

**STATE
ENVIRONMENTAL LAWS AFFECTING
INDIANA AGRICULTURE**

*(See NASDA's website for Federal Environmental Laws
Affecting U.S. Agriculture)*

A Project of the

**National Association of State Departments
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through the

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Research and Information**



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STATE ENVIRONMENTAL LAWS AFFECTING INDIANA AGRICULTURE

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The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and the territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent the State Departments of Agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry while protecting consumers and the environment. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for educational and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (NCALRI) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The NCALRI focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The NCALRI is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the U.S. Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by agricultural producers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Agricultural producers always should confer with their own attorneys, consultants, or advisors, as well as federal, state, and local authorities responsible for the applicable environmental laws.

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Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances constantly change. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single guide to describe in complete detail and depth the impact environmental laws and regulations have on agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information (NCALRI), the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in September 2003.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column for information on applications and procedures for securing a permit. A list of agencies and contact information is provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 2-11</i>	Livestock, poultry and aquaculture operations, depending on size	National Pollutant Discharge Elimination System (NPDES) and state general permit or land disposal permit	United States Environmental Protection Agency (U.S. EPA) Regional Office and Indiana Department of Environmental Management (IDEM)
	Wetlands dredge and fill activity or dam, dike, or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers with U.S. EPA and IDEM approval
	Water usage	Annual reports required for withdrawal of more than 100,000 gallons per day	IDEM or Indiana Department of Natural Resources (DNR)
	Water well construction and use	No permit, but driller must be certified and driller's log may be required to be submitted	DNR
Groundwater <i>pp. 11-15</i>	Groundwater protection	Generally no permit, but Best Management Practices (BMPs) must be followed in capacity use areas	DNR and IDEM

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality <i>pp. 15-25</i>	Grain terminals and grain elevators	Permit required	U.S. EPA Regional Office or IDEM
	General agricultural operations including odor, dust, or flies	No permit, but may be vulnerable to nuisance suits. Odor abatement plan required for certain livestock facilities	U.S. EPA Regional Office or IDEM
	Burning/Incineration of dead animals	Permit required in certain circumstances	IDEM
Solid Waste and Hazardous Waste <i>pp. 25-28</i>	Storage, treatment, or disposal of hazardous or solid waste	Permit required for storage, treatment, or disposal activities	U.S. EPA Regional Office, IDEM, and Indiana Solid Waste Management Districts
	Public notice of hazardous waste	No permit	IDEM
Pesticides and Chemigation <i>pp. 28-37</i>	Application and use of pesticides	No permit, but a license may be required	U.S. EPA, Office of the Indiana State Chemist (OISC), and Indiana Department of Agriculture (IDOA)
	Use of pesticides around farmworkers	No permit, but training and notification is required	OISC
	Record keeping	No permit, but all requirements must be met	OISC
Wildlife Protection <i>pp. 38-40</i>	Taking of wildlife	Permit required if an endangered or threatened species may be affected	U.S. Fish and Wildlife Service and DNR

STATE ENVIRONMENTAL LAWS AFFECTING INDIANA AGRICULTURE

Producer Note: Agricultural producers are faced with many challenges in today's rapidly changing world. Changes in industrialization, computer-based technology, market dynamics, and environmental regulation are affecting producers in a number of ways. Environmental regulation is a complex area with both federal and state government involvement. Staying informed is the producer's most useful instrument for meeting the challenges of today's agriculture. This information on environmental regulation is provided to educate producers on the breadth and scope of environmental laws which may impact agricultural production activities.

Indiana's Environmental Policy

Indiana recodified its environmental laws in 1996 to ensure that prior environmental laws would be clear, concise, and easy to interpret and apply.¹ A major focus was to establish a statewide policy for comprehensive environmental development and control. The underlying intent was to unify, coordinate, and implement programs to preserve, protect, and enhance the quality of the environment so that future generations might enjoy clean air, clean water, and a healthful environment. This intent also encompassed the policy to establish the use of environmental resources of Indiana for their most beneficial uses.²

The Indiana environmental policy encourages productive and enjoyable harmony between humans and the environment and supports efforts that prevent or eliminate damage to the environment. The policy also stresses the need to stimulate the health and welfare of humans in order to enrich their understanding of ecological systems and natural resources important to Indiana.³

Indiana recognizes the importance of preserving significant historic, cultural, and natural aspects of heritage and maintains that wherever possible Indiana should strive for an environment that:

- Supports diversity but also supports a variety of individual choices;
- Achieves a balance between population and resource use that will permit high standards of living and a wise sharing of life's amenities;

¹ IND. CODE ANN. § 13-12-1-1 (Lexis-Nexus 2000).

² IND. CODE ANN. § 13-12-3-1 (Lexis-Nexus 2000).

³ IND. CODE ANN. § 13-12-4-1 (Lexis-Nexus 2000).

- Enhances the quality of renewable resources; and
- Undertakes the maximum attainable recycling of depletable resources.⁴

The Indiana General Assembly sets forth two (2) approaches to environmental protection:⁵

- Clean manufacturing which 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;⁶ and
- Waste management which is also known as pollution control which consists of environmental protection practices employed after industrial wastes, pollutants, discharges, and emissions have been generated.⁷

Furthermore, the General Assembly establishes that clean manufacturing is the most reliable, effective, and preferred approach of environmental protection and wastes, pollutants, emissions, or discharges that have not been avoided or eliminated by means of clean manufacturing should be managed or controlled in a manner that has the least adverse impact on human health and the environment.⁹

I. WATER QUALITY

Producer Note: In order for agricultural producers to stay in compliance with water quality legislation, they must be aware of federal and state water quality standards, NPDES permit requirements, state and local nonpoint source pollution programs, wetland permits, oil spill liability, and whether there are waters in their area that require special protection. Indiana takes an active role in ensuring compliance with these requirements.

⁴ IND. CODE ANN. § 13-12-4-4 (Lexis-Nexus 2000).

⁵ IND. CODE ANN. § 13-12-5-1 (Lexis-Nexus 2000).

⁶ IND. CODE ANN. § 13-12-5-2 (Lexis-Nexus 2000).

⁷ Waste management or pollution control practices include the following: 1) Waste storage and waste transportation, 2) waste treatment including detoxification, incineration, and 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.

⁸ IND. CODE ANN. § 13-12-5-3 (Lexis-Nexus 2000).

⁹ IND. CODE ANN. § 13-12-5-4 (Lexis-Nexus 2000).

A. Indiana Water Quality Laws

Most states have enacted clean water legislation. While state statutes addressing clean water usually contain provisions similar to those found in parallel federal legislation, there may be significant differences. In fact, the state statutes may impose requirements that are even more restrictive than the federal law. In all cases, however, federal Clean Water Act (CWA)¹⁰ requirements must be followed and enforced along with the state laws and state regulations implemented by that state's administrative agencies.

Subject to certain standards and conditions, the CWA allows the United States Environmental Protection Agency (U.S. EPA) to delegate administration of the federal National Pollutant Discharge Elimination System (NPDES), the point source pollution permit program,¹¹ to the individual states. Most states, including Indiana, assume the responsibility for administering the NPDES permit program and additionally administer their own state water quality programs.

The NPDES permit process is the primary point source control process used in Indiana. All facilities which discharge to Indiana waters must apply for and receive a NPDES permit. Unpermitted discharges and permittees out of compliance may be referred for enforcement action. Although NPDES permits are the mainstay of the point source control program, other tools include wastewater treatment plant inspections, operator assistance and training, data tracking, and enforcement programs.

All waters in the state are designated according to their beneficial use categories consistent with the requirements of the CWA¹² and have narrative criteria appropriate to support these beneficial uses, although Indiana is working toward numeric water quality criteria rather than narrative criteria. Water quality standards for wetlands has also been proposed by the Indiana Department of Environmental Management (IDEM).

Section 305(b) of the CWA requires the state to report on how well waters of the state support their beneficial use categories. Waters that do not fully support their beneficial use categories, even though all permitted dischargers are meeting their permit limits, are placed on the Section 303(d) List of Impaired Waters. The Indiana Water Quality Report pursuant to Section 305(b) requirements is submitted to the U.S. EPA in even-numbered years. A more

¹⁰ 33 U.S.C. § 1251 *et seq.* (1994).

¹¹ The term point source is defined in the CWA and means “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term, however, does not include agricultural stormwater discharges and return flows from irrigation.” 33 U.S.C. § 1362(14) (1994); *see also* 40 CFR § 122.2 (2001).

¹² Or U.S. EPA's implementing regulations.

informal update is prepared in odd-numbered years. The most recent reports and water quality status are available on the internet.¹³

Indiana water quality reports describe the condition of Indiana streams and lakes, the Great Lake shoreline, and groundwater. Indiana uses the watershed approach to water quality planning, monitoring, assessment, reporting, protection, and restoration. Indiana water quality is assessed on a five-year (5-year) rotating basin cycle. Thus, about one-fifth (1/5) of the state waters are assessed each year according to their for support of aquatic life, fishing, and recreational uses.

Along with laws and regulations which address point source pollution, Indiana has also enacted laws governing nonpoint source pollution (NPS), although regulation of NPS pollution is presently only addressed through watershed management and planning projects. NPS pollution is described as pollution in runoff from stormwater and snowmelt from agricultural, urban, mined, and other lands. NPS pollution comes from diffuse sources rather than a discernable source. In other words, NPS pollution does not derive from a single source as does point source pollution.

Caution: Because environmental laws and regulations change frequently, agricultural producers must stay in touch with both state and federal officials in order to remain in compliance and aware of changes in the law.

Producer Note: Often the specifics of environmental laws are found in state or federal agency regulations. Because, agency regulations are amended frequently, agricultural producers must stay in contact with agency offices administering specific programs in order to keep up with all changes which may occur. In Indiana, the primary agency for environmental issues is the Department of Environmental Management (IDEM). Within IDEM, there are separate divisions that administer specific environmental areas. (See Appendix A, page IN-53.)

1. Indiana Water Quality Classifications

In order to maintain, protect, and enhance water quality in Indiana, the Indiana legislature has charged IDEM with the responsibility to act as the water pollution agency for Indiana for all purposes of the federal CWA and the federal Safe Drinking Water Act (SWDA).¹⁴ IDEM also serves as the:

¹³ Available at <http://www.ai.orgidem/water/publications>.

¹⁴ 42 U.S.C. §§ 300f - 300j (1994).

- Agency responsible for solid and hazardous waste for all purposes of the federal Resource Conservation and Recovery Act (RCRA);¹⁵
- Agency responsible for air pollution control for all purposes of the federal Clean Air Act (CAA);¹⁶
- Agency responsible for representing Indiana in the Midwest Interstate Compact on Low-Level Radioactive Waste;¹⁷
- Agency responsible for superfund clean-up activities for purposes of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);¹⁸ and
- Agency responsible for environmental restoration concerning the federal Defense Environmental Restoration Program (DERP).¹⁹

The eleven (11) member Water Pollution Control Board (WPCB) is the primary Indiana regulatory oversight body that approves rules involving the prosecution of water pollution violations in state waters and that approves rules regarding any substance that is deleterious to public health or that injuriously affects or destroys any fish life or any beneficial animal or vegetable life.²⁰ Three (3) board members serve as a result of their state agency position or official state duties (Office of Lt. Governor, Department of Natural Resources, Board of Health) and eight (8) board members serve on appointment by the governor. They represent the following communities: agriculture, medical, small business, environmental, industry, public, citizens, cities and towns.

IDEM establishes standards for water quality and administers a complete program for water conservation, pollution abatement, and pollution control.²¹ The IDEM must prepare a list of impaired waters in accordance with Section 303(d) of the CWA..

¹⁵ 42 U.S.C. §§ 6901 *et seq.* (1994).

¹⁶ 42 U.S.C. §§ 7401 *et seq.* (1994).

¹⁷ IND. CODE ANN. § 13-29-1 (Lexis-Nexus 2000).

¹⁸ 42 U.S.C. §§ 9601-9675 (1994); *see also* 40 CFR 300.505, Subpart F (2001).

¹⁹ 10 U.S.C. §§ 2701-2708 (2000).

²⁰ IND. CODE ANN. § 13-18-3-1 (Lexis-Nexus 2000).

²¹ IND. CODE ANN. § 13-13-1-1 (Lexis-Nexus 2000).

Within IDEM are several offices and divisions to carry out its many responsibilities including environmental emergencies, public communications, agency investigations and hearings, air pollution control, water pollution control, solid waste management, testing and laboratory analysis, pollution prevention, and administrative functions and services.²²

In general, it is unlawful to throw, run, drain, or otherwise dispose into any of the streams or waters of Indiana or to cause or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into any such waters any organic or inorganic matter that causes or contributes to a polluted condition of any waters.²³ Upon an awareness that a violation is believed to have occurred, a notice of violation (NOV) is sent to the alleged violator by IDEM via certified mail. The notice includes an administrative order issued by IDEM against the person to cease the violation and abate the condition of pollution. The order sets forth a reasonable time in which the correction and abatement must take place.²⁴ A person is deemed to have committed a class B misdemeanor for failure to discharge a duty imposed by the water pollution control laws.²⁵

Upon request IDEM must advise and consult with any person planning or wanting to correct or prevent any pollution condition of any water of Indiana.²⁶ IDEM approval is required for all plans and specifications for abatement or correction of any polluted condition.²⁷

A permit applicant seeking to lawfully discharge into Lake Michigan must demonstrate that the affected mixing zone will not cause harm to human health or aquatic life. Surface water quality standards are applied to the undiluted discharge rather than at a point outside the mixing zone.²⁸

To protect Indiana's water quality, hard or nondegradable detergents containing alkyl benzene sulfonate (ABS) are prohibited. Prohibition of these compounds includes their use, sales, and disposal.²⁹ Detergents containing greater than 0.5% phosphorous by weight are also

²² IND. CODE ANN. §§ 13-13-3-1 and -2 (Lexis-Nexus 2000).

²³ IND. CODE ANN. § 13-18-4-5 (Lexis-Nexus 2000).

²⁴ IND. CODE ANN. § 13-18-4-6 (Lexis-Nexus 2000).

²⁵ IND. CODE ANN. § 13-18-8-9 (Lexis-Nexus 2000).

²⁶ IND. CODE ANN. § 13-18-7-2 (Lexis-Nexus 2000).

