

Civil Authority of Prosecutors

Things you didn't know you could do

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Civil Enforcement and Collections



Injunctive Relief



Sharing Authority



Investigative Authority



Mandatory Actions



Crimes and Infractions



Miscellaneous

Title 2: General Assembly



Lobbyists must register and file reports of their activities to the Indiana Lobby Registration Commission. <http://www.in.gov/ilrc/> Prosecutors and AG have authority to investigate violations of lobbying registration, reporting and activity rules. IC 2-7-6-1.



AG has powers of PA to enforce lobbying statutes. IC 2-7-6-1.



Violation of the rules are Level 6 felonies, and have the additional penalty that a person may be prohibited from lobbying for up to 10 years. It is a Level 6 felony to lobby in violation of that ban. IC 2-7-6-2.



If the ILRC finds a violation or error in reports, it can demand that the person fix the reports. If the person fails to fix it, the commission shall refer to the PA. If PA does not file criminal charges within 60 days, the AG can file as prosecutor. IC 2-7-4-7.

Title 3: Elections



IC 3-6-5-31 requires that the county election board investigate if it has “substantial reason to believe an election law violation has occurred.” The CEB may refer their findings to the PA or AG. If it is referred, the AG or PA shall sue for injunctive relief. IC 3-6-5-32.



If an affidavit is filed alleging a voter is an illegal voter, the inspector of the polls shall deliver the affidavit to the prosecutor, who shall deliver it to the grand jury for investigation, the results of which shall be reported to the court. If there is a violation of the National Voters Rights Act, the PA shall notify the appropriate authority (the Co-Directors of the Indiana Election Division). IC 3-14-5-1.



A voter is not subject to arrest while going to the polls, while in attendance there, and while returning from the polls. However, this immunity is not applicable to treason, a felony or a breach of the peace. IC 3-5-4-4.



A person who during an election knowingly: ... (b) possesses outside the polls a ballot, pencil or other marking device either genuine or counterfeit, commits a Level 6 felony. IC 3-14-3-13.

Venue for election violations is the county of residence of the voter. IC 3-14-5-4.



There is automatic use immunity for non-defendant witnesses in many election crimes, so a witness cannot claim a 5th Amendment privilege. IC 3-14-5-6.

Title 4: Public Officials



When the Inspector General discovers evidence of criminal activity, the Inspector General shall certify to the appropriate PA. The IG shall cooperate with the PA. If the PA fails to file within 180 days of certification, the IG may apply to the Governor, who applies to the Court of Appeals to appoint the IG as special prosecutor. IC 4-2-7-7.



AG has concurrent jurisdiction with the PA to prosecute lynching cases. IC 4-6-2-1.1.

The AG's identity deception unit may cooperate with PA, and may be appointed special deputy prosecutors. IC 4-6-13-6, 4-6-13-8.

Title 5: State and Local Administration



Prosecutors are included in Access to Public Records Act. IC 5-14-3-2.

Title 6: Taxation



A person who lies when selling a home commits a Level 6 felony. A county recorder or county assessor who knowingly or intentionally accepts a false sales disclosure form commits an A infraction. IC 6-1.1-5.5-10.



If a person files a false or incomplete sales disclosure, the County or Township Assessor shall provide written notice of the problem and give the person 30 days to fix the problem. If not resolved, the assessor shall assess a penalty, payable to the auditor. If the person fails to pay the penalty, the PA shall initiate an action to recover the penalty, along with reasonable attorney's fees. IC 6-1.1-5.5-12.



The PA shall sue to recover delinquent taxes from a public utility. IC 6-1.1-8-38.



If officers of a political subdivision make an appropriation that exceeds the amount they are permitted to appropriate, they are guilty of malfeasance, and are liable to the subdivision for 125% of the excess appropriated. The PA shall sue to recover this money. IC 6-1.1-18-10.



If a person buys a property at sheriff's sale for delinquent taxes, but then fails to complete the purchase, the PA shall initiate an action to recover a civil penalty of 25% of the bid price. IC 6-1.1-24-8.



If a county treasurer fails to make a settlement with the auditor, the auditor shall notify the PA who shall bring a suit against the treasurer's bond for 110% of the taxes due. IC 6-1.1-27-4.



If the state auditor notifies PA that the county auditor or county treasurer hasn't certified a settlement or made payments of taxes owed to the state, the PA shall sue the defaulting county auditor or treasurer, who is liable for 115% of the amount due the state. IC 6-1.1-27-4.



If not otherwise specified by law, the PA is responsible to enforce the penalties and forfeitures in the property tax laws. IC 6-1.1-38-13. PA is only person authorized to collect unpaid inheritance tax. IC 6-4.1-9-11.



The AG and the PA have concurrent jurisdiction to prosecute crimes related to taxation. IC 6-8.1-3-13, 6-3-6-11, 6-5.5-7-5.

Title 7.1: Alcohol and Tobacco



If a person violates the alcohol server training program laws, the AG, the ABC or the PA may sue for an injunction. IC 7.1-3-1.5-11.



A person who, knowing that another person is intoxicated, sells, barter, delivers, or gives away an alcoholic beverage to the intoxicated person commits a Class B misdemeanor. After charges have been filed against a person for a violation, the PA shall notify the ABC of the charges filed. IC 7.1-5-10-15



The ABC, the AG or PA may maintain an action in the name of the state to abate and perpetually enjoin a public nuisance, or to abate, or enjoin, or both, a practice, or conduct of a person, whether a permittee or not, that violates Title 7.1 or any rules of the ABC. IC 7.1-2-6-4.



The ABC's Office of the Prosecutor may assist PA. IC 7.1-2-2-1.



The AG enforces fines, taxes and fees for ABC matters. "It is the duty of the prosecuting attorney of the proper county to assist the attorney general in these matters whenever the attorney general requests his assistance." IC 7.1-4-6-8.

Title 8 Utilities and Transportation



The AG, DOT or PA may bring an injunction against a person who fails to comply with the financial responsibility requirements for an aircraft. IC 8-21-3-5.

The DOT may refer violations of train safety rules that result in fatality to PA. 8-9-1-4.



Violations of train signal rules are to be prosecuted by the PA. A fine for an engineer who fails to sound the horn is \$10-50, and the fine for the railroad failing to post a sign signaling the engineer to sound the horn is \$250-\$1,000. I.C. 8-6-4-2, 8-6-4-3.

A railroad that fails to give a written statement of freight rates to shipper may be referred to the PA. 8-2-18-1.



