental contamination

(a) This section applies to a transaction that involves a parcel of real estate that is owned or leased by a unit and the unit or a board, an agency, a department, a commission, or other division of the unit has determined in a resolution, an ordinance, a lease, a contract, or other written instrument that the parcel of real estate:

(1) may have environmental contamination:

(A) that occurred during or before the time the unit owned or leased the parcel of real estate; and

(B) for which the unit may be liable under applicable laws; and

(2) will be used in connection with an economic development project that will:

(A) promote opportunities for employment of the citizens of the unit;

(B) attract new business enterprises to the unit; or

(C) retain or expand a business enterprise within the unit.

(b) Except as provided in IC 26-2-5-1 and notwithstanding defenses available and immunity provided in IC 34-13-3, a unit may enter into a contract or lease that contains a provision, a clause, a covenant, a promise, or an agreement by the unit to defend or indemnify any person against any claim, cause of action, demand, cost, judgment, or other loss of any kind provided for under the terms of the contract.

(c) A unit may not indemnify a person against any claim, cause of action, demand, cost, judgment, or other loss resulting from environmental contamination of the parcel of real estate caused by the negligence or willful misconduct of the indemnified person occurring after the effective date of the indemnification.

(d) Nothing in this section may be construed to limit any rights that a unit may have to defend or indemnify a person under any other law.

[As amended by: P.L.1-1998, §201.]

IC 36-7-13.5. SHORELINE DEVELOPMENT

IC 36-7-13.5-1 ------- Shoreline development: definitions

The following definitions apply throughout this chapter:

(1) "Commission" refers to the shoreline development commission established by section 2 of this chapter.

(2) "Corridor" has the meaning set forth in IC 14-13-3-2.

(3) "Executive committee" refers to the executive committee of the commission established by section 13 of this chapter.

(4) "Fund" refers to the shoreline environmental trust fund established by section 19 of this chapter.

(5) "Qualifying property" means one (1) or more parcels of land in the corridor under common ownership, regardless of whether any improvements are located on the land, with respect to which:

(A) the:

(i) land is unused, if there are no improvements on the land; or

(ii) land and improvements are unused;

(B) all or a part of each parcel of the land is located within five hundred (500) yards of a lake or river; and

(C) there are significant obstacles to redevelopment because of any of the following:

(i) Obsolete or inefficient buildings.

(ii) Aging infrastructure or inefficient utility services.

(iii) Utility relocation requirements.

(iv) Transportation or access problems.

(v) Topographical obstacles.

(vi) Environmental contamination.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-2 ------- Shoreline development: commission established

(a) The shoreline development commission is established.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-3 ------- Shoreline development: commission membership

The commission consists of the following members:

(1) The following members appointed by the governor:

(A) The mayor of East Chicago.

(B) The mayor of Gary.

(C) The mayor of Hammond.

(D) The mayor of Michigan City.

(E) The mayor of Portage.

(F) The mayor of Whiting.

(G) Two (2) representatives, each from a steel company that owns land abutting Lake Michigan with a continuous shoreline of not less than one (1) mile.

(H) One (1) representative of a company that:

(i) is not a steel company; and

(ii) owns land abutting Lake Michigan with a continuous shoreline of not less than three-tenths (0.3) mile.

(I) One (1) representative of the department of environmental management.

(J) One (1) representative of the department of natural resources.

(K) One (1) representative of the department of transportation.

(L) One (1) representative of Beverly Shores.

(M) One (1) representative of Burns Harbor.

(N) One (1) representative of Dune Acres.

(O) One (1) representative of Ogden Dunes.

(P) One (1) representative of the northwest Indiana advisory board established under IC 13-13-6.

(2) One (1) member appointed by the lieutenant governor.

(3) Two (2) members appointed by the speaker of the house of representatives who:

(A) are members of the house of representatives;

(B) represent house districts that have territory within the corridor; and

(C) are not affiliated with the same political party.

If all the house districts that have territory within the corridor are represented by members of the house of representatives who are from the same political party, the speaker shall appoint a member of the house of representatives who represents a house district

that is located anywhere in a county that has territory within the corridor to satisfy the requirement under clause (C).

(4) Two (2) members appointed by the president pro tempore of the senate who:

(A) are members of the senate;

(B) represent senate districts that have territory within the corridor; and

(C) are not affiliated with the same political party.

If all the senate districts that have territory within the corridor are represented by members of the senate who are from the same political party, the president pro tempore shall appoint a member of the senate who represents a senate district that is located anywhere in a county that has territory within the corridor to satisfy the requirement under clause (C).

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-4 ------- Shoreline development: additional membership provisions

(a) The members of the commission referred to in section 3(1)(G) of this chapter may not represent the same steel company.

(b) A member of the commission referred to in section 3(1)(A) through 3(1)(F) of this chapter may designate an individual to serve on the commission in the member's place.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-5 ------- Shoreline development: term of members

The term of each member is two (2) years.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-6 ------- Shoreline development: vacancies

A vacancy occurring in the membership of the commission shall be filled by the appointing authority.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-7 ------- Shoreline development: travel and per diem reimbursement

(a) Each member of the commission who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided in the rules adopted under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided in the rules adopted under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-8 ------- Shoreline development: majority vote required

The affirmative votes of a majority of the members of the commission are required for the commission to take action on any measure.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-9 ------- Shoreline development: commission officers

The chairman, vice chairman, and treasurer of the executive committee selected under section 14 of this chapter shall act in those same capacities with respect to the commission.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-10 ----- Shoreline development: commission meetings

(a) The commission:

(1) shall fix the time for regular meetings; and

(2) may hold special meetings on call of the chairman with seven (7) days written notice.

(b) A member may waive written notice of a specific meeting by a written notice filed with the commission.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-11 ------ Shoreline development: commission duties

(a) The commission shall:

(1) identify qualifying properties;

(2) prepare a comprehensive master plan for development and redevelopment within the corridor that:

(A) plans for remediation of environmental contamination;

(B) accounts for economic development and transportation issues relating to environmental contamination; and

(C) establishes priorities for development or redevelopment of qualifying properties;

(3) establish guidelines for the evaluation of applications for grants from the fund;

(4) after reviewing a report from the department of environmental management under section 22 of this chapter, refer to the executive committee applications for grants from the fund under section 21 of this chapter that the commission recommends for approval;

(5) prepare and provide information to political subdivisions on the availability of financial assistance from the fund;

(6) coordinate the implementation of the comprehensive master plan;

(7) monitor the progress of implementation of the comprehensive master plan; and

(8) report at least annually to the governor, the lieutenant governor, the legislative council and all political subdivisions that have territory within the corridor on:

(A) the activities of the commission; and

(B) the progress of implementation of the comprehensive master plan.

(9) Employ an executive director and other individuals that are necessary to carry out the commission's duties.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-12 ----- Shoreline development: additional commission authority

(a) When necessary to accomplish the purposes of the commission, the commission may do the following:

(1) Conduct studies necessary for the performance of the commission's duties.

(2) Publicize, advertise, and distribute reports on the commission's purposes, objectives, and findings.

(3) Provide recommendations in matters related to the commission's functions and objectives to the following:

(A) Political subdivisions that have territory within the corridor.

(B) Other public and private agencies.

(4) When requested, act as a coordinating agency for programs and activities of other public and private agencies that are related to the commission's objectives.

(5) Receive grants and appropriations from the following:

(A) Federal, state, and local governments.

(B) Individuals.

(C) Foundations.

(D) Other organizations.

(b) The commission may contract for staff services with:

(1) qualified agencies or individuals; or

(2) a planning commission established under IC 36-7-7.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-13 ----- Shoreline development: executive committee of the commission

(a) The executive committee of the commission is established.

(b) The executive committee consists of:

(1) the members of the commission referred to in section 3(1)(A) through 3(1)(H) of this chapter; and

(2) the members of the commission referred to in section 3(2) through 3(4) of this chapter.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-14 ----- Shoreline development: executive committee officers

(a) The executive committee shall elect the following officers from among the members of the executive committee:

(1) A chairman.

(2) A vice chairman.

(3) A treasurer.

(b) Each officer serves a term of one (1) year beginning July 1 of each year.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-15 ----- Shoreline development: executive committee action

The affirmative votes of a majority of the members of the executive committee are required for the executive committee to take action on any measure.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-16 ----- Shoreline development: executive committee meetings

(a) The executive committee:

(1) shall fix the time for regular meetings; and

(2) may hold special meetings on call of the chairman with seven (7) days written notice.

(b) A member may waive written notice of a specific meeting by a written notice filed with the executive committee.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-17 ----- Shoreline development: executive committee duties

The executive committee shall:

(1) be responsible for the management of all functions related to the provision of grants to political subdivisions from the fund for the purposes set forth in this chapter;

(2) review each grant application referred to the executive committee by the commission under section 11 of this chapter, including the report received from the department of environmental management under section 22 of this chapter, to determine whether to approve a grant;

(3) determine the amount of each grant to a political subdivision approved by the executive committee;

(4) approve, with appropriate signatures, each grant that the executive committee determines to make under this chapter; and

(5) prepare and adopt by majority vote an annual budget for carrying out the activities of the commission.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-18 ----- Shoreline development: executive committee fiscal responsibilities

(a) After approval of the budget by the executive committee, money may be expended only as budgeted, unless a majority vote of the executive committee authorizes other expenditures.

(b) Appropriated money remaining unexpended or unencumbered at the end of the year becomes part of a nonreverting cumulative fund to be held in the name of the commission. The executive committee may authorize unbudgeted expenditures from this fund by a majority vote of the executive committee.

(c) The executive committee is responsible for the safekeeping and deposit of money the commission receives under this chapter. The state board of accounts shall:

(1) prescribe the methods and forms for keeping; and

(2) periodically audit; the accounts, records, and books of the commission.

(d) The treasurer of the executive committee may receive, disburse, and handle money belonging to the commission, subject to the following:

(1) Applicable statutes.

(2) Procedures established by the executive committee.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-19 ----- Shoreline development: shoreline environmental trust fund established

The shoreline environmental trust fund is established to provide a source of money for the following:

(1) The rehabilitation, redevelopment, and reuse of qualifying property by providing grants to political subdivisions to conduct any of the following activities:

(A) Identification and acquisition of qualifying property within a political subdivision.

(B) Environmental assessment of identified qualifying property and other activities necessary or convenient to complete the environmental assessments.

(C) Remediation of environmental contamination conducted on qualifying property.

(D) Clearance of real property under IC 36-7-14-12.2 or IC 36-7-15.1-7 in connection with remediation activities.

(E) Other activities necessary or convenient to return qualified property to full use.

(2) The operations of the commission.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-20 ----- Shoreline development: budget agency responsibilities

(a) The budget agency shall:

(1) administer the fund; and

(2) report to the executive committee semiannually:

(A) revenue receipted to the fund;

(B) distributions from the fund; and

(C) the balance in the fund.

(b) The following shall be paid from money in the fund:

(1) The expenses of administering the fund.

(2) Grants approved by the executive committee under section 17 of this chapter.

(3) The amount budgeted by the executive committee for the operations of the commission.

(c) The fund consists of the following:

(1) Appropriations made by the general assembly.

(2) Grants and gifts intended for deposit in the fund.

(3) Interest, gains, or other earnings of the fund.

(d) The budget agency shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest, gains, or other earnings from these investments shall be credited to the fund.

(e) As an alternative to subsection (d), the budget agency may invest or cause to be invested all or a part of the fund in a fiduciary account with a trustee that is a financial institution. Notwithstanding any other law, any investment may be made by the trustee in accordance with at least one (1) trust agreement or indenture. A trust agreement or indenture may allow disbursements by the trustee to the budget agency as provided in the trust agreement or indenture. The budget agency and the state board of finance must approve any trust agreement or indenture before its execution.

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

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-21 ----- Shoreline development: grant application

(a) Before a political subdivision may receive a grant from the fund, the political subdivision must submit to the department of environmental management and the commission the following:

(1) A grant application, in the form prescribed by the department of environmental management and the commission, that:

(A) identifies the qualifying property;

(B) includes any ordinances, resolutions, or other documentation of the political subdivision's determination to submit the grant application;

(C) identifies the entity from which the qualifying property has been acquired or will be acquired by the political subdivision;

(D) specifies the cost of acquisition of the qualifying property to the political subdivision, if any;

(E) identifies any environmental contamination of the qualifying property that will be subject to remediation;

(F) specifies the environmental remediation objectives with respect to the qualifying property;

(G) estimates all costs the political subdivision will incur with respect to the qualifying property;

(H) evaluates the prospect for conveyance of the qualifying property for use by a private or public entity; and

(I) includes a schedule of all actions taken or to be taken by the political subdivision with respect to the qualifying property between the time of acquisition and the anticipated time of conveyance by the political subdivision.

(2) Documentation of community and neighborhood comment concerning the use of a qualifying property on which environmental remediation activities will be undertaken after environmental remediation activities are completed.

(b) A political subdivision may apply for a grant under this section for activities under this chapter with respect to:

(1) qualifying property previously acquired by the political subdivision by:

(A) purchase; or

(B) donation from a private or public entity; or

(2) qualifying property to be acquired using grant money.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-22 ----- Shoreline development: IDEM responsibilities

The department of environmental management shall do the following under this chapter:

(1) Upon receipt of a grant application from a political subdivision under section 21 of this chapter with respect to a qualifying property, evaluate the technical aspects of the political subdivision's:

(A) environmental assessment of the property; and

(B) proposed environmental remediation with respect to the property.

(2) Submit to the commission a report of its evaluation under subdivision (1).

(3) Evaluate the technical aspects of the political subdivision's environmental remediation activities conducted on qualifying properties.

(4) Act as a liaison with the United States Environmental Protection Agency.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-23 ----- Shoreline development: priority ranking system

The executive committee shall develop a priority ranking system for making grants under this chapter based on the following:

(1) The comprehensive master plan.

(2) Socioeconomic distress in an area, as determined by the poverty level and unemployment rate in the area.

(3) The technical evaluation by the department of environmental management under section 22 of this chapter.

(4) Other factors determined by the commission, including the following:

(A) The number and quality of jobs that would result from reuse of the qualifying property.

(B) Housing, recreational, and educational needs of communities.

(C) Any other factors the executive committee determines will assist in the implementation of this chapter.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-24 ----- Shoreline development: grants

(a) Based on the priority ranking system established under section 23 of this chapter, the executive committee may make grants from the fund to political subdivisions under this section.

(b) A grant must be used for at least one (1) of the purposes set forth in section 19 of this chapter and may be used to pay consultant, advisory, and legal fees and any other costs or expenses resulting from the assessment, planning, or environmental remediation of a qualifying property.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-25 ----- Shoreline development: covenant not to sue

If:

(1) a private entity offers a political subdivision a donation of property for which the political subdivision intends to submit a grant application under section 21 of this chapter; and

(2) the donation of the property is conditioned on obtaining from the state a covenant not to sue the private entity for any potential liability arising under state law associated with environmental contamination of the property;

the political subdivision may request that the commission seek the covenant not to sue from the governor. The governor may execute a covenant not to sue under this section.