²⁷ IND. CODE ANN. § 13-18-7-1 (Lexis-Nexus 2000).

²⁸ IND. CODE ANN. § 13-18-4-7 (Lexis-Nexus 2000).

²⁹ IND. CODE ANN. § 13-18-9-2 (Lexis-Nexus 2000).

prohibited.³⁰ There are, however, several products that are excluded from the enforcement of this rule.³¹ Violators may be enjoined by an injunction issued by the attorney general³² and are subject to the following:

- Civil penalties up to \$25,000.00 per day per violation for each day of violation and
- Class D felony criminal charges, imprisonment up to six months, and fines up to \$50,000.00 per day for each day of violation.

Subsequent convictions can escalate the criminal penalty to one hundred thousand dollars (\$100,000.00) per day. Although IDEM has the authority to waive the civil penalty, if the violation endangers or causes damage to public health or the environment or is intentional, willful, or criminal, the civil penalty cannot be waived. Permissible waivers may only be requested after correcting the violation report of the violation and the corresponding corrective action must be submitted to IDEM for consideration. Violation of any emergency order issued may subject the violator to a civil penalty up to \$500.00 per hour.^{33, 34}

2. *Indiana Confined Feeding Operations*

Producer Note: A common by-product of livestock operations is animal manure which must be stored and disposed properly. Many states are becoming more involved in the regulation of storage, treatment, handling, and land application of manure through regulations, recommendations, pollution prevention plans, and best management practices (BMPs).

Construction of a confined feeding operation (CFO) requires prior approval from IDEM.³⁵ Application for such approval must be submitted on an IDEM form and include the following:

³⁰ IND. CODE ANN. § 13-18-9-3 (Lexis-Nexus 2000).

³¹ The following compounds are excluded: 1) detergents for food processing, dairy equipment, industrial cleaning equipment, laundry, dishwashing, and cleaning compounds contained in fuel or lubricating oil, and 2) phosphoric acid products including sanitizers, brighteners, acid cleaners, and metal conditioners.

³² IND. CODE ANN. § 13-18-9-5 (Lexis-Nexus 2000).

³³ IND. CODE ANN. § 13-18-10-6 and see also IND. CODE ANN. §§ 13-30-4, -5, -6, -8 (Lexis-Nexus 2000).

³⁴ IND. CODE ANN. § 13-18-9-6 (Lexis-Nexus 2000).

³⁵ IND. CODE ANN. § 13-18-10-1 (Lexis-Nexus 2000).

- Plans and specifications for the design and construction of manure treatment and storage facilities;
- Soil maps indicating placement of the CFO;
- Farmstead map indicating placement of buildings in relationship to other features;
- Soil borings for areas under any waste storage facility;
- Operation specifications for manure handling and land application;
- Affidavit of notifications to adjacent land owners and county commissioners as required;
- Additional information when required on a site specific basis;
- A manure management plan that outlines the following:
 - Soil testing procedures;
 - Manure testing procedures; and
 - Maps of manure application areas;
- Supplemental information including:
 - Building designs and specifications;
 - General features of topography;
 - Soil types;
 - Drainage courses;
 - Identification of nearest streams, ditches, and lakes;
 - Location of any field tiles;
 - Location of manure application areas on soil survey map;
 - Location of any manure treatment facilities; and
 - Farmstead plans including the location of water wells on the site; and

- An application fee that is refundable if IDEM does not make a determination in accordance with the time period established for such a decision.³⁶

An applicant seeking approval for a CFO to be constructed on land that is undeveloped must make a reasonable effort to provide written notice by mail within ten (10) working days after submitting the construction application to IDEM to:

- The county executive for the county in which the CFO is to be located;
- County commissioners;
- Each person who owns land that adjoins the land on which the CFO is to be located; and / or all occupants of the adjoining land if the landowner of such land does not occupy the land.

The notification should also include the date of the construction application and include a brief description of the CFO. The construction application process also requires that the applicant submit an affidavit to IDEM that certifies that the applicant has complied with the notification requirements. To complete the construction application process, manure treatment plans and specifications or manure control facilities must be approved by IDEM.³⁷

Once approved, construction must begin within two (2) years of the application approval date and completed within four (4) years of the application approval date.³⁸

IDEM offers technical assistance to owners and operators of CFOs to encourage compliance with water quality laws.³⁹ IDEM has authority to set forth policies for the construction and operation of CFOs that include standards for manure management.⁴⁰

Within thirty (30) days of completion of construction and prior to the introduction of animals, the applicant must send IDEM an affidavit that affirms the CFO was constructed in accordance with approved plans and IDEM requirements and is operating accordingly.

³⁶ IND. CODE ANN. § 13-15-4-1 (Lexis-Nexus 2000).

³⁷ IND. CODE ANN. § 13-18-10-2 (Lexis-Nexus 2000).

³⁸ IND. CODE ANN. § 13-18-10-2.2 (Lexis-Nexus 2000).

³⁹ IND. CODE ANN. § 13-18-10-2.6 (Lexis-Nexus 2000).

⁴⁰ IND. CODE ANN. § 13-18-10-4 (Lexis-Nexus 2000).

Each CFO must submit to the IDEM 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 renew and maintain a valid approval for the CFO.⁴¹

The IDEM is also authorized to issue injunctions to clean water violators.⁴² CFO violators are subject to civil penalties up to twenty-five thousand dollars (\$25,000.00) per day for each day of violation plus class D felony criminal charges, imprisonment up to six months, and fines up to \$50,000.00 per day for each day of violation. Subsequent convictions can escalate the criminal penalty to one hundred thousand dollars (\$100,000.00) per day. Although the IDEM has the authority to waive the civil penalty, if the violation endangers or causes damage to public health or the environment or is intentional, willful, or criminal, the civil penalty cannot be waived. Waiver must be requested after correcting the violation and a report of the violation must be submitted to the IDEM for consideration. Violation of an emergency order may subject the violator to a civil penalty up to five hundred dollars (\$500.00) per hour.⁴³

Producer Note: Construction of a CFO requires prior approval from the IDEM. Application for approval must be submitted on forms provided by the IDEM. Plans and specifications for design and operation are required along with manure management plans and other soil and topographical information, an application fee, and notice to neighbors and the county executive. The IDEM offers technical assistance to applicants, owners, and operators to encourage compliance with water quality laws.

3. *Indiana Water Distribution Systems*

The IDEM establishes regulations to implement certification programs for operators of water treatment plants or water distribution systems. The certification program for the operators varies with the complexity, size, and source of the water for the treatment system and the complexity and size for the distribution system.⁴⁴ Agricultural producers should note that the IDEM may require operator certification for on-farm systems. However, the IDEM may decline to regulate transient non-community water systems which are defined as systems that do not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. Agricultural producers are encouraged to check with the IDEM to determine current regulations and enforcement.⁴⁵

⁴¹ IND. CODE ANN. § 13-18-10-2.3 (Lexis-Nexus 2000).

⁴² IND. CODE ANN. § 13-18-10-5 (Lexis-Nexus 2000).

⁴³ IND. CODE ANN. § 13-18-10-6 and see also IND. CODE ANN. §§ 13-30-4, -5, -6, -8 (Lexis-Nexus 2000).

⁴⁴ IND. CODE ANN. §13-18-11-1.5 (Lexis-Nexus 2000 & Supp. 2001).

⁴⁵ IND. CODE ANN. § 13-18-11-1b (Lexis-Nexus 2000 & Supp. 2001).

4. *Indiana NPDES Permits*

Producer Note: Agricultural producers should check with the IDEM to determine what requirements concerning water pollution permits may apply to water discharge activities. Livestock operations are not allowed to discharge non-storm water.

Some CFO may be required to obtain a NPDES permit, e.g. operators who have violated water pollution control laws or regulations, which have resulted in an enforcement action by the IDEM.

When the IDEM receives an application for an original NPDES permit, it notifies the county commissioner or zoning board of the affected county and advises the applicant in writing if the affected stream is a regulated drain. Discharges into regulated drains must also have county drainage board approval.⁴⁶ The IDEM has authority to issue NPDES permits that contain conditions that include alternate effluent limits based on weather events and water flows.⁴⁷

Annual NPDES fees are established by the IDEM. A ten percent (10%) delinquency penalty is assessed when fee payments are thirty (30) days past due in addition to the penalties described in sections 1 and 2 above.⁴⁸

II. **GROUNDWATER**

A. **Indiana Groundwater Laws**

The main sources of groundwater contamination in Indiana are identified as commercial fertilizer application, CFOs, underground storage tanks (USTs), surface impoundments, landfills constructed prior to 1989; septic tanks, shallow injection wells, industrial facilities, materials spills, salt storage, and road salting.

Groundwater protections programs are implemented through the efforts of five (5) state agencies. The Indiana legislature also created the Groundwater Task Force (GTF) to study groundwater contamination and coordinate efforts among the various state agencies to address groundwater pollution problems. The GTF also develops pollution policies and strategy and coordinates the management of groundwater programs. The GTF is a ten (10) member board

⁴⁶ IND. CODE ANN. § 13-18-19-1 (Lexis-Nexus 2000).

⁴⁷ IND. CODE ANN. § 13-18-19-2 (Lexis-Nexus 2000 & Supp. 2001). A general NPDES permit exists for activities of coal mining facilities; *see* IND. CODE ANN. § 13-18-18-1 (Lexis-Nexus 2000).

⁴⁸ IND. CODE ANN. § 13-18-20-14 (Lexis-Nexus 2000).

that consists of five (5) state agency heads and five (5) members of various segments of the community that serve at the pleasure of the governor for two-year (2-year) terms.⁴⁹

1. Indiana Water Pollution Control Board

The Indiana Water Pollution Control Board (WPCB) establishes the groundwater quality standards that include numeric and narrative criteria, the water classification plan, and the method of determining where the standards must apply.⁵⁰ The WPCB also establishes the protection zone distances around community water system wells and administers the corresponding program of education and assistance. However, a protection zone may not restrict any activity by a landowner, a mineral owner, or a mineral leaseholder unless the owner or leaseholder is sent written notice and has an opportunity to be heard.⁵¹ The WPCB has authority for the construction and monitoring of surface impoundments including pits, ponds, and lagoons, used for the storage or treatment of nonhazardous waste and wastewater.⁵² The IDEM, Department of Natural Resources (DNR), and the Department of Health (DOH) have authority to set rules and regulations to apply the groundwater quality standards.

The IDEM maintains a public list of contaminated groundwater sites within Indiana.⁵³ The IDEM has other governing responsibilities including:

- Receiving and investigating complaints about groundwater contamination including private water supply wells; and
- Provides information to the public about groundwater and groundwater pollution.⁵⁴
- Taking emergency action to reduce exposure to contaminated well waters that poses a threat to human health and order the abandonment of contaminated water wells.

⁴⁹ IND. CODE ANN. § 13-18-17-1 (Lexis-Nexus 2000).

⁵⁰ IND. CODE ANN. § 13-18-17-5 (Lexis-Nexus 2000).

⁵¹ IND. CODE ANN. § 13-18-17-6 (Lexis-Nexus 2000).

⁵² IND. CODE ANN. § 13-18-17-7 (Lexis-Nexus 2000).

⁵³ IND. CODE ANN. § 13-18-17-2 (Lexis-Nexus 2000).

⁵⁴ IND. CODE ANN. § 13-18-17-3 (Lexis-Nexus 2000).

2. *Indiana Drinking Water Revolving Loan Program*

Indiana has a drinking water revolving loan program.⁵⁵ This fund was established for the benefit of participants for the planning, designing, construction, renovation, improvement, expansion, and any combination of such activities for public water systems including all new community water systems and new nontransient, noncommunity water systems to ensure compliance with national primary drinking water regulations under the federal Safe Drinking Water Act (SDWA).⁵⁶ The IDEM administers the drinking water revolving loan program.

3. *Indiana Water Resources Policy and Administration*

Indiana recodified its natural resources law in 1995 to improve its clarity, conciseness, interpretation, and application.^{57, 58} The DNR is organized under four (4) bureaus including the bureau of water and resource regulation, the bureau of lands and cultural resources, the bureau of mine reclamation, and the bureau of law enforcement and administration and several divisions.⁵⁹

The DNR has authority to investigate, compile, disseminate information, and make recommendations concerning the natural resources of Indiana and their conservation which includes the drainage and reclamation of land; flood prevention; development of water power; culture and preservation of forests, fish, and game; the preservation of soils; the prevention of the waste of mineral resources; the prevention and methods of control of plant diseases, infections, and pests; the prevention and methods of control of bee diseases; the increased production of honey; and the use of bee appliances as well as other related questions and subjects.⁶⁰ The DNR also has authority to collect reasonable fees for permits, licenses, inspections, or other similar services performed according to DNR responsibilities.⁶¹ Without a DNR permit, a person may not lawfully:

⁵⁵ IND. CODE ANN. § 13-18-21 (Lexis-Nexus 2000).

⁵⁶ 42 U.S.C. §§ 300f *et seq.* (1994).

⁵⁷ IND. CODE ANN. § 14-8-3 (Lexis-Nexus 1995).

⁵⁸ The recodification did not affect any rights, liabilities, penalties, offenses, proceedings, bonds, notes, loans, other forms of indebtedness, tax levies, funds, patents, contracts, leases, permits, licenses, certificates of registration, grants of authority, or limitations of authority; see IND. CODE ANN. §§ 14-8-3 *et seq.* (Lexis-Nexus 1995).

⁵⁹ Divisions include: accounting, administrative support services, budget, engineering, entomology and plant pathology, fish and wildlife, forestry, historic preservation and archeology, human resources, internal audit, land acquisition, law enforcement, management information systems, nature preserves, oil and gas, outdoor recreation, public information and education, reclamation, reservoir management, safety and training, soil conservation, state museums and historic sites, state parks, and water; see IND. CODE ANN. § 14-9-3 (Lexis-Nexus 1995).

⁶⁰ IND. CODE ANN. § 14-11-1-1 (Lexis-Nexus 1995).

⁶¹ IND. CODE ANN. § 14-11-4 (Lexis-Nexus 1995).

