

CONFERENCE COMMITTEE REPORT DIGEST FOR HB 1263

Citations Affected: IC 13.

Synopsis: Environmental matters. Conference committee report for ESB 1263. Provides, for purposes of the question of whether a lender is to be treated as an owner of an underground storage tank, a petroleum facility, or a vessel or facility from which a release has occurred, that a lender shall be considered to have participated in the management of the underground storage tank, petroleum facility, vessel, or facility only if the lender: (1) exercises decision making control over environmental compliance; or (2) exercises control at a level comparable to that of a manager of the underground storage tank, petroleum facility, vessel, or facility. Provides that the liability of a fiduciary for the release or threatened release of a hazardous substance from an underground storage tank, vessel, or facility held in a fiduciary capacity does not exceed the assets held in a fiduciary capacity by the fiduciary. Provides that the liability of a fiduciary for the release or threatened release of petroleum from a petroleum facility does not exceed the assets held in a fiduciary capacity by the fiduciary. Provides that a fiduciary is not liable in its personal capacity for several types of actions involving an underground storage tank, a petroleum facility, a vessel, or a facility. 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 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. (This conference committee report inserts SB 207 as it came out of the house environmental affairs committee and deletes and reinserts an unincorporated technical correction.)

Effective: July 1, 1998; Upon passage.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1263 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the technical correction made pursuant to Senate Rule
- 2 33(c) adopted on February 19, 1998.
- 3 Page 5, line 6, delete "section" and insert "**Section**".
- 4 Page 5, line 35, delete "section" and insert "**Section**".
- 5 Page 6, line 25, delete "section" and insert "**Section**".
- 6 Page 7, line 12, after "of" delete "a".
- 7 Page 7, line 13, after "(1)" insert "**a**".
- 8 Page 7, line 14, after "(2)" insert "**a**".
- 9 Page 7, line 15, after "(3)" insert "**an**".
- 10 Page 7, line 16, after "(4)" insert "**a**".
- 11 Page 7, line 17, after "(5)" insert "**a**".
- 12 Page 10, line 8, delete "U.S. C." and insert "**U.S.C.**".
- 13 Page 10, line 29, delete "section" and insert "**Section**".
- 14 Page 11, line 26, delete "U.S. C." and insert "**U.S.C.**".
- 15 Page 12, line 4, delete "section" and insert "**Section**".
- 16 Page 13, line 2, delete "U.S. C." and insert "**U.S.C.**".
- 17 Page 13, line 22, delete "section" and insert "**Section**".
- 18 Page 14, between lines 2 and 3, begin a new paragraph and insert:
- 19 "SECTION 13. IC 13-15-6-1, AS AMENDED BY P.L.25-1997,
- 20 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 1998]: Sec. 1. Not later than fifteen (15) days after **receiving**
- 22 **being served** the notice provided by the commissioner under
- 23 IC 13-15-5-3:
- 24 (1) the permit applicant; or
- 25 (2) any other person aggrieved by the commissioner's action;
- 26 may appeal the commissioner's action to the office of environmental
- 27 adjudication and request that an environmental law judge hold an

1 adjudicatory hearing concerning the action under IC 4-21.5-3 and
2 IC 4-21.5-7.

3 SECTION 14. IC 13-15-6-3, AS AMENDED BY P.L.25-1997,
4 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 1998]: Sec. 3. (a) Not later than thirty (30) days after
6 **receiving being served** a request for an adjudicatory hearing, an
7 environmental law judge under IC 4-21.5-7 shall, if the environmental
8 law judge determines that:

9 (1) the request was properly submitted; and

10 (2) the request establishes a jurisdictional basis for a hearing;
11 assign the matter for a hearing.

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

14 (1) A contested permit provision.

15 (2) A permit term or condition the environmental law judge
16 considers inseverable from a contested permit provision.

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

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

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

30 (1) The petition is based on new grounds that arise more than
31 thirty (30) days after the person **receives is served** the notice.

32 (2) The petition is filed not more than thirty (30) days after the
33 new grounds arise.

34 (3) The new grounds:

35 (A) are based on new information that was not available
36 during the review period; and

37 (B) could not by due diligence have been discovered and
38 produced within the time required for the proceedings under
39 this section.

40 SECTION 16. IC 13-15-6-7 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 1998]: **Sec. 7. (a) In computing a period of time under this
43 chapter, the day of the act, event, or default from which the
44 designated period of time begins to run is not included. The last
45 day of the computed period is to be included unless it is a:**

46 (1) **Saturday;**

47 (2) **Sunday;**

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

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

51 (b) **A period runs until the end of the next day after a day**

1 described in subsections (a)(1) through (a)(4).

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

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

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

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

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

35 An individual appointed under this subdivision must possess
36 knowledge, experience, or education qualifying the individual to
37 represent the entity the individual is being recommended to
38 represent.

39 SECTION 18. IC 13-17-3-4, AS ADDED BY P.L.1-1996,
40 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 1998]: Sec. 4. (a) The board shall adopt rules under IC 4-22-2
42 that are:

- 43 (1) consistent with the general intent and purposes declared in
44 IC 13-17-1 and section 1 of this chapter; and
45 (2) necessary to the implementation of the federal Clean Air Act
46 (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act
47 Amendments of 1990 (P.L.101-549).

48 (b) **Notwithstanding IC 13-15-5, the board may adopt rules**
49 **under IC 4-22-2 and IC 13-14-9 that allow the commissioner's**
50 **actions on permits and permit modifications to become effective**
51 **immediately, regardless of whether a thirty (30) day comment**

1 **period is held on the permits or permit modifications. The board**
 2 **may adopt rules under this subsection only after considering the:**

3 **(1) environmental significance of;**

4 **(2) federal requirements for federally delegated or approved**
 5 **programs concerning; and**

6 **(3) need for opportunity for public participation on;**
 7 **the permits or permit modifications.**

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

12 (1) The following ex officio members:

13 (A) The commissioner of the state department of health.

14 (B) The director of the department of natural resources.

15 (C) The lieutenant governor.

16 (2) The following eight (8) members, who shall be appointed by
 17 the governor based on recommendations from representative
 18 constituencies:

19 (A) One (1) representative of agriculture.

20 (B) One (1) representative of manufacturing **employed by an**
 21 **entity that holds an NPDES major permit.**

22 (C) One (1) representative of environmental interests.

23 (D) One (1) representative of labor.

24 (E) One (1) representative of local government.

25 (F) One (1) health professional who holds a license to practice
 26 in Indiana.

27 (G) One (1) representative of small business.

28 (H) One (1) representative of the general public, who cannot
 29 qualify to sit on the board under any of the other clauses in this
 30 subdivision.

31 (b) An individual appointed under subsection (a)(2) must possess
 32 knowledge, experience, or education qualifying the individual to
 33 represent the entity the individual is being recommended to represent."

34 Renumber all SECTIONS consecutively.

(Reference is to EHB 1263 as printed February 13, 1998 and as
 amended by the technical correction made pursuant to Senate Rule
 33(c) adopted on February 19, 1998.)

Conference Committee Report
on
House Bill 1263

Signed by:

Senator

Representative Kruzan

Senator

Representative Wolkins

Senate Conferees

House Conferees