[As added by: P.L.31-2001, §1.]

IC 36-7-13.5-26 ----- Shoreline development: guidance documents

The executive committee may adopt guidelines or guidance documents to implement this chapter without complying with IC 4-22-2.

[As added by: P.L.31-2001, §1.]

IC 36-8-12.2. HAZARDOUS MATERIALS EMERGENCY ACTION REIMBURSEMENT

IC 36-8-12.2-1 ------- Hazardous materials emergency action reimbursement: "facility" defined

As used in this chapter, "facility" has the meaning set forth in 327 IAC 2-6.1-4(7), as in effect on January 1, 2001.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-2 ------- Hazardous materials emergency action reimbursement: "fire department" defined

As used in this chapter, "fire department" means a fire department that:

(1) is established under IC 36-8-2-3 or IC 36-8-13-3(a)(1); and

(2) employs:

(A) both full-time paid members and volunteer members; or

(B) only full-time paid members.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-3 ------- Hazardous materials emergency action reimbursement: "hazardous materials emergency" defined

As used in this chapter, "hazardous materials emergency" has the meaning set forth in IC 13-11-2-97.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-4 ------- Hazardous materials emergency action reimbursement: "mode of transportation" defined

As used in this chapter, "mode of transportation" has the meaning set forth in 327 IAC 2-6.1-4(10), as in effect on January 1, 2001.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-5 ------- Hazardous materials emergency action reimbursement: "responsible party" defined

As used in this chapter, "responsible party" has the meaning set forth in IC 13-11-2-191(d).

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-6 ------- Hazardous materials emergency action reimbursement: conditions for imposing charge

A fire department may impose a charge on a person that is a responsible party with respect to a hazardous materials emergency that:

(1) the fire department responded to;

(2) members of that fire department assisted in containing, controlling, or cleaning up;

(3) with respect to the release or imminent release of hazardous materials at a facility, involves a quantity of hazardous materials that exceeds the spill quantities of hazardous materials that must be reported under 327 IAC 2-6.1-5, as in effect on January 1, 2001; and

(4) with respect to the release or imminent release of hazardous materials from a mode of transportation, involves a quantity of hazardous materials that exceeds the spill quantities of hazardous materials that must be reported under 327 IAC 2-6.1-6, as in effect on January 1, 2001.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-7 ------- Hazardous materials emergency action reimbursement: using charges schedule

A fire department imposing a charge under this chapter may bill the responsible party for the total value of the assistance provided, as determined from the state fire marshal's schedule of service charges issued under IC 36-8-12-16(e).

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-8 ------- Hazardous materials emergency action reimbursement: use of money collected

Money collected under this chapter must be deposited in the general fund of the unit that established the fire department under IC 36-8-2-3 or IC 36-8-13-3(a)(1) and may be used only for the following:

(1) Purchase of supplies and equipment used in providing hazardous materials emergency assistance under this chapter.

(2) Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance under this chapter.

(3) Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department under this chapter.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-9 ------- Hazardous materials emergency action reimbursement: limitation; reimbursement with replacement materials

(a) A fire department may not bill under this chapter for services provided that duplicate services provided by another governmental entity.

(b) The responsible party billed for services under this chapter may elect to reimburse the fire department by providing replacement materials that are of equal or greater value than those expended by the fire department in responding to the emergency.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-10 ----- Hazardous materials emergency action reimbursement: recovery of all costs of action

A fire department that imposes a service charge under this chapter and maintains an action for reimbursement under IC 13-25-6-5 may recover all costs of the action, including attorney's fees.

[As added by: P.L.33-2001,§3]

IC 36-8-12.2-11 ------ Hazardous materials emergency action reimbursement: penalty

A responsible party is subject to a penalty for failure to pay the full amount of a charge made under this chapter within sixty (60) days after the issuance of the bill for payment by the fire department. The amount of the penalty is ten percent (10%) of the amount of the charge that remains unpaid on the due date.

[As added by: P.L.33-2001,§3]

IC 36-9-23. MUNICIPAL SEWAGE WORKS

IC 36-9-23-35 -------- Chapter concerning construction and funding of sewage works does not affect powers of IDEM

No proceedings other than those prescribed by this chapter are required for:

(1) the construction or acquisition of sewage works;

(2) the issuance or sale of bonds; or

(3) the establishment of fees;

under this chapter. However, the functions, powers, and duties of the department of environmental management, the water pollution control board, and the state department of health are not affected by this chapter.

[As amended by: P.L.2-1992, §894.]

IC 36-9-24. LEASING OF SEWAGE DISPOSAL FACILITIES

IC 36-9-24-10 -------- Lease of sewage disposal facilities not effective until sewage treatment provisions have been approved by IDEM

A lease under this chapter does not become effective until its provisions for sewage treatment have been found sufficient by the department of environmental management according to rules adopted by the state water pollution control board.

[As amended by: P.L.143-1985, §201.]

IC 36-9-27. DRAINAGE LAW

IC 36-9-27-23 -------- Drainage connections to be approved by IDEM

(a) Whenever:

(1) a person wants to connect a drain with a regulated drain that is subject to this chapter; and

(2) the connection would result in the discharge into the regulated drain of liquid wastes that would cause or contribute to pollution of the receiving waters;

the person seeking the connection must obtain written approval from the department of environmental management for the discharge, and shall file that written approval with the board having jurisdiction of the regulated drain when filing his request to connect.

(b) The board may deny a connection request, even though approval of the department of environmental management is given or is not required.

(c) The board shall deny a connection request whenever the approval of the department of environmental management is required and is not obtained.

(d) The provisions of this section requiring department of environmental management approval do not apply to the discharge of sewage from a single or two (2) family residence.

[As amended by: P.L.143-1985, §202.]

IC 36-9-27-53.5 ----- On-site field reviews by IDEM and IDNR

(a) A county surveyor or board planning to perform a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27 that:

(1) is subject to regulation under:

(A) IC 14-26-5; or

(B) IC 14-28-1; or

(2) requires an individual permit under Section 404 of the federal Clean Water Act (33 U.S.C. 1344);

shall request an on-site field review of the project through a written notification of the division of water of the department of natural resources (referred to as "the division" in this section).

(b) Not more than fourteen (14) days after it receives a notification under subsection (a), the division shall contact the county surveyor or the designee of the county surveyor and the department of environmental management to establish a date, time, and location for the on site field review.

(c) The on site field review shall be conducted by a team consisting of:

(1) one (1) or more representatives of the county;

(2) one (1) or more representatives of the department of natural resources, including an engineer from the division of water;

(3) one (1) or more representatives of the department of environmental management; and

(4) if applicable, representatives of the local soil and water conservation district.

(d) Not more than thirty (30) calendar days after the completion of an on-site field review under this section, the division shall provide the county surveyor with a written summary of the review. The summary must contain the following:

(1) A narrative and map defining the project location.

(2) A description of the proposed work.

(3) A list of conditions that:

(A) the department of natural resources would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work;

(B) the department of environmental management would place on a certification to comply with Section 401 of the federal Clean Water Act (33 U.S.C. 1341), if it is possible to ensure compliance with Section 401 by placing conditions on the certification; or

(C) both departments referred to in this subdivision would place on a permit or certification.

(e) The department of natural resources may not require or recommend the following as conditions for a permit for a project for the reconstruction or maintenance of a regulated drain:

(1) Deed restrictions in connection with the proposed work.

(2) Conservation easements in connection with the proposed work.

(3) Tree planting or tree retention within the easement of the regulated drain, if:

(A) the project involves construction on only one (1) side of the drain;

(B) vegetation on the opposite overbank will not be disturbed; and

(C) the board agrees to establish a suitably sized vegetated filter strip consisting of grasses and legumes along the side of the drain on which the construction will occur.

(f) For the purposes of subsection (e)(3), a project involves construction on only one (1) side of a regulated drain if the work is limited to the entire area:

(1) below the top of the banks; and

(2) within the drainage easement on one (1) side;

of the stream or open drain.

(g) A county surveyor or board that is aggrieved by the permit conditions disclosed under subsection (d)(3) has the right to enter into further negotiations with the department of natural resources and the department of environmental management in order to obtain a mutually agreeable set of permit conditions.

(h) If the permit conditions disclosed under subsection (d)(3) concerning a project for the reconstruction or maintenance of a regulated drain are acceptable to the county surveyor and board, the conditions:

(1) are binding upon the department of natural resources; and

(2) may not be changed by the department of natural resources.

However, subdivisions (1) and (2) cease to apply to the permit conditions disclosed under subsection (d)(3) concerning a project if an application for a permit for the project is not submitted within two (2) years after the onsite field review.

[As amended by: P.L.2-1996, §295.]

IC 36-9-30. COLLECTION AND DISPOSAL OF SOLID WASTE BY LOCAL GOVERNMENTAL UNITS

IC 36-9-30-1 --------- Solid waste collection and disposal: applicability

This chapter applies to all units except townships.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-2 --------- Solid waste collection and disposal: definitions

As used in this chapter:

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal, and solid commercial, industrial, and institutional wastes.

"Solid waste disposal facility" means a sanitary landfill, an incinerator, a composting facility, a garbage grinding facility, or any other facility that is suitable for solid waste disposal and is constructed and approved under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-3 --------- Solid waste collection and disposal: authorization

A unit may establish, acquire, construct, install, operate, and maintain facilities for the collection and disposal of solid waste in order to secure the collection and disposal of solid waste accumulated inside or outside the corporate boundaries of the unit. The unit may issue revenue bonds to pay all or part of the costs of the facilities.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-4 --------- Solid waste collection and disposal: unit must obtain approval from IDEM for any method or methods used for the disposal of solid waste before obtaining land or facilities

A unit acting under this chapter must obtain approval from the department of environmental management, according to rules adopted by the solid waste management board, for any method or methods used for the disposal of solid waste before obtaining land or facilities. One (1) or more of the methods listed below may be used:

(1) A unit may use a sanitary landfill. If a sanitary landfill is to be used, information necessary to evaluate the project shall be submitted to the department of environmental management for review and approval before the purchase of land or equipment.

(2) A unit may use incineration. If incineration is to be used, the plans and specifications of each incinerating plant or other facility, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction of the facilities. The plans must include an approved method for the disposal of noncombustible solid waste and incinerator residue.

(3) A unit may use composting. If composting is to be used, the plans and specifications of composting facilities, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction of the facilities. The plans must provide for the proper disposal of all solid waste that is not suitable for composting.

(4) A unit may use a garbage grinding system involving the separate collection and disposal of garbage into a community sewerage system through commercial-type grinders or community-wide installation of individual grinders. As used in this subdivision, "garbage" means all decayable solid and semisolid wastes resulting from the processing, preparation, cooking, serving, or consumption of food or food materials. The plans and specifications for the garbage grinding facilities, along with other information necessary to evaluate the project, shall be submitted to the department of environmental management for review and approval before construction or installation of the facilities. The plans must provide for the proper disposal of all solid waste that is not suitable for grinding.

(5) A unit may use any other suitable methods or facilities for the disposal of solid waste, if the plans and specifications, along with other information necessary to evaluate the project, are submitted to the department of environmental management for review and approval before the acquisition, construction, installation, or operation of the method or facility.

[As amended by: P.L.143-1985, §203.]

IC 36-9-30-5 --------- Solid waste collection and disposal: contracting by unit

(a) A unit may contract with persons for the collection or disposal of solid waste. The contract may provide that persons contracted with have the exclusive right to collect or dispose of solid waste under section 4 of this chapter.

(b) A unit may contract with any business or institution for the collection and disposal of industrial, commercial, or institutional solid waste. All fees collected by the unit shall be deposited in the treasury of the unit for the administration, operation, and maintenance of the solid waste collection and disposal project.

(c) A unit may contract for the use of privately owned solid waste disposal facilities.

(d) If a contract executed under subsection (a) or (b) will yield a gross revenue to a contractor (other than a governmental entity) of at least twenty-five thousand dollars ($25,000) during the time it is in effect, then the unit must comply with IC 36-1-12-4 in awarding the contract. The unit shall require the bidder to submit a financial statement, a statement of experience, the bidder's proposed plan or plans for performing the contract, and the equipment that the bidder has available for the performance of the contract. The statement shall be submitted on forms prescribed by the state board of accounts. IC 36-1-12-4(b)(6) does not apply to this subsection.

(e) A unit may contract with private persons that operate facilities that combine significant elements of recycling or production of refuse derived fuel.

[As amended by: P.L.19-1990, §39.]

IC 36-9-30-5.5 ------- Solid waste collection and disposal: term of contract for incineration of waste

(a) As used in this section, "waste" includes solid waste and waste disposed of in conjunction with the disposal of solid waste, as well as liquid waste (consisting of sludge from air and water pollution control facilities or water supply treatment facilities) when disposed of in conjunction with the disposal of solid waste.

(b) A unit may contract for twenty (20) years or less for the incineration of waste.

[As added by: P.L.353-1985, §1.]

IC 36-9-30-6 --------- Solid waste collection and disposal: appropriations by unit

The fiscal body of a unit acting under this chapter may make appropriations for the acquisition, establishment, operation, and maintenance of premises, facilities, and services for the collection and disposal of solid waste. Appropriations under this section may include amounts for employees, vehicles, and equipment necessary or incidental to the collection or disposal of solid waste.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-7 --------- Solid waste collection and disposal: supervision and control by works board and sanitary board or utility service board

(a) Except as provided in subsection (b), the:

(1) construction, acquisition, improvement, equipment, custody, administration, operation, and maintenance of any facilities for the collection and disposal of solid waste; and

(2) collection of revenues for the use and services of the facilities;

are under the supervision and control of the works board of the unit.

(b) The legislative body of a municipality may provide by ordinance that the functions described by subsection (a) are under the supervision and control of the sanitary board or utility service board of the municipality.

(c) As used in the following sections of this chapter, "board" means the works board or other board performing the functions described by subsection (a).