- Possess a wild animal, including in an aquarium, that might be harmful or dangerous to plants or animals;
- Change the level of the water or the shoreline of a public freshwater lake⁶² by excavating, filling in, or otherwise, affect or cause a change in the area or depth of the natural resources, scenic beauty, or contour of the lake below the waterline or shoreline;
- Lower freshwater lakes having an area of at least ten (10) acres by locating, making, digging, dredging, constructing, reconstructing, repairing, or recleaning a ditch or drain having a bottom depth lower than the normal water level of a lake within one-half (1/2) mile of the lake⁶³ nor may a person order or recommend such acts;
- Obstruct or restrict the capacity of channels and floodways in order to prevent and limit floods; and
- Take sand, gravel, stone, or other mineral or substance from or under the bed of any navigable water.⁶⁴

Licenses and permits for the above listed activities are not issued before a thirty (30) day waiting period following notice of the application. The details of the required notice may vary according to whether the license affects adjacent real property in general, affects the specific real property, or affects other interested parties.⁶⁵ Notice must include information referencing the license application number and any options available to the applicant. A public hearing is held upon the request of the applicant or when a petition requests such hearing if signed by twenty-five (25) landowners within one (1) mile of the proposed site of the proposed activity or within one (1) mile of an existing licensed activity or by a motion by the director of DNR

All flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana are regulated, designed, constructed, and operated according to sound and accepted engineering practices. Any restrictions upon these

⁶² IND. CODE ANN. § 14-26-2-1 (Lexis-Nexus 1995); however, this statute section does not apply to Lake Michigan's water, the land underneath, or its shoreline.

⁶³ IND. CODE ANN. §§ 14-26-5-1 to -3 (Lexis-Nexus 1995).

⁶⁴ IND. CODE ANN. §§ 14-29-3-1 to -4 (Lexis-Nexus 1995 & Supp. 2001).

⁶⁵ IND. CODE ANN. § 14-11-4-7 (Lexis-Nexus 1995).

watercourses are considered public nuisances;⁶⁶ however, there is an exception for a person using chemicals in a normal manner in the production of agricultural products.⁶⁷

Violators of these water resource sections may be subject to administrative injunctions issued by the DNR, criminal charges, and civil penalties up to one thousand dollars (\$1,000.00) for every day of violation that exists.⁶⁸ Each day of continuing violation after a conviction of the offense constitutes a separate offense.⁶⁹

4. Indiana Natural Resources Commission

The Indiana Natural Resources Commission (NRC) is a twelve-member body consisting of representatives of the Department of Transportation, the Department of Environmental Management, the Department of Commerce, the Bureau of Water and Resource Regulation, the Bureau of Lands and Cultural Resources, the Indiana Academy of Science, and five citizens.⁷⁰ The Indiana NRC is responsible for the state's participation in programs set forth in the National Historic Preservation Act⁷¹ or by the United States Secretary of the Interior for the preservation of significant American or Indiana history, architecture, archeology, and culture purposes. The NRC appoints administrative law judges for the purpose of administrative hearings to assist in the enforcement of DNR laws and regulations. Administrative hearings generally occur if a violation continues after notification of a violation and a fifteen day (15-day) grace period for abatement passes. A separate notice of violation may be imposed for each day a violation occurs.

Producer Note: Often the specifics of environmental laws are found in state and federal agency regulations. In addition, regulations are likely to be amended frequently. As a result, agricultural producers must stay in contact with offices administering specific programs in order to keep up with all of the changes which may occur in a particular program.

⁶⁶ IND. CODE ANN. § 14-28-1-1-36 (Lexis-Nexus 1995).

⁶⁷ IND. CODE ANN. § 14-28-1-27 (Lexis-Nexus 1995 & Supp. 2001).

⁶⁸ IND. CODE ANN. § 14-28-1-1-36 (Lexis-Nexus 1995).

⁶⁹ IND. CODE ANN. §§ 14-11-4-7 to 8 (Lexis-Nexus 1995).

⁷⁰ IND. CODE ANN. § 14-10-1 (Lexis-Nexus 1995).

⁷¹ 16 U.S.C. §§ 470 *et seq.* (2000).

III. AIR QUALITY

Producer Note: While most agricultural operations are not air pollution sources as defined by the federal Clean Air Act (CAA)⁷², nor by Indiana's state air quality laws, complaints concerning odor and dust resulting from agricultural activities or operations may arise. These complaints may emerge in the form of civil actions filed as nuisances against agricultural producers.

A. Indiana Air Quality Laws

1. *Indiana Air Policy and Administration*

Indiana has air pollution control laws. The guiding purpose of these laws is established by the state legislature and set forth in Indiana's statutes to maintain the purity of the air resource and to protect public health, public welfare, and the public enjoyment of the air resource.⁷³ State air pollution control laws, however, do not prevent towns, cities, or counties from adopting and enforcing local air pollution ordinances consistent with air pollution control laws or adopting and enforcing more restrictive ordinances to further the expressed purposes of air pollution control laws.⁷⁴

The Office of Air Quality (OAQ) within IDEM is responsible for implementing the provisions of the federal Clean Air Act (CAA) and safeguarding the air through the prevention, abatement, and control of air pollution by all practical and economically feasible methods. The OAQ is also responsible for developing Indiana's air quality standards, issuing air permits, monitoring air quality, and enforcing all clean air and air quality provisions. These responsibilities and their correspondent activities are administered under four (4) ranches of OAQ.⁷⁵

a. *Air Quality Program Activities*

The OAQ program activities include developing and implementing ways to meet air health standards and to reduce air pollutants. Outreach to those interested in improving air quality is considered of great significance not only in teaching citizens how to reduce air pollution but also in gaining new ideas on how to achieve it.

⁷² 42 U.S.C. §§ 7401 *et seq.* (1994).

⁷³ IND. CODE ANN. § 13-17-1-1 (Lexis-Nexus 2000).

⁷⁴ IND. CODE ANN. § 13-17-12-1 (Lexis-Nexus 2000).

⁷⁵ The branches of OAQ are: (1) Programs Branch, (2) Permits Branch, (3) Monitoring Branch, and (4) Compliance Branch.

b. Air Quality Permit Activities

Air quality permit activities include, of course, permitting. Air quality permits are issued for businesses and industries that emit significant amounts of air pollutants. If the source meets air emissions criteria, a permit issues. If not, then the source is not allowed to operate. Permitting is one way to ensure that all state and federal air quality laws and regulations are followed. Failure to possess a valid air permit for emitting a regulated pollutant subjects the violator to a civil penalty up to three thousand dollars (\$3,000.00) plus the fee for the permit if no other violations exist and the violator subsequently obtains the required permit.⁷⁶

c. Air Quality Monitoring Activities

Air quality monitoring activities include sampling and assessing air quality samples for air pollution throughout Indiana and maintaining those data for various analyses including cost analyses, pollution reports, and improvement or progress reports. The OAQ publishes a clean air bulletin three (3) times per year in an effort to provide technical information about various OAQ programs and initiatives. The bulletin is available on request from OAQ and also on the OAQ internet web site.⁷⁷

d. Air Quality Compliance Activities

Compliance activities include inspection, monitoring, testing, and record keeping. The compliance branch also follows up on air complaints and assists air emission sources in achieving or maintaining compliance.

e. Air Pollution Control Board

The Air Pollution Control Board (APCB) is the body responsible for adopting air regulations in Indiana. The federal standards first set forth in the CAA of 1970 are the basis upon which Indiana has established the state's emission thresholds and regulations for what are known as regulated pollutants. In response to a CAA directive from the EPA for Indiana to amend its state implementation plan (SIP) to reduce the tolerance of nitrous oxide in Indiana by 2007, the Indiana APCB adopted new nitrous oxide emission standards in 2001 that the APCB believes will reduce the level of that particular pollutant in Indiana's air by one-third. Primarily, this rule affects large electric generating facilities, large industrial boilers, and cement kilns although motor vehicles also emit nitrous oxide. The new Indiana standards take effect May 1, 2004. Nitrogen oxides are responsible for most of the ground level ozone or smog that can have serious health impacts on the elderly, small children, and those with respiratory conditions.

⁷⁶ IND. CODE ANN. § 13-17-7 (Lexis-Nexus 2000).

⁷⁷ See @ <http://www.IN.gov/idem/air/cab/index.html>.

f. Air Pollution Permits

To regulate air pollution, Indiana uses air permits. The type of approval document required is based on the source's potential to emit air pollution. The OAQ issues three (3) principal types of permits:

- Construction Permits are reserved for new sources of air emissions which must also register for operating conditions with OAQ and undergo New Source Review (NSR) unless the potential to emit any of the regulated pollutants is below the threshold of regulatory concern;⁷⁸
- Operating Permits are reserved for existing sources as required by the 1990 CAA Amendments; and
- Amendments or Modifications to Existing Operating Permits are reserved for existing sources intending to make changes to production processes, emission units, or air pollution control equipment.

There are five (5) levels of air operating permits, each with increasingly higher levels of a source's potential to emit various regulated pollutants. The permit hierarchy (from lowest to highest potential to emit) consists of the following levels: (1) exemption, (2) registration, (3) minor source operating permits (MSOPs), (4) federally enforceable state operating permits (FESOPs), and (5) title V (major source) operating permits.

In Indiana's permit rules⁷⁹ exempt new sources or modifications of existing sources that consist of only farm operations from the new source requirements of 326 IAC 2-5.1-2 for registrations and 326 IAC 2-1.1-3 for permits including the requirement to submit an application. In relation to the Part 70 permit program, farm operations are defined as an "insignificant activity."⁸⁰ The definition of "farm operation"⁸¹ is a business concerned with the planting, harvesting, and/or marketing of crops and the raising of animals but does not include nurseries, tree farms, or sod production.

⁷⁸ Emissions must be less than the pollutant's threshold. The thresholds are: 10 TPY (tons per year) of Volatile Organic Compounds (VOC) for sources not required to use air pollution control equipment to comply with the VOC emission rules, 5 TPY of Volatile Organic Compounds for sources that are required to use air pollution control equipment to comply with the VOC emission rules, 25 TPY of carbon monoxide (CO), 10 TPY of NO₂ (Nitrogen dioxide and oxides of nitrogen) or sulfur dioxide (SO₂), 0.2 TPY of lead, or 5 TPY or particulate matter which includes particulate matter smaller than 10 microns, fluorides, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds.

⁷⁹ 326 IAC 2-1.1-3(d)(31).

⁸⁰ 326 IAC 2-7-1(21)(G)(xxviii).

⁸¹ 326 IAC 1-2-28.

g. Alternative Air Operating Permit Programs

In addition to the three principal types of permits, IDEM has established two alternative operating permit programs for certain specified types of industrial operations. The Source Specific Operating Agreement (SSOA) program and the Permit-by-Rule program. The SSOA allows a source to operate under (up to) four different operating agreements as long as the source does not exceed the potential to emit any regulated pollutant and remains below the emission level classified as a major source.⁸² The Permit-by-Rule program allows those sources whose actual (not potential) emissions without the use of pollution control devices are less than 20-percent of the major source threshold⁸³ Sources opting to operate under the Permit-by-Rule must be able to demonstrate compliance for every twelve (12) month period, within thirty (30) days of receiving a request from the DEM or EPA.⁸⁴

Limitations on allowable emissions or potential to emit exist for grain elevators⁸⁵ and grain processing or milling.⁸⁶ The term “grain elevator”⁸⁷ is defined as “an installation at which grains are weighed, cleaned, dried, loaded, unloaded, and placed in storage. The term does not include any portion of the installation at which activities other than those described in this section are conducted.” “Grain terminal elevator”⁸⁸ is defined as “any grain elevator which has greater than the following capacity: (1) Two million five hundred thousand (2,500,000) U.S. bushels certified storage; (2) Ten million (10,000,000) bushels annual grain throughput.” Grain elevators may obtain a SSOA in accordance with 326 IAC 2-9-6.

Producer Note: Agricultural producers involved in handling or storing grain must check with the DEM to determine what requirements the DEM may have concerning the control of grain elevators and related dust generating equipment and facilities.

⁸² 326 IAC § 2-8.

⁸³ The major source threshold is less than 20 tons per year (TPY) of carbon monoxide, oxides of nitrogen (NO_x), sulfur dioxide (SO₂), volatile organic compounds (VOCs), particulate matter, or particulate matter smaller than 10 microns (PM-10), or less than 2 TPY of lead or any other single hazardous air pollutant (HAP), or 5 TPY of a combination of hazardous air pollutants.

⁸⁴ 326 IAC § 2-10.

⁸⁵ 326 IAC 2-11-3.

⁸⁶ 326 IAC 2-11-4.

⁸⁷ 326 IAC 1-2-33.1.

⁸⁸ 326 IAC 1-2-33.2

2. *Indiana Open Burning*

Open burning in Indiana is prohibited except as allowed by law. The term open burning means burning where the air contaminants from combustion are emitted directly into the air without passing through a stack or chimney from an enclosed chamber.⁸⁹ Open burning regulations do not apply to sources with existing permits and registrants for the open burning activities already approved. Open burning is allowed by specific exemptions in the following maintenance purposes, and a person may burn:

- Vegetation from a farm, an orchard, a nursery, a tree farm, cemetery, or a drainage ditch;
- Wood generated from the initial clearing of a public utility right-of-way in an unincorporated area and from a county highway department in pruning or clearing a roadside;
- Undesirable wood structures or remnants of such;⁹⁰
- Clean petroleum products for repairing and maintaining railroad tracks and right-of-ways but not railroad ties.⁹¹
- Waste oil spilled during oil well testing but under time, location, and condition restrictions;
- That which is prescribed to be burned by the Indiana DNR or the U.S. Forest Service; and
- That which is necessary to create fire breaks and to train personnel by fire fighters.⁹²

For any open burning allowed, the fires may not be conducted:

- During high winds, temperature inversions, or air stagnation or when a pollution alert or ozone action day is declared;

⁸⁹ IAC § 4-1-0.5(6).

⁹⁰ IND. CODE ANN. § 13-17-9-1 (Lexis-Nexus 2000).

⁹¹ IND. CODE ANN. § 13-17-9-2 (Lexis-Nexus 2000).

⁹² IND. CODE ANN. §§ 13-17-9 *et seq.* (Lexis-Nexus 2000).

- Within one hundred (100) feet of a structure or power line or within three hundred (300) feet of a frequently traveled road, fuel storage area, or pipeline; and
- When:
 - Any asbestos materials are included;
 - Any pollution problem exists;
 - It threatens public health;
 - It creates a nuisance or fire hazard.⁹³

All open burning must be conducted:

- In compliance with other laws and ordinances;
- With adequate on-site fire fighting equipment; and
- During daylight hours and extinguished prior to sunset.

