

February 18, 1998

**ENGROSSED
SENATE BILL No. 207**

DIGEST OF SB 207 (Updated February 17, 1998 12:20 pm - DI 69)

Citations Affected: IC 13-15; IC 13-17; IC 13-18.

Synopsis: Environmental board appointments and environmental permits. Changes requirements for manufacturing representatives who are appointed to the water pollution control board and the air pollution control board. Provides that not later than 15 days after being served a notice provided by the commissioner of the department of environmental management that a permit will be issued or denied, the permit applicant or any other person aggrieved by the commissioner's action may appeal the commissioner's action to the office of environmental adjudication and request that an environmental law judge hold an adjudicatory hearing concerning the action. (Current law
(Continued next page)

Effective: July 1, 1998.

Miller

(HOUSE SPONSORS — STURTZ, BOSMA)

January 6, 1998, read first time and referred to Committee on Health and Environmental Affairs.

January 22, 1998, amended, reported favorably — Do Pass.

January 27, 1998, read second time, ordered engrossed.

January 28, 1998, engrossed.

January 29, 1998, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 4, 1998, read first time and referred to Committee on Rules and Legislative Procedures; reassigned to Committee on Environmental Affairs.

February 17, 1998, amended, reported — Do Pass.

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computes the 15 day time period beginning with the day the notice is received by the permit applicant or any other person aggrieved by the commissioner's action.) Specifies procedures for computing periods of time under the law concerning appeals of department of environmental management determinations to issue or deny permits. Allows the air pollution control board to adopt rules that allow commissioner's actions on permits and permit modifications to become effective immediately.

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February 18, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

ENGROSSED SENATE BILL No. 207

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-15-6-1, AS AMENDED BY P.L.25-1997,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 1. Not later than fifteen (15) days after **receiving**
4 **being served** the notice provided by the commissioner under
5 IC 13-15-5-3:

6 (1) the permit applicant; or

7 (2) any other person aggrieved by the commissioner's action;
8 may appeal the commissioner's action to the office of environmental
9 adjudication and request that an environmental law judge hold an
10 adjudicatory hearing concerning the action under IC 4-21.5-3 and
11 IC 4-21.5-7.

12 SECTION 2. IC 13-15-6-3, AS AMENDED BY P.L.25-1997,
13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 1998]: Sec. 3. (a) Not later than thirty (30) days after
15 **receiving being served** a request for an adjudicatory hearing, an

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1 environmental law judge under IC 4-21.5-7 shall, if the environmental
2 law judge determines that:

- 3 (1) the request was properly submitted; and
4 (2) the request establishes a jurisdictional basis for a hearing;
5 assign the matter for a hearing.

6 (b) Upon assigning the matter for a hearing, an environmental law
7 judge may stay the force and effect of the following:

- 8 (1) A contested permit provision.
9 (2) A permit term or condition the environmental law judge
10 considers inseverable from a contested permit provision.

11 (c) After a final hearing under this section, a final order of an
12 environmental law judge on a permit application is subject to review
13 under IC 4-21.5-5.

14 SECTION 3. IC 13-15-6-5, AS ADDED BY P.L.1-1996, SECTION
15 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
16 1998]: Sec. 5. (a) This section applies to an application for a permit or
17 for the renewal of a permit under the operating permit program under
18 42 U.S.C. 7661 through 7661f.

19 (b) Notwithstanding IC 4-21.5-5-5, a person may file a petition for
20 judicial review of final agency action on an application for a permit, a
21 permit renewal, or a permit revision more than thirty (30) days after the
22 person ~~receives~~ **is served** notice of the final agency action if the
23 following conditions exist:

- 24 (1) The petition is based on new grounds that arise more than
25 thirty (30) days after the person ~~receives~~ **is served** the notice.
26 (2) The petition is filed not more than thirty (30) days after the
27 new grounds arise.
28 (3) The new grounds:
29 (A) are based on new information that was not available
30 during the review period; and
31 (B) could not by due diligence have been discovered and
32 produced within the time required for the proceedings under
33 this section.