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-8 --------- Solid waste collection and disposal: contracts relating to financing to be approved by the fiscal body of the unit

The board may take all steps and proceedings and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. However, any contract relating to the financing of the acquisition, construction, or purchase of facilities for the collection and disposal of solid waste must be approved by the fiscal body of the unit before it is effective.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-9 --------- Solid waste collection and disposal: employees authorized

The board may employ, fix the compensation of, and assign the duties of engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees it considers necessary in the execution of its powers and duties.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-10 -------- Solid waste collection and disposal: limitations on funds from which expenses may be paid

All expenses incurred by the board in carrying out this chapter shall be paid solely from money provided under this chapter. The board may not bind itself or the unit beyond the extent to which money has been or may be provided under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-11 -------- Solid waste collection and disposal: board to operate, manage and control facilities

After the:

(1) construction, installation, and completion; or

(2) acquisition;

of facilities for the collection and disposal of solid waste, the board shall operate, manage, and control the facilities. The board may extend and improve the facilities, if money is available for that purpose under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-12 -------- Solid waste collection and disposal: board to adopt rules for the use and operation of facilities

The board shall adopt rules for the use and operation of facilities constructed or acquired under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-13 -------- Solid waste collection and disposal: board to do all things necessary and expedient

The board shall do all things necessary or expedient for the successful operation of facilities constructed or acquired under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-14 -------- Solid waste collection and disposal: contracts with another unit to use facilities

A unit constructing, acquiring, or maintaining facilities for the collection and disposal of solid waste may contract with a unit that wants to use the facilities for the payment of all or part of the cost and expenses of the facilities, for any term not exceeding twenty-five (25) years. A contract under this section must be executed in accordance with IC 36-1-7.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-15 -------- Solid waste collection and disposal: financing options

The acquisition, establishment, construction, installation, operation, and maintenance of facilities and land for the collection and disposal of solid waste may be financed through general taxation, service fees, or a combination of these methods.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-16 -------- Solid waste collection and disposal: payment of preliminary expenses of board

(a) All or part of the necessary preliminary expenses that are incurred by a board and must be paid before the issuance and delivery of revenue bonds under this chapter may be paid in the manner provided by this section.

(b) The board may certify the items of expense to the fiscal officer of the unit, who shall immediately draw a warrant or warrants to be paid out of the unappropriated part of the general fund of the unit, without a special appropriation being made. If the unit has no unappropriated money in its general fund, the fiscal officer shall recommend to the fiscal body of the unit:

(1) the temporary transfer from other funds of a sufficient amount to meet the items of expense; or

(2) the making of a temporary loan for that purpose.

The fiscal body shall immediately make the transfer or authorize the temporary loan.

(c) The fund or funds from which the payments are made shall be fully reimbursed and repaid out of the first proceeds of the sale of revenue bonds, and before any other disbursements are made from those proceeds. The amount advanced to pay preliminary expenses is a first charge against the proceeds resulting from the sale of the revenue bonds until it has been repaid.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-17 -------- Solid waste collection and disposal: issuance of revenue bonds

(a) The unit may issue revenue bonds to provide all or part of the money necessary to pay the costs of facilities acquired or constructed under this chapter. The bonds, which are payable solely from the fund established under section 18 of this chapter, must be authorized by an ordinance of the fiscal body of the unit, setting forth the terms and conditions of the bonds.

(b) The bonds may bear interest at any rate determined by the ordinance, payable semiannually, and mature serially, either annually or semiannually and beginning at the time and extending over the period of years determined by the ordinance.

(c) The ordinance may include the terms and conditions considered necessary and proper to protect the bondholders.

(d) The bonds shall be issued in the name of the unit, but they are not a corporate indebtedness of the unit. The bonds must contain a statement on their face that the unit is not obligated to pay them or the interest on them, except from the fund established under section 18 of this chapter.

(e) The bonds are negotiable instruments.

(f) The bonds and the interest on them are exempt from all state, county, and municipal taxation.

(g) The bonds shall be executed in the same manner as other bonds issued by the unit are executed, and shall be sold in accordance with IC 5-1-11 or at a negotiated sale.

(h) Bonds issued by a lessor corporation under this chapter shall be sold in accordance with IC 5-1-11 or at a negotiated sale.

[As amended by: P.L.35-1990, §71.]

IC 36-9-30-18 -------- Solid waste collection and disposal: authorizing ordinance

The ordinance authorizing the revenue bonds must also:

(1) establish a sinking fund for the payment of the bonds, the interest on the bonds, and the charges of banks or trust companies for making payment of the bonds or interest; and

(2) pledge the revenues of the facilities, after the payment of the reasonable expense of operation, repair, and maintenance, into the sinking fund at intervals to be determined by the ordinance, for:

(A) the payment of interest on the bonds as it falls due;

(B) the payment of the bonds as they fall due; and

(C) the accumulation of reasonable reserves in the sinking fund as a margin for safety and a protection against default, and for the payment of premiums upon bonds retired by call or purchase.

The required payments constitute a first charge upon the revenues of the facilities, after the payment of the reasonable expense of operation, repair, and maintenance.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-19 -------- Solid waste collection and disposal: application of bonds proceeds

(a) All money received from any revenue bonds issued under this chapter, after reimbursements for preliminary expenses under section 16 of this chapter, shall be applied solely to the payment of the costs of the facilities acquired or constructed under this chapter. Any surplus of bond proceeds above that amount shall be paid into the fund established under section 18 of this chapter. The holders of the bonds have a lien on the money until it is applied in the manner prescribed by this section.

(b) For purposes of this section, costs of the facilities include:

(1) the cost of all property and rights considered necessary or convenient for installing, constructing, and equipping the facilities;

(2) interest on bonds before and during the acquisition, installation, construction, and equipment of the facilities, and for six (6) months after the start of collection of fees under this chapter;

(3) engineering and legal expenses;

(4) expenses for estimates of cost and revenues;

(5) expenses for surveys and plans;

(6) other expenses necessary or incidental to determining the feasibility or practicability of the method or methods to be used for the disposal of solid waste;

(7) administrative expenses; and

(8) other expenses necessary or incidental to financing under this chapter.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-20 -------- Solid waste collection and disposal: actions to challenge bonds

(a) An action to question the validity of the revenue bonds or to prevent their issuance may not be brought after the date fixed for their sale.

(b) Any holder of any of the revenue bonds or the coupons attached to them may bring any action necessary to:

(1) protect and enforce his rights under this chapter or the ordinance authorizing the bonds; and

(2) enforce and compel performance of all duties required by this chapter or the ordinance authorizing the bonds, including the making and collecting of reasonable

and sufficient fees for the use of and services rendered by the facilities for the disposal of solid waste.

However, the unit may not be compelled to pay fees on behalf of other users or owners.

(c) If there is a failure to pay the principal or interest of any of the bonds on the date named for payment, any court having jurisdiction of the action may appoint a receiver to administer the facilities on behalf of the unit and the bondholders. The receiver may:

(1) charge and collect from all users or owners fees sufficient to provide for the payment of the expenses of operation, repair, and maintenance;

(2) pay any bonds and interest outstanding; and

(3) apply the revenues in conformity with this chapter and the ordinance authorizing the bonds.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-21 -------- Solid waste collection and disposal: fees for the use of and the service rendered by the facilities

(a) Except as provided in subsection (l), the fiscal body of the unit owning, operating, and maintaining facilities for the collection or disposal of solid waste may, by ordinance, establish and maintain just and equitable fees for the use of and the service rendered by the facilities.

(b) Except as provided in subsection (m), if the fiscal body of a unit has authorized the issuance of revenue bonds under this chapter, it shall, as long as the bonds are outstanding, establish and maintain fees with respect to the facilities for which the bonds are issued.

(c) The aggregate amount of the required fees must be sufficient to pay the cost of operation, repair, depreciation, and maintenance of the facilities, and to pay the sums required to be paid into the bond fund under this chapter.

(d) The ordinance may provide that the fees are payable:

(1) by either the users of the facilities, the owners of the property served by the facilities, or the unit; or

(2) by the users, owners, and the unit in the proportions fixed by the ordinance.

(e) Revenues collected under this section are considered revenues of the facilities.

(f) The fees may not be established until after a public hearing at which the users of the facilities, the owners of property served or to be served by the facilities, and other interested parties have an opportunity to be heard concerning the proposed fees and the provisions concerning payment of the fees.

(g) After introduction of the ordinance fixing the fees and providing for their payment, and before the ordinance is finally adopted, notice of the hearing, setting forth the proposed schedule of fees and the provisions concerning payment, shall be published in accordance with IC 5-3-1.

(h) After the hearing, which may be adjourned from time to time, the ordinance, as originally introduced or as amended, shall be passed and put into effect. A copy of the schedule of fees established shall be kept on file in the office of the board and in the office of the fiscal officer of the unit. The fee schedule is a public record.

(i) The fees or the provisions for their payment may be changed or readjusted in the manner by which they were originally established. However, if the change or readjustment is made substantially pro rata as to all classes of use or service, no hearing or notice is required.

(j) If:

(1) a user of the facilities; or

(2) an owner of property served by the facilities;

does not pay a fee within thirty (30) days after it is due, the amount of the fee, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the unit in a civil action in the name of the unit.

(k) The unit is subject to the fees established under this chapter. The unit shall pay the fees when due. The payments are considered part of the revenues of the facilities.

(l) This subsection applies to a county having a population of more than forty-four thousand (44,000) but less than forty-five thousand (45,000). The county executive owning, operating, and maintaining facilities for the collection or disposal of solid waste may, by ordinance, establish and maintain just and equitable fees for the use of and the service rendered by the facilities.

(m) If the fiscal body of a county that is subject to subsection (l) has authorized the issuance of revenue bonds under this chapter, the county executive shall, as long as the bonds are outstanding, establish and maintain fees with respect to the facilities for which the bonds are issued.

[As amended by: P.L.12-1992, §188.]

IC 36-9-30-22 -------- Solid waste collection and disposal: solid waste disposal nonreverting capital fund

(a) At the request of the board, the fiscal body of the unit may, by ordinance, establish a solid waste disposal nonreverting capital fund.

(b) Capital for the fund consists of:

(1) deposits by the board of the revenues of its facilities that remain after payment of expenses, in an amount determined by the fiscal body upon the recommendation of the board; and

(2) appropriations of money derived from user fees, in an amount determined by the fiscal body.

(c) After an appropriation by the fiscal body, the board may use the fund for:

(1) acquisition of property and other rights;

(2) installing, constructing, equipping, expanding, modifying, or remodeling new or existing facilities; or

(3) engineering, legal, surveying, estimating, appraising, planning, designing, and other expenses necessary to determine the feasibility of implementing solid waste disposal methods.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-23 -------- Solid waste collection and disposal: garbage grinders

(a) A garbage grinder may not be installed on any private property under this chapter unless the property owner and the tenant, if any, files a written request for garbage disposal service and the installation of a garbage grinder.

(b) The users of garbage grinders may discontinue the service at any time by filing a written request for the discontinuance of the service with the board.

(c) All property rights in the garbage grinders remain in the unit. The unit may remove a garbage grinder upon the discontinuance of the service by the user or if any fees are not paid within thirty (30) days after they are due.

(d) The users of garbage grinders are responsible for any damages to the grinders, except for ordinary wear and tear.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-24 -------- Solid waste collection and disposal: lease with option to purchase of solid waste disposal facilities

(a) A unit may enter into a lease with option to purchase of solid waste disposal facilities inside or outside the corporate boundaries of the unit. However, a lease with an option to purchase may not be entered into for a term of more than thirty (30) years unless:

(1) the lessor is a corporation organized under Indiana law or admitted to do business in Indiana;

(2) a petition for the lease, signed by fifty (50) or more resident taxpayers of the unit, has been filed with the board; and

(3) the board has, after investigation, determined that there is a need for the facilities.

The terms and conditions of the option to purchase must be specified in the lease.

(b) A lease under this section may provide that as a part of the lease rental for the solid waste disposal facilities, the unit agrees to:

(1) pay all taxes and assessments levied against or on account of the leased property;

(2) maintain insurance on the leased property for the benefit of the lessor corporation; and

(3) assume all responsibilities for repair and alterations of the leased property during the term of the lease.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-25 -------- Solid waste collection and disposal: public hearing on lease

(a) After the lessor corporation and the unit have agreed upon the terms and conditions of a lease under section 24 of this chapter, and before the final execution of the lease, notice of a hearing to be held before the board shall be given to all interested persons. The hearing may not be earlier than ten (10) days after the publication of notice.

(b) The notice of hearing shall be published one (1) time in the manner prescribed by IC 5-3-1. The notice must name the day, place, and hour of the hearing and set forth a brief summary of the principal terms of the lease, including the location and name of the proposed lessor corporation, the character of the property to be leased, the rental to be paid, the term of the lease, and a summary of the terms of purchase under the option. The cost of publication shall be paid by the lessor corporation.

(c) The proposed lease, drawings, plans, specifications, and estimates for the solid waste disposal facilities shall be kept available for inspection by the public during the ten (10) day period and at the meeting.

(d) At the hearing, which may be adjourned from time to time, all interested persons are entitled to be heard upon the necessity for the execution of the lease and upon the fairness and reasonableness of the rental and purchase price provided for in the lease.

(e) After the hearing, the board may authorize the execution of the lease as originally agreed upon or make the modifications in the lease that are agreed upon with the lessor corporation. However, the lease rental or purchase price as set out in the published notice may not be increased.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-26 -------- Solid waste collection and disposal: action to contest lease may not be brought after execution

When the execution of a lease is authorized under section 25 of this chapter, the board shall give at least thirty (30) days' notice of the date upon which the lease will be executed. The notice shall be published one (1) time in the manner prescribed by IC 5-3-1. An action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease may not be brought after the execution of the lease.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-27 -------- Solid waste collection and disposal: pre-acquisition and construction lease may not be brought after the execution

In anticipation of the acquisition of a site and the construction and erection of solid waste disposal facilities, including the necessary equipment and appurtenances, a unit may enter into a lease may not be brought after the execution with a lessor corporation, subject to the approval of the state board of tax commissioners. Such a lease may not provide for the payment of any lease rental by the lessee until the facilities are completed and ready for solid waste disposal. The lessor corporation shall agree in the lease to furnish a bond satis-

factory to the lessee and conditioned upon final completion of the facilities within the period specified in the lease, except for unavoidable delays.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-28 -------- Solid waste collection and disposal: lease or sale of site lessor of facility

A unit that wants to have solid waste disposal facilities erected on land owned or to be acquired by the unit may:

(1) sell that land to the lessor; or

(2) lease that land to the lessor for a nominal rental for the same period of years that the unit leases the facilities, and grant an option to the lessor to purchase the land within six (6) months after the termination of the lease of the facilities if the unit defaults under the terms of the lease and the lease is terminated.

If the option price on the land is not fixed in the original lease, the circuit court for the county shall appoint three (3) appraisers who reside in the unit to determine the price to be paid for the land under the option.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-29 -------- Solid waste collection and disposal: submission of plans and estimates

(a) A lessor corporation proposing to build solid waste disposal facilities, including the necessary equipment and appurtenances, shall, after the execution of the lease, submit to the unit plans, specifications, and estimates for the facilities. The plans and specifications shall be submitted to the state department of health and must be approved in writing by the state department and by the unit before the execution of the lease.

(b) This section does not prohibit the unit from contracting for the preliminary engineering design work necessary to initiate the planning and engineering of the solid waste disposal facilities, and making provisions for payment for these services.

[As amended by: P.L.2-1992, §895.]