Open burning is allowed for cooking and for recreational and ceremonial purposes; however, if the size is greater than one hundred twenty-five (125) cubic feet, e.g., five by five by five (5 x 5 x 5) feet, the local fire department and health department must be notified twenty-four (24) hours prior to the burning, and fires must not be ignited more than two (2) hours before the activity and must be extinguished upon the conclusion of the activity. Fires for disposal purposes cannot be bigger than one thousand (1000 cu. ft.) cubic feet, e.g., ten by ten by ten (10 x 10 x 10) feet, or within five hundred (500) feet of any fuel storage or pipeline.

Open burning for private residences is allowed if the building contains four (4) or fewer dwelling units and the burning is in noncombustible containers, has enclosed sides, and has a bottom except in Clark, Floyd, Lake, or Porter Counties. Burning is strictly prohibited in apartment and condominium complexes and mobile home parks.⁹⁴ Burning for the purpose of heating with clean wood is allowed from October 1 and May 15.⁹⁵

⁹³ IND. CODE ANN. § 13-17-9-3 (Lexis-Nexus 2000).

⁹⁴ 326 IAC 4-1-3(c)(2).

⁹⁵ 326 IAC 4-1-3(c)(6)(A).

At any time if a fire creates a nuisance or fire hazard, it must be extinguished. Approval letters given for authorized fires and variances must be available at the burning sites for review by state and local officials upon request. Emergency burning is allowed:

- For spilled petroleum products when all other practicable methods have failed and failure to do so would cause a health or environmental hazard; and
- To burn clean wood wastes, vegetation, or deceased animals resulting from a natural disaster.

All waste that is regularly generated as routine business activities may not be burned nor may any materials containing asbestos, arsenic, chromium, copper, or creosote be burned. Use of any air curtain destructors that facilitate complete combustion of wastes requires prior approval.

Agricultural producers should note that Indiana regulations provide that one who allows the accumulation or existence of combustible material which contributes to a fire that causes air pollution may not avoid liability on the basis that the fire was set by accident, vandals, or an act of God.⁹⁶

3. Indiana Fugitive Dust

The term fugitive dust means the generation of particulate matter such that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located. The rules on fugitive dust apply to all sources although there are some exemptions including:

- Release of steam not in combination with any other gaseous or particulate pollutants unless the condensation from said steam creates a nuisance or hazard in the surrounding community;
- Fugitive dust from publicly maintained unpaved thoroughfares where no nuisance or health hazard is created by its usage or where no means are available to finance the necessary road improvements;
- Fugitive dust from construction or demolition where every reasonable precaution is taken to minimize emissions;
- Fugitive dust generated from agricultural operations provided every reasonable precaution is taken to minimize emissions and provided operations are terminated

⁹⁶ 326 IAC § 4-1-5.

if a severe health hazard is generated because of prevailing meteorological conditions;

- Visible plumes from a stack or chimney which provide adequate dispersion and meet compliance with other applicable rules; and
- Fugitive dust from a source caused by adverse meteorological conditions.⁹⁷

Fugitive dust control plans may required to control fugitive dust emissions from roads and parking lots; open aggregate (sand or gravel) piles; open bucket or belt conveyors of sand, gravel, coal, stone, grain, or similar materials; emissions generated by trucks or other vehicular handling equipment or from loading or unloading operations; material handling operations such as screening, grinding, crushing or mixing; or from activities involving solid waste disposal.⁹⁸

Even though a general exemption exists for some agricultural operations, some feed mills and elevators may still be affected by restrictions of particulate matter when every reasonable precaution is taken to minimize emissions and operations are terminated when a severe health hazard is generated. Agricultural producers should check with the OAG and local officials to determine if their operations exceed restrictions.

Agricultural producers should note that although dust generated from publicly maintained unpaved thoroughfares generally is exempt from fugitive dust rules, dust generated either by the cargo of a vehicle or by the mud tracked by the vehicle may be considered to cause noncompliance with fugitive dust rules.⁹⁹

4. *Indiana Vehicle Emissions*

Under the 1990 Amendments to the federal CAA, areas not meeting the air standards for certain pollutants for ozone in categories classified as moderate, serious, and severe to extreme must have a motor vehicle inspection and maintenance program.¹⁰⁰ The Indiana vehicle inspection and maintenance program for reducing auto emissions is known as the Clean Air Car Check. The owners of vehicles registered within the affected counties are subject to the testing requirement and receive a testing reminder notice from the Indiana Bureau of Motor Vehicles. However, the following vehicles are exempt from this regulation:

⁹⁰ 326 IAC 6-4-6.

⁹¹ 326 IAC 6-5-4.

⁹⁹ 326 IAC 6-4-4.

¹⁰⁰ 326 IAC 13-1.1-2(a)(1).

- Heavy duty motor vehicles with a gross weight of nine thousand (9,000) pounds or more;
- Motorcycles;
- Vehicles with small engine displacements less than two hundred (200) cubic centimeters;
- Farm tractors, farm trucks, and farm equipment used in connection with agricultural pursuits that are usual and normal to the user's primary operation;
- Recreational vehicles;
- Vehicles using diesel fuel;
- Vehicles older than 1976 as identified by the vehicle and engine identification number;
- Electric vehicles; and
- Off-highway construction equipment.

5. Nonattainment Area Particulate Limitations

When grain elevators are located in a nonattainment area for particulate limitations, they must comply with requirements in 326 IAC 6-1-2(d). As of March 2002, Lake County and Vermillion County have PM10 nonattainment area limits.

For grain elevators that began construction or modification prior to January 13, 1977, any grain storage elevator located at any grain processing source that has a permanent grain storage capacity of 35,200 cubic meters (one million U.S. bushels) or more, and any grain terminal elevator that has a permanent grain storage capacity of 88,100 cubic meters (2.5 million U.S. bushels) or more shall be limited to particulate matter emission of no greater than 0.07 g/dscm.

All grain elevators subject to the nonattainment rule must provide for housekeeping and maintenance procedures that minimize the opportunity for particulate matter to become airborne and leave the property.

- Housekeeping practices include sweeping and maintaining areas, handling and disposing of collected waste materials that the area does not generate plus fugitive dust, controlling dust from driveways and roads, cleaning up accidental spills and other accumulations as soon as possible but no later than that day;

- Equipment maintenance shall consist of procedures that eliminate or minimize emissions from equipment or a system caused by malfunctions, breakdowns, improper adjustment, operating above the rated or designed capacity, not following designed operating specifications, lack of good preventive maintenance care, lack of critical and proper spare replacement parts on hand, and lack of properly trained and experienced personnel;
- Emissions from the affected areas, operations, equipment and systems shall not exceed twenty percent (20%) opacity as determined pursuant to 326 IAC-5.

IV. SOLID WASTE AND HAZARDOUS WASTE

A. Indiana Solid Waste and Hazardous Waste Laws and Regulations

Producer Note: While most agricultural producers and ranchers are not generators, transporters, or disposers of hazardous waste, it is important for them to check with state officials concerning the definitions of solid waste to determine whether an operation's activities could be regulated under state solid waste or hazardous waste statutes.

It is Indiana's policy that reducing solid waste at the source, recycling of solid waste materials, and implementing other solid waste management alternatives are more preferable methods to manage solid waste than incineration and landfill-based disposal.¹⁰¹

In interstate commerce, differential treatment to out-of-state waste businesses may not occur unless: (1) it is authorized by federal law; (2) the differential treatment serves a legitimate state purpose that could not be served as well by other reasonably available means that did not impose differential treatment; and (3) differential treatment equalizes financial, regulatory, or enforcement burdens among the persons engaged in or benefiting from the interstate commerce.¹⁰² Violators may be enjoined by the courts but the state, a state agency, or an officer or employee of the state may not have monetary damages or attorney's fees awarded against them.

1. Indiana's Solid Waste Management Board

The Solid Waste Management Board (SWMB) is an independent board. made up of thirteen (13) members representing the Indiana Department of Health (DOH), DNR, and the lieutenant governor as ex-officio members plus one representative from the following areas appointed by the governor to serve a four (4) year term: agriculture, manufacturing, environmental interests, labor, local government, health professionals, small business, general

¹⁰¹ IND. CODE ANN. §13-19-1-1 (Lexis-Nexis 2000)

¹⁰² IND. CODE ANN. §13-19-1-3 (Lexis-Nexis 2000)

public, solid waste management industry, and solid waste management districts.¹⁰³ The SWMB must meet regularly and least six (6) times per year.¹⁰⁴

The SWMB has authority to adopt rules to regulate solid waste, hazardous waste, and atomic radiation and to implement the federal Resource Conservation and Recovery Act (RCRA),¹⁰⁵ to develop operating policy concerning IDEM activities. IDEM then carries out these and other duties imposed by law including the modification of permits to prohibit the processing or disposal of specific solid waste at a solid waste disposal or processing facility.^{106, 107, 108} The SWMB also adopt rules for voluntary certification programs for persons that remediate sites where releases of hazardous substances or petroleum have occurred.¹⁰⁹

The SWMB has the responsibility to establish requirements for issuing, renewing, transferring, or modifying permits to control solid waste, hazardous waste, and atomic radiation and permits for the construction, installation, or modification of such waste facilities, equipment, or devices. By statutory design, applicants for these types of permits must possess good character. Besides the intent to control or limit solid waste and hazardous waste, the application is targeted to determine the accountability and the financial responsibility of the source to reduce potential harm and assure that any imposed liability would be born by the source.¹¹⁰

2. *Indiana Hazardous Waste*

Producer Note: There are several laws which control the use, disposal, and cleanup of hazardous wastes. Agricultural producers who use hazardous chemicals, petroleum, or other products stored in storage tanks should be aware of requirements governing their actions.

¹⁰³ IND. CODE ANN. §§ 13-19-2-1, -2, -3, and -5 (Lexis-Nexus 2000).

¹⁰⁴ IND. CODE ANN. § 13-19-2-7 (Lexis-Nexus 2000).

¹⁰⁵ 42 U.S.C. §§ 6901 *et seq.* (1994).

¹⁰⁶ IND. CODE ANN. § 13-19-3-1 (Lexis-Nexus 2000).

¹⁰⁷ IND. CODE ANN. §§ 13-19-3-3 to -6 (Lexis-Nexus 2000); the SWMB does not regulate the coal industry waste and expansion of existing permitted landfills except to require environmental assessment reports for site hydrology, groundwater, surrounding area use, and history of the landfill for vertical expansions, design, engineering requirements, operational requirements, cover, closure and financial assurance, surface water control, and remedial action plan.

¹⁰⁸ IND. CODE ANN. § 13-19-3-8 (Lexis-Nexus 2000 & Supp. 2001).

¹⁰⁹ IND. CODE ANN. § 13-19-3-7.2 (Lexis-Nexus 2000 & Supp. 2001).

¹¹⁰ IND. CODE ANN. §§ 13-19-4-2, -3 (Lexis-Nexus 2000).

To prevent the release of hazardous materials from entering surface or groundwater, secondary containment structures are required at facilities where hazardous materials are stored or transferred, and each owner or operator of a hazardous material facility must develop a plan for responding to the release of a hazardous material at that facility.¹¹¹ Exemptions exist, however, for:

- Facilities under federal rules, regulations, or laws;
- Hazardous materials that are stored or transferred as products packaged for distribution to and use by the public; and
- Above ground storage tanks that:
 - Are used to store oils or petroleum products;
 - Have a capacity up to six hundred sixty (660) gallons; and
 - Are subject to EPA regulations.¹¹²

3. Indiana Underground Storage Tanks

Indiana maintains an underground storage tank (UST) release detection, prevention, and correction program under the guidance and authority of the Solid Waste Management Board (SWMB).¹¹³ The program encompasses the following areas: monitoring, leak detection, inventory control, standards for new tanks, tank testing, notice to DEM, and required reporting for releases and responses to correct the effects of a release. The program also involves emergency corrective responses and closure of USTs to prevent future releases of regulated substances into the environment as well as assurance of owner/operator financial responsibility in case of bodily injury or property damage. Additionally, UST workers must obtain certification.

USTs used to store regulated substances may not be installed unless the tank will prevent releases due to corrosion or structural failure for the operational life of the tank, and the tank is:

- Cathodically protected against corrosion;
- Constructed of noncorrosive material;

¹¹¹ IND. CODE ANN. § 13-18-5-1 (Lexis-Nexus 2000).

¹¹² IND. CODE ANN. § 13-18-5-2 (Lexis-Nexus 2000).

¹¹³ IND. CODE ANN. § 13-23-1-1 (Lexis-Nexus 2000).

- Steel clad with a noncorrosive material; or
- Designed to prevent the release or threatened release of any stored substance; and
- Lined or constructed of material compatible with the substance to be stored.¹¹⁴

The certification program is managed by the state fire marshal.¹¹⁵ The underground petroleum storage tank trust fund provides a source of money for costs and expenses associated with underground petroleum storage tanks, corrective actions that are ordered or required to be undertaken, enforcement, cost recovery actions, and administrative expenses and personnel expenses incurred in carrying out required duties.¹¹⁶ Violators of Indiana's UST provisions are subject to a civil penalty up to ten thousand dollars (\$10,000.00) per underground storage tank for each day of violation.¹¹⁷

Producer Note: Many agricultural producers buried USTs on their property many years ago. If a producer has an UST, the IDEM should be contacted because special controls may be necessary to regulate the substances contained in those tanks. In some cases, removal of the tank may be necessary.

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes. Most states have some form of licensing or certification requirements controlling pesticide users. Additionally, if an agricultural producer employs agricultural workers, there are regulations which address safety concerns about pesticide use by those workers or around those workers.

A. Indiana Pesticide and Chemigation Laws

Producer Note: Indiana, like most states, has laws designed to control the use of pesticides. The laws are designed to closely monitor the distribution and ultimate use of these substances within the state.

¹¹⁴ IND. CODE ANN. § 13-23-5-1 (Lexis-Nexus 2000).

¹¹⁵ IND. CODE ANN. § 13-23-3-2 (Lexis-Nexus 2000).

¹¹⁶ IND. CODE ANN. § 13-23-6-1 (Lexis-Nexus 2000).

¹¹⁷ IND. CODE ANN. § 13-23-14-3 (Lexis-Nexus 2000).