Utilities Regulatory Commission and AG may request assistance of the PA, and the PA shall give such assistance as required by the AG. 8-1-2-2.



If a public utility tries to divert or hide funds, the PA or the AG may sue for a penalty of \$500-\$1,000, payable to the state treasury. IC 8-1-10-2.



When the DOT is notified by a governmental agency of a possible violation of the chapter regulating billboards and junkyards, the department shall determine whether a violation exists. Whenever the department determines a violation exists, the department shall enter a resolution setting out the nature, extent, and location of the violation and refer the resolution to the AG. IC 8-23-20-13. When the AG receives a resolution, the AG shall commence an action to enjoin the violation. The AG may also request the PA to institute criminal proceedings against the persons responsible for violation of this chapter. The PA shall institute criminal proceedings if requested to do so by the AG. IC 8-23-20-14.

Title 9: Motor Vehicles



IC 9-32-16-10 permits the BMV to refer investigations into violations by motor vehicle dealers to the PA, and authorizes the PA to appoint a BMV attorney as special deputy prosecutor to assist in prosecuting such a case.



IC 9-30-6-10 requires the PA to defend the State in petition for judicial review of ignition interlock orders, refusal suspensions and chemical test suspensions.

Title 11: Corrections



IC 11-8-8-22 provides a procedure for persons on the sex offender registry to petition to be removed from the registry. The PA represents the State, but can ask the AG to do it.



The PA is required to assist the DOC in establishing and maintaining an automated victim notification system. IC 11-8-7-2.



The PA shall sit on the forensic diversion advisory board. IC 11-12-3.7-10.



The PA or PA's designee shall sit on the community corrections advisory board. IC 11-12-2-2.



The DOC may recommend that a grand jury be convened to tour and examine the jail. IC 11-12-4-2.

Title 12: Human Services



If an endangered adult consents to protective services from APS and another person interferes, APS may request PA to seek injunction against the interference or mandate implementation of delivery of services. IC 12-10-3-20.



APS may use PA to seek an emergency protective services order. IC 12-10-3-28.



DCS is obligated to investigate a report of an unlicensed child care center. It shall report its findings to the AG and the PA. The AG or DCS may request an injunction, impose a civil penalty of up to \$100 per day and remove the children. IC 12-17.2-4-29.



A person who knowingly or intentionally violates the laws relating to a child care center commits a Class B misdemeanor. IC 12-17.2-4-35.

Title 14: Natural and Cultural Resources



AG and PA have concurrent power to enforce Article 22, Fish and Wildlife (IC 14-22-39-1), Article 15, Water Recreation (IC 14-15-10-2) and off-road vehicles on DNR land (IC 14-16-1-25).



The AG and PA “shall rigidly enforce this title.” IC 14-11-5-1.



Natural Resources Commission may issue notice of violation to someone who has committed a misdemeanor or infraction, and assess a fine up to the maximum set by law. It is a defense if the PA has filed charges relating to the same event. IC 14-10-2-6. This may create a double jeopardy problem.

Title 15: Agriculture



The Dean of Agriculture shall collect a fee imposed under the commodity market development program. If that fee is not paid, the Dean may request the AG, and the AG may request the PA, who shall institute an action in court for collection. IC 15-15-11-15.



The AG, BOAH, PA or resident can sue to enjoin a livestock dealer who acts without a license. IC 15-17-19-3.

Title 16: Health



If the Health Department finds that a home is unfit for human habitation, it may order the dwelling be vacated. A person may file for judicial review, and the PA shall attend to the proceedings on the part of the local board. IC 16-41-20-11. It is a class B misdemeanor to fail to vacate a dwelling that is ordered vacated. IC 16-41-20-13.



If the State Department of Health finds that merchandise falling under Food, Drug and Cosmetic Act is adulterated or misbranded, it shall detain or embargo that merchandise. The PA shall file a suit for condemnation of the merchandise. IC 16-42-1-19. Before referring a case for criminal violations of the FDCA, the state health commissioner must give notice and opportunity to present the accused person's views to the commissioner. IC 16-42-1-32.



The AG or PA may sue for an injunction for violation of the Emergency Medical Services laws. IC 16-31-10-1.



PA or Defendant may petition for release of medical information relevant to prosecution or defense of a person who has been charged with a potentially disease transmitting offense. IC 16-41-8-4.



AG or PA may sue to enjoin a person who deals in recycled lubricants without plainly labeling the product as reclaimed. IC16-44-1-2. It is also a B misdemeanor. IC 16-44-1-1.



The PA shall prosecute all persons violating IC 16-41-20 [fail to vacate condemned dwelling], IC 16-41-21 [health and safety regulations of schools] , IC 16-41-23 [discriminating in coin lock toilets, also MB], IC 16-41-24 [water supply regulation], IC 16-41-34 [eradication of rats], or this chapter [sanitary requirements for food establishments], or rules adopted under those provisions. IC 16-42-5-25.



Recklessly providing water buckets or tin drinking cups for school students to drink from is a class B misdemeanor. IC 16-41-21-10, 16-41-21-19.



PA shall call the first meeting of the child fatality committee, which will create the local child fatality review team (CFRT). IC 16-49-2-2. The PA shall submit a report of that meeting to the state child fatality review coordinator. IC 16-49-2-7. The PA shall call the first meeting of the local child fatality review team. IC 16-49-3-1. The PA or designee shall be on the CFRT. IC 16-49-2-4.

Title 20: Education



PA shall prosecute all suits "at the insistence" of the state superintendent (without charge) to recover school funds and revenues. IC 20-39-2-1 .