IC 36-9-30-30 -------- Solid waste collection and disposal: annual tax levy to pay rental stipulated in the lease

A unit that wants to lease solid waste disposal facilities under this chapter shall annually levy a tax sufficient to produce the money required to pay the rental stipulated in the lease. The levy may be reviewed by other bodies vested by law with that authority, in order to ascertain that the levy is sufficient to raise the amount required under the lease.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-31 -------- Solid waste collection and disposal: leased facility exempt from state and local taxes; rental subject to all applicable taxes

A solid waste disposal facility leased by a lessor corporation to a unit under this chapter is exempt from all state, county, and other taxes, including all sales and use taxes applicable to tangible personal property incorporated or to be incorporated in the facility. However, the rental paid to a lessor corporation under the terms of such a lease is subject to all applicable taxes.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-32 -------- Solid waste collection and disposal: exercise of option to purchase; extension of lease

(a) If a unit exercises an option to purchase contained in a lease under section 24 of this chapter, it may pay the purchase price of the facilities purchased with money obtained from bonds issued and sold under the statutes governing the issue and sale of bonds of the unit.

(b) If the unit does not exercise the option to purchase at the expiration of the lease, the solid waste disposal facilities covered by the lease become the absolute property of the unit upon the unit's full discharge and performance of its obligations under the lease. The lessor corporation shall execute proper instruments conveying to the unit good and merchantable title to the facilities.

(c) If the unit does not exercise the option to purchase, then the board, subject to the approval of the fiscal body of the unit, may extend the lease of the solid waste disposal facility for the term, not to exceed a period equal to the term of the original lease, and for the consideration agreed to by the parties to the original lease or their assignees. At the end of the extension period, the facility covered by the lease becomes the absolute property of the unit, and the lessor corporation shall execute all proper instruments to convey the facility to the unit.

[As added by: Acts 1981, P.L.309, §106.]

IC 36-9-30-33 -------- Solid waste collection and disposal: SWMB may adopt rules

The solid waste management board may adopt rules under IC 4-22-2 to carry out this chapter.

[As amended by: P.L.143-1985, §204.]

IC 36-9-30-34 -------- Solid waste collection and disposal: action of IDEM does not limit powers of other governmental entities, if they are not in conflict

Action taken by the department of environmental management under this chapter does not limit the powers of other governmental entities to make or enforce other statutes, ordinances, or rules for the storage, collection, removal, or disposal of solid waste, if they do not conflict with this chapter. For purposes of this section, the provisions of this chapter shall be construed as cumulative or alternative.

[As amended by: P.L.143-1985, §205.]

IC 36-9-30-35 -------- Solid waste collection and disposal: acceptable means of solid waste disposal; open dumps prohibited; violations; enforcement

(a) Solid waste may be disposed of on land only through use of sanitary landfills, incineration, composting, garbage grinding, or other acceptable methods approved by the department of environmental management in accordance with rules adopted by the solid waste management board. A person may not operate or maintain an open dump.

(b) A person may not operate or maintain facilities for the collection and disposal of solid waste, except as set out in section 4 of this chapter or under rules adopted by the solid waste management board.

(c) Failure to comply with this section constitutes the operation of a nuisance inimical to human health. A prosecuting attorney who receives a report of such a failure from the department of environmental management, a solid waste management district, or a local health officer shall cause appropriate court proceedings to be instituted.

(d) A person who fails to comply with this section commits a Class C infraction. If the violation is of a continuing nature, each day of failure to comply constitutes a separate infraction.

(e) The department of environmental management may bring proceedings for injunctive or mandatory relief through the attorney general against any person (including any agency of the state or federal government) for failure to comply with this section.

[As amended by: P.L.33-1992, §22.]

IC 36-9-31. WASTE COLLECTION AND DISPOSAL IN INDIANAPOLIS

IC 36-9-31-1 --------- Waste collection and disposal: application to Indianapolis

This chapter applies to each consolidated city.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-2 --------- Waste collection and disposal in Indianapolis: definitions

As used in this chapter:

"Board" refers to the board of public works of the consolidated city, subject to IC 36-3-4-23.

"Byproduct" means energy and materials from wastes in a form that will allow their reuse.

"Byproduct recovery facility" means a facility for the systematic separation and recovery of energy and recyclable material from waste.

"Cost" as applied to a facility, or any part of a facility, includes the cost of construction, modification, or acquisition of the facility, or any part of it, financing charges, interest before and during construction and for one (1) year after commencement of operation of the facility, cost of funding any reserves to secure the payment of principal and interest on the bonds, cost of funding any operation and maintenance reserve fund, cost of funding any major repair or replacement fund, legal and underwriting expenses, plans, specifications, surveys, estimates of costs and revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the facility, administrative expense, and such other expenses as may be necessary or incident to the construction, modification, or acquisition of the facility, the financing of the construction, modification, or acquisition, and the placing of the facility in operation.

"Developer" means any person that proposes to enter into or has entered into a financing agreement with the consolidated city for financing a facility and that proposes to enter into or has entered into a separate agreement with some other person for the use and operation of the facility so financed.

"Disposal" includes the treatment of as well as the placing, processing, confining, compacting, storing, or covering of waste.

"Facility" means any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture, or other real or personal property that is to be used, occupied, or employed for the storage, processing, or disposal of waste or the recovery and marketing by any means of any byproduct, such as recycling centers, transfer stations, trucks, bailing facilities, rail haul or barge haul facilities, processing systems, byproduct recovery facilities or other facilities for reducing waste volume, sanitary landfills, plants and facilities for compacting, composting, or pyrolization of wastes, incinerators, and other waste disposal, reduction, or conversion facilities or any combination thereof. The term excludes any energy generating facility that does not rely on waste as its primary fuel source and any facility regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Financing agreement" includes an agreement between the consolidated city and a developer or between a developer or user, or both, concerning the financing of, the title to, or possession of facilities, or both, and payments to the city in respect thereof.

"Grant" means money to be received from the federal government or any of its agencies, or the state or any of its agencies, intended to be used for the construction, modification, or acquisition of waste disposal facilities. The term also includes federal revenue-sharing money to which the consolidated city is entitled.

"Net revenues" means the amount of revenues received by the consolidated city from the operation and ownership of facilities less the reasonable expenses of the operation, repair, and maintenance of these facilities.

"Processing" means an operation for the purpose of modifying the characteristics or properties of waste to facilitate transportation of, disposal of, or the recovery of byproducts from waste.

"Proposal" means a written response to a request for proposals.

"Proposer" means any person that has submitted a proposal in response to a request for proposals issued to the person by the board.

"Public notice" means a notice published in accordance with IC 5-3-1.

"Put or pay contract" means a contract entered into by the consolidated city with any person whereby the city guarantees the provision of a specified amount of waste to the person and the city is obligated to pay the person a specified amount for waste that is not so provided.

"Request for proposals" means an invitation to submit a proposal to the consolidated city for the construction, modification, acquisition, operation, or combination of any of these, of the facility under section 4 of this chapter.

"Request for qualifications" means an invitation by the consolidated city to any person to submit qualifications in order to qualify to submit a proposal.

"Revenue bonds" means bonds issued under section 10 of this chapter.

"Revenues" means the amounts received by the consolidated city from the operation or ownership of facilities, including amounts received from the collection of fees under section 8 of this chapter, amounts received under financing agreements under section 11 of this chapter, tipping fees, lease rentals, and amounts received from the sale or other disposition of byproducts, but not including any amounts derived from the levy of taxes.

"Service district" means the solid waste collection special service district created by IC 36-3-1-6.

"Solid waste" has the meaning set forth in IC 36-9-30-2, except that the term excludes sewage and other highly diluted water-carried materials or substances and those in gaseous forms, excludes waste when the waste is to be reused or reclaimed as salvage, and excludes waste regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

"Tipping fees" means the charge by any person for the disposal of waste at a facility.

"User", for purposes of section 11 of this chapter only, means a person that has entered into a financing agreement with the consolidated city, or with a developer, in contemplation of the user's use and operation of the facilities referred to in the agreement.

"Waste" includes solid waste and water disposed of in conjunction with the disposal of solid waste, as well as liquid waste (consisting of sludge from air or water pollution control facilities or water supply treatment facilities), when disposed of in conjunction with the disposal of solid waste.

"Waste disposal development bonds" means bonds issued under section 11 of this chapter.

"Waste disposal district" means the waste disposal special taxing district referred to in IC 36-3-1-6.

"Waste disposal district bonds" means bonds issued under section 9 of this chapter.

[As amended by: P.L.1-1996, §95.]

IC 36-9-31-3 --------- Waste collection and disposal in Indianapolis: powers granted

In order to provide for the collection and disposal of waste in the consolidated city and for the management, operation, acquisition, and financing of facilities for waste disposal, the board may exercise the following powers on behalf of the city, in addition to the powers specifically set forth elsewhere in this chapter:

(1) To sue and be sued.

(2) To exercise the power of eminent domain as provided in IC 32-11 within the corporate boundaries of the city; however, the power of eminent domain may not be exercised to acquire the property of any public utility used for the production or distribution of energy.

(3) To provide for the collection of waste accumulated within the service district and to provide for disposal of waste accumulated within the waste disposal district, including contracting with persons for collection, disposal, or waste storage, and the recovery of byproducts from waste, and granting these persons the right to collect and dispose of any such wastes and store and recover byproducts from them.

(4) To plan, design, construct, finance, manage, own, lease, operate, and maintain facilities for waste disposal.

(5) To enter into all contracts or agreements necessary or incidental to the collection, disposal, or recovery of byproducts from waste, such as put or pay contracts, contracts and agreements for the design, construction, operation, financing, ownership, or maintenance of facilities or the processing or disposal of waste or the sale or other disposition of any products generated by a facility. Notwithstanding any other statute, any such contract or agreement may be for a period not to exceed forty (40) years.

(6) To enter into agreements for the leasing of facilities in accordance with IC 36-1-10; however, any such agreement having an original term of five (5) or more years is subject to approval by the state board of tax commissioners under IC 6-3.5. Such an agreement may be executed before approval, but if the state board of tax commissioners does not approve the agreement it is void.

(7) To purchase, lease, or otherwise acquire real or personal property.

(8) To contract for architectural, engineering, legal, or other professional services.

(9) To exclusively control, within the city, the collection, transportation, storage, and disposal of waste and, subject to the provisions of sections 6 and 8 of this chapter, to fix fees in connection with these matters.

(10) To determine exclusively the location and character of any facility, subject to local zoning ordinances and environmental management laws (as defined in IC 13-11-2-71).

(11) To sell or lease to any person any facility or part of it.

(12) To make and contract for plans, surveys, studies, and investigations.

(13) To enter upon property to make surveys, soundings, borings, and examinations.

(14) To accept gifts, grants, or loans of money, other property, or services from any source, public or private, and to comply with their terms.

(15) To issue from time to time waste disposal district bonds to finance the cost of facilities as provided in section 9 of this chapter.

(16) To issue from time to time revenue bonds to finance the cost of facilities as provided in section 10 of this chapter.

(17) To issue from time to time waste disposal development bonds to finance the cost of facilities as provided in section 11 of this chapter.

(18) To issue from time to time notes in anticipation of grants or in anticipation of the issuance of bonds to finance the cost of facilities as provided in section 13 of this chapter.

(19) To establish fees for the collection and disposal of waste, subject to the provisions of sections 6 and 8 of this chapter.

(20) To levy a tax within the service district to pay costs of operation in connection with waste collection, waste disposal, mowing services, and animal control, subject to regular budget and tax levy procedures. For purposes of this subdivision, "mowing services" refers only to mowing services for rights-of-way or on vacant property.

(21) To levy a tax within the waste disposal district to pay costs of operation in connection with waste disposal, subject to regular budget and tax levy procedures.

(22) To borrow in anticipation of taxes.

(23) To employ staff engineers, clerks, secretaries, and other employees in accordance with an approved budget.

(24) To issue requests for proposals and requests for qualifications as provided in section 4 of this chapter.

(25) To require all persons located within the service district or waste disposal district to deposit waste at sites designated by the board.

(26) To otherwise do all things necessary for the collection and disposal of waste and the recovery of byproducts from it.

[As amended by: P.L.67-1999, §1.]

IC 36-9-31-4 --------- Waste collection and disposal in Indianapolis: contracts and agreements

(a) Notwithstanding any statute relating to the length, duration, and terms of contracts and agreements, the board on behalf of the consolidated city may enter into any contract or agreement with any person upon such terms and conditions as may be agreed upon, for the design, construction, operation, financing, ownership, or maintenance of a facility for waste disposal in accordance with the requirements and conditions of this section. Before or after the expiration or termination of the term or duration of any contract or agreement entered into or granted under this section, the board, in accordance with the requirements and conditions of this section, may from time to time enter into amended, extended, supplemental, new, or further contracts or agreements with the same or any other person for any purpose referred to in this section.

(b) Overall cost, including construction costs, tipping fees, and reductions in costs resulting from the sale of byproducts, should in all cases be a major criterion in the selection of contractors for award of contracts under this section. The board shall consider the highly complex and innovative nature of byproduct recovery technology, the variety of waste disposal technology available, the desirability of flexibility for the development of these complex facilities, and the economic and technical utility of contracts for byproduct recovery projects that include in their scope various combinations of design, construction, operations, management, or maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the consolidated city to award a contract on the basis of factors other than cost alone, for example, facility design, system reliability, energy efficiency, compatibility with source separation and other recycling systems and environmental protection. Accordingly, and notwithstanding any other statute, a contract entered into between the board on behalf of the city and any person under this section may be awarded by the board by following either of the following procedures:

(1) Public bidding in compliance with IC 36-1-12.

(2) Compliance with subsection (c).

(c) The board may issue a request for qualifications and request for proposals prepared by or for the consolidated city in accordance with the following provisions:

(1) All persons may be required to prequalify as a proposer by submitting information relating to the experience of the proposer, the basis on which the proposer purports to be qualified to carry out all work required by a proposed contract, and the financial condition of the proposer. Minimum requirements may be set by the board as to these minimum qualifications in a request for qualifications issued before that.

(2) Before the issuance of a request for proposals under this section, the board shall adopt a proposed request for proposals and shall publish a public notice that may contain a request for qualifications, if a prequalification process has been adopted under subdivision (1), including the criteria on which proposers may be selected. The public notice must include the intent to issue a request for proposals, and must further designate times and places where the proposed request for proposals may be viewed by the general public. Comments may be addressed to the scope or contents of the proposed request for proposals. The board shall allow not less than a thirty (30) day period for the submission of qualifications and comments on the

proposed request for proposals, following which the board shall select a proposer and adopt a request for proposals. After that, the board shall notify each proposer that is selected of the selection, inform each proposer of the date and place proposals are to be submitted, and deliver to each proposer a copy of the request for proposal.

(3) Requests for proposals must include a clear identification and specification of all elements of cost that would become charges to the city, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for proposals for the full lifetime of a proposed contract, including such appropriate matters as proposals for project staffing, implementation of all work tasks, carrying out of all responsibility required by the proposed contract, the cost of planning, design, construction, operation, management, or maintenance of any facility, or the cost of processing or disposal of solid waste, and a clear identification and specification of any revenues that would accrue to the city from the sale of any byproducts or from any other source, and such other information as the board may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section. However, the board may prescribe the form and content of proposals and, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the board of the proposal. In addition, the board in the request for proposals may set such maximum allowable cost limits as it determines to be appropriate.

(4) Proposals may not be received by the board before thirty (30) days following notification to the proposers of their selection.