1. *Indiana Pesticide Registration*

It is unlawful for any person to produce, distribute, display, sell, or offer for sale within this state or deliver any pesticide¹¹⁸ product that has not been registered in the office of the state chemist nor paid the annual registration fee.¹¹⁹ Pesticides found in containers that are unsafe due to damage may be seized and impounded.

The Indiana Pesticide Review Board (PRB) is authorized, after due notice and a public hearing, to declare as a pest¹²⁰ any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances.¹²¹

The PRB is authorized to adopt a list of restricted-use pesticides and pesticide-for-use-by-prescription-only for the state or for designated areas within the state if it finds that the characteristics of the pesticides require that rules restricting their sale, distribution, or use¹²² by any person are necessary to prevent undue hazards to persons, animals, wildlife, lands, or waters other than the pests that they are intended to prevent, destroy, control, or mitigate. The PRB has the authority to:

- Set forth conditions of sale, distribution, or use of such restricted-use pesticides and pesticides-for-use-by-prescription-only and whether any or all materials shall be purchased, possessed, or used only under permit, certificate, license, or registration of the state chemist or under certain conditions or in certain quantities or concentrations; and

¹¹⁸ The term “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and the term “plant regulator” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants (The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.); *see* IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

¹¹⁹ IND. CODE ANN. §§ 15-3-3.5-3 and -6 (Lexis-Nexus 1998).

¹²⁰ The term “pest” means any insect, rodent, nematode, fungus, or weed; or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) that is declared to be a pest by the EPA or the PRB; *see* IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

¹²¹ IND. CODE ANN. § 15-3-3.5-9 (Lexis-Nexus 1998).

¹²² The term “use” means the application or supervision of an application of a pesticide including mixing or loading the pesticide; storage of pesticides and pesticide containers by the intended applicator of the pesticides; transportation of pesticides and pesticide containers by the intended applicator of the pesticides; disposal of pesticides and pesticide containers by the intended applicator of the pesticides; and an act of handling, releasing, or exposing individuals or the environment to a pesticide; *see* IND. CODE ANN. § 15-3-3.6.2 (Lexis-Nexus 1998).

- Require users to follow rules for safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.¹²³

The state chemist may require all users of restricted-use pesticides and pesticides-for-use-by-prescription-only to maintain pesticide application records. The state chemist may set forth rules restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, or size to alleviate danger of spillage, breakage, or misuse.¹²⁴

The state chemist establishes the rules for the issuance of permits to purchase, possess, or use restricted-use pesticides and pesticides-for-use-by-prescription-only and also rules for determining whether a pesticide product is highly toxic to man or wildlife.¹²⁵

The Indiana PRB is a twenty-two (22) member board with representatives from the DOH, DNR, IDEM, Office of the State Toxicologist, Office of the State Veterinarian, University Agricultural Research Programs, Cooperative Extension Service (CES), terrestrial and aquatic ecologists, pesticide industry, agricultural agronomic and nonagronomic crop producers or users of pesticides, conservation organizations, entomology, plant pathology and weed scientists; commercial pesticide applicators, and the public.

The state chemist and agents of the office may:

- Enter at reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions possibly resulting from the use or misuse of a pesticide product; and
- Enter any public or private premises including any vehicle of transport during regular business hours in order to obtain samples of pesticide products and examine and copy records relating to pesticide transportation and sale.¹²⁶

A person may not distribute unregistered, adulterated or misbranded pesticide products.¹²⁷ The state chemist has authority to warn; cite; deny, suspend, revoke, or amend the person's pesticide registration; obtain court orders for temporary or permanent injunctions restraining violations; and issue a written or printed stop sale, stop use, or removal order, and a decree of condemnation. Violators of pesticide rules and regulations may be subject to civil penalties up

¹²³ IND. CODE ANN. § 15-3-3.5-10 (Lexis-Nexus 1998).

¹²⁴ IND. CODE ANN. § 15-3-3.5-10 (Lexis-Nexus 1998).

¹²⁵ IND. CODE ANN. § 15-3-3.5-11 (Lexis-Nexus 1998).

¹²⁶ IND. CODE ANN. § 15-3-3.5-18 (Lexis-Nexus 1998).

¹²⁷ IND. CODE ANN. § 15-3-3.5-18.1 (Lexis-Nexus 1998).

to two hundred fifty dollars (\$250.00) for first violations, five hundred dollars (\$500.00) for second violations, and one thousand dollars (\$1,000.00) for subsequent violations as well as a Class A or C misdemeanor charges.¹²⁸

A person may not handle, transport, store, display, or distribute pesticide products in a manner as to endanger man or the environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with the pesticide products¹²⁹ nor may a person dispose, discard, or store any pesticide product or pesticide container in a manner that may cause injury to persons, plants, animals, wildlife, lands, or waters except the pests that the pesticides are intended to prevent, destroy, control, or mitigate.¹³⁰

2. *Indiana Pesticide Licenses*

Indiana categorizes pesticide applicators as:

- Certified applicators;
- Private applicators;
- Commercial applicators;
- Licensed applicators for hire;
- Licensed applicators not for hire; and
- Licensed public applicators.¹³¹

Agricultural producers in certain situations may be exempt from pesticide applicator regulation.¹³²

A person applying for a license must submit an application to the state chemist on a state provided form, pass the appropriate examination, and pay the requisite fee. The CES organizes and conducts the programs of instruction and training in areas of the pesticide knowledge

¹²⁸ IND. CODE ANN. §§ 15-3-3.5-18.3, -21, -25, and -28 (Lexis-Nexus 1998).

¹²⁹ IND. CODE ANN. § 15-3-3.5-33 (Lexis-Nexus 1998).

¹³⁰ IND. CODE ANN. § 15-3-3.5-34 (Lexis-Nexus 1998).

¹³¹ Veterinarians in their practice and researchers are also exempt from these regulations; *see* IND. CODE ANN. § 15-3-3.6-10 (Lexis-Nexus 1998).

¹³² IND. CODE ANN. § 15-3-3.6-10 (Lexis-Nexus 1998).

required. Where appropriate and feasible, the CES draws upon the resources and expertise of other educational institutions and the private sector in this effort.¹³³

If the person desires to engage in the aerial application of pesticides, additional proof that the person has satisfied aerial application requirements under applicable state and federal laws must be submitted. Pesticide licenses expire each year on January 1 but are renewable by submitting a renewal application on the form provided by the state along with the renewal fee.¹³⁴

A person may not act as a pesticide consultant unless the person has paid the requisite fee and registered with the state chemist by submitting satisfactory proof that the person is qualified to make recommendations and offer advice concerning the use of pesticides. However, full-time employees of a federal, state, or local government agency are exempted from the required fee.¹³⁵

a. Certified Applicators

Certified applicator means an individual certified to be qualified to use or supervise the use of any restricted-use¹³⁶ pesticide and has such a state-issued certificate as evidence. A registered technician is a person who is not licensed but has registered with the state chemist and is authorized to engage in pesticide use and related activities under the direct supervision of a licensed and certified applicator.¹³⁷

b. Private Applicators

Producer Note: Private applicator certificates may be obtained by persons who pass a test showing they have practical knowledge of pest problems, proper storage, use, handling, and disposal. Educational materials are available at county extension offices.

Private applicator means a certified applicator who uses or supervises the use of any restricted-use pesticide for purposes of producing any agricultural commodity on property owned or rented by the applicator or applicator's employer or, if the application is without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. A private applicator may not be issued a permit

¹³³ IND. CODE ANN. § 15-3-3.6-23 (Lexis-Nexus 1998).

¹³⁴ IND. CODE ANN. § 15-3-3.6-8.1 (Lexis-Nexus 1998).

¹³⁵ IND. CODE ANN. § 15-3-3.6-8.3 (Lexis-Nexus 1998).

¹³⁶ Restricted use pesticide means any pesticide classified as restricted by the EPA or that the PRB has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands other than the pests the pesticide is intended to prevent, destroy, control, or mitigate; *see* IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

¹³⁷ IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

to use a restricted-use pesticide without first complying with the certification requirements including passing an examination that has been determined by the state chemist necessary to prevent unreasonable adverse effects on the environment¹³⁸ such as but not limited to injury to the applicator or other persons and, of course, paying the requisite fee.¹³⁹ Private applicators holding an applicable state-issued permit are authorized to purchase, possess, or use restricted-use pesticides.

Certification standards are employed to determine the private applicator's competency with respect to the use and handling of pesticides must comply with EPA certification standards and also involve competency with respect to related hazards such as the acute dermal and inhalation toxicity including the persistence, mobility, and susceptibility to biological concentration. The certification process must also discern any use experience that may reflect an inherent misuse or an unexpected good safety record which may not follow laboratory toxicological information, knowledge of the relative hazards of patterns of use such as granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer applications, and the extent of the intended use.¹⁴⁰

c. Commercial Applicators

The term "commercial applicator" means a certified applicator who uses or supervises the use of any restricted-use pesticide for any purpose on any property other than as the trading of personal services mentioned above.

d. Licensed Applicator for Hire

The term "licensed applicator for hire" means any licensed certified commercial applicator who is employed by a licensed pesticide business to use or supervise the use of any pesticide on the property of another and who assumes direct responsibility for such services for the business.

e. Licensed Applicator Not for Hire

The term "licensed applicator not for hire" means a licensed certified commercial applicator who is employed by a private employer to use or supervise the use of a restricted-use pesticide only on the property of the employer. A person under the direct supervision of a licensed applicator not for hire person may also use pesticides. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the PRB.

¹³⁸ Unreasonable adverse effects on the environment means an unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide; *see* IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

¹³⁹ IND. CODE ANN. § 15-3-3.6-9 (Lexis-Nexus 1998).

¹⁴⁰ IND. CODE ANN. § 15-3-3.6-9 (Lexis-Nexus 1998).

f. Licensed Public Applicator

The term “licensed public applicator” means a licensed certified commercial applicator who uses or supervises the use of a restricted-use pesticide as an employee of a state agency, municipal corporation, or other governmental agency. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site.

g. Pesticide Dealer

Registration is required for persons or businesses that distribute restricted-use pesticides. The application for registration must be submitted to the state chemist on the state provided form. Registration renewal must be submitted on the state provided form along with the requisite fee application each year by January 1.¹⁴¹ Additionally, a pesticide business license or a pest inspector license will not issue until the applicant for the license has furnished a surety bond.¹⁴²

3. *Indiana Pesticide Records*

Commercial applicators and licensed pest inspectors must maintain records with any relevant information deemed to be necessary to satisfy pesticide provisions with respect to applications of restricted-use pesticides. It is the discretion of the state chemist to require certified applicators to maintain records related to applications of state restricted pesticide uses. Agricultural producers should check with the office of the state chemist in order to maintain compliance. All required records must be kept for a period of two (2) years from the date of the application of the pesticide.¹⁴³

4. *Indiana Pesticide Containers*

A person may not transport, store, or dispose any pesticide or pesticide containers in a manner that would cause injury to humans, beneficial vegetation, crops, livestock, wildlife, and beneficial insects or to pollute any waterway in a manner harmful to any wildlife in a waterway. The PRB has authority to set forth rules governing the storage and disposal of pesticides or pesticide containers. In determining these standards, the PRB takes EPA regulations into consideration.¹⁴⁴

¹⁴¹ IND. CODE ANN. § 15-3-3.6-12 (Lexis-Nexus 1998).

¹⁴² IND. CODE ANN. § 15-3-3.6-13 (Lexis-Nexus 1998).

¹⁴³ IND. CODE ANN. § 15-3-3.6-19 (Lexis-Nexus 1998).

¹⁴⁴ IND. CODE ANN. § 15-3-3.6-24 (Lexis-Nexus 1998).

5. *Indiana Pesticide Accidents and Claims*

The state chemist is authorized to require the reporting of significant pesticide accidents or incidents. Any person who claims damages from a pesticide accident must file such claim on a state provided form available in the office of the state chemist. This claim report must be filed with the state chemist within sixty (60) days after the date that alleged damage occurs. If a growing crop is alleged to have been damaged, the claim report must be filed before twenty-five percent (25%) of the crop is harvested. Within seven (7) days after the receipt of such claim report, the state chemist notifies the pesticide licensee and the owner or lessee of the property or other persons who may be charged with the responsibility for the damages and furnishes them with copies of the damage statements.¹⁴⁵

6. *Indiana Pesticide Penalties*

The state chemist may deny, suspend, revoke, or modify any provision of any license, permit, or certification and warn, cite, or impose penalties on a person for a violation if the state chemist finds that the person has:

- Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;
- Recommended, used, or supervised the use of any registered pesticide in a manner inconsistent with its labeling;
- Used known ineffective or improper pesticides;
- Operated faulty or unsafe equipment;
- Operated equipment in a careless or negligent manner;
- Neglected or refused to comply with pesticide rules or any lawful order;¹⁴⁶
- Refused or neglected to keep and maintain the required records or to make reports and supply information when requested;
- Made false or fraudulent records, invoices, or reports;
- Engaged in or professed to be engaged in the business of using a pesticide without having a pesticide business license;

¹⁴⁵ IND. CODE ANN. § 15-3-3.6-2 (Lexis-Nexus 1998).

¹⁴⁶ After notice; *see* IND. CODE ANN. § 15-3-3.6-14 (Lexis-Nexus 1998 & Supp. 2001).

- Used a restricted-use pesticide without having a licensed applicator or the direct supervision of a licensed certified operator;
- Used fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification;
- Refused or neglected to comply with any limitations or restrictions on or within an issued license, permit, registration, or certification;
- Aided or abetted a person in violating the pesticide provisions, conspired with a person to evade the pesticide provision, or allowed a license, permit, registration, or certification to be used by another person;
- Made false or misleading statements during or after an inspection concerning any infestation or infection of pests;
- Impersonated any pesticide inspector, investigator, or official whether federal, state, county, or city;
- Knowingly purchased or used a pesticide that was not properly registered; or
- Failed to continuously maintain the required financial liability responsibility.¹⁴⁷

The state chemist may also impose civil penalties for violations from one hundred to two hundred fifty dollars (\$100.00 to \$250.00) for first time offenses and up to one thousand dollars (\$1,000.00) for repeated violations.¹⁴⁸ Violators may also be subject to criminal charges of a Class C misdemeanor for impeding, hindering, or preventing the performance of the state chemist's duty or a Class A misdemeanor for knowingly or intentionally violating a pesticide provision after receiving written notification of a previous violation.¹⁴⁹

The state chemist has authority to enter upon any public or private property at reasonable times to:

- Observe the use and application of a pesticide;
- Inspect any equipment used with a pesticide;

¹⁴⁷ IND. CODE ANN. § 15-3-3.6-14 (Lexis-Nexus 1998 & Supp. 2001).