IC 20-28-5-8: PA shall immediately notify the state superintendent and the school corporation superintendent when a licensed employee of a school is convicted of:

- (1) Kidnapping (IC 35-42-3-2).
- (2) Criminal confinement (IC 35-42-3-3).
- (3) Rape (IC 35-42-4-1).
- (4) Criminal deviate conduct (IC 35-42-4-2) (before its repeal).
- (5) Child molesting (IC 35-42-4-3).
- (6) Child exploitation (IC 35-42-4-4(b)).
- (7) Vicarious sexual gratification (IC 35-42-4-5).
- (8) Child solicitation (IC 35-42-4-6).
- (9) Child seduction (IC 35-42-4-7).
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3).
- (12) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- (14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (15) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- (18) Dealing in marijuana, hash oil, hashish, or salvia as a felony (IC 35-48-4-10).
- (19) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10(b) before its amendment in 2013).
- (20) Possession of child pornography (IC 35-42-4-4(c)).
- (21) Homicide (IC 35-42-1).
- (22) Voluntary manslaughter (IC 35-42-1-3).
- (23) Reckless homicide (IC 35-42-1-5).
- (24) Battery as any of the following:
 - (A) A Class A felony (for a crime committed before July 1, 2014) or a Level 2 felony (for a crime committed after June 30, 2014).
 - (B) A Class B felony (for a crime committed before July 1, 2014) or a Level 3 felony (for a crime committed after June 30, 2014).
 - (C) A Class C felony (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014).
- (25) Aggravated battery (IC 35-42-2-1.5).
- (26) Robbery (IC 35-42-5-1).
- (27) Carjacking (IC 35-42-5-2) (before its repeal).
- (28) Arson as a Class A felony or Class B felony (for a crime committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014) (IC 35-43-1-1(a)).
- (29) Burglary as a Class A felony or Class B felony (for a crime committed before July 1, 2014) or as a Level 1, Level 2, Level 3, or Level 4 felony (for a crime committed after June 30, 2014) (IC 35-43-2-1).
- (30) Attempt under IC 35-41-5-1 to commit an offense listed in this subsection.
- (31) Conspiracy under IC 35-41-5-2 to commit an offense listed in this subsection.

The DOE shall permanently revoke the employee's license.



The principles of hygiene and sanitary science must be taught in grade five at each public school and may be taught in other grades. IC 20-30-5-9(a). The state health commissioner and the state superintendent shall develop a leaflet, which shall be distributed to each school superintendent, who shall require teachers to instruct about hygiene. Each PA to whom the state department of health or the state department of health's agents report any violation of this section *shall* commence proceedings against the violator. IC 20-30-5-9(c). What those proceedings are is unclear.



School corporations must establish a written policy to address criminal gang activity and provide criminal gang intervention services in schools, which must be in consultation with PA. IC 20-26-18-2, 20-26-18-5.



An action to test or question the legality of a consolidated school corporation may only be brought in an action of quo warranto in the name of the state on information filed by the PA. IC 20-23-6-15.



Department of Labor shall enforce student employment laws and “ensure that violators are prosecuted,” and may request the AG to assist the PA in prosecutions. IC 20-33-3-38. Interestingly, the Department of Labor assesses fines, and there are no other penalty provisions, nor provisions that authorize the PA to file suit to enforce fines in court.



Compulsory school attendance laws require: “The prosecuting attorney shall file and prosecute actions under this section as in other criminal cases. The court shall promptly hear cases brought under this section.” IC 20-33-2-26.



If a school sells land without a title, and the deal falls through, the purchase money shall be repaid with interest. However, it may not be repaid until the PA has “investigated the facts of the case and certified to the correctness of the claim.” IC 20-26-7-42.



The county school superintendent has the right “at all times” to inspect the PA’s records (to look for revenues that are due school funds). IC 20-23-1-5.

Title 22: Labor and Safety



A person who violates worker’s compensation laws commits a class C misdemeanor. The worker’s comp board may file an injunction, as well. PA *shall* prosecute all violations upon written request of the worker’s comp board. IC 22-3-4-13.



A violation or threatened violation of the Right to Work Act of 2012 may be reported to the AG, DOL or PA, each of whom may investigate and “enforce compliance.” IC 22-6-6-11.



If Department of Labor imposes a civil penalty against a home care employer, the PA or the AG may file suit to recover that penalty. IC 22-1-5-19.



The State Fire Marshal may conduct investigations into causes and circumstances surrounding any fire or explosion, and has power to issue subpoenas, take depositions and assist the PA. IC 22-14-2-8.



Violation of laws relating to "Postsecondary proprietary educational institutions" are a class B misdemeanor. "A person who, with intent to defraud, represents the person to be an agent of a postsecondary proprietary educational institution commits a Level 5 felony." IC 22-4.1-21-38. A PA may seek injunctive relief for any violation. IC 22-4.1-21-36.



If an employer fails to make required contributions to the unemployment compensation system, the AG or the PA may file for an injunction from continuing in business until the required contributions are paid. IC 22-4-30-1.



A person who violates laws regarding worker's compensation occupational diseases compensation commits a class C misdemeanor. IC 22-3-7-37.

Title 23: Business and Other Associations



Violation of business franchise law is a Level 5 felony. IC 23-2-2.5-37. The PA must, within 90 days of referral of a crime regarding business franchises, file with the commissioner a written statement concerning any action taken or if no action has been taken. IC 23-2-2.5-36.



The county auditor must annually inspect cemetery bonds and refer any violations to the PA. IC 23-14-51-4.



A person who knowingly violates the Indiana Commodity Code (23-2-6) commits a Level 5 felony. IC 23-2-6-33.



Violating the Indiana Uniform Securities Act (23-19-5) is a Level 5 or Level 4 felony. PA may appoint a securities division attorney a special deputy prosecutor. "It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this article." The PA may refer the matter to AG who then has prosecutorial authority. IC 23-19-5-8.



Title 24: Trade Regulation



Violation of state anti-trust regulation may be prosecuted for civil forfeiture of \$50 by the PA, who earns a fee of \$25. IC 24-1-3-3.



"It shall be the duty of every prosecuting attorney to whom the state department of health or any of its agents shall report any violation of the provisions of this chapter [labeling produce containers] to cause proceedings to be commenced against the person or persons so violating the provisions of this chapter and to prosecute the same to final termination." IC 24-6-6-9.



Any person who sells a second-hand watch must keep records of the sale and any identifying marks of the watch, and open these records to inspection by the PA. IC 24-4-3-3.



The AG, PA or an individual may maintain an action to enjoin any act that is in violation of prescription drug discount card regulation and for the recovery of damages. IC 24-5-21-6.



A person shall not corrupt or improperly influence, or attempt to corrupt or improperly influence the independent judgment of a real estate appraiser. This is a class A misdemeanor and the AG may file an injunction and impose a fine of up to \$10,000. IC 24-5-23.5-9. There would be double jeopardy implications for both criminal prosecution and an AG-imposed fine.