(5) Proposals received under this section shall be evaluated by the board as to net cost or revenues and, in the manner consistent with provisions set forth in the requests for proposals, may be evaluated on the basis of additional factors such as the technical evaluation of facility design, net energy efficiency, environmental protection, overall system reliability, and financial condition of the proposer.

(6) The board, on behalf of the city, may negotiate with the proposer and may make a contract award to any responsible proposer. The board shall give public notice of a public hearing, which notice must designate the time and place of a public hearing at which hearing the board shall hear comments upon the contract to be awarded. Following the public hearing, the board shall make a contract award to any responsible proposer selected under this section based on a determination by the board that the selected proposal is the most responsive to the needs of the city. The award must be in the form of a resolution and must include particularized findings relative to factors evaluated under this section, indicating that the city's needs are met by the award and that the action is in the public interest.

(d) An action to contest the validity of the contract awarded or the procedure by which it was awarded must be brought within thirty (30) days following the award of the contract. After that date, the contract is incontestable for any cause.

(e) Notwithstanding any other statute, any contract entered into by the board with any person on behalf of the consolidated city for the collection of solid waste may be awarded by negotiation or by competitive bids. The board shall consider the following factors in awarding a negotiated contract:

(1) Price quoted by the proposed contractor.

(2) Prior experience of the proposed contractor.

(3) Financial status of the proposed contractor.

(4) Number of vehicles and other equipment to be used by the proposed contractor.

(5) Any other factors related to the proposed contractor's ability to perform under the contract.

If a contract is awarded by negotiation, the reason for using negotiation as the method to award the contract must be stated in writing by the board at the time that the contract is awarded. A copy of this statement must be kept available for public inspection.

(f) The board shall award competitive bid contracts to the lowest responsible and responsive bidder after advertising for bids. However, if a contract is not awarded to the lowest bidder, the factors used to justify that award must be stated in the minutes or memoranda at the time the award is made, and a copy of the minutes or memoranda must be kept available for public inspection. The procedures for granting a collection contract by competitive bidding shall be prescribed in an ordinance adopted by the city-county legislative body or, in the absence of such an ordinance, by IC 36-1-12-4.

(g) The board may contract with multiple parties for solid waste collection and may award separate contracts for separate geographical areas within the consolidated city.

(h) This subsection applies to contracts of less than three hundred thousand dollars ($300,000) a year for the collection of solid waste. The board may require a waste collector under a contract to carry insurance coverage in a form which protects against losses in excess of the amount covered by other liability insurance policies. The board may not require a waste collector to carry such umbrella insurance coverage in excess of one million dollars ($1,000,000). A waste collector under a contract must provide one (1) of the following as determined by the board:

(1) A performance bond or an irrevocable letter of credit equal to ten percent (10%) of the annual contract price.

(2) An agreement that ten percent (10%) of the annual contract price may be withheld by the board as security for performance of the contract.

[As amended by: P.L.175-1990, §1.]

IC 36-9-31-5 --------- Waste collection and disposal in Indianapolis: provisions applicable to put or pay contracts

(a) Any put or pay contract may provide for payments to be made by the consolidated city under the contract from:

(1) the levy of taxes;

(2) revenues;

(3) any other available funds of the consolidated city; or

(4) any combination of the foregoing.

(b) A put or pay contract may further provide that payments by the consolidated city to the other person to the contract are required only to the extent and only for the period or periods that person is able to accept and dispose of waste in accordance with the contract had such waste been delivered to the person.

(c) A put or pay contract may be entered into by the consolidated city extending for a period of five (5) years or more only after a public hearing by the board, at which all interested persons shall be heard. After the public hearing, the board may adopt a resolution authorizing the execution of the contract on behalf of the city if it finds that the estimated amount of waste to be provided throughout the term of the contract will not be less than the specified amount of waste required to be provided by the contract.

(d) A put or pay contract providing for payments by the consolidated city in whole or in part from the levy of taxes is not valid unless approved by ordinance of the city-county legislative body. Upon execution of such a contract and approval by the legislative body, the board shall cause notice of the execution of the contract and its approval to be given by public notice. Fifty (50) or more taxpayers residing in the city who will be affected by the contract and who may be of the opinion that no necessity exists for the execution of the contract or that the payments provided for in the contract are not fair and reasonable may file a petition in the office of the county auditor within thirty (30) days after the publication of the notice of execution and approval, setting forth their names, addresses, and objections to the contract and the facts showing that the execution of the contract is unnecessary or unwise or that the payments provided for in the contract are not fair and reasonable, as the case may be. Upon the filing of the petition, the county auditor shall immediately certify a copy of it, together with such other data as may be necessary in order to present the ques-

tions involved, to the state board of tax commissioners. Upon receipt of the certified petition and information, the state board of tax commissioners shall fix a time and place for the hearing of the matter, which must be not less than five (5) nor more than thirty (30) days thereafter in the city. Notice of the hearing shall be given by the state board of tax commissioners to the members of the board and to the first fifty (50) taxpayer-petitioners upon the petition by a letter signed by one (1) member of the state board of tax commissioners and enclosed with fully prepaid postage sent to those persons at their usual place of residence, at least five (5) days before the date of the hearing. The decision of the state board of tax commissioners on the appeal, upon the necessity for the execution of the contract, and as to whether the payments under it are fair and reasonable, is final.

(e) An action to contest the validity of the contract or to enjoin the performance of any of its terms and conditions must be brought within thirty (30) days after the publication of notice of the execution and approval of the contract, or if an appeal has been taken to the state board of tax commissioners, then within thirty (30) days after the decision of the board.

(f) After the consolidated city has entered into a put or pay contract under this section, the city-county legislative body shall annually levy a tax sufficient to produce each year the necessary amount, with other amounts available, if any, that is sufficient to pay the amounts that the contract provides are to be paid from the levy of taxes. The tax levies provided for in this chapter are reviewable by other bodies vested by law with authority to ascertain that the levies are sufficient to raise the amount that, with other amounts available, is sufficient to meet the payments under the contract payable from the levy of taxes.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-6 --------- Waste collection and disposal in Indianapolis: imposition of property taxes or user fees

For purposes of IC 6-3.5-1.1, the service district and the waste disposal district constitute civil taxing units, and they may impose ad valorem property tax levies for the purpose of paying for waste collection, or waste disposal. However, notwithstanding any other provision of this chapter, if a property tax is levied for waste collection, a user fee may not also be charged for waste collection or animal control.

[As amended by: P.L.85-1995, §43.]

IC 36-9-31-7 --------- Waste collection and disposal in Indianapolis: service district created

The service district is created for the purpose of providing persons within its territory with solid waste collection service.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-8 --------- Waste collection and disposal in Indianapolis: fees for waste collection and disposal

(a) The board may establish fees for waste collection and disposal. The board shall establish fees for waste disposal when necessary to pay principal or interest on any bonds issued under section 10 of this chapter. Fees established under this subsection shall apply to all persons owning real property benefited by waste collection, a facility for waste disposal, or both. The board may change and readjust fees from time to time.

(b) The board may fix the fees for waste collection on the basis of a schedule of charges for each classification of residence or building in use in the solid waste collection service district, and may fix the fees for waste disposal on the basis of a schedule of charges for each classification of residence or building in use in the waste disposal district. These classifications of residences and buildings shall be based on:

(1) weight or volume of the refuse received;

(2) the average number of containers or bags of refuse received;

(3) the relative difficulty associated with the disposal of the waste received; or

(4) any combination of these criteria or any other criteria the board determines to be logically related to the service.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

(d) If the fees are not paid when due (by the affected property owner), a lien is created upon the property benefited by the collection and disposal of waste. When the property is sold at a tax sale under the procedures provided by statute, the amount of the purchase price attributable to the waste charge lien reverts to the consolidated city.

(e) The board may exercise reasonable discretion in adopting differing schedules of fees, based upon variations in the cost of furnishing the services included within this chapter to various classes of owners of property, the distance of the property benefited from the facility, or any other variations the board determines to be logically related to the cost of the service.

(f) Fees shall be established only after a public hearing before the board at which all persons using facilities or owning property benefited by waste collection and disposal, and others interested, have had opportunity to be heard by the board concerning the proposed fees. After adoption of the resolution fixing fees and before the resolution takes effect, public notice of the hearing, setting forth the schedule of fees, shall be given. The hearing may be adjourned from time to time. After the hearing, the resolution establishing fees, either as originally passed or as amended, shall be passed and put into effect. A copy of the schedule of fees so established shall be kept on file in the office of the board and shall be kept open to inspection by all persons interested. The fees established shall be extended to cover any additional territory later served that falls within the same class, without the necessity of any hearing or notice. Any change or readjustment of fees may be made in the same manner as they were originally established.

(g) An action to contest the validity of the fees adopted or the procedure by which they were adopted must be brought within thirty (30) days following the adoption of the fees.

(h) Fees imposed under this chapter may be used, together with any other revenues, to pay the cost of facilities for waste disposal, waste collection, the operation and maintenance of facilities, cost incurred under put or pay contracts, charges that may be pledged to the payment of principal of and interest on waste disposal district or revenue bonds, or amounts required by put or pay contracts.

(i) Before any fee established by the board for waste collection or disposal may take effect, the city-county legislative body must by ordinance approve, reject, or modify the fee.

[As amended by: P.L.38-1984, §7.]

IC 36-9-31-9 --------- Waste collection and disposal in Indianapolis: waste disposal district bonding

(a) The waste disposal district constitutes a special taxing district for the purpose of levying a special benefit tax for the purpose of providing the disposal of waste and the recovery of byproducts from waste.

(b) Whenever, upon investigation, the board determines that a facility or facilities for waste disposal is necessary for the public health and welfare, and that the construction, modification, or acquisition of the facility or facilities will be of public utility and benefit, the board may, upon approval of the city-county legislative body, issue waste disposal district bonds under this section for the payment of the cost of the facility.

(c) Before authorizing the waste disposal district bonds the board may either accept public bids for the facility or adopt a resolution approving a request for proposals all as provided in section 4 of this chapter.

(d) When plans and specifications have been prepared according to the public bidding requirements of IC 36-1-12, or a resolution adopted by the board approving a request for proposals, the board shall adopt a resolution declaring that, upon investigation, it has been found that it is necessary for the public health and welfare and will be of public utility and

benefit to construct, modify, or acquire (and maintain where constructed) the facility or facilities and to acquire the property described for that purpose. The resolution shall be kept open to inspection by all persons interested in or affected by the acquisition of the property or the construction of the facility. Upon adoption of the resolution, the board shall give public notice of the adoption and its purpose, which notice must name a date not less than ten (10) days after the date of the last publication on which the board will receive or hear remonstrances from persons interested in or affected by the facility or facilities and will determine their public utility and benefit.

(e) At the time fixed for the hearing, or at any time before that, any person owning real or personal property within the waste disposal district may file a written remonstrance with the board. At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and all remonstrances filed. After considering the remonstrances, the board shall take final action determining the public utility and benefit of the proposed proceedings and confirm, modify and confirm, or rescind the resolution, which final action shall be duly recorded. This action is final and conclusive upon all persons, except that any person who has remonstrated in writing and who is aggrieved by the decision of the board may take an appeal as provided in subsection (f).

(f) Any person who has filed a written remonstrance with the board as provided in subsection (e), in case the board takes final action confirming the resolution in its original or any modified form, is entitled to appeal to the superior court of the county. Within ten (10) days after the final action of the board, the remonstrator must file in the office of the clerk of the court a copy of the resolution of the board and his remonstrance, together with a surety bond conditioned to pay the costs of the appeal should the appeal be determined against him. The only ground of remonstrance of which the court has jurisdiction on appeal is the question of whether it will be of public utility and benefit to construct, modify, or acquire the proposed facility, and the burden of proof is upon the remonstrator. The cause shall be summarily tried by the court without a jury. All remonstrances upon which an appeal are taken shall be consolidated and heard as one (1) cause of action by the court, and the cause shall be heard and determined by the court within thirty (30) days after the time of filing the appeal. Upon the date fixed for hearing, the court shall hear evidence upon the remonstrances and shall confirm the final action of the board on the resolution or sustain the remonstrance.

(g) Upon final action of the board, or court, confirming the resolution in its original or any modified form, all real or personal property located within the waste disposal district is subject to a special tax for the purpose of providing money to pay all or a part of the total cost of the acquisition, modification, or construction of the facility, which special tax is declared to constitute the amount of benefits resulting to all of the property in the district.

(h) For the purpose of raising money to pay the cost of the facility, and in anticipation of the special tax to be levied, the board shall, upon the approval of the legislative body, cause to be issued waste disposal district bonds in the name of the consolidated city in accordance with IC 36-3-5-8.

(i) On adopting a resolution ordering the issuance of waste disposal district bonds, the board, with legislative body approval, shall then certify a copy of the resolution and a copy of the approval to the fiscal officer of the consolidated city, who shall then prepare the bonds.

(j) The waste disposal district bonds are not, in any respect, a corporate obligation or indebtedness of the consolidated city, but constitute an indebtedness of the waste disposal district. The waste disposal district bonds, and interest on them, issued under this section are payable out of a special tax levied upon all of the property of the waste disposal district and any other revenues made available for that purpose under this chapter. The waste disposal district bonds must so recite these terms upon their face, together with the purpose for which they are issued.

(k) All proceeds from the sale of waste disposal district bonds shall be kept as a separate and specific fund, to pay the cost of the facility, and no part of the proceeds may be used for any other purpose. Any surplus remaining out of the proceeds of the waste disposal district

bonds, after all of the cost is fully paid, shall be paid into and becomes a part of the waste disposal district bond fund; however, money derived from sources other than the waste disposal district bond proceeds, such as state or federal grants or other contributions, are not so restricted as to application regardless of whether the contribution arises for a project financed from waste disposal district bond proceeds.

(l) For the purpose of raising money to pay the waste disposal district bonds issued under this section, the city-county legislative body shall levy each year a special tax upon all the property of the waste disposal district in such amount and manner as to meet and pay the principal of the waste disposal district bonds as they severally mature, together with all accruing interest on them. The tax so levied each year shall be certified to the fiscal officers of the consolidated city and the county. The tax so levied and certified shall be estimated and entered upon the tax duplicate by the county auditor and shall be collected and enforced by the county treasurer in the same manner as county taxes are estimated, entered, collected and enforced. As the tax is collected by the county treasurer, it shall be accumulated and kept in a separate fund to be known as the waste disposal district bond fund, and shall be applied to the payment of the principal of and interest on the waste disposal district bonds as they become due and to no other purpose. In fixing the amount of the necessary levy the legislative body shall consider the amount of net revenues, if any, to be derived from the collection of fees under section 8 of this chapter or any other net revenues collected under this chapter above the amount of revenues necessary to be applied upon or reserved by or for the city for the operation, maintenance, and administrative expenses of the facilities. The board shall annually, in lieu of making the levy or to reduce the amount of the levy, set aside by resolution the amount of the net revenues to be collected before maturity of the principal and interest of the waste disposal district bonds payable in the following calendar year. If the board adopts this resolution, then it is unlawful for the board to use any part of the amount so set aside out of the net revenues for any purpose other than the payment of waste disposal district bonds and the interest on them. A proportionate payment of this amount shall be made to the waste disposal district bond fund monthly.