¹⁴⁸ Only penalties in accordance with the schedule of civil penalties adopted by the PRB; *see* IND. CODE ANN. § 15-3-3.6-14.5 (Lexis-Nexus 1998).

¹⁴⁹ IND. CODE ANN. § 15-3-3.6-16 (Lexis-Nexus 1998).

- Inspect and sample property that is exposed to pesticides or reported to be exposed to pesticides;
- Inspect storage or disposal areas;
- Inspect or investigate complaints of injury to humans or property; and
- Sample pesticides being used or will be used.

If the state chemist is denied access, the state chemist is authorized to apply to the court for a search warrant.¹⁵⁰ The state chemist may also request subpoenas to compel the attendance of witnesses or the production of necessary documents and request that the court grant a temporary or permanent injunction restraining any person from committing a violation.¹⁵¹

Local government and other political subdivisions do not have authority to regulate the use or application of pesticides. However, such an entity may, by resolution, petition the PRB for a hearing to allow a variance from a rule based upon any special circumstances relating to the use or application of a pesticide. Upon receipt of a petition, the PRB holds a public hearing to consider the variance requested. The public hearing is conducted in an informal manner. The PRB may grant a variance as requested, or the PRB may make changes.¹⁵²

Producer Note: Agricultural producers must take special care in disposing pesticide containers. Although permits for disposal are not required under Federal Insecticide Rodenticide Act (FIFRA), the pesticide label will reflect requirements for disposal which must be met in order to prevent violations of the law.

Producer Note: Agricultural producers are also required to take precautions to protect farm workers from pesticides. Producers must properly train and notify workers of pesticide dangers. Producers should refer to the EPA publication entitled *The Worker Protection Standard for Agricultural Producers-How to Comply: What Employers Need to Know* for specific explanations of these requirements. Contact the EPA or the Indiana DOA for the most current requirements.

¹⁵⁰ Upon showing a need to a court of competent jurisdiction; see IND. CODE ANN. § 15-3-3.6-18 (Lexis-Nexus 1998).

¹⁵¹ IND. CODE ANN. §§ 15-3-3.6-17 and -18 (Lexis-Nexus 1998).

¹⁵² IND. CODE ANN. § 15-3-3.6-27 (Lexis-Nexus 1998).

VI. PROTECTION OF WILDLIFE

A. Indiana Wildlife Protection Laws

1. *Indiana Wildlife Habitat Protection*

Producer Note: Agricultural producers have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife and wildlife habitat.

Producer Note: Many states have additional laws and regulations which either enhance wildlife protections under federal laws or address issues peculiar to wildlife within the state. State laws and regulations may also address common problems caused by wildlife. Indiana is one of those states that has state laws protecting wildlife.

Indiana considers all wild animals located within the state as property of the people, and accordingly, they are protected and managed by the DNR.¹⁵³ The purpose of Indiana wildlife laws is to protect and preserve fish and wildlife including their habitat for present and future generations by balancing ecological, recreational, and economic benefits. In particular, the Fish and Wildlife Division (FWD) of the DNR is charged with responsibility for the protection, reproduction, care, management, survival, and regulation of wild animal populations as well as;

- Organizing and pursuing a program of research and management of wild animals that will serve the best interests of the resources and the people of Indiana;¹⁵⁴
- Issuing all licenses and permits related to wildlife issues;¹⁵⁵
- Establishing hunting and fishing seasons including all related and necessary restrictions and the restrictions of taking, chasing, transporting, and selling wild animals or exotic mammals or any attempt to do so including with or without dogs;¹⁵⁶

The FWD offers training programs and educational programs that teach, encourage, and share knowledge and goals about the management of fish and wildlife and their habitat. The

¹⁵³ IND. CODE ANN. §§ 14-22-1-1 and -3 (Lexis-Nexus 1995 & Supp. 2001); except those wild animals that are legally owned or being held in captivity under a valid license or permit or are otherwise excepted including groundhogs.

¹⁵⁴ IND. CODE ANN. § 14-22-2-3 (Lexis-Nexus 1995).

¹⁵⁵ IND. CODE ANN. § 14-22-2-4 (Lexis-Nexus 1995).

¹⁵⁶ IND. CODE ANN. § 14-22-2-6 (Lexis-Nexus 1995).

FWD approaches its responsibilities with conviction that care of these natural resources is in the best interests of the people of Indiana and the benefits are greater when the responsibility is shared or borne by all Indiana citizens.

At any time in the performance of official duties, representatives of the FWD may enter into or upon private property for sanctioned purposes of managing and protecting any wild animal found upon or within the property and to kill or to remove any wild animal that is considered a nuisance or detrimental to the overall population.¹⁵⁷

Agricultural producers should take note of the following wildlife provisions in Indiana:

- Indiana has trapping laws that regulate harvesting, checking, placement, and design of snares for furbearing animals;¹⁵⁸
- Indiana prohibits shooting a firearm from within, into, upon, or across a public highway and into or across the waters or boundary waters of the state unless it is in lawful pursuit of wild animals;¹⁵⁹
- Silencers are not allowed for hunting;¹⁶⁰ and
- Coyotes are an exception to the prohibitive takings rule when they are present on one's land or on land possessed or when written permission from FWD has been obtained by the possessor of the land.¹⁶¹

2. *Indiana Special Wildlife Terms*

The term endangered when it is used in Indiana laws and regulations means any animal species whose prospects for survival or recruitment within the state are in immediate jeopardy and are in danger of disappearing from the state. Federal endangered species that occur in Indiana are included in all lists. The term of special concern means any animal species where problems of limited abundance or distribution are known or suspected and close monitoring may be required. The term extirpated means any animal species that has been absent from Indiana as a naturally occurring breeding population for more than 15 years. It is unlawful to take, possess, sell or offer to sell, purchase or offer to purchase, ship, transport, carry, deliver or receive for

¹⁵⁷ IND. CODE ANN. § 14-22-2-5 (Lexis-Nexus 1995).

¹⁵⁸ IND. CODE ANN. §§ 14-22-6-4, -5, -6 (Lexis-Nexus 1995).

¹⁵⁹ IND. CODE ANN. § 14-22-6-10 (Lexis-Nexus 1995).

¹⁶⁰ IND. CODE ANN. § 14-22-6-11 (Lexis-Nexus 1995).

¹⁶¹ IND. CODE ANN. § 14-22-6-12 (Lexis-Nexus 1995).

shipment, transportation, or carriage any migratory bird or a nest, egg, or part of a migratory bird designated as endangered, threatened, or of special concern.^{162, 163}

B. Indiana Wildlife Programs

The FWD and the Soil Conservation Division (SCD) of the DNR plus soil and water conservation districts cooperate with other conservation education organizations and hunter organizations to establish programs to help landowners with problems caused by localized deer populations.¹⁶⁴ Other wildlife programs in Indiana include:

- The Nongame and Endangered Wildlife Program which protects and manages more than five hundred fifty (550) species of nongame and endangered wildlife in the state;
- The Restoration Project involves restoring extirpated populations of several species including river otters, peregrine falcons, and bald eagles; and
- Other research and surveys involving endangered mussels, sturgeon, darters, hellbenders, rattlesnakes, least terns, sandhill and whooping cranes, wood rats, loggerhead shrikes, bobcats, and bats.

Producer Note: Agricultural producers should be aware that some actions with respect to endangered species could expose them to both federal and state penalties. Producers should check with the Indiana Fish and Wildlife Division (FWD) of the Department of Natural Resources (DNR) to get a list of endangered species and a list of specially managed species in order to avoid potential liability.

1. Indiana Fish and Wildlife Fund

Money collected from fines and penalties on violations of wildlife laws goes to the Fish and Wildlife Fund.¹⁶⁵ However, monies may also be appropriated to or set apart for this fund. The Fish and Wildlife Fund is used to protect and propagate game, fish, birds, and mammals in Indiana as well as to support the operation of the FWD including the enforcement division. This

¹⁶² IND. CODE ANN. §§ 14-22-6-2 and -3 (Lexis-Nexus 1995).

¹⁶³ IND. CODE ANN. § 14-22-6-8 (Lexis-Nexus 1995). The word sell includes selling as a meal, and the word taken is expanded to include taken in another state and brought into Indiana.

¹⁶⁴ IND. CODE ANN. § 14-22-6-14 (Lexis-Nexus 1995).

¹⁶⁵ IND. CODE ANN. §§ 14-22-3-2 and -3 (Lexis-Nexus 1995).

fund also provides funds for the “turn in a poacher” program and various offered rewards. A separate fund also exists for deer research and management.¹⁶⁶

2. *Indiana “Turn in a Poacher” Program*

The "turn in a poacher" program is established for the purpose of encouraging citizen participation in deterring the unlawful taking or possession of game, fish, or nongame wildlife.¹⁶⁷ The DNR provides a toll free telephone number for reporting such activities and conducts investigations initiated through citizen participation in game, fish, and nongame wildlife law enforcement. Special boat patrol funds are provided to counties for law enforcement services on lakes located within the counties.¹⁶⁸

Producer Note: Agricultural producers should check with the FWD within the Indiana DNR in order to determine if any threatened and endangered species protected under state or federal law are located on the producer’s property. If so, state and federal permits may be required before certain activities can take place on the property. The FWD and the U.S. Fish and Wildlife Service have application forms for any necessary permits. Failure to obtain proper permits may expose the producer to serious state or federal penalties if a protected species is harmed.

VII. **Enforcement of State Environmental Laws**

As with federal environmental laws, persons who violate the regulatory requirements of state environmental laws face substantial penalties. The specific penalties vary to some degree with each statute. However, they generally include both civil and criminal penalties. Additional fines can be assessed for each day that an operation remains in violation. For severe or repeated violations, imprisonment can be imposed. State agencies can also initiate proceedings, either in court or before an administrative tribunal, to enjoin a producer’s activities and force compliance with the statute. In some situations, citizens may also file law suits to enforce environmental laws. As with the federal statutes, state laws afford producers the right to administrative and/or judicial review of agency decisions.

¹⁶⁶ IND. CODE ANN. § 14-22-5-4 (Lexis-Nexus 1995).

¹⁶⁷ IND. CODE ANN. § 14-9-8-23 (Lexis-Nexus 1995).

¹⁶⁸ IND. CODE ANN. § 14-9-9-5 (Lexis-Nexus 1995 Supp. 2001).

VIII. OTHER INDIANA LAWS AFFECTING AGRICULTURE

Producer Note: Many other state statutes may potentially impact agricultural activities as they relate to the environment. The following is a brief discussion of additional state laws in Indiana.

Producer Note: Agricultural producers may be confronted with complaints of local residents. These problems may originate due to odors, flies, rodents, or dust generated on or by the operation. Resulting lawsuits or court actions in these instances are usually based on a nuisance theory, and in some cases, a right to farm defense may apply.

A. Indiana Nuisance Law and Right To Farm Protection

The term agricultural operation means any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for timber growing.¹⁶⁹ The term agricultural product means a natural product of a farm, a nursery, a grove, an orchard, a vineyard, a garden, or an apiary, and it includes trees and firewood.¹⁷⁰ Locality means the specific area of land upon which an agricultural operation is conducted.¹⁷¹

A nuisance may be described as anything that interferes with the comfortable enjoyment of life or property and may legally become the subject of an lawsuit or an action to enjoin or abate the nuisance. In some cases, damages may be awarded to the party bringing the lawsuit.¹⁷²

When the growth of urban and nonagricultural areas extends into formerly rural and agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the policy of Indiana to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. One of the purposes of this policy is to reduce the loss of Indiana's agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Indiana has Right To Farm legislation. A Right to Farm law, for the most part, is a statute that provides some protection to agricultural producers and operations against nuisance lawsuits. Nuisance lawsuits often arise when urban growth and development extends into rural

¹⁶⁹ IND. CODE ANN. § 34-6-2-7 (Lexis-Nexus 2000).

¹⁷⁰ IND. CODE ANN. § 34-6-2-8 (Lexis-Nexus 2000).

¹⁷¹ IND. CODE ANN. § 34-6-2-74 (Lexis-Nexus 2000).

¹⁷² IND. CODE ANN. §§ 34-19-1-1, -2, -3 (Lexis-Nexus 2000 & Supp. 2001).

areas or formerly low density areas. A private nuisance involves injury that interferes with an individual's use and enjoyment of his or her property. Public nuisance involves injury that interferes with the public at large. Right-to-farm laws are usually designed to accomplish one or both of the following objectives:

- To strengthen the legal position of agricultural producers in lawsuits based on private nuisance; and
- To protect agricultural producers from anti-nuisance ordinances and unreasonable controls on farming operations.

When an agricultural operation meets the following criteria, the Indiana statute referred to as the Right To Farm Law may provide the agricultural producer with some protection against legal actions based on a nuisance claim:

- The operation has been ongoing continuously on the same locality for more than one (1) year;¹⁷³
- There is no significant change in the hours of operation or the type of operation; and
- The operation would not have been a nuisance at the time it began.

An agricultural operation that meets the above criteria may not become a nuisance¹⁷⁴ due to any changed conditions in the vicinity of the locality after the agricultural operation began unless the operation is considered to be a negligent operation.¹⁷⁵

Stronger Right To Farm protection may be provided to agricultural producers whose land is in an agricultural district. Indiana allows agricultural districts to be formed. These districts may also be called agricultural protection zoning. The legislative body having jurisdiction over the geographic area has exclusive authority to adopt a zoning ordinance.¹⁷⁶

¹⁷³ The continuity of an agricultural operation may only be considered to be interrupted when the operation has been discontinued for more than one (1) year.

¹⁷⁴ Neither private or public nuisance.

¹⁷⁵ IND. CODE ANN. § 34-19-1-4 (Lexis-Nexus 2000 & Supp. 2001).

¹⁷⁶ IND. CODE ANN. § 36-7-4-601 (Lexis-Nexus 2000).

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline local area requirements, agricultural producers should always check with local boards to determine if there are any planning and zoning regulations which may affect production activities.