IC 24-4-1-1: “A person engaged in the purchasing, manufacture, or distribution of milk or milk products who, for the purpose of destroying the business of a competitor in any locality and creating or maintaining a monopoly, discriminates between different sections, communities, or cities of this state by buying or selling milk or milk products at a lower rate in one section, community, or city than is paid or charged in another section, community, or city after equalizing the distance from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, the actual cost of transportation, and making allowance for differences in quality, commits a Class B misdemeanor.” “It shall be the duty of the prosecuting attorneys, in their counties, and the attorney general to enforce the provisions of sections 1 and 3 of this chapter by appropriate actions in courts of competent jurisdiction.” IC 24-4-1-4



AG has concurrent jurisdiction with PA to pursue criminal violations of Indiana anti-trust law. PA may file civil proceeding to restrain violations. IC 24-1-2-5.



The AG or PA may file a certificate that in his opinion “the case is of general importance.” IC 24-1-2-8. I have no idea what the significance of this designation is.



PA may file for an injunction against a person who uses a misleading trade name, and can be granted reasonable attorney’s fees in addition to regular pay. IC 24-2-2-4. PA doesn’t have to pay filing fees or trial expenses, which shall be covered by the state auditor. IC 24-1-2-9.

Title 25 : Professions



The PA may, along with the AG, file injunctive action against an individual practicing unlicensed dentistry [25-14-1-14](plus attorney’s fees, IC 25-14-1-15), architecture [IC 25-4-1-4], chiropractors [IC 25-10-1-14], funeral directors [IC 25-15-8-19], health facility administrators [25-19-1-14], surveyors [25-21.5-11-1], physicians [25-22.5-8-4], nurses [IC 25-23-1-27.2], pharmacy technicians [25-26-19-10], private investigators [25-30-1-22], security guards [IC 25-30-1.3-24], engineers [IC 25-31-1-29], psychologists [25-33-1-16], real estate appraisers [25-34.1-8-12] and appraisal management companies [IC 25-34.1-11-18] and veterinarians [IC 25-38.1-4-12].



AG represents board of dentistry and nursing board in judicial review proceedings, who may call on PA for assistance. IC 25-14-1-21; IC 25-23-1-26.



“It shall be the duty of a prosecuting attorney to whom the board reports a violation of this chapter [private investigator firm licensing] to cause proceedings to be commenced against a person violating this chapter and to prosecute the person to final termination.” IC 25-30-1-20. Same for security guards. IC 25-30-1.3-22.



A person who violates the itinerant merchant’s license may have his bond forfeited into the PA’s operating fund. IC 25-37-1-5.

Title 26 Commercial Transactions



Violations of the Service for Audio or Visual Entertainment Products Act constitute either class C or class A infractions. IC 26-2-6-6

Title 30: Trusts and Fiduciaries



A person who sells or advertises prepaid services or merchandise without the necessary certificate of authority commits a Class A misdemeanor. PA or AG may file for injunctive relief. IC 30-2-13-38.

Title 32: Property



Each year, the township trustee, county highway superintendent or Indiana Department of Transportation shall examine all hedges or live fences along highways. If they are not maintained properly, the authority will issue notice to the landowner. If the landowner does not comply, the authority will cut back the growth and bill the landowner. The PA shall prosecute the collection of the bill, and earns \$10 for bringing such suit. IC 32-26-5-3.



The AG, PA, city attorney or county attorney may bring injunction to abate and perpetually enjoin the maintenance of an “indecent nuisance.” IC 32-30-7-7. An “indecent nuisance” means a:

- (1) place in or upon which prostitution (as described in IC 35-45-4);
- (2) public place in or upon which other sexual conduct (as defined in IC 35-31.5-2-221.5) or sexual intercourse (as defined in IC 35-31.5-2-302); or
- (3) public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.



A court cannot dismiss a private suit brought against an indecent nuisance without the consent of the PA, and a judge can direct the PA to prosecute the action if she believes the private suit should not be dismissed. IC 32-30-7-20.

Title 33: Officers



Powers of Prosecutor and Deputy Prosecutors:

- 1) take acknowledgments of deeds or other instruments in writing;
- 2) administer oaths;
- 3) protest notes and checks;
- 4) take the deposition of a witness;
- 5) take and certify affidavits and depositions; and
- 6) perform any duty now conferred upon a notary public by a statute.

An acknowledgment of a deed or another instrument taken by a prosecuting attorney or deputy prosecuting attorney may be recorded in the same manner as though a deed or another instrument were acknowledged before a notary public. IC 33-39-2-1. However, none of these may be undertaken until a seal is obtained. IC 33-39-2-2.

A PA may establish and administer a youth mentoring program. IC 33-39-2-7.

“...[U]pon the order of a judge trying a criminal case, the county auditor shall pay to a prosecuting attorney, from funds in the county treasury not otherwise appropriated and as a part of the costs of the trial, an amount equal to the expenses necessarily incurred by a prosecuting attorney in traveling to attend the taking of any deposition in connection with the criminal action.” IC 33-39-3-1.

The PA may appoint one or more investigators with the approval of the county council. A county council may not reduce the number of investigators or compensation of any investigator without approval of the PA. IC 33-39-4-1.



A PA or DPA who recklessly acts as attorney, agent, or counsel for an applicant in a proceeding to procure a license to retail or wholesale intoxicating liquors or aids or assists in any manner in the procuring of a license commits a Class B misdemeanor. IC 33-39-5-1.



PA commits a crime if he shares his pay with his deputy. IC 33-39-6-1.

The AG shall call one or two conferences a year, which shall be paid by the general fund of the respective county. 33-39-6-1(c).

A PA who elects to be a full-time PA shall devote the PA’s full professional time to the prosecuting attorney’s office and may not engage in the private practice of law. IC 33-39-6-6.

The state shall pay the expenses incurred by a prosecuting attorney from a threatened, pending, or completed action or proceeding that arises from:

- (1) making;
- (2) performing; or
- (3) failing to make or perform;

a decision, a duty, an obligation, a privilege, or a responsibility of the prosecuting attorney’s office. IC 33-39-9-4.



PA may appoint the Inspector General to serve as a special deputy prosecutor to assist in any criminal proceeding involving public misconduct. IC 33-39-10-3.



PA may appoint AG or DAG as a special deputy prosecutor in a criminal proceeding involving environmental law. IC 33-39-10-3.

All lawyers must “abstain from all offensive personality.” IC 33-43-1-3.

Title 34: Civil Law



If a person by betting on a game loses any money or property and delivers any part of the money or property, the person may bring civil action within 180 days. If the person fails to do so, the PA shall bring a civil action to recover the money or other property so lost on behalf of the gambler’s children, spouse or State. IC 34-16-1-4.