(m) The board may not issue waste disposal district bonds under this section, payable by special taxation for that purpose in a total amount, including outstanding bonds already issued, in an amount exceeding six percent (6%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. All waste disposal district bonds issued in violation of this subsection are void.

[As amended by: P.L.6-1997, §230.]

IC 36-9-31-10 -------- Waste collection and disposal in Indianapolis: revenue bonds

(a) The board may recommend to the city-county legislative body that it finance the cost of facilities for waste disposal by borrowing money and issuing revenue bonds from time to time under this section.

(b) The issuance of revenue bonds must be authorized by ordinance of the legislative body.

(c) The revenue bonds are special obligations of the consolidated city and are payable solely from and secured by a lien upon the revenues of all or part of the facilities whether or not the facilities are being financed with revenue bonds under this section, as shall be more fully described in the ordinance authorizing the issuance of the revenue bonds. The ordinance may pledge and assign for the security of the revenue bonds all or part of the revenues or net revenues of the facilities.

(d) The revenue bonds, and interest on them, are not a debt of the consolidated city or the board, nor a charge, lien, or encumbrance, legal or equitable, upon property of the board or the city, or upon the revenues of the board other than those revenues of the facilities that have been pledged to the payment of the revenue bonds. Every revenue bond must recite in substance that the revenue bond, including interest, is payable solely from the revenues pledged to its payment, and that neither the board nor the city is under any obligation to pay it, except from those revenues.

(e) In order that the payment of the revenue bonds and the interest on them be adequately secured, the consolidated city and its officers, agents, and employees shall provide for such covenants and do such other acts and things that may be necessary, convenient, or desirable in order to secure the revenue bonds or that may tend to make the revenue bonds more marketable.

[As added by Acts 1982, P.L.77, §27.]

IC 36-9-31-11 -------- Waste collection and disposal in Indianapolis: waste disposal development bonds

(a) The consolidated city may, upon request of the board:

(1) enter into agreements concerning, and acquire by any lawful means, real property or interests in real and personal property needed for the purposes of this section;

(2) enter into financing agreements to purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve facilities for waste disposal;

(3) lease facilities to users or developers with or without an option to purchase;

(4) sell facilities to users or developers for consideration, which may be paid in installments or otherwise;

(5) make direct loans to users or developers for the cost of acquisition, construction, or installation of facilities, including land, machinery, or equipment, in which event the bonds shall be secured by the pledge of one (1) or more bonds or other secured or unsecured debt obligations of the users or developers;

(6) enter into agreements with users or developers to allow the users or developers to wholly or partially acquire, construct, or modify facilities to be acquired by the city; and

(7) issue waste disposal development bonds under this section to accomplish the purposes of this section and to secure payment of the bonds as provided in this section.

(b) This section does not authorize the financing of facilities for a developer unless any agreement that may exist between a developer and a user is fully disclosed to, and approved by, the board.

(c) The board may, from time to time, enter into negotiations with any one (1) or more persons concerning the terms and conditions of financing facilities. Preliminary expenses in connection with negotiations may be paid from money furnished by the proposed user or developer, or from grant money, or from funds of the board.

(d) The board shall hold a public hearing on the proposed financing of the facilities after giving public notice. Upon findings by the board that the proposed financing will be of benefit to the health or welfare of the consolidated city and that the proposed financing complies with the purposes and provisions of this chapter, the board shall, by resolution, approve the financing, including the form and terms of the financing agreement, the waste disposal development bonds, and the trust indenture, if any. The resolution of the board shall be transmitted by the secretary of the board to the legislative body.

(e) If the legislative body finds that the proposed financing will be of benefit to the health or welfare of the consolidated city and complies with the purposes and provisions of this section, it may adopt an ordinance approving the proposed financing. The ordinance may also authorize the issuance of waste disposal development bonds payable solely from revenues and receipts derived from a financing agreement or from payments made under a guaranty agreement by a developer, user, or any other person. The waste disposal development bonds are not in any respect a general obligation of the consolidated city.

(f) Any financing agreement must provide for payments in an amount not less than an amount sufficient to pay the principal of, premium, if any, and interest on the waste disposal development bonds authorized for the financing of the facilities. The term of any financing agreement may not exceed forty (40) years from the date of any waste disposal development bonds issued under the agreement. However, a financing agreement does not terminate after forty (40) years if a default under it remains uncured, unless the termination is

authorized by and according to the terms of the financing agreement. If the consolidated city retains an interest in the facilities, the financing agreement must require the user or developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the facilities, so that the city will not incur any expenses on account of the facilities that are not covered by the payments provided for in the financing agreement.

(g) The consolidated city may advance all expenses, premiums, and commissions that it considers necessary or advantageous in connection with the issuance.

(h) The consolidated city is exempt from all property taxes on facilities. Developers and users are liable for property taxes on facilities as provided by law. This section does not deny any tax exemption a developer or user may have under other laws because of the nature of the facilities or the user.

(i) The user or developer is responsible for obtaining and maintaining all approvals and permits required for the construction of the facilities under this section.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-12 -------- Waste collection and disposal in Indianapolis: bond refunding

If the legislative body finds that a refunding of outstanding bonds would be of benefit to the health and welfare of the consolidated city and would comply with the purposes and provisions of this chapter, it may authorize the issuance of bonds under IC 5-1-5 to refund outstanding bonds issued in accordance with this chapter. A saving to the issuing body as provided in IC 5-1-5-2 is not required for the issuance of refunding bonds.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-13 -------- Waste collection and disposal in Indianapolis: grant or bond anticipation notes

(a) The consolidated city, pending receipt of any grant may, but within the limitation set forth in this section, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer of the consolidated city and containing such terms and provisions as may be prescribed by the board. The city may, in anticipation of the issuance of bonds issued under section 9, 10, or 11 of this chapter, borrow money from any person and evidence the debt so incurred by note or notes executed by the executive and fiscal officer and containing such terms and provisions as may be prescribed by the board.

(b) Any note or notes issued under this section or any renewal of them must mature not more than five (5) years from the date of issuance of the original note and must pledge for the payment of the principal and interest the proceeds of the grant or bonds.

(c) The board shall apply the proceeds of any note or notes issued under this section to the cost of the facility for which the grant is to be made or bonds issued, but no purchaser of any obligations is liable for the proper application of the proceeds.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-14 -------- Waste collection and disposal in Indianapolis: technical provisions relating to bond issuance

(a) All bonds issued under this chapter may:

(1) be issued as serial bonds or as term bonds or a combination of both types;

(2) be executed and delivered by the consolidated city at any time and from time to time;

(3) bear such date or dates;

(4) bear interest at such rate or rates;

(5) be redeemable before their stated maturities on such terms and conditions and at premiums as necessary or advisable;

(6) be issued in any denomination or denominations of not less than five thousand dollars ($5,000);

(7) be in a form, either coupon or registered or a combination of both types;

(8) carry registration conversion privileges;

(9) be payable in a medium of payment and at a place or places, which may be at any one (1) or more banks or trust companies within or without Indiana;

(10) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(11) be authenticated in a manner and upon compliance with conditions;

(12) establish reserves from the proceeds of the sale of bonds or from other funds, or both, to secure the payment of the principal and interest on the bonds issued under this chapter;

(13) establish reserves, from the proceeds of the sale of bonds or from other funds or both, for extensions, enlargements, additions, replacements, renovations, and improvements to or for the facilities; and

(14) contain other terms and covenants;

all as provided in the ordinance of the legislative body or the resolution of the board authorizing the bonds.

(b) The bonds issued under this chapter may mature at such time or times not to exceed forty (40) years.

(c) The bonds issued under this chapter may bear either the impressed or facsimile seal of the consolidated city and shall be executed by the manual or facsimile signature of the city executive and attested by the manual or facsimile signature of the city fiscal officer, so long as one (1) of these signatures is manual.

(d) The coupons appertaining to the bonds issued under this chapter shall be executed by the facsimile signature of the city fiscal officer.

(e) The bonds and the interest coupons appertaining to them, if any, issued under this chapter are valid and binding obligations of the consolidated city for all purposes in accordance with the terms of this chapter, notwithstanding that before delivery of them any of the persons whose signatures appear on them have ceased to be officers of the city, as if the persons had continued to be officers of the city until after delivery.

(f) The bonds issued under this chapter may be sold at public or private sale for such price or prices as may be provided in the ordinance authorizing their issuance.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-15 -------- Waste collection and disposal in Indianapolis: bonds may be secured by trust indenture

The bonds issued under this chapter may be secured by a trust indenture by and between the consolidated city and a corporate trustee, which may be any national or state bank having its principal office in Indiana and having trust powers. The trust indenture or resolution or ordinance under which the bonds are issued may:

(1) mortgage the land, any interest in land, or the facilities on account of which the bonds are issued;

(2) pledge the revenues or any other funds, or any part of them, to be received by the consolidated city;

(3) contain such provisions for protecting and enforcing the rights and remedies of the bondholders or lenders as may be considered reasonable, including covenants setting forth the duties of the city and board in relation to the construction of the facilities and the custody, safeguarding, application, and investment of all money received or to be received by the city on account of the facilities financed by the issuance of the bonds;

(4) provide for the establishment of reserve funds from the bond proceeds or from other sources to the extent authorized;

(5) set forth the rights and remedies of the bondholders and trustee, and provisions restricting the individual right or actions of bondholders;

(6) contain provisions regarding investment of funds, sales, exchange or disposal of property, and manner of authorizing and making of payments without regard to any general statute relating to these matters;

(7) provide for the payment of the proceeds of the sale of bonds to such trustee, officer, bank, or depository as it may determine for their custody, and for the method of their disbursement, with such safeguards and restrictions as it may determine;

(8) provide for the appointment of a receiver by the superior court of the county under terms and conditions as are considered reasonable; and

(9) contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-16 -------- Waste collection and disposal in Indianapolis: securities issued are exempt from registration requirements

Any security issued in connection with a financing under this chapter the interest on which is excludable from gross income tax is exempt from the registration requirements of IC 23-2-1, or any other securities registration law.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-17 -------- Waste collection and disposal in Indianapolis: bonds and notes exempt from taxation

All bonds, as well as grant and bond anticipation notes, issued under this chapter and the interest on them are exempt from taxation in accordance with IC 6-8-5.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-18 -------- Waste collection and disposal in Indianapolis: revenues exempt from taxation

All revenues received by the consolidated city under this chapter are exempt from all taxation.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-19 -------- Waste collection and disposal in Indianapolis: optional financing methods for facilities

The facilities, or any part of them, to be financed under this chapter, may be financed by any one (1) or more or any combination of one (1) or more of the methods provided for in this chapter.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-20 -------- Waste collection and disposal in Indianapolis: actions to challenge bonds

An action to contest the validity of the bonds or to prevent their issuance must be brought within thirty (30) days following the adoption of the ordinance or resolution authorizing the bonds.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-21 -------- Waste collection and disposal in Indianapolis: chapter constitutes full authority for issuance of bonds

This chapter constitutes full authority for the issuance of bonds. No procedure, proceedings, publications, notices, consents, approvals, orders, acts, or things, by a board, officer, commission, department, agency, or instrumentality of the state is required to issue bonds or to do any act or perform anything under this chapter except as prescribed by this chapter. The powers conferred by this chapter are in addition to, and not in substitution for, and the limitations imposed by this chapter do not affect, the powers conferred by any other statute.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-22 -------- Waste collection and disposal in Indianapolis: regulations applicable to public utilities do not apply

A facility owned, operated, or financed under this chapter and the sale of byproducts from it are exempt from regulation under IC 8-1-2. IC 8-1-11.1 does not apply to such a facility or its operation or financing.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-23 -------- Waste collection and disposal in Indianapolis: facility shall accept waste without discrimination; fees shall be nondiscriminatory but may vary

Any facility owned, operated, or financed under this chapter shall accept waste accumulated within the waste disposal district without discrimination as to whether or not the waste is collected by the city. The fees made by any such facility for any services rendered or to be rendered, either directly or in connection with them, must be nondiscriminatory, but they may vary based upon the volume, weight, hazardousness, or difficulty of disposal of the waste disposed of or processed by the facility.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-24 -------- Waste collection and disposal in Indianapolis: sale of energy byproducts

An energy byproduct of a facility may not be sold to a person already being served the same type of energy by a public utility subject to regulation by the utility regulatory commission; however, an energy byproduct of a facility may be sold to a person who:

(1) after the in-service date of the facility is not receiving the same type energy from the public utility; or

(2) constructs a new facility that is not served the same type energy by the public utility.

In the case of a new facility that is not served the same type energy by the public utility, the energy byproduct must first be offered to the public utility upon the same terms and conditions agreed to in good faith, by the person who constructs the new facility. If the public utility fails to accept, in writing, the purchase of the energy byproduct upon those terms and conditions within forty-five (45) days after the date the offer is made to the public utility, then the energy byproduct may be sold directly to the person by the facility.

[As amended by P.L.23-1988, §130.]

IC 36-9-31-25 -------- Waste collection and disposal in Indianapolis: chapter supplemental

This chapter is supplemental to all other statutes covering the acquisition, construction, modification, use, and maintenance of facilities for waste disposal by a consolidated city. As to facilities acquired, constructed, modified, operated, or leased under this chapter, and the collection of wastes under this chapter, it is not necessary to comply with other statutes concerning the acquisition, construction, modification, use, and maintenance of facilities or the collection of waste by cities, except as specifically required by this chapter.

[As added by: Acts 1982, P.L.77, §27.]

IC 36-9-31-26 -------- Waste collection and disposal in Indianapolis: annual publication of both the full and per capita cost to the unit for solid waste collection and disposal during the preceding year [Expires 6/30/2002]

(a) The executive of a unit that provides solid waste collection or disposal services under this chapter shall by March 1 of each year calculate both the full and per capita cost to the unit for solid waste collection and disposal during the preceding year.

(b) The calculations that this section requires must include the following as the principal components of the cost of solid waste collection and disposal:

(1) The rate charged by the service provider, broken down into the following:

(A) Collection costs.

(B) Disposal costs.

(C) Recycling costs.

(D) Other costs.

(2) Direct or indirect costs incurred by the service provider but not included in the charge to the user.

(c) The Indiana institute on recycling shall determine a methodology for units to follow in making the calculations that this section requires.

(d) The unit shall publish the results of the calculations and each principal component of the calculations in the manner provided for publication of notice in IC 5-3-1 and file an exact copy of the published information with the Indiana institute on recycling (IC 13-20-18).

(e) This section expires June 30, 2002.

[As amended by P.L.1-1996, §97.]

IC 36-9-33. COLLECTION AND DISPOSAL OF WASTE GENERALLY

IC 36-9-33-1 --------- Waste collection and disposal, excluding Indianapolis

This chapter applies to all units (except townships and counties having a consolidated city) that adopt ordinances under section 3 of this chapter after March 31, 1987.