B. Indiana Land Resources Council

Indiana has a Land Resources Council (LRC).¹⁷⁷ The purpose of the council is collect information and provide educational assistance, technical assistance, and advice to local governments regarding land use strategies and issues across the state.¹⁷⁸ Other activities the council may participate in are:

- Provide technical assistance and information about land use strategies;
- Facilitate collaboration among local government units;
- Compile and maintain current data on land resources in Indiana;
- Coordinate educational programs for local planning;
- Provide a referral service for land use planning;
- Obtain and locate additional funding for planning projects; and
- Make recommendations and advise the state legislature on land resource issues.¹⁷⁹

The LRC consists of nine members including the Commissioner of Agriculture and eight others appointed by the governor. Members represent each the following interests: county government, municipal government, farm owners, home building and land development, business, the environment, academia experts in land use, soil and water conservation districts, and forestry.¹⁸⁰

¹⁷⁷ IND. CODE ANN. § 15-7-9-4 (Lexis-Nexus 1998 & Supp. 2001).

¹⁷⁸ IND. CODE ANN. § 15-7-9-6 (Lexis-Nexus 1998 & Supp. 2001).

¹⁷⁹ IND. CODE ANN. § 15-7-9-7 (Lexis-Nexus 1998 & Supp. 2001).

¹⁸⁰ IND. CODE ANN. § 15-7-9-8 (Lexis-Nexus 1998 & Supp. 2001).

Producer Note: Many states have passed laws allowing preservation or conservation of agricultural land through the use of conservation easements. When conservation easements are used for agricultural land purposes, the law frequently has certain requirements relating to the creation, compensation, and enforcement of such easements.

C. Indiana Conservation Easements and Beneficial Assessments

A conservation easement is a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations on the land that:

- Retain or protect natural, scenic, or open-space values of real property;
- Assure availability for agricultural, forest, recreational, or open-space uses;
- Protect natural resources;
- Maintain or enhance air or water quality; or
- Preserve the historical, architectural, archeological, or cultural aspects of real property.¹⁸¹

The holder of a conservation easement may be a governmental body. The holder may also be a charitable corporation, association, or trust when it is held for the same purposes listed above. A conservation easement is created, conveyed, recorded, assigned, released, modified, terminated, altered, or affected in the same manner as any other easement contained in real property. Real property subject to a conservation easement is assessed and taxed on a basis that reflects the easement use value rather than on a potentially higher use value or basis.¹⁸²

In Indiana, land that is devoted to agricultural use is beneficially assessed as agricultural land and not assessed at its highest and best use, as sometimes is the case, especially when the land is situated close proximity to fast growing and developing areas. Assessment laws such as this also help to protect and preserve agricultural land for agricultural uses.¹⁸³

¹⁸¹ IND. CODE ANN. § 32-5-2.6-1 (Lexis-Nexus 2000 & Supp. 2001).

¹⁸² IND. CODE ANN. § 32-5-2.6-7 (Lexis-Nexus 2000 & Supp. 2001).

¹⁸³ IND. CODE ANN. § 6-1.1-4-13.

D. Indiana Destruction of Detrimental Plants

Landowners must prevent and destroy detrimental plants on their real estate property by cutting, mowing, plowing, cultivating, or using chemicals.¹⁸⁴ The term detrimental plant includes Canada thistle (*Cirsium arvense*), Johnson grass, sorghum alumun (*Sorghum halepense*), bur cucumber (*Sicyos angulatus*), shattercane (*Sorghum bicolor* [L.] Moench spp. *drummondii* [Steud.] deWet), and, in residential areas only, noxious weeds and rank vegetation. The term does not include agricultural crops.

After providing forty-eight (48) hours notice to the landowner or person in possession of the property, a township trustee with reason to believe that detrimental plants may exist may enter the property to investigate.¹⁸⁵ If the township trustee determines that a person has detrimental plants growing on property in the township that have not been treated or destroyed as required by law, the trustee must notify the landowner, or person in possession, in writing to do so within five (5) days after the notice is given.¹⁸⁶ If the landowner or person in possession does not comply accordingly, the trustee is authorized to do so within three (3) additional days. The trustee or his agent may enter upon such real estate to carry out proper destruction of the detrimental plants without fear of trespass, civil or criminal liability to any damages to crops, livestock, or other property damage unless the agent's actions are determined to be gross negligence or willful or wanton destruction.¹⁸⁷ Compensatory costs may be subsequently billed to the landowner, or person in possession, and added to property taxes if not paid.¹⁸⁸ A county Weed Control Board (WCB) may, by choice, assume jurisdiction after the trustee's notice.¹⁸⁹

A violator of the detrimental plant law who does so knowingly so may also be subjected to Class C misdemeanor charges.¹⁹⁰ Besides a landowner and a person in possession of private property, persons responsible for the rights-of-way of highways, railroads, or inter-urban

¹⁸⁴ IND. CODE ANN. § 15-3-4-1 (Lexis-Nexus 1998).

¹⁸⁵ The Cooperative Extension Service provides technical assistance to township trustees for the control of detrimental plants; *see* IND. CODE ANN. § 15-3-4-8 (Lexis-Nexus 1998).

¹⁸⁶ Notice must be by certified mail or by personal service; Notice is considered received on the date of delivery if served personally or on the earlier of the date of signature of return receipt of the mailing or three (3) business days after the date of mailing if sent by mail. *see* IND. CODE ANN. § 15-3-4-1 (Lexis-Nexus 1998).

¹⁸⁷ All law enforcement agencies having jurisdiction in a township shall assist the township trustee in carrying out the duties; *see* IND. CODE ANN. § 15-3-4-8 (Lexis-Nexus 1998).

¹⁸⁸ IND. CODE ANN. § 15-3-4-3 (Lexis-Nexus 1998).

¹⁸⁹ IND. CODE ANN. § 15-3-4-2 (Lexis-Nexus 1998).

¹⁹⁰ IND. CODE ANN. § 15-3-4-5 (Lexis-Nexus 1998).

companies are subject to this law.¹⁹¹ The selling of Canada thistle seed is also a Class C infraction. Each day of violation constitutes a separate infraction.¹⁹²

E.. Indiana County Weed Control Board

The authorizing body of any county may, on its own initiative or after receiving a petition signed by five percent (5%) of the registered voters of the county, establish a WCB.¹⁹³ The WCB identifies important weed control problems affecting the public welfare and develops programs appropriate to each situation. Noxious weeds include the detrimental plants listed in the previous section¹⁹⁴

Similarly as does the township trustee, the WCB may undertake investigations to determine the extent of infestation of noxious weed species and their effect and to take all necessary and proper steps to control and contain noxious weeds¹⁹⁵ which have adverse significance on agricultural production. The WCB, like the township trustee, may enter upon any land at any reasonable time after giving forty-eight (48) hours notice to inspect for noxious weeds. When noxious weeds are discovered, written or actual¹⁹⁶ notice is given to the landowner or person in possession to implement containment and control measures. The WCB notifies the township trustee at the same time as the landowner. The WCB allows five (5) days for removal of any noxious weeds, but after that, the WCB has authority control the noxious weeds and seek compensation from the landowner for any costs incurred to control noxious weeds. A tax lien may be placed on the property if voluntary payment is not forthcoming.¹⁹⁷ Failure to comply with the WCB notice to remove the plants subjects the violator to an additional Class C infraction. Additionally, a person who knowingly contaminates uninfested land with Johnson

¹⁹¹ The Director of the Department of Natural Resources or the Dean of Agriculture of Purdue University may totally or partially exempt land that is subject to a program of the department or station; *see* IND. CODE ANN. § 15-3-4-9 (Lexis-Nexus 1998).

¹⁹² IND. CODE ANN. § 15-3-4-5 (Lexis-Nexus 1998).

¹⁹³ Authorizing body means the body that has the power to adopt ordinances; *see* IND. CODE ANN. § 15-3-4.6-1 (Lexis-Nexus 1998).

¹⁹⁴ Canada thistle (*Cirsium arvense*), Johnson grass, *Sorghum alumun* (*Sorghum halepense*), Bur cucumber (*Sicyos angulatus*), and Shattercane (*Sorghum bicolor* (L.) Moench spp. *drummondii* (Steud.) de Wet) are deemed noxious weeds; *see* IND. CODE ANN. § 15-3-4.6-2 (Lexis-Nexus 1998).

¹⁹⁵ Including marijuana; *see* IND. CODE ANN. §§ 15-3-4.6-4, and -4.1 (Lexis-Nexus 1998).

¹⁹⁶ Actual notice must served personally by the county sheriff; *see* IND. CODE ANN. § 15-3-4.6-5 (Lexis-Nexus 1998).

¹⁹⁷ IND. CODE ANN. § 15-3-4.6-5 (Lexis-Nexus 1998).

grass or transports Johnson grass in any form capable of germination commits a Class C infraction.¹⁹⁸

The county WCB¹⁹⁹ consists of the township trustee, the county's CES agent, and representatives of the soil and water conservation district, the agricultural community, and the county highway department or the county commission.²⁰⁰

F. Indiana Horticultural and Quarantine Districts

Horticultural and quarantine districts may be organized to prevent the spread of contagious diseases among fruit, fruit trees, and fruit-bearing plants through prevention, treatment, cure, and extirpation of fruit pests and diseases. Such districts may hire experts to prescribe the proper methods of treatment and purchase labor, spraying machines, or other items necessary to adequately spray fruit trees or other fruit-bearing plants.

A horticultural or quarantine district may consist of ten (10) or more landowners of any contiguous area where orchards or fruit trees or other fruit-bearing plants are located.²⁰¹ Assessments may be made from time to time upon the members in order to carry out the purposes described above²⁰² but must be in proportion to the service derived, procured, or otherwise obtained from the district on the basis of the acreage or number of trees, plants, vines, or other herbaceous plants.²⁰³ The boundary of such horticultural and quarantine district coincides with the area²⁰⁴ enclosing the lands of the members of the association.²⁰⁵

¹⁹⁸ Unless it is with the prior written approval of the Dean of Agriculture of Purdue University or his designee; *see* IND. CODE ANN. § 15-3-5-4 (Lexis-Nexus 1998).

¹⁹⁹ The Purdue University Cooperative Extension Service provides technical assistance to WCB members for the control and contain the growth and spread of noxious weeds; *see* IND. CODE ANN. § 15-3-4.6-7 (Lexis-Nexus 1998).

²⁰⁰ IND. CODE ANN. § 15-3-4.6-3 (Lexis-Nexus 1998).

²⁰¹ IND. CODE ANN. § 15-3-7-2 (Lexis-Nexus 1998).

²⁰² IND. CODE ANN. § 15-3-7-12 (Lexis-Nexus 1998).

²⁰³ IND. CODE ANN. § 15-3-7-15 (Lexis-Nexus 1998).

²⁰⁴ Up to twenty (20) square miles.

²⁰⁵ IND. CODE ANN. § 15-3-7-7 (Lexis-Nexus 1998).

G. Indiana Agricultural Commodity Market Development Councils

A group consisting of five percent (5%) or more of the producers of an agricultural commodity may establish a commodity market development council.²⁰⁶ Fees may be assessed against the commodity when it is placed into the stream of commerce. The fee is generally collected on a per unit basis and used primarily for expenses incurred in promoting the marketing and sales of such commodity.

H. Indiana Certification of Agricultural Products

The governor or his designee may certify that a certain agricultural product meets the specifications of a buyer of that agricultural product although a fee may be collected for this service.²⁰⁷

I. Indiana General Animal Health Policies

The Indiana Legislature has adopted a policy within the state to promote and encourage the prevention, suppression, control, and eradication of infectious, contagious, and communicable diseases affecting the health of animals within the trade of animals and animal products in and from the state.²⁰⁸

J. Indiana State Board of Animal Health

The Indiana State Board of Animal Health (SBAH) regulates animals for the purpose of controlling animal diseases. The Board's authority includes the transportation and disposal of animal carcasses and parts of such carcasses other than those slaughtered and intended for human foods. The SBAH also regulates the sanitary and health conditions of the premises of auction sale barns or community sales facilities.²⁰⁹ The SBAH administers the state meat inspection and dairy inspection programs.²¹⁰

The SBAH is composed of eleven (11) members. Representatives from the school of veterinary medicine of Purdue University, licensed veterinarians, and livestock or poultry

²⁰⁶ The Dean of Agriculture at Purdue University approves such organizational petitions; *see* IND. CODE ANN. § 15-4-3.5-3 (Lexis-Nexus 1998).

²⁰⁷ IND. CODE ANN. § 15-4-9-2 (Lexis-Nexus 1998).

²⁰⁸ IND. CODE ANN. § 15-2.1-1-1 (Lexis-Nexus 1998 & Supp. 2001).

²⁰⁹ IND. CODE ANN. § 15-2.1-1-4 (Lexis-Nexus 1998 & Supp. 2001).

²¹⁰ IND. CODE ANN. § 15-2.1-23 and IAC 15-2.1-24.

producers appointed by the governor make up the SBAH.²¹¹ Generally, the SBAH supervises the prevention, suppression, control, and eradication of infectious, contagious, and communicable diseases affecting the health of animals within the state and those in transit through the state including the disposal of carcasses of animals. Movement and transportation of wild animals or birds which might carry or disseminate diseases to Indiana's animals or birds are controlled by the SBAH. The SBAH also has authority to investigate, gather, and compile information concerning the organization, business conduct, practices, and management of any licensee, permittee, or any applicant. The SBAH has authority to issue administrative orders to enforce its regulations.

The SBAH or any of its agents may enter private and public property to make inspections and surveys for the purpose of sanitation control. The SBAH has authority to enter where any animals are quartered or carcasses exist for the purpose of inspecting, examining, and testing in regard to the presence of any infectious, contagious, or communicable disease of animals and the possible cause and sources of such disease, and for performing other similarly related functions.²¹² The SBAH is authorized to subpoena and to take testimony in the same manner as that is prescribed by law for judicial procedures in the state courts.²¹³ The SBAH may require licensees and permittees to file informational reports concerning activities, practices, and management of that particular business if necessary to carry out its stated purposes.

Indiana has established an animal disease diagnostic laboratory at Purdue University in West Lafayette and a branch laboratory in Dubois County for the purpose of aiding in the diagnosis of diseases of domestic animals for the prevention, control, and eradication of diseases of domestic animals.²¹⁴ The services of the laboratory are usually furnished without any charge unless otherwise determined by the Trustees of Purdue University, and even in those cases, the fees may support only the laboratory's equipment and supplies and the stated purposes of the facility.