A PA may bring suit against a person or corporation:

- Who unlawfully exercises a public office without authority of the state;
- Who does something which forfeits his office;
- That acts as a corporation without being a corporation;
- That does something which forfeits its corporate status;
- That obtained its corporate franchise through fraud; or
- That exceeds its authority.

A PA shall bring suit against the county assessor or township assessor if the county commissioners pass an ordinance determining that the assessor has failed to perform adequately the duties of the assessor. IC 34-17-2-1. These suits result in annulment of letters-patent, certificates or deed. IC 34-17-2-2.



Whenever property is forfeited or escheats, PA may sue for recovery. IC 34-17-2-3.



If a judgment is rendered against a corporation or against a person claiming to be a corporation, the PA shall immediately institute proceedings to restrain the corporation, appoint a receiver and make a distribution of property among creditors. IC 34-17-3-6.



PA may pursue forfeiture of property involved in illegal activities. IC 34-24-1 and 34-24-2.



The PA must litigate petitions for expungement on behalf of the state. IC 34-28-2-3, 34-28-5-15.



PA shall prosecute infractions established by state statute. PA may establish an infraction deferral program. IC 34-28-5-1.

Title 36: Local Government



Local governments shall turn over bad checks to the PA. IC 36-1-8-13.

Local government may establish procedures to prevent the general public from gaining access to the home address of a PA or DPA through property records. IC 36-1-8.5.



A county officer who fails to deliver a fee book to the county executive for inspection shall forfeit one hundred dollars (\$100), to be collected by the PA and paid into the common school fund of the county. IC 36-2-7-16.



An officer who fails to pay the amount due from him into the county treasury shall forfeit to the state a sum equal to the amount of fees actually collected during that quarter, to be collected by the PA and paid into the common school fund of the county. IC 36-2-7-17.

Sheriff is required to file with the PA a weekly report of each person confined in the county jail. IC 36-2-13-12.



Upon request of the PA, the coroner must have a pathologist perform an autopsy. IC 36-2-14-6. If a coroner and a pathologist disagree if an autopsy should be conducted on a child, the PA shall decide. IC 36-2-14-6.3. PA may petition for sealing of coroner records on a specific case if he can prove dissemination of the information would create a significant risk of harm to any criminal investigation into the death. IC 36-2-14-18.

Coroner may provide health records of decedent to PA. IC 36-2-14-21.



An area plan commission or board of zoning appeals may request PA to “take appropriate action in any case involving the violation of any ordinance or regulation adopted under I.C. 36-7-4.” IC 36-7-4-1013. PA may deputize area plan commission attorneys. IC 36-7-4-1013.



A person may not operate or maintain facilities for the collection and disposal of solid waste, except as provided by law or rule. Failure to comply constitutes the Operation of a Nuisance Inimical to Human Health, a class C infraction. A PA who receives a report of such a failure from the department of environmental management, a solid waste management district, or a local health officer shall cause appropriate court proceedings to be instituted. IC 36-9-30-35.

Appendix: Law of Injunctions

An injunction is equitable relief

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See, e.g., *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-313, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987). The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. See, e.g., *Romero-Barcelo*, 456 U.S., at 320, 102 S. Ct. 1798, 72 L. Ed. 2d 91.

Indiana Trial Rule 65

(A) Preliminary injunction.

(1) Notice. No preliminary injunction shall be issued without an opportunity for a hearing upon notice to the adverse party.

(2) Consolidation of hearing with trial on merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(B) Temporary restraining order--Notice--Hearing--Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his claim that notice should not be required.

Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten [10] days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the whereabouts of the party against whom the order is granted is unknown and cannot be determined by reasonable diligence or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

- (C) Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of a governmental organization, but such governmental organization shall be responsible for costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.
- (D) Form and scope of injunction or restraining order.** Every order granting temporary injunction and every restraining order shall include or be accompanied by findings as required by Rule 52; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- (E) Temporary Restraining Orders--Domestic Relations Cases.** Parties wishing protection from domestic or family violence in Domestic Relations cases shall petition the court pursuant to IC 34-26-5. Subject to the provisions set forth in this paragraph, in an action for dissolution of marriage, separation, or child support, the court may issue a Temporary Restraining Order, without hearing or security, if either party files a verified petition alleging an injury would result to the moving party if no immediate order were issued.
- (1) Joint Order. If the court finds that an order shall be entered under this paragraph, the court may enjoin both parties from:
 - (a) transferring, encumbering, concealing, selling or otherwise disposing of any joint property of the parties or asset of the marriage except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court; and/or
 - (b) removing any child of the parties then residing in the State of Indiana from the State with the intent to deprive the court of jurisdiction over such child without the prior written consent of all parties or the permission of the court.
 - (2) Separate Order Required. In the event a party seeks to enjoin by a temporary restraining order the non-moving party from abusing, harassing, or disturbing the peace of the petitioning party or any child or step-child of the parties, or exclude the non-moving party from the family dwelling, the dwelling of the non-moving party, or any other place, and the court determines that an order shall be issued, such order shall be addressed to one person. A joint or mutual restraining order shall not be issued. If both parties allege injury, they shall do so by separate petitions. The trial court shall review each petition separately and grant or deny each petition on its individual merits. In the event the trial court finds cause to grant both petitions, it shall do so by separate orders.
 - (3) Effect of Order. An order entered under this paragraph is automatically effective upon service. Such orders are enforceable by all remedies provided by law including contempt. Once issued, such orders remain in effect until the entry of a decree or final order or until modified or dissolved by the court.
- (F) Statutory Provision Unaffected by this Rule.** Nothing in this rule shall affect provisions of statutes extending or limiting the power of a court to grant injunctions. By way of example and not by way of limitation, this rule shall not affect the provisions of 1967 Indiana Acts, ch. 357, §§ 1-8 [FN1] relating to public lawsuits, and Indiana Acts, ch. 7, §§ 1-15 [FN2] providing for removal of injunctive and mandamus actions to the Court of Appeals of Indiana, and Indiana Acts, ch. 12 (1933).

