

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 209, 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:

- 1 Page 1, delete lines 1 through 11.
- 2 Page 2, line 6, delete "the groundwater" and insert "**human health**
- 3 **and the environment**".
- 4 Page 10, between lines 27 and 28, begin a new paragraph and insert:
- 5 "SECTION 11. IC 13-14-9-2 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. Except as provided
- 7 in sections 4.5, 7, ~~and~~ 8, **and 14** of this chapter, a board may not adopt
- 8 a rule under this chapter until the board has conducted at least two (2)
- 9 public comment periods, each of which must be at least thirty (30) days
- 10 in length.
- 11 SECTION 12. IC 13-14-9-8, AS AMENDED BY P.L.204-2007,
- 12 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 13 JULY 1, 2009]: Sec. 8. (a) **Except as provided in subsection (g)**,
- 14 unless a board determines that a proposed rule should be subject to
- 15 additional comments or makes a determination described in subsection
- 16 (f), sections 2 through 7 and sections 9 through 14 of this chapter do
- 17 not apply to a rulemaking action if the commissioner determines that:
- 18 (1) the proposed rule constitutes:
- 19 (A) an adoption or incorporation by reference of a federal law,
- 20 regulation, or rule that:
- 21 (i) is or will be applicable to Indiana; and

- 1 (ii) contains no amendments that have a substantive effect
 2 on the scope or intended application of the federal law or
 3 rule;
- 4 (B) a technical amendment with no substantive effect on an
 5 existing Indiana rule; or
- 6 (C) a substantive amendment to an existing Indiana rule, the
 7 primary and intended purpose of which is to clarify the
 8 existing rule; and
- 9 (2) the proposed rule is of such nature and scope that there is no
 10 reasonably anticipated benefit to the environment or the persons
 11 referred to in section 7(a)(2) of this chapter from the following:
- 12 (A) Exposing the proposed rule to diverse public comment
 13 under section 3 or 4 of this chapter.
- 14 (B) Affording interested or affected parties the opportunity to
 15 be heard under section 3 or 4 of this chapter.
- 16 (C) Affording interested or affected parties the opportunity to
 17 develop evidence in the record collected under sections 3 and
 18 4 of this chapter.
- 19 (b) If the commissioner makes a determination under subsection (a),
 20 the commissioner shall prepare written findings under this section. The
 21 full text of the commissioner's written findings shall be included in:
- 22 (1) the notice of adoption of the proposed rule; and
 23 (2) the written materials to be considered by the board at the
 24 public hearing held under this section.
- 25 (c) The notice of adoption of a proposed rule under this section
 26 must:
- 27 (1) be published in the Indiana Register; and
 28 (2) include the following:
- 29 (A) Draft rule language that includes the language described
 30 in subsection (a)(1).
 31 (B) A written comment period of at least thirty (30) days.
 32 (C) A notice of public hearing before the appropriate board.
- 33 (d) The department shall include the following in the written
 34 materials to be considered by the board at the public hearing referred
 35 to in subsection (c):
- 36 (1) The full text of the proposed rule as most recently prepared by
 37 the department.
 38 (2) Written responses of the department to written comments
 39 received during the comment period referred to in subsection (c).
 40 (3) The commissioner's findings under subsection (b).
- 41 (e) At the public hearing referred to in subsection (c), the board
 42 may:

- 1 (1) adopt the proposed rule;
 2 **(2) adopt the proposed rule with amendments;**
 3 ~~(2) (3)~~ reject the proposed rule;
 4 ~~(3) (4)~~ determine that additional public comment is necessary; or
 5 ~~(4) (5)~~ determine to reconsider the proposed rule at a subsequent
 6 board meeting.

7 (f) If the board determines under subsection (e) that additional
 8 public comment is necessary, the department shall publish a second
 9 notice in accordance with section 4 of this chapter and complete the
 10 rulemaking in accordance with this chapter.

11 **(g) If the board adopts the proposed rule with amendments**
 12 **under subsection (e)(2), the amendments must meet the logical**
 13 **outgrowth requirements of section 10 of this chapter, except that**
 14 **the board, in determining whether the amendments are a logical**
 15 **outgrowth of comments provided to the board, and in considering**
 16 **whether the language of comments provided to the board fairly**
 17 **apprised interested persons of the specific subjects and issues**
 18 **contained in the amendments, shall consider the comments**
 19 **provided to the board at the public hearing referred to in**
 20 **subsection (c)(2)(C).**

21 SECTION 13. IC 13-14-9-14, AS ADDED BY P.L.100-2006,
 22 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2009]: Sec. 14. (a) **Except as provided in subsection (g),**
 24 sections 1 through 13 of this chapter do not apply to a rule adopted
 25 under this section.

26 (b) The water pollution control board may use the procedures in this
 27 section to adopt a rule to establish new water quality standards for a
 28 community served by a combined sewer that has:

- 29 (1) an approved long term control plan; and
 30 (2) an approved use attainability analysis that supports the use of
 31 a CSO wet weather limited use subcategory established under
 32 IC 13-18-3-2.5.

33 (c) After the department approves the long term control plan and use
 34 attainability analysis, the department shall publish in the Indiana
 35 Register a notice of adoption of a proposed rule to establish a CSO wet
 36 weather limited use subcategory for the area defined by the approved
 37 use attainability analysis.