34 SECTION 4. IC 13-15-6-7 IS ADDED TO THE INDIANA CODE
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
36 1, 1998]: Sec. 7. (a) **In computing a period of time under this
37 chapter, the day of the act, event, or default from which the
38 designated period of time begins to run is not included. The last
39 day of the computed period is to be included unless it is a:**

- 40 (1) **Saturday;**
41 (2) **Sunday;**
42 (3) **legal holiday under a state statute; or**

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

3 **(b) A period runs until the end of the next day after a day**
 4 **described in subdivisions (1) through (4).**

5 **(c) A period of time under this chapter that commences when a**
 6 **person is served with a paper commences with respect to a**
 7 **particular person on the earlier of the date that:**

8 **(1) the person is personally served with the notice; or**
 9 **(2) a notice for the person is deposited in the United States**
 10 **mail.**

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

14 SECTION 5. IC 13-17-2-2, AS ADDED BY P.L.1-1996, SECTION
 15 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 16 1998]: Sec. 2. The board consists of the following eleven (11)
 17 members:

- 18 (1) The following ex officio members:
 19 (A) The commissioner of the state department of health.
 20 (B) The director of the department of natural resources.
 21 (C) The lieutenant governor.
 22 (2) The following eight (8) members, who shall be appointed by
 23 the governor based on recommendations from representative
 24 constituencies:
 25 (A) One (1) representative of agriculture.
 26 (B) One (1) representative of manufacturing **employed by an**
 27 **entity that has applied for or received a Title V operating**
 28 **permit.**
 29 (C) One (1) representative of environmental interests.
 30 (D) One (1) representative of labor.
 31 (E) One (1) representative of local government.
 32 (F) One (1) health professional who holds a license to practice
 33 in Indiana.
 34 (G) One (1) representative of small business.
 35 (H) One (1) representative of the general public, who cannot
 36 qualify to sit on the board under any of the other clauses in this
 37 subdivision.

38 An individual appointed under this subdivision must possess
 39 knowledge, experience, or education qualifying the individual to
 40 represent the entity the individual is being recommended to
 41 represent.

42 SECTION 6. IC 13-17-3-4, AS ADDED BY P.L.1-1996, SECTION



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1 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
2 1998]: Sec. 4. (a) The board shall adopt rules under IC 4-22-2 that are:

- 3 (1) consistent with the general intent and purposes declared in
4 IC 13-17-1 and section 1 of this chapter; and
5 (2) necessary to the implementation of the federal Clean Air Act
6 (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act
7 Amendments of 1990 (P.L.101-549).

8 (b) **Notwithstanding IC 13-15-5, the board may adopt rules**
9 **under IC 4-22-2 and IC 13-14-9 that allow the commissioner's**
10 **actions on permits and permit modifications to become effective**
11 **immediately, regardless of whether a thirty (30) day comment**
12 **period is held on the permits or permit modifications. The board**
13 **may adopt rules under this subsection only after considering the:**

- 14 (1) **environmental significance of;**
15 (2) **federal requirements for federally delegated or approved**
16 **programs concerning; and**
17 (3) **need for opportunity for public participation on;**
18 **the permits or permit modifications.**

19 SECTION 7. IC 13-18-1-2, AS ADDED BY P.L.1-1996, SECTION
20 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
21 1998]: Sec. 2. (a) The board consists of the following eleven (11)
22 members:

- 23 (1) The following ex officio members:
24 (A) The commissioner of the state department of health.
25 (B) The director of the department of natural resources.
26 (C) The lieutenant governor.
27 (2) The following eight (8) members, who shall be appointed by
28 the governor based on recommendations from representative
29 constituencies:
30 (A) One (1) representative of agriculture.
31 (B) One (1) representative of manufacturing **employed by an**
32 **entity that holds an NPDES major permit.**
33 (C) One (1) representative of environmental interests.
34 (D) One (1) representative of labor.
35 (E) One (1) representative of local government.
36 (F) One (1) health professional who holds a license to practice
37 in Indiana.
38 (G) One (1) representative of small business.
39 (H) One (1) representative of the general public, who cannot
40 qualify to sit on the board under any of the other clauses in this
41 subdivision.

42 (b) An individual appointed under subsection (a)(2) must possess

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- 1 knowledge, experience, or education qualifying the individual to
- 2 represent the entity the individual is being recommended to represent.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Environmental Affairs, to which was referred Senate Bill 207, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 14, delete "holds an NPDES major permit." and insert "**has applied for or received a Title V operating permit.**".