XYZ Dairy, LLC
Anytown, Indiana

4. This Court has jurisdiction over XYZ and the subject matter of this action because the Site is located in XXX County.
5. IDEM may proceed in court, by appropriate action, to, among other things, procure or secure compliance with Title 13 of the Indiana Code or any law that IDEM has the duty and power to enforce. Ind. Code § 13-14-2-6. The Indiana Attorney General may bring an action for declaratory and equitable relief in the name of the State against an individual or other entity for the protection of the environment of Indiana from significant pollution, impairment, or destruction. Ind. Code § 13-30-1-1. The court may grant temporary and permanent equitable relief or impose conditions upon the Defendant that are required to protect the environment from pollution, impairment, and destruction. Ind. Code § 13-30-1-11.
6. IDEM may enforce the laws and rules related to confined feeding control by proceeding in court. Ind. Code § 13-18-10-3. IDEM may seek injunctive relief from persons subject to the laws and rules related to confined feeding control. Ind. Code § 13-18-10-5.
7. XYZ is an operating dairy and produces more than a Zillion gallons of manure and wastewater each day it is in operation.
8. The east and west lagoons at XYZ have a total capacity of approximately 20 million gallons for manure and wastewater when there is 2 feet of freeboard in the lagoons.
9. IDEM has conducted several inspections of the XYZ CFO Site in early 2015 and found several violations of the environmental management rules and laws at each inspection. Inspections were conducted on February 7; May 14; and April 2, 2015. A true and

accurate copy of each inspection report is attached hereto, as, respectively, Exhibits A; B; and C.

10. XYZ is liable for current and ongoing violations of several environmental laws and rules of the State of Indiana:

- a. During the inspections on February 7, 2015 and May 14, 2015, IDEM observed:
 - i. XYZ failed to maintain any freeboard in the east and west lagoons;
 - ii. The west manure storage structure has a seep present on the northern side slope that damaged established vegetation, resulting in contaminated stormwater run-off;
 - iii. The berm between the east and west lagoons is no longer visible because of a build-up of manure;
 - iv. The berm on the southern side of the western lagoon has been eroded from the high levels of liquid manure; and
 - v. The east and north berm on the eastern lagoon have eroded from solids in liquid that are migrating over the top of the berm.
- b. During the inspection on May 28, 2015, IDEM observed the same violations as above, except that one side of the west lagoon had had enough manure and wastewater removed to allow for approximately 1 foot of freeboard.
- c. Pursuant to 37 IAC 19-13-1(a) all waste management systems and application equipment must be maintained and operated to meet the approval conditions. Defendant is failing to maintain the waste management systems in compliance with the CFO approval conditions.
- d. Pursuant to 37 IAC 19-3-1(d), all waste management systems must be designed, constructed, and maintained to meet minimize leaks and seepage and prevent

manure releases or spills, as well as ensure compliance with the water quality standards in 37 IAC 2. Defendant is failing to maintain the waste management systems to minimize leaks and seepage and prevent manure releases and spills.

- e. Pursuant to 37 IAC 19-13-1(c), manure at the production area must be stored in an approved waste management system until removed for land application in accordance with 37 IAC 19-14. As noted during the inspections on May 14, 2015 and May 31, 2015, XYZ stored liquid manure in a silage bunker. The silage bunker was constructed with concrete blocks on three sides, on a concrete pad, and an earthen berm was constructed on the fourth side. The earthen berm and a synthetic liner were used to contain the liquid manure. The silage bunker is not an approved waste management system.
- f. Pursuant to 37 IAC 19-13-1(g), all earthen berms for manure storage structures must: (1) be stabilized with vegetation or alternative erosion control measures, and (2) be maintained to allow visual inspection and prevent growth of trees and shrubs. As noted during the inspections on February 7, 2015, May 14, 2015, and May 31, 2015, XYZ's earthen berms for the eastern lagoon were damaged by heavy equipment, the berm between the east and west lagoons is no longer visible, the southern berm on the western lagoon, and the east and north berm on the eastern lagoon are eroded from solids in liquid that migrated over the top of the berms.
- g. Pursuant to 37 IAC 19-13-1(d), if uncovered, liquid manure storage structures must be maintained with a minimum freeboard of two (2) feet or as specified in the approval conditions. As noted during the inspections on February 7, 2015, May 14, 2015, XYZ failed to maintain the east and west lagoons with a minimum

freeboard of two (2) feet. XYZ did not have visible freeboard in the east and west lagoons. As noted during the May 31, 2015 inspection, XYZ had only removed enough manure so that one side of the west lagoon contained 1 foot of freeboard, instead of the 2 feet required.

- h. Pursuant to 37 IAC 19-13-1(e), uncovered liquid manure storage structures must have clearly identified markers to indicate manure levels relative to the approved freeboard elevation. As noted during the inspections on February 7, 2015, May 14, 2015, and May 31, 2015, the east and west lagoons did not have clearly identified manure level markers relative to the approved freeboard elevation.
- i. Pursuant to 37 IAC 19-7-6(a), CFOs must carry out proper management of dead livestock as required by 345 IAC 7-7 to ensure that there shall be (1) no discharge of mortality or liquids that have been in contact with mortality to waters of the state, and (2) no disposal in a manure storage facility that is not specifically designed to treat animal mortalities. As noted during the inspections on May 14, 2015 and May 31, 2015, XYZ failed to properly manage dead livestock by leaving decaying mortalities throughout the property.
- j. Pursuant to 37 IAC 19-11-1(a), all CFOs that are defined as concentrated animal feeding operations (“CAFOs”) in 40 CFR 122.23(b)(2) and all CAFOs with a NPDES permit must meet the storm water requirements in 40 CFR 122.23(e) and 40 CFR 122.42(e)(1) through 40 CFR 122.42(e)(2). As noted during the inspections on May 14, 2015 and May 31, 2015, XYZ did not meet the storm water requirements of 40 CFR 122.23(b)(2). There were no run-on and run-off controls throughout the property, including, the silage feed area, the mortality

management areas, the lagoon areas, the silage pad, the unapproved storage area , and the sand alley waste storage area.

11. These continuing violations by XYZ indicate a pattern of non-compliance, which must be abated through an order of this Court for injunctive relief to prevent further actual and potential damage to public health and the environment.
12. Unless enjoined by this Court, it is believed that XYZ will continue to improperly manage the significant amounts of manure at the site and continue to violate the applicable environmental laws and rules, which will result in immediate and irreparable harm to the air, water, and land in and around the Site, and to the citizens of Indiana.
13. The harm to the environment and to the public, on whose behalf IDEM brings this action, if injunctive relief is not granted, outweighs the harm to XYZ if injunctive relief is granted.
14. The interests of the public will be served by granting injunctive relief, and it is likely that IDEM will prevail on the merits of its Complaint for Preliminary and Permanent Injunctions.
15. Preliminary and permanent injunctions are necessary to prevent further harm to the environment and to eliminate the possibility that the conduct of XYZ in the operation of its dairy could result in permanent, irreparable damage to the environment and the public.
16. Pursuant to IC 13-18-10-6, a person who violates the statutes with regard to confined feeding control is subject to civil penalties described in IC 13-30-4-1, not to exceed \$25,000 per day of any violation.
17. IDEM reserves the right to amend this complaint to add violations that have already occurred, but do not merit preliminary injunctive relief at this time.