[As added by: P.L.353-1985, §2.]

IC 36-9-33-2 --------- Waste collection and disposal, excluding Indianapolis: solid waste defined

As used in this chapter, "solid waste" has the meaning set forth in IC 36-9-30-2, except that the term does not include the following:

(1) Sludge, sewage, and other highly diluted water-carried materials or substances and those in gaseous forms.

(2) Metal, glass, paper, paperboard, or corrugated material that is stored, collected, or recovered for recycling.

(3) Waste regulated under IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14.

(4) Waste generated by any person that disposes of the person's own waste in:

(A) a fully permitted sanitary landfill owned or leased by the person; or

(B) a resource recovery facility owned by the person;

at the date of adoption of the ordinance by the unit.

(5) Waste generated by any agricultural activity.

(6) Waste generated by a new manufacturing or a commercial enterprise or by the expansion of an existing manufacturing or commercial enterprise.

(7) Other waste described in an ordinance adopted by the unit's legislative body.

[As amended by: P.L.1-1996, §98.]

IC 36-9-33-3 --------- Waste collection and disposal, excluding Indianapolis: flow control authorized under certain conditions

A unit may by ordinance provide for and exclusively control the collection and disposal of solid waste under this chapter within the unit. However, a unit may exercise this power only upon the completion of construction or the acquisition of a facility for the processing or disposal of solid waste by incineration or similar methods.

[As added by: P.L.353-1985, §2.]

IC 36-9-33-4 --------- Waste collection and disposal, excluding Indianapolis: limits on exercise of powers granted by chapter

(a) A municipality may not exercise a power granted by this chapter inside the boundaries of another municipality without the consent of that municipality's legislative body.

(b) A municipality may not exercise a power granted by this chapter in unincorporated territory without the consent of the executive of the county in which that territory is located.

[As added by: P.L.353-1985, §2.]

IC 36-9-33-5 --------- Waste collection and disposal, excluding Indianapolis: additional limits on exercise of powers granted by chapter

A county may not exercise a power granted by this chapter inside the boundaries of any municipality in that county without the consent of that municipality's legislative body.

[As added by: P.L.353-1985, §2.]

IC 36-9-33-6 --------- Waste collection and disposal, excluding Indianapolis: units may jointly exercise a power

Notwithstanding sections 3 and 4 of this chapter, units may jointly exercise a power granted by this chapter in the manner provided by IC 36-1-7.

[As added by: P.L.353-1985, §2.]

UNCODIFIED 1996–2001 PROVISIONS THAT ARE RELEVANT IN 2001

UNCODIFIED PROVISIONS - STUDY COMMITTEES

P.L. 248-2001, §4 --- Environmental Quality Service Council [Expires 12/31/2005]

(a) As used in this SECTION, "council" refers to the environmental quality service council established by subsection (c).

(b) As used in this SECTION, "department" refers to the department of environmental management.

(c) The environmental quality service council is established.

(d) The council consists of seventeen (17) voting members and one (1) nonvoting member as follows:

(1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

(3) The:

(A) commissioner of the department; or

(B) commissioner's designee;

who serves as a nonvoting member.

(4) Nine (9) individuals who are not members of the general assembly and who are appointed by the governor as follows:

(A) Two (2) individuals representing business and industry, not more than one (1) of whom may be affiliated with the same political party.

(B) Two (2) individuals representing local government, one (1) of whom may be a solid waste management district director and not more than one (1) of whom may be affiliated with the same political party.

(C) Two (2) individuals representing environmental interests, one (1) of whom may be a solid waste management district director and not more than one (1) of whom may be affiliated with the same political party.

(D) One (1) individual representing the general public.

(E) Two (2) individuals representing the following interests:

(i) One (1) representative of semipublic permittees.

(ii) One (1) representative of agriculture.

Until an appointment is made under clause (A), (B), (C), (D), or (E), an unfilled position shall be held by the corresponding member of the environmental quality service council serving on December 31, 2000, who was appointed under P.L.248-1996, SECTION 1(d)(4) to represent the same interest as must be represented by the person appointed to the unfilled position.

(e) Appointments are valid for two (2) years after the date of the appointment. However, a member shall serve on the council until a new appointment is made.

(f) If a vacancy occurs among the members of the council, the appointing authority of the member whose position is vacant shall fill the vacancy by appointment. If the appointing authority does not fill a vacancy within sixty (60) days after the date the vacancy occurs, the vacancy shall be filled by appointment by the chairman of the legislative council.

(g) The chairman of the legislative council shall designate a member of the council to be the chairman of the council.

(h) The chairman of the council shall call for the council to meet at least one (1) time during a calendar year. The chairman may designate subcommittees to meet between committee meetings and report back to the full council.

(i) Each member of the council is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, on interim study committees established by the legislative council.

(j) The council shall do the following:

(1) Study issues designated by the legislative council.

(2) Advise the commissioner of the department on policy issues decided upon by the council.

(3) Review the mission and goals of the department and evaluate the implementation of the mission.

(4) Serve as a council of the general assembly to evaluate:

(A) resources and structural capabilities of the department to meet the department's priorities; and

(B) program requirements and resource requirements for the department.

(5) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.

(6) Submit a final report to the legislative council that contains at least the following:

(A) An outline of activities of the council.

(B) Recommendations for any department action.

(C) Recommendations for any legislative action.

(k) The commissioner of the department shall report to the council each month concerning the following:

(1) Permitting programs and technical assistance.

(2) Proposed rules and rulemaking in progress.

(3) The financial status of the department.

(4) Any additional matter requested by the council.

(l) The council shall:

(1) operate under procedures; and

(2) issue reports and recommendations;

as directed by the legislative council.

(m) The legislative services agency shall provide staff support to the council.

(n) This SECTION expires December 31, 2005.

[Uncodified: P.L. 248-2001, §4.]

P.L. 225-2001, §17 -- EQSC to review mercury issues [Expires 1/1/2004]

(a) Before January 1, 2004, the environmental quality service council shall:

(1) review issues relating to the labeling and disposal of products that contain mercury;

(2) review issues relating to the notifications, restrictions on sales, and limitations on the use of elemental mercury under IC 13-20-17.5, as added by this act; and

(3) make legislative recommendations based on the reviews conducted under this SECTION, if appropriate.

(b) This SECTION expires January 1, 2004.

[Uncodified: P.L. 225-2001, §17.]

P.L. 61-1999, §1 ----- EQSC to study feasibility of an air emissions reduction credit program [Expires 7/1/2001]

(a) The environmental quality service council shall conduct a study to advise the department of environmental management concerning the feasibility of establishing an air emissions reduction credit program that provides economic incentives to achieve air quality goals and objectives in Indiana.

(b) The environmental quality service council shall consider the following items in its study:

(1) Cost effective ways to achieve air emissions reductions.

(2) The economic and environmental benefits of an air emissions reduction credit program that would allow credits to be earned, banked, and traded on an exchange.

(3) The benefits of an air emissions reduction credit trading program in:

(A) areas classified as nonattainment for ozone;

(B) areas classified as transitional for ozone attainment; and

(C) areas unclassified under the federal Clean Air Act (42 U.S.C. 7401 et seq.).

(4) The establishment of a formal process for the

identification of emission offsets for use in nonattainment areas.

(5) Existing federal and state air emissions reduction credit programs.

(6) Use of set-asides to achieve net reduction of air emissions and maximum environmental benefit.

(7) The establishment of a central registry or clearinghouse where air emissions reduction credit program information may be published.

(8) Existing federal regulations that might affect a state operated air emissions reduction credit program.

(9) Guidelines determining use and value of an earned air emissions reduction credit.

(10) Locally transported pollutants and long range transported pollutants.

(11) The benefits of interpollutant trading.

(12) The duration of an earned air emissions reduction credit.

(13) Any other information the environmental quality service council considers appropriate.

(c) Before January 1, 2000, the environmental quality service council shall make a recommendation to the legislative council that does at least one (1) of the following:

(1) Suggests legislation that would require the air pollution control board to adopt rules to establish an air emissions reduction credit program before July 1, 2001.

(2) Advises the department of environmental management to adopt guidance or nonrule policy documents before July 1, 2001, to implement air emissions reduction credit trading or other economic incentives to meet air quality goals and objectives.

(3) Recommends that the environmental quality service council or a workgroup established by the environmental quality service council should continue to study the feasibility of establishing an air emissions reduction credit program in Indiana.

(d) A recommendation made under subsection (c) by the environmental quality service council may not interfere with federal acid rain programs or the state implementation plan concerning nitrogen oxides.

(e) This SECTION expires July 1, 2001.

[Uncodified: P.L.61-1999, §1.]

UNCODIFIED PROVISIONS AFFECTING TITLE 13—AIR

P.L. 224-1999, §21 -- Styrene emissions [Expires 7/1/2001]

(a) As used in this SECTION, "existing source" means a source in the reinforced plastic composites fabricating industry that:

(1) emits styrene; and

(2) has been issued a construction permit or an operating permit by the department of environmental management.

(b) The department of environmental management shall do the following:

(1) Before October 1, 1999, develop written policies and procedures to address changes in estimated air pollution emissions from existing sources.

(2) Before publication under subdivision (3), make a proposed non-rule policy document available to the following for review and comment:

(A) The public.

(B) The air pollution control board.

(C) The environmental quality service council.

(D) The clean manufacturing technology institute.

(3) Not later than November 1, 1999, publish a non-rule policy document describing the policies and procedures that the department will use to make determinations on air construction and operating permits for existing sources.

(c) Before December 31, 2000, the air pollution control board shall adopt rules to establish appropriate standards for control of air pollution from new and existing sources in the reinforced plastic composites fabricating industry. The air pollution control board shall consider all available information when adopting the rules, including the following:

(1) Available control technology.

(2) Industry work practices.

(3) Materials available to the industry.

(4) Recommendations by the clean manufacturing technology institute.

(d) This SECTION expires July 1, 2001.

[Uncodified: P.L.224-1999, §21.]

P.L. 229-1999, §6 --- Certain motor vehicle inspection rules and activities legalized

The following are legalized:

(1) A rule adopted by the air pollution control board and described in IC 13-17-5-5(a) before its repeal.

(2) An inspection or certification conducted under IC 13-17-5-5(b) before its repeal.

(3) Contracts entered into and inspections made under IC 13-17-5-5(c) before its repeal.

[Uncodified: P.L.229-1999, §6.]

P.L. 112-2000, §7 ---- 326 IAC 2-1.1-3(b) is void

326 IAC 2-1.1-3(b) is void.

[Uncodified: P.L.112-2000, §7.]

P.L. 112-2000, §8 ---- Exemptions from certain air permit requirements

(a) A reference in this SECTION to a provision of the Indiana Administrative Code or Code of Federal Regulations includes a reference to a successor provision.

(b) "Construction" has the meaning set forth in 326 IAC 1-2-21.

(c) "Modification" has the meaning set forth in 326 IAC 1-2-42.

(d) "Operation" has the meaning set forth in 326 IAC 2-1.1-1(11).

(e) "Process" has the meaning set forth in 326 IAC 2-1.1-1(17).

(f) "Regulated pollutant" has the meaning set forth in 326 IAC 1-2-66.

(g) Where a rule of the air pollution control board lists emission units, operations, or processes of which construction or modification are exempt from the requirement to obtain a registration, permit, modification approval, or permit revision, the air pollution control board may not condition such exemption on whether the potential to emit any regulated pollutant from the construction or modification exceeds an emission threshold establishing the requirement to obtain a registration, permit, modification approval, or permit revision under 326 IAC 2.

(h) This SECTION does not apply to construction or modification:

(1) subject to federal prevention of significant deterioration requirements as set out in 326 IAC 2-2 and 40 CFR 52.21;

(2) subject to nonattainment new source review requirements as set out in 326 IAC 2-3;

(3) at a source that has an operation permit issued under 326 IAC 2-7, where the construction or modification would be considered a Title I modification under 40 CFR Part 70; or

(4) that would result in the source needing to make a transition to an operating permit issued under 326 IAC 2-6.1, 326 IAC 2-7, or 326 IAC 2-8.

[Uncodified: P.L.112-2000, §8.]

P.L. 112-2000, §9 ---- APBC to implement SECTION 7 by rule [May expire 1/1/2002]

(a) Before January 1, 2002, the air pollution control board shall amend 326 IAC 2-1.1-3 to reflect SECTION 7 of this act.

(b) This SECTION expires on the earlier of the following:

(1) The effective date of the rule amendment adopted under subsection (a).

(2) January 1, 2002.

[Uncodified: P.L.112-2000, §9.]

UNCODIFIED PROVISIONS AFFECTING TITLE 13—WATER

P.L. 132-2000, §11 -- Terms of plant/system operator certificates [Expires 9/1/2003]

(a) Notwithstanding the amendment of IC 13-18-11 by this act, a certificate that is issued to a water treatment plant operator or water distribution system operator under IC 13-18-11 before September 1, 2000, must, to remain in effect, be renewed not later than two (2) years after it was issued.

(b) A certificate of a water treatment plant operator or water distribution system operator that is renewed under IC 13-18-11 before September 1, 2000, is renewed for a two (2) year period.

(c) A certificate of a water treatment plant operator or water distribution system operator that is issued after August 31, 2000, is subject to the triennial certificate renewal requirements set forth in IC 13-18-11-6.5, as added by this act.

(d) A certificate of a water treatment plant operator or water distribution system operator that is renewed after August 31, 2000, is renewed for a three (3) year period under the triennial certificate renewal requirements set forth in IC 13-18-11-6.5, as added by this act.

(e) This SECTION expires September 1, 2003.

[Uncodified: P.L.132-2000, §11.]

P.L. 140-2000, §23 -- WPCB to adopt rule re CSO notifications [Expires 1/1/2002]

(a) As used in this SECTION, "NPDES" refers to a National Pollutant Discharge Elimination System.

(b) As used in this SECTION, "combined sewer" has the meaning set forth in IC 13-11-2-31.4.

(c) The water pollution control board established under IC 13-18-1 shall adopt a rule before September 1, 2001, establishing requirements for community notification by NPDES permit holders of the potential health impact of combined sewer overflows whenever information from any reliable source indicates that:

(1) a discharge or discharges from one (1) or more combined sewer overflow points is occurring; or

(2) there is a reasonable likelihood that a discharge or discharges from one (1) or more combined sewer overflow points will occur within the next twenty-four (24) hours.

(d) This SECTION expires January 1, 2002.

[Uncodified: P.L.140-2000, §23.]

P.L. 140-2000, §26 -- Duties of IDEM re data assessing impaired waters; EQSC water data task force [Expires 10/1/2002]

(a) As used in this SECTION, "department" refers to the department of environmental management.

(b) Before July 1, 2001, the department shall develop and maintain a quality assurance program plan and information management system to assess the validity and reliability of the data used in the implementation of IC 13-18-2-3, as added by this act, and IC 13-18-3-2, as amended by this act.