K. Indiana Dead Animal Disposal Law

The transportation of the carcass of any dead animal or part of any such animal that was not slaughtered for human food is prohibited over state highways except by a state licensed²¹⁵

²¹¹ Livestock and poultry production includes horses, sheep, swine, dairy, beef, and eggs.

²¹² IND. CODE ANN. § 15-2.1-3-14 (Lexis-Nexus 1998).

²¹³ IND. CODE ANN. § 15-2.1-3-15 (Lexis-Nexus 1998).

²¹⁴ IND. CODE ANN. § 15-2.1-5-2 (Lexis-Nexus 1998).

²¹⁵ A valid disposal plant license only authorizes transportation of dead animal carcasses to licensed disposal plant located in Indiana; see IND. CODE ANN. § 15-2.1-16-15 (Lexis-Nexus 1998 & Supp. 2001).

disposal plant operator²¹⁶ or a person acting for such licensee.²¹⁷ The transporting vehicle, too, must have a transportation vehicle certificate.²¹⁸ All vehicles transporting dead animal carcasses²¹⁹ be must equipped with an endgate for all practical purposes that is watertight so that no seepage that may occur from such dead bodies and escape during transportation. The carcasses or parts of dead animals must be hidden by the vehicle's bed such that no dead carcasses or bodies can be viewed by persons using the highways and that public nuisances are obviated during such transportation.²²⁰ The owner of livestock, however, may transport the animal for disposal without obtaining a license.²²¹

The carcass of dead animals and any such parts must be disposed within twenty-four (24) hours after knowledge of death so as not to produce a nuisance. Disposal methods may include:

- Transportation to an approved disposal plant;
- Thorough and complete incineration according to standards established by an appropriate governmental agency;
- Composting according to standards approved by the SBAH; and
- Burial upon the animal owner's premises such that every part of the animal's body is at least four (4) feet below the natural surface of the ground and every part of

²¹⁶ Any person desiring to construct a new disposal plant, or reconstruct and reopen a disposal plant previously closed must submit an application to the state veterinarian on a furnished form with the required information together with a set of detailed construction plans and specifications for the disposal plant along with the proposed operations plan including the location site; *see* IND. CODE ANN. § 15-2.1-16-11 (Lexis-Nexus 1998 & Supp. 2001).

²¹⁷ An exception exists for a public official charged by law with such duties to remove or supervise the removal of the carcasses of dead animals for the disposal to protect the public health and welfare; *see* IND. CODE ANN. § 15-2.1-16-16 (Lexis-Nexus 1998 & Supp. 2001).

²¹⁸ IND. CODE ANN. § 15-2.1-16 (Lexis-Nexus 1998 & Supp. 2001).

²¹⁹ On each occasion after the bodies of dead animals have been unloaded from any transporting vehicle, such vehicle and all parts thereof, shall be thoroughly cleansed with steam or hot water and disinfected after each use; *see* IND. CODE ANN. § 15-2.1-16-18 (Lexis-Nexus 1998 & Supp. 2001); *also* transporting vehicles must go directly to the place of disposal or to a substation maintained for the temporary storage of such animal body for a disposal plant except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person; the driver must avoid creating any nuisance during such transportation and must clean up and remedy the escape of any seepage; *see* IND. CODE ANN. 15-2.1-16-19 (Lexis-Nexus 1998 & Supp. 2001); and any interim disposal plant substation maintained by a licensee must be a building with four (4) walls, a roof, concrete or cement floors with good drainage, thoroughly sanitary in construction and maintenance, rodent proof, and fly tight; and all sewage or waste water from said substation must be properly disposed; *see* IND. CODE ANN. § 15-2.1-16-33 (Lexis-Nexus 1998).

²²⁰ IND. CODE ANN. § 15-2.1-16-17 (Lexis-Nexus 1998 & Supp. 2001).

²²¹ IND. CODE ANN. § 15-2.1-16-1 and 345 IAC 7-7-2.

the animal's body is covered with at least four (4) feet of earth in addition to any other material that may be used as cover except where burial is prohibited by city law or ordinance.²²²

The skinning or harvesting of the hide of any dead animal is generally allowed unless the animal has died of a contagious disease or a nuisance is created. Disposal of the remaining body parts must follow the same requirements as a dead animal carcass.²²³

L. Indiana Agricultural Ammonia Law

In Indiana, the distribution, application, and use of agricultural anhydrous ammonia (NH₃) fertilizer and ammonia solutions²²⁴ is under the authority of the state chemist.²²⁵ Public and private facilities, equipment, operation procedures, and transport vehicles including those not used in interstate commerce must receive prior written approval and pass inspection requirements before installation and use. Safety rules and regulations are necessary for the protection of the safety of the public, and persons handling or using such materials. The state chemist is authorized to issue orders for mandatory compliance or temporary or permanent injunctions restraining any person from continuing violations. Violators of these provisions may be subject to a Class C misdemeanor.

M. Indiana Commercial Fertilizer Law

Fertilizer material means any substance containing nitrogen, phosphate, potash, or any recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers, except unmanipulated animal and vegetable manures. Mixed fertilizer means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth. Commercial fertilizer includes mixed fertilizer or fertilizer materials except nonprocessed barnyard manure, marl, lime, wood ashes, and plaster. The term “specialty fertilizer” means a fertilizer distributed for nonfarm use.²²⁶

²²² IND. CODE ANN. § 15-2.1-16-20 (Lexis-Nexus 1998 & Supp. 2001).

²²³ IND. CODE ANN. § 15-2.1-16-21 (Lexis-Nexus 1998 & Supp. 2001).

²²⁴ Any agricultural ammonia solution containing 10 percent (10%) or more by weight of free ammonia and/or having a vapor pressure of one (1) PSIG (pound per square inch gauge) or above at 104⁰ F.

²²⁵ The state chemist is appointed by the governor and it is the desire of the legislature that the governor should appoint a professor of biochemistry at Purdue University as the state chemist; *see* IND. CODE ANN. § 15-3-3-2 (Lexis-Nexus 1998).

²²⁶ IND. CODE ANN. § 15-3-3-3 (Lexis-Nexus 1998).

The Indiana Fertilizer Advisory Board (FAB) advises the state chemist on the regulation of fertilizer in the state.²²⁷ The FAB consists of twelve (12) members representing the fertilizer manufacturing/distributing industry, agricultural producers, lawn care industry, agricultural academia, public conservation organizations, and the office of the state chemist.

The Indiana legislature set forth new provisions in 1996 for commercial fertilizers for the storage of bulk fertilizers. The provisions state that bulk fertilizers must be stored in a manner that minimizes the release of fertilizer and protects the waters of the state. Other provisions allow the state chemist to adopt rules and establish standards for the distribution and storage of bulk fertilizers. The state chemist has the authority to issue stop-sale or stop-use orders, issue temporary or permanent injunctions restraining violations, and orders to seize commercial fertilizers not in compliance with the provisions and their related rules and regulations. Violators may be subject to a Class C misdemeanor.²²⁸

N. Indiana Required Notification by Environmental Permit Applicants to Adjoining Property Owners

Indiana state law provides that applicants for any type of environmental permit on land that is undeveloped or on land for which a valid existing permit has not been issued must notify the adjoining property owners or occupants living on adjoining property of such application within ten (10) days after submitting it to the IDEM.²²⁹ The IDEM recommends that not more than ten (10) working days after submitting an application for an environmental permit issued by the IDEM, the applicant should make a reasonable effort to provide notice to:

- All owners of land that adjoins the land that is the subject of the permit application; or
- All occupants of such land; or
- Both landowners and occupants.

²²⁷ IND. CODE ANN. § 15-3-3-17 (Lexis-Nexus 1998).

²²⁸ IND. CODE ANN. § 15-3-3-15 (Lexis-Nexus 1998).

²²⁹ IND. CODE ANN. § 13-15-8 (Lexis-Nexus 2000).

The notice must be provided in writing and include:

- The date on which the application for the permit was submitted to IDEM; and
- A brief description of the subject of the application.²³⁰

Failure to notify the adjoining landowner/s or occupant/s would deny the landowners or occupants the right to participate in the permitting process and would provide grounds for objection and appeal of any permit IDEM issued. An appeal can result in the permit being declared invalid. To avoid permit problems and to show that notice was given, the IDEM suggests that permit applicants carefully document all the steps that were taken to provide reasonable notice, save any receipts or other proof of any notice efforts. One may obtain the names and mailing addresses of the owners of the adjoining property from the tax assessor's office in the county where the property is located. For facilities that must obtain more than one new environmental permit must comply with the notice requirements each time a permit application is submitted. However, if multiple permit applications are submitted at or about the same time, a single notice that lists all permits applied for during the previous ten (10) days is sufficient.

²³⁰ IND. CODE ANN. § 13-15-8 (Lexis-Nexus 2000); the construction, installation, or modification of any of the following enterprises are exempted from this requirement: (1) a combined sewer; (2) a sanitary sewer; (3) a storm sewer; (4) a public water supply; and (5) a water main extension.

Appendix A - Agencies

Producer Note: State and federal agencies are available to answer questions regarding environmental matters and compliance with environmental laws and regulations. The following is a list of agencies and organizations which should be able to answer questions or provide materials for an agricultural producer.

Agriculture Resource Council

ISTA Center, Suite 414
150 West Market Street
Indianapolis, Indiana 46204
(317) 233-2207
(317) 232-1362 fax
<http://www.indag.org>

(317) 232-1362 fax
3. Land Resources Council
(317) 234-5262
(317) 232-1362 fax
4. Rural Development Council
(317) 232-8776
(317) 233-1571 fax

Association of Soil and Water Conservation Districts

225 South East Street, Suite 740
Indianapolis, IN 46202
(317) 692-7374
(317) 692-7363 fax
<http://www.iaswcd.org/>

Department of Environmental Management (IDEM)

Indiana Government Center North
100 North Senate Avenue
P. O. Box 6015
Indianapolis, IN 46206-6015
(317) 232-8603 or
(800) 451-6027 toll free in Indiana
(317) 233-6647 fax
(888) 233-7745 Emergency Spills
<http://www.IN.gov/idem>

Board of Animal Health

805 Beachway Drive, Suite 50
Indianapolis, IN 48224
(877) 747-0338
(317) 227-0330 fax
<http://www.animalhealth@boah.state.in.us>

4 Office Divisions within IDEM 1. **Office of Agricultural Relations in IDEM**

(Same address as main IDEM)
(317)232-8587
(317)233-6647 fax
<http://www.IN.gov/idem/agriculturalcommunity>

Cooperative Extension Service Agriculture and Natural Resources

1140 Agricultural Administration Building
West Lafayette, IN 47907-1140
(765) 494-7891
(765) 494-5876 fax
<http://www.anr.ces.purdue.edu/>

(Continued)

2. **Office of Air Quality (OAQ) in IDEM**

(same address as main IDEM)
(317) 233-0178
(317) 233-2342 main fax or
(317) 308-3239 Shadeland fax
<http://www.IN.gov/idem/air/>

Office of the Commissioner for Agriculture (OCA)

Indian State Teachers Association (ISTA) Center
150 West Market Street, Suite 414 to 416
Indianapolis, IN 46204
(317) 232-8770
(317) 232-1362 fax
<http://www.IN.gov/oca>

4 Branches within OAQ

1. Compliance Branch
(317) 232-8457
(317) 233-6865 fax
2. Monitoring Branch
(317) 308-3238
(317) 233-5967 main fax or
3. Permits Branch
(317) 232-8217
(317) 232-6749 fax
4. Programs Branch

Divisions within OCA

1. Commission for Agriculture & Rural Dev.
(317) 232-8778
(317) 232-1362 fax
2. Grain Buyers & Warehouse Licensing Agency
(317) 232-1356

(317) 233-5694
(317) 233-2342 fax

- Facilities Data Analysis
- Geological Services

3. Office of Land Quality (OLQ) in IDEM

(same address as main IDEM)

(317) 232-8941

(317) 232-3403 fax

<http://www.IN.gov/idem/land/>

6 Branches within OLQ

1. Compliance and Response Branch
IDEM at Shadeland

2525 North Shadeland Avenue

Indianapolis, IN

(317) 308-3023

(317) 308-3104 fax

- Agricultural & Solid Waste

(312) 232-3399

- Industrial Waste (#1 & #2)

(312) 308-3003

- Technical Compliance

(312) 308-3115

- Emergency Response

(317) 308-3024 or

(888) 233-7745 toll free

- Underground Storage Tank

(317) 308-3039

2. Permits Branch

- Engineering

(317) 232-8855

- Geology

(312) 232-8713

- Hazardous Waste

(312) 232-3242

- Solid Waste

(312) 232-7200

(317) 232-3403 fax

3. Operations & Information Branch

(317) 232-8941

- Finance and Operations

- Rules, Planning, and Outreach

4. Remediation Services Branch

- Federal Cleanup Superfund

- Leaking Tank Group

- Site Assessment

- State Cleanup and Removals

5. Risk Management Branch

(317) 232-8857

- Risk Integrated System of Cleanups

6. Science Services Branch

- Applied Science Technologies

- Chemical Support (A and B)

4. Office of Pollution Prevention and Technical Assistance in IDEM

150 West Market Street, Suite 703

Indianapolis, IN 46204

(317) 232-8172 or

(800) 988-7901 toll free

(317) 233-5627 fax

<http://www.IN.gov/idem/oppta/>

5. Office of Water Quality in IDEM

(same address as IDEM)

(317) 232-8603

(800) 451-6027 toll free

(317) 233-8406 fax

<http://www.IN.gov/idem/water/>

Department of Health

2 North Meridian Street

Indianapolis, IN 46204

(317) 233-2700

(317) 233-7210 fax

<http://www.state.IN.us/isdh/>

Department of Natural Resources

402 West Washington Street

Indianapolis, IN 46204

(317) 232-4020

(317) 232-8036 fax

<http://www.state.IN.us/dnr/>

Office of State Chemist and Seed Commissioner

Purdue University

1154 Biochemistry

West Lafayette, Indiana 47907-1154

(765) 494-1492

(765) 494-4331 fax

5 Divisions within OSCSC

1. Feed Division

(765) 494-1550

2. Fertilizer Division

(765) 494-1547

3. Inspectors Division

(765) 494-1552

4. Pesticide Division

(765) 494-1585

5. Seed Division

(765) 494-1557