18. Pursuant to Indiana Trial Rule 65(C), IDEM, as a government entity, need not post security to obtain injunctive relief.

19. With this Complaint, IDEM submits its Memorandum in Support of Verified Complaint for Preliminary and Permanent Injunctions.

WHEREFORE, the Commissioner of the Indiana Department of Environmental Management respectfully requests that, following a hearing on IDEM's Complaint, the Court issue Preliminary and Permanent Injunctions requiring that XYZ do the following:

1. Within thirty (30) days, remove the waste from the unauthorized silage bunker.
2. Within thirty (30) days, lower the lagoon levels to ensure at least 180 days of storage is available.
3. Within thirty (30) days, install a freeboard marker to ensure the two (2) feet of freeboard is clearly marked.
4. Within thirty (30) days, remove solids from the eastern lagoon in order for the waste management system to function according to design.
5. Within thirty (30) days, submit to IDEM a professional engineer's assessment and plan to address the seep in the northern slope of the western lagoon.
6. In the alternative, Respondent must remove all animals until adequate storage of at least 180 days, is available.

Pursuant to Ind. Trial Rule 65(A)(2) and (3), IDEM further requests that the Court set a prompt hearing on its request for a preliminary injunction and grant IDEM all other just and proper relief in the premises.

VERIFICATION

I affirm, under the penalties of perjury, that the representations in ¶ 6 through ¶ 14 are true, to the best of my knowledge and belief.

Indiana Department of Environmental Management

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Atty. No. 1958-98

By: _____

Deputy Attorney General
Atty. No.

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A detailed enumeration of XYZ's violations may be found in IDEM's Verified Complaint, which this Memorandum supports and incorporates herein.

Unless restrained and enjoined by this Court, it is believed that XYZ Dairy will continue to violate the applicable state environmental laws and rules regarding management of a confined feeding operation, which will result in substantial, immediate, and irreparable harm to the Site, to the surrounding area, and to the citizens of Indiana.

III. STANDARD

Courts generally consider four factors when evaluating a preliminary injunction request: (1) the absence of an adequate remedy at law, so that the failure to grant the requested relief will cause irreparable harm if preliminary relief is denied; (2) a reasonable likelihood of success on the merits by demonstrating a *prima facie* case; (3) the threatened injury to the plaintiff outweighs the harm that the grant of an injunction may inflict on the defendants; and (4) the grant of a preliminary injunction must not disserve the public interest. *Reilly v. Daly*, 666 N.E.2d 439, 443 (Ind. App. 1996), *trans. denied*. The granting or denial of an injunction is within the sound discretion of this Court. *Id.*

IV. ARGUMENT

This Court should issue Preliminary and Permanent Injunctions to enjoin XYZ from further violation of the applicable state environmental laws and rules regarding management of a confined feeding operation.

A. Irreparable harm will result if an injunction is not issued.

The first test in determining whether a preliminary injunction should be issued is whether there is irreparable harm without the issuance of the preliminary injunction. Here, because of the proven danger in violating the state environmental laws and rules regarding management of a

confined feeding operation, irreparable harm is shown in two ways: by *per se* irreparable harm; and because there is no adequate remedy at law.

XYZ,'s violations are *per se* irreparable harm. Where the action sought to be enjoined is unlawful, the unlawful act constitutes *per se* irreparable harm for purposes of the preliminary injunction analysis.

1. XYZ's failure to maintain adequate freeboard in their manure lagoons and use of a silage pad for storage of liquid manure constitutes *per se* irreparable harm.

“When the acts sought to be enjoined are unlawful, the plaintiff need not make a showing of irreparable harm or a balance of hardships in its favor.” *L.E. Services v. State Lottery Commission*, 646 N.E.2d 334, 349 (Ind. App. 1995); *Common Council of City of Peru v. Peru Daily*, 440 N.E.2d 726, 733 (Ind. App. 1982). In the present case, there is no question that XYZ is not in compliance with the rules and laws related to management of a confined feeding operation. XYZ's continued failure to acknowledge and comply with the rules requiring that it properly remove and land apply manure at a rate to ensure sufficient storage capacity in their lagoons has created a significant potential for pollution and contamination and for a health risk at the Site and its surrounding area. Without injunctive relief, IDEM has no reasonable expectation that compliance with environmental standards will be achieved.

2. IDEM and the public have no adequate remedy at law.

Even in the absence of *per se* irreparable harm, a preliminary injunction is proper here under the traditional standard. This standard requires that the plaintiff establish the absence of an adequate remedy at law, a showing that irreparable harm will result if preliminary relief is denied. *Reilly*, 666 N.E.2d at 443. Under this test, IDEM is entitled to a preliminary injunction against XYZ because of the threat of surface water and groundwater contamination caused by the continued failure to properly manage manure, which represents a substantial threat to the

environment, public health, and natural resources. Should XYZ be allowed to continue the unlawful activities at the Site, the prospective harm could be significant and irreversible.

Because of the compelling interests at issue, a later remedy granted to IDEM will be insufficient to accomplish the goal of immediate compliance with the law. “Injunctive relief will be granted if it is more practicable, efficient or adequate than that afforded by law.” *Porter Memorial Hospital v. Malak*, 484 N.E.2d 54, 62 (Ind. App. 1985).

IDEM attempted to resolve this matter without resorting to the courts, by sending XYZ correspondence on April 1, 2015 to inform the dairy that the conditions at the Site posed an imminent and substantial danger to public health or the environment. Although XYZ did remove some manure, such that one lagoon had approximately 1 foot of freeboard at the latest inspection, the violations continue. Injunctive relief, through the issuance of a court order requiring proper management of the manure at the Site or removal of the animals such that the operation does not continue to generate manure and wastewater is the only remedy likely to be effective. There is no other adequate remedy at law.

B. IDEM has established a prima facie case that XYZ’s activities threaten the discharge of pollutants into the environment and are unlawful and that the Plaintiff has a reasonable likelihood of success on the merits.