(c) The department:

(1) shall make data from the information management system under subsection (b) available to the public upon request; and

(2) may charge a reasonable fee to persons requesting the data.

(d) The department shall use the data from the information management system under subsection (b) to review the data as of January 1, 2002, supporting:

(1) the listing of impaired waters under IC 13-18-2-3, as added by this act; and

(2) the special designation of waters under IC 13-18-3-2, as amended by this act.

(e) Before July 1, 2000, the environmental quality service council shall appoint a water data task force to assess the program resource needs of the department to collect adequate physical, chemical, and biological data used by the department. The task force shall present its findings to the environmental quality service council upon completion.

(f) The water data task force appointed under subsection (e) shall include four (4) members of the general assembly, the chairperson of the environmental quality service council, and representatives of the following:

(1) The academic community in the disciplines of biology, chemistry, and hydrology.

(2) The department.

(3) The department of natural resources.

(4) The United States Geological Survey.

(5) Private chemical water testing laboratories.

(6) Industry.

(7) Agriculture.

(8) Environmental advocacy organizations.

(9) General citizens.

(10) Municipalities.

(11) The water pollution control board.

(12) Local public health officials.

(13) The state department of health.

(14) The United States Fish and Wildlife Service.

(g) This SECTION expires October 1, 2002.

[Uncodified: P.L.140-2000, §26.]

P.L. 140-2000, §27 -- Exceptional use waters until 10/1/2002; duties of WPCB [Expires 1/1/2003]

(a) Until October 1, 2002, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

(1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(l), as added by this act.

(2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of this act.

(b) Before October 1, 2002, the water pollution control board established under IC 13-18-1 shall:

(1) determine whether, effective October 1, 2002, to designate as an outstanding state resource water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and

(2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires January 1, 2003.

[Uncodified: P.L.140-2000, §27, as amended by P.L. 1-2001, §49.]

P.L. 140-2000, §28 -- WPCB to establish MDL rules and policies; IDEM MDL working group [Expires 10/1/2003]

(a) As used in this SECTION, "board" refers to the water pollution control board established under IC 13-18-1.

(b) Before October 1, 2003, the board shall establish policies and rules to govern the implementation of total maximum daily load requirements of Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d).

(c) Before July 1, 2000, the department shall appoint a working group of stakeholders with respect to the implementation of total maximum daily load requirements as described in subsection (b). The working group shall consider and make recommendations to the department of environmental management and the board on identification of issues, the development of policy options, policy adoption, and rulemaking. The working group must include representatives from:

(1) the general public;

(2) municipalities;

(3) industry;

(4) business;

(5) agriculture;

(6) environmental advocacy groups; and

(7) others with a high level of expertise in the subject area to be considered by the working group.

(d) The working group appointed under subsection (c) must also include the following members:

(1) a representative of the environmental quality service council;

(2) a technical secretary; and

(3) a member of the board.

(e) This SECTION expires October 1, 2003.

[Uncodified: P.L.140-2000, §28, as amended by P.L. 1-2001, §50.]

P.L. 55-2001, §4 ----- Budget agency to establish grant terms and conditions [Expires 9/2/2001]

(a) Not later than September 1, 2001, the budget agency shall establish the terms and conditions under which it will make grants to political subdivisions under IC 13-18-21-25(b)(2), as added by this act.

(b) The budget agency shall consult with representatives of:

(1) political subdivisions; and

(2) other entities identified by the budget agency that have an interest in the terms and conditions to be established under subsection (a);

in developing the terms and conditions to be established under subsection (a).

(c) This SECTION expires September 2, 2001.

[Uncodified: P.L.55-2001, §4.]

UNCODIFIED PROVISIONS AFFECTING TITLE 13—WASTE

P.L 110-1998, §4----- Applicability of certain solid waste management district provisions [Effective retroactively to January 1, 1998]

IC 13-21-3-14 and IC 13-21-3-14.5, as amended by this act, do not apply to a contract executed before April 1, 1998.

[Uncodified: P.L.110-1998, §4.]

P.L. 119-1999, §15 -- Legality of certain brownfield revitalization zones

(a) A brownfield revitalization zone that was established or a deduction in a brownfield revitalization zone that was granted after June 30, 1997, and before the passage of this act in conformity with IC 6-1.1-42, as amended by this act, is legalized and validated to the same extent as if the changes in this act had been part of P.L.59-1997.

(b) A brownfield revitalization zone that was established or a deduction in a brownfield revitalization zone that was granted after June 30, 1997, and before the passage of this act, in response to an applicant that:

(1) had an ownership interest in an entity that contributed; or

(2) contributed;

a contaminant (as defined in IC 13-11-2-42) that is the subject of a voluntary remediation under IC 13-25-5 is void to the same extent as if this act had been part of P.L.59-1997.

[Uncodified: P.L.119-1999, §15.]

P.L. 171-1999, §1 --- Provisions relevant to a particular solid waste landfill [Expires 1/1/2008]

(a) This SECTION applies only to a solid waste landfill:

(1) in existence on April 15, 1999; and

(2) located in a county having a population of more than twenty-three thousand seven hundred (23,700) but less than twenty-four thousand (24,000).

(b) As used in this SECTION, "Subtitle D" refers to solid waste landfill design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR 258.

(c) A landfill may not be operated after November 1, 2002, if the landfill does not comply with the following provisions of 40 CFR 258:

(1) The western slope of the landfill footprint as it exists on April 15, 1999, must be incorporated into a new Subtitle D landfill cell with a synthetic liner installed on the lower portion of the western slope.

(2) The new Subtitle D landfill cell must be located in part of the western unfilled area as provided in the original landfill permit issued January 5, 1988.

(3) All areas of the landfill footprint as it exists on April 15, 1999, that are not incorporated into the new Subtitle D landfill cell must be closed by October 15, 2002, under the requirements of 329 IAC 10-22-7(b).

(4) The proper authority of the county where the landfill is located shall employ a qualified independent consultant to determine whether the new Subtitle D landfill cell will be negatively impacted by the geology at the landfill site.

(d) During 1999 and 2000, the landfill shall conduct appropriate tests to determine groundwater flow direction for the purpose of determining appropriate groundwater monitoring locations. Tests performed under this subsection must include the use of dyes and must be jointly approved by the:

(1) department of environmental management; and

(2) solid waste management district board for the district where the landfill is located.

(e) The county:

(1) may continue to operate the landfill through November 1, 2002, in the landfill footprint existing on April 15, 1999; and

(2) must operate the landfill in compliance with all applicable permit conditions and rules relative to landfill operations, except for rule provisions associated with karst terrain.

(f) This SECTION expires January 1, 2008.

[Uncodified: P.L.171-1999, §1.]

P.L. 224-1999, §20 -- SWMB to adopt rules concerning special waste certification [Partial expiration dates]

(a) The solid waste management board shall adopt rules under IC 4-22-2 and IC 13-14-9 to make the board's rules consistent with IC 13-20-7-1, as amended by this act. This subsection expires July 1, 2001.

(b) The solid waste management board shall adopt the rules described in subsection (a) before July 1, 2000. This subsection expires July 1, 2001.

(c) A rule adopted by the solid waste management board before the effective date of this SECTION that does not comply with IC 13-20-7-1, as amended by this act, applies only to special waste that is disposed of at a solid waste landfill that does not meet Subtitle D design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR Part 258.

[Uncodified: P.L.224-1999, §20.]

P.L. 138-2000, §10 -- SWMB to adopt rules re industrial waste [Expires 7/1/2002]

(a) The solid waste management board shall adopt rules under IC 4-22-2 before July 1, 2001, to reflect the elimination of references to special waste and the addition of references to industrial waste in this act.

(b) This SECTION expires January 1, 2002.

[Uncodified: P.L.138-2000, §10.]

P.L. 109-2001, §3 --- Applicability of IC 6-3.1-23, brownfields tax credits [Effective 1/1/2002]

IC 6-3.1-23, as added by this act, applies to taxable years beginning after December 31, 2001.

[Uncodified: P.L.109-2001, §3.]

P.L. 193-2001, §5 --- IC 13-26-5-2.5 and IC 13-26-11-15 do not apply to certain regional sewer districts [Expires 7/1/2002]

(a) IC 13-26-5-2.5 and IC 13-26-11-15, both as added by this act, do not apply to a regional sewage district established under:

(1) IC 13-26;

(2) IC 13-3-2 (before its repeal on July 1, 1996); or

(3) IC 19-3-1.1 (before its repeal on April 1, 1980);

if the regional sewage district began construction or received final bids on construction during 2001.

(b) This SECTION expires July 1, 2002.

[Uncodified: P.L.193-2001, §5.]

P.L. 218-2001, §10 -- SWMB to adopt rules reflecting industrial and special waste changes [Expires 7/1/2003]

(a) The solid waste management board shall adopt rules under IC 4-22-2 before July 1, 2003, to reflect the elimination and repeal of:

(1) references to industrial waste in this act; and

(2) references to special waste in SECTIONS 2, 5, 6, 7, 9, and 11 of P.L.138-2000.

(b) This SECTION expires July 1, 2003.

[Uncodified: P.L.218-2001, §10.]

UNCODIFIED PROVISIONS AFFECTING TITLE 13—UST FAB

P.L. 67-1996, §11 ---- Renewals of certain certifications of the state fire marshal [Expires 1/2/2002]

(a) Notwithstanding IC 13-23-3-1, as added by SEA 56-1996, if a person is certified by the state fire marshal under IC 13-7-20-13.1 (before its repeal) or IC 13-23-3-1 before January 1, 1997, the person may renew the person's certification one (1) time before January 1, 1998, under the certification requirements in effect on December 31, 1996. If a person renews a person's certification under this subsection, the certification expires:

(1) the date the state fire marshal accepts the evidence submitted by the person under subsection (b)(2) that the person has successfully completed the examination; or

(2) January 1, 1998;

whichever is earlier.

(b) To subsequently renew a certification renewed under subsection (a), a person must:

(1) successfully complete the International Fire Code Institute examination or another appropriate examination approved by the state fire marshal:

(A) after January 1, 1997; and

(B) before January 1, 1998; and

(2) submit evidence to the state fire marshal before January 1, 1998, that the person has successfully completed the examination.

(c) A certification renewed under subsection (b):

(1) is effective on the date the state fire marshal accepts the evidence submitted by the person under subsection (b)(2) that the person has successfully completed the examination; and

(2) expires two (2) years from the date the person successfully completes the examination.

(d) This SECTION expires January 2, 2002.

[Uncodified: P.L. 67-1996, §11.]

P.L. 131-1997, §9 --- Applicability of IC 13-23-8-4(b)(3) UST ELF requirements [Expires 6/1/2002]

(a) IC 13-23-8-4(b)(3), as added by this act, does not apply to a corrective action plan submitted to the department of environmental management before June 1, 1997.

(b) This SECTION expires June 1, 2002.

[Uncodified: P.L.131-1997, §9.]

P.L. 122-1999, §3 --- Transfers between the UPST ELF and the UST guaranty fund [Expires 7/2/2001]

(a) On July 1, 1999, the auditor of state shall transfer one hundred twenty thousand dollars ($120,000) from the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1 to the underground storage tank guaranty fund established by IC 13-23-10-1. The Indiana development finance authority shall use money transferred to the underground storage tank guaranty fund under this SECTION to carry out the purposes of IC 13-23-10-10, as amended by this act.

(b) On July 1, 2001, the auditor of state shall transfer any money remaining in the underground storage tank guaranty fund established by IC 13-23-10-1 to the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

(c) This SECTION expires July 2, 2001.

[Uncodified: P.L.122-1999, §3.]

P.L. 212-1999, §10 -- Legal effect of change in "operator" definition

IC 13-11-2-148(e), as amended by this act, shall not be construed to affect any litigation filed before January 1, 1999.

[Uncodified: P.L.212-1999, §10.]

P.L. 129-2000, §1 --- IDEM to develop NPD re migration from UST to offsite property [Expires 1/1/2001]

(a) As used in this SECTION, "department" refers to the department of environmental management.

(b) As used in this SECTION, "excess liability fund" refers to the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

(c) Before September 1, 2000, the department shall develop a nonrule policy document under IC 13-23 to address the circumstances in which a spill or release from an underground storage tank may have migrated to real property that is owned or operated by a person or entity that does not own or operate the site where the underground storage tank is located. The nonrule policy document shall address the following:

(1) Guidance for addressing the need for a responsible party to undertake a reasonable, good faith effort to obtain access to offsite property impacted by a petroleum release or spill.

(2) Guidance for addressing:

(A) when the department may issue an order granting a responsible party offsite access; and

(B) the department's subsequent exercising of its discretion in pursuing an enforcement action against a responsible party for failing to determine the extent of offsite contamination.

(3) Guidance for addressing when the department and its excess liability trust fund may approve for reimbursement under that fund the costs of a responsible party's investigation and remediation efforts, including an initial site characterization and corrective action plan, when offsite contamination has not been fully delineated because of lack of offsite access.

(d) The department shall work with interested stakeholders in developing the nonrule policy document and keep the environmental quality service council apprised of its efforts to develop the nonrule policy document.

(e) This SECTION expires January 1, 2001.

[Uncodified: P.L.129-2000, §1.]

P.L. 14-2001, §20 --- Money in repealed UST guaranty fund transferred to general fund [Expires 7/1/2001]

(a) Any money in the underground storage tank guaranty fund established by IC 13-23-10, as repealed by this act, on June 29, 2001, shall be transferred to the state general fund on June 30, 2001.

(b) This SECTION expires July 1, 2001.

[Uncodified: P.L.129-2000, §1.]

UNCODIFIED PROVISIONS AFFECTING TITLE 13—OTHER

P.L. 112-2000, §6 ---- IDEM to prepare White River report

(a) As used in this SECTION, "department" refers to the department of environmental management.

(b) The department shall prepare a report that includes the following:

(1) A comprehensive and detailed report that:

(A) describes plans for restoration of the White River; and

(B) sets forth the department's recommendations for changes in statutes, rules, or procedures and practices of the department to:

(i) reduce the probability of contamination events; and

(ii) improve the timeliness and efficiency of protocols and procedures for notice to affected entities if such an event occurs in the future.

(2) A complete list of all events of contamination of waters of the state after December 31, 1994, in which fish or other aquatic species were killed and in which civil penalties were imposed under IC 13-30-4 (or under the law that governed the imposition of civil penalties before the enactment of IC 13-30-4), including the following:

(A) A description of the contamination event.

(B) The date the contamination event occurred.

(C) The entity on which the civil penalty was imposed.

(D) The total amount of the civil penalty imposed.

(c) Before November 30, 2000, the department shall deliver the report described in subsection (b) to:

(1) the executive director of the legislative services agency for distribution to members of the legislative council;

(2) the environmental quality service council;

(3) the governor; and

(4) the lieutenant governor.

(d) The environmental quality service council shall:

(1) study the report delivered to it under subsection (c); and

(2) make recommendations to the general assembly before January 1, 2002.

[Uncodified: P.L.112-2000, §.6]

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