38 (d) The notice under subsection (c) must include the following:

- 39 (1) Suggested rule language that amends the designated use to
 40 allow for a CSO wet weather limited use subcategory in
 41 accordance with IC 13-18-3-2.5.
 42 (2) A written comment period of at least thirty (30) days.

1 (3) A notice of public hearing before the water pollution control
2 board.

3 (e) The department shall include the following in the written
4 materials to be considered by the water pollution control board at the
5 public hearing referred to in subsection (d)(3):

6 (1) The full text of the proposed rule as most recently prepared by
7 the department.

8 (2) Written responses of the department to written comments
9 received during the comment period referred to in subsection
10 (d)(2).

11 (3) The letter prepared by the department approving the long term
12 control plan and use attainability analysis.

13 (f) At the public hearing referred to in subsection (d)(3), the board
14 may:

15 (1) adopt the proposed rule to establish a new water quality
16 standard amending the designated use to allow for a CSO wet
17 weather limited use subcategory;

18 **(2) adopt the proposed rule with amendments;**

19 ~~(3)~~ **(3)** reject the proposed rule; or

20 ~~(4)~~ **(4)** determine to reconsider the proposed rule at a subsequent
21 board meeting.

22 **(g) If the board adopts the proposed rule with amendments**
23 **under subsection (f)(2), the amendments must meet the logical**
24 **outgrowth requirements of section 10 of this chapter, except that**
25 **the board, in determining whether the amendments are a logical**
26 **outgrowth of comments provided to the board, and in considering**
27 **whether the language of comments provided to the board fairly**
28 **apprised interested persons of the specific subjects and issues**
29 **contained in the amendments, shall consider the comments**
30 **provided to the board at the public hearing referred to in**
31 **subsection (d)(3).**

32 ~~(g)~~ **(h)** The department shall submit a new water quality standard
33 established in a rule adopted under subsection ~~(f)(1)~~ **(f)** to the United
34 States Environmental Protection Agency for approval."

35 Page 18, between lines 27 and 28, begin a new paragraph and insert:

36 "SECTION 30. IC 13-23-8-3, AS AMENDED BY P.L.221-2007,
37 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2010]: Sec. 3. For the purposes of section 2 of this chapter, the
39 following amounts shall be used:

40 (1) If the underground petroleum storage tank that is involved in
41 the occurrence for which claims are made:

42 (A) is not in compliance with rules adopted by the board

- 1 concerning technical and safety requirements relating to the
2 physical characteristics of underground petroleum storage
3 tanks before the date the tank is required to be in compliance
4 with the requirements; and
5 (B) is in compliance on a date required under the requirements
6 described under section 4 of this chapter at the time a release
7 was discovered;
8 the amount is thirty-five thousand dollars (\$35,000).
- 9 (2) If the underground petroleum storage tank that is involved in
10 the occurrence for which claims are made:
11 (A) is in compliance with rules adopted by the board
12 concerning technical and safety requirements relating to the
13 physical characteristics of underground petroleum storage
14 tanks before the date the tank is required to be in compliance
15 with the requirements;
16 (B) is not a double walled underground petroleum storage
17 tank; and
18 (C) has piping that does not have secondary containment;
19 the amount is ~~twenty-five~~ **thirty** thousand dollars (~~\$25,000~~);
20 **(\$30,000)**.
- 21 (3) If the underground petroleum storage tank that is involved in
22 the occurrence for which claims are made:
23 (A) is in compliance with rules adopted by the board
24 concerning technical and safety requirements relating to the
25 physical characteristics of underground petroleum storage
26 tanks before the date the tank is required to be in compliance
27 with the requirements;
28 (B) is not a double walled underground petroleum storage
29 tank; and
30 (C) has piping that has secondary containment;
31 the amount is twenty-five thousand dollars (\$25,000).
- 32 (4) If the underground petroleum storage tank that is involved in
33 the occurrence for which claims are made:
34 (A) is in compliance with rules adopted by the board
35 concerning technical and safety requirements relating to the
36 physical characteristics of underground petroleum storage
37 tanks before the date the tank is required to be in compliance
38 with the requirements;
39 (B) is a double walled underground petroleum storage tank;
40 and
41 (C) has piping that does not have secondary containment;
42 the amount is twenty-five thousand dollars (\$25,000).

- 1 (5) If the underground petroleum storage tank that was involved
 2 in the occurrence for which claims are made:
 3 (A) is in compliance with rules adopted by the board
 4 concerning technical and safety requirements relating to the
 5 physical characteristics of underground petroleum storage
 6 tanks before the date the tank is required to be in compliance
 7 with the requirements;
 8 (B) is a double walled underground petroleum storage tank;
 9 and
 10 (C) has piping that has secondary containment;
 11 the amount is twenty thousand dollars (\$20,000).".
 12 Page 22, line 37, delete "the groundwater" and insert "**human**
 13 **health and the environment**".
 14 Page 30, delete lines 6 through 7.
 15 Renumber all SECTIONS consecutively.
 (Reference is to SB 209 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 11, Nays 0.

Senator Gard, Chairperson