Page 2, line 24, delete "has applied for or received a Title V operating" and insert "**holds an NPDES major permit.**".

Page 2, delete line 25.

and when so amended that said bill do pass.

(Reference is to Senate Bill 207 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 207, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-15-6-1, AS AMENDED BY P.L.25-1997, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. Not later than fifteen (15) days after **receiving being served** the notice provided by the commissioner under IC 13-15-5-3:

(1) the permit applicant; or
 (2) any other person aggrieved by the commissioner's action; may appeal the commissioner's action to the office of environmental adjudication and request that an environmental law judge hold an adjudicatory hearing concerning the action under IC 4-21.5-3 and IC 4-21.5-7.

SECTION 2. IC 13-15-6-3, AS AMENDED BY P.L.25-1997, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Not later than thirty (30) days after **receiving being served** a request for an adjudicatory hearing, an environmental law judge under IC 4-21.5-7 shall, if the environmental law judge determines that:

(1) the request was properly submitted; and
 (2) the request establishes a jurisdictional basis for a hearing; assign the matter for a hearing.
 (b) Upon assigning the matter for a hearing, an environmental law judge may stay the force and effect of the following:

(1) A contested permit provision.
 (2) A permit term or condition the environmental law judge considers inseverable from a contested permit provision.
 (c) After a final hearing under this section, a final order of an environmental law judge on a permit application is subject to review under IC 4-21.5-5.

SECTION 3. IC 13-15-6-5, AS ADDED BY P.L.1-1996, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) This section applies to an application for a permit or for the renewal of a permit under the operating permit program under 42 U.S.C. 7661 through 7661f.

(b) Notwithstanding IC 4-21.5-5-5, a person may file a petition for judicial review of final agency action on an application for a permit, a

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permit renewal, or a permit revision more than thirty (30) days after the person **receives is served** notice of the final agency action if the following conditions exist:

- (1) The petition is based on new grounds that arise more than thirty (30) days after the person **receives is served** the notice.
- (2) The petition is filed not more than thirty (30) days after the new grounds arise.
- (3) The new grounds:
 - (A) are based on new information that was not available during the review period; and
 - (B) could not by due diligence have been discovered and produced within the time required for the proceedings under this section.

SECTION 4. IC 13-15-6-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1998]: **Sec. 7. (a) In computing a period of time under this chapter, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is a:**

- (1) Saturday;
- (2) Sunday;
- (3) legal holiday under a state statute; or
- (4) day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subdivisions (1) through (4).

(c) A period of time under this chapter that commences when a person is served with a paper commences with respect to a particular person on the earlier of the date that:

- (1) the person is personally served with the notice; or
- (2) a notice for the person is deposited in the United States mail.

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

Page 1, line 9, delete "recommended".

Page 1, line 10, delete "by representative constituencies and".

Page 1, line 10, delete ":".

Page 1, line 11, reset in roman "based on recommendations from representative constituencies:".

Page 2, between lines 11 and 12, begin a new paragraph and insert: "SECTION 6. IC 13-17-3-4, AS ADDED BY P.L.1-1996, SECTION



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7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) The board shall adopt rules under IC 4-22-2 that are:

- (1) consistent with the general intent and purposes declared in IC 13-17-1 and section 1 of this chapter; and
- (2) necessary to the implementation of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549).

(b) Notwithstanding IC 13-15-5, the board may adopt rules under IC 4-22-2 and IC 13-14-9 that allow the commissioner's actions on permits and permit modifications to become effective immediately, regardless of whether a thirty (30) day comment period is held on the permits or permit modifications. The board may adopt rules under this subsection only after considering the:

- (1) environmental significance of;**
- (2) federal requirements for federally delegated or approved programs concerning; and**
- (3) need for opportunity for public participation on; the permits or permit modifications."**

Page 2, line 20, delete "recommended".

Page 2, line 21, delete "by representative constituencies and".

Page 2, line 21, delete ":".

Page 2, line 22, reset in roman "based on recommendations from representative constituencies:".

Page 2, delete lines 38 through 42.

Delete page 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 207 as printed January 23, 1998.)

STURTZ, Chair

Committee Vote: yeas 12, nays 0.

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