



Will A Longstanding Environmental Mystery Finally Be Solved?

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Twenty years ago, the Indiana General Assembly enacted the Environmental Legal Action (ELA) statute, Ind. Code § 13-30-9-1 et seq., to allow recovery of costs related to remedial or removal actions that address “the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment.” Ind. Code § 13-30-9-2. The statute left some questions unresolved including: what statute of limitations period applies to an ELA claim so as to prevent recovery under the statute? While the Indiana Supreme Court answered some questions about the ELA statute’s application, the statute of limitations issue persisted. [Cooper Indus., LLC v. City of South Bend](#), 899 N.E.2d 1274, 1286, n. 9 (Ind. 2009).

After the *Cooper* decision, legislative action was taken and, on May 10, 2011, an amendment to the ELA statute became effective that added a timeframe for the recovery of eligible costs. (This amendment was codified at Indiana Code § 34-11-2-11.5.) However, since the 2011 ELA amendment, two factions have disagreed whether the amendment’s bar to the recovery of costs incurred “more than 10 years before” the filing date of a lawsuit asserting an ELA claim also was intended to be a *de facto* statute of limitations or not. Ind. Code § 34-11-2-11.5.

The Indiana Court of Appeals will hear oral argument in the case of *Elkhart Foundry & Machine Co., et al. v. City of Elkhart, et al.*, 20A03-1709-

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CT-02136, on [August 21, 2018](#), which may decide which competing interpretation of the 2011 ELA amendment is correct.

Any decision in the *Elkhart Foundry* case is unlikely to answer all the unsettled questions surrounding the ELA statute, but hopefully one or two mysteries might finally be solved.