The second prong of the preliminary injunction test is whether the plaintiff can show a reasonable chance of success on the merits. Three inspections show continued, serious violations of XYZ’s approval and of the rules related to management of a confined feeding operation. This evidence shows that IDEM has met its burden of demonstrating a *prima facie* case that Defendants’ actions are unlawful. Therefore, IDEM has more than a reasonable likelihood of success on the merits.

C. The threatened injury to the environment is greater than the harm to XYZ should the injunction issue.

The third prong of the Preliminary Injunction test, to be considered after the Court has found that an injunction is warranted under the first two prongs of the test, is whether the threatened injury to the public is greater than the possible harm to the defendant if the injunction is granted. XYZ's actions are in violation of the law and therefore constitute *per se* irreparable harm, obviating the need for IDEM to engage in a balance of the harms to plaintiff and defendant. *L.E. Services*, 646 N.E.2d at 349. Even if the Court does not find XYZ's actions to be *per se* irreparable harm, the threatened harm to the environment should the unauthorized activities continue to occur outweighs the harm that would result if the Court were to order Defendant to immediately properly manage its confined feeding operation.

If not enjoined, the potential harm to the environment, public health, and natural resources is excessive. Without the assurance of a court order for injunctive relief, IDEM cannot be assured that XYZ will achieve compliance to avoid environmental degradation. Thus, the prospective harm far outweighs the possible harm to XYZ in this action, and Preliminary and Permanent Injunctions should be issued.

D. Requiring Defendant to comply with the applicable confined feeding operation rules will serve the public interest.

The fourth test in determining whether a preliminary injunction should be issued is a consideration of the public's interest. When sitting as a court of equity, courts allow extraordinary weight to be placed upon the public interests in a suit where the State is a plaintiff. *See, e.g., Virginia Railway v. System Federation No. 40*, 300 U.S. 515, 552 (1937). This deference is founded upon the unique position of a political branch to identify and protect the public interest. *United States of America v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996), *cert. denied* 117 S.Ct. 682 (1997).

The State of Indiana, through its legislature, has spoken as to its will and intent regarding environmental issues and public health with regard to protection of the environment from the potential harm posed by confined feeding operations. Storing manure in an unauthorized structure; allowing manure to accumulate in excess of the storage capacity of the approved structures; and failure to properly manage stormwater, among other things, are conducive to the discharge of significant amounts of contaminants and pollutants to the water and soil. It is because of these threats to health and the environment that the state legislature and environmental board have put in place current environmental statutes and rules. IDEM cannot, and this Court should not, countenance a failure to meet the applicable requirements, which are in place to minimize damage to the environment, state resources, and the public.

Granting this injunction will best serve the public interest, not disserve it. Furthermore, failure to grant an injunction may encourage other persons to violate state environmental requirements in a similar manner, both now and in the future. Thus, granting an injunction will serve the public's interest by serving as a deterrent.

V. CONCLUSION

The Indiana Department of Environmental Management is entitled to Preliminary and Permanent Injunctions, which relief will require XYZ to comply with state environmental laws and rules. XYZ is flagrantly disregarding the applicable requirements, and a clear and present danger exists. The Indiana Department of Environmental Management respectfully requests, pursuant to Tr. Rules 65(A)(2) and (3), that this Court set a prompt hearing on its request for preliminary and permanent injunctions at its earliest convenience and grant IDEM the relief it seeks.

Respectfully submitted,

GREGORY F. ZOELLER
Indiana Attorney General
Atty. No. 1958-98

By: _____

Deputy Attorney General
Atty. No.

Indiana Attorney General's Office
Indiana Government Center South, Fifth Floor
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5. Drunk Uncle operates a building or structure where alcoholic beverages are sold in violation of law. Specifically, the State alleges as follows:
 - a. On or about May 15, 2015, Drunk Uncle did sell a keg of beer for consumption at a place other than a licensed premises and did fail, at the time of sale, to obtain a signed receipt from the purchaser, all in violation of I.C. 7.1-3-6.5-5.
 - b. On or about May 18, 2015, Drunk Uncle did sell and deliver liquor for carry out in a quantity that exceeded four quarts, all in violation of I.C. 7.1-3-9-9(c).
 - c. On or about June 8, 2015, Drunk Uncle did recklessly, knowingly or intentionally sell an alcoholic beverage to a minor, all in violation of I.C. 7.1-5-7-8.
6. Drunk Uncle is a public nuisance as defined by I.C. 7.1-1-3-33 and I.C. 7.1-2-6.
7. These continuing violations by Drunk Uncle indicates a pattern of non-compliance, which must be abated through an order of this Court for injunctive relief to prevent further actual and potential damage to public order.
8. Unless enjoined by this Court, it is believed that Drunk Uncle will continue to conduct business in violation of the Indiana Code and rules of the Alcoholic Beverage Commission, which will result in immediate and irreparable harm to the the citizens of Indiana.
9. The harm to public, on whose behalf the State brings this action, if injunctive relief is not granted, outweighs the harm to Drunk Uncle if injunctive relief is granted.
10. The interests of the public will be served by granting injunctive relief, and it is likely that the State will prevail on the merits of its Complaint for Preliminary and Permanent Injunctions.

11. Preliminary and permanent injunctions are necessary to prevent further harm to the public and to eliminate the possibility that the conduct of Drunk Uncle could result in permanent, irreparable damage to the public.
12. The State reserves the right to amend this complaint to add violations that have already occurred, but do not merit preliminary injunctive relief at this time.
13. Pursuant to Indiana Trial Rule 65(C), the State, as a government entity, need not post security to obtain injunctive relief.
14. With this Complaint, the State submits its Memorandum in Support.

WHEREFORE, the State of Indiana respectfully requests that, following a hearing on the Complaint, the Court issue Preliminary and Permanent Injunctions requiring enjoining Drunk Uncle from the sale of alcoholic beverages at 123 Main St., Anytown, Indiana or any other location in Indiana.

Pursuant to Ind. Trial Rule 65(A)(2) and (3), the State further requests that the Court set a prompt hearing on its request for a preliminary injunction and grant the State all other just and proper relief in the premises.

VERIFICATION

I affirm, under the penalties of perjury, that the foregoing representations are true, to the best of my knowledge and belief.

Indiana Excise Police Officer

Respectfully submitted,

PROSECUTING ATTORNEY

Atty. No. _____

By: _____

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123 Main St., First Floor
Anytown, IN