April 5, 2011

ENGROSSED
SENATE BILL No. 200

DIGEST OF SB 200 (Updated March 31, 2011 10:10 am - DI 69)

Citations Affected: IC 13-18.

Synopsis: Environmental general permits. Allows the department of environmental management (IDEM) to develop and issue NPDES general permits under federal law. Establishes transitional provisions for current NPDES general permits authorized by rule. Requires IDEM to conduct an antidegradation review of all NPDES general permits. Provides that IDEM may modify the general permits for purposes of antidegradation compliance. Provides that after an antidegradation review of a permit is conducted, activities covered by an NPDES general permit are not required to undergo an additional antidegradation review. Requires IDEM to establish a general coal mine permit that may be obtained for a facility instead of obtaining another more specialized NPDES coal mine permit and to determine the criteria that must be met to qualify for the general permit. Provides that the general permit must allow a coal mine operator the option of submitting a notice of intent to be governed by the general permit requirements before the requirements apply to the coal mine operator. Requires persons regulated by a national pollutant discharge elimination systems (NPDES) general permit to submit a notice of intent within ninety (90) days after the department of environmental management makes the form available.

Effective: Upon passage; July 1, 2011.

Gard, Charbonneau, Tallian, Randolph
(HOUSE SPONSOR — WOLKINS)

January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
January 20, 2011, reported favorably — Do Pass.
January 24, 2011, read second time, amended, ordered engrossed.
January 25, 2011, engrossed. Read third time, passed. Yeas 47, nays 2.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Environmental Affairs.
April 4, 2011, reported — Do Pass.

C o p y

April 5, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C o p y

ENGROSSED
SENATE BILL No. 200

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:

SECTION 1. IC 13-18-3-2, AS AMENDED BY P.L.78-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Degradation" has the meaning set forth in IC 13-11-2-50.5.

(c) "Outstanding national resource water" has the meaning set forth in IC 13-11-2-149.5.

(d) "Outstanding state resource water" has the meaning set forth in IC 13-11-2-149.6.

(e) "Watershed" has the meaning set forth in IC 14-8-2-310.

(f) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has

a unique or special ecological, recreational, or aesthetic significance.

(g) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (f) and (g), including the board's conclusions concerning that information.

(i) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

(j) Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

(k) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

C o p y

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 IAC 2-1.5-4(b) are met.

(l) The procedures provided by rule under subsection (k) must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water:

(A) Implementation of a water quality project in the watershed of the outstanding state resource water that will result in an overall improvement of the water quality of the outstanding state resource water.

(B) Payment of a fee, not to exceed five hundred thousand dollars ($500,000), based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter for use as permitted under that section.

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water.

(m) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(n) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality

Copy

service council.

(o) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

(p) This subsection applies to all surface waters of the state. The department shall complete an antidegradation review of ~~the rules of the board that authorize~~ **all** NPDES general permits. The ~~board~~ **department** may modify ~~those rules~~ **the general permits** for purposes of antidegradation compliance. After an antidegradation review of a ~~rule~~ **permit** is conducted under this subsection, activities covered by an NPDES general permit ~~authorized by that rule~~ are not required to undergo an additional antidegradation review. An NPDES general permit may not be used to authorize a discharge into an outstanding national resource water or an outstanding state resource water, except that a short term, temporary storm water discharge to an outstanding national resource water or to an outstanding state resource water may be permitted under an NPDES general permit if the commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge.

(q) Subsection (r) applies to an application for:

(1) an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4); or

(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in subsection (l)(1).

(r) For purposes of an antidegradation review with respect to an application referred to in subsection (q), the applicant shall demonstrate at the time the application is submitted to the department, and the commissioner shall review:

(1) an analysis of alternatives to the proposed discharge; and

(2) subject to subsection (s), social or economic factors indicating the importance of the proposed discharge if alternatives to the proposed discharge are not practicable.

C o p y

(s) Subject to subsection (t), the commissioner shall consider the following factors in determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures:

(1) Creation, expansion, or maintenance of employment.

(2) The unemployment rate.

(3) The median household income.

(4) The number of households below the poverty level.

(5) Community housing needs.

(6) Change in population.

(7) The impact on the community tax base.

(8) Provision of fire departments, schools, infrastructure, and other necessary public services.

(9) Correction of a public health, safety, or environmental problem.

(10) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.

(11) The impact on the quality of life for residents in the area.

(12) The impact on the fishing, recreation, and tourism industries.

(13) The impact on threatened and endangered species.

(14) The impact on economic competitiveness.

(15) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (14) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.

(16) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that:

(A) recognizes social or economic importance; and

(B) is given to the applicant by:

(i) a legislative body; or

(ii) other government officials.

(17) Any other action or recommendation relevant to the antidegradation demonstration made by a:

(A) state;

(B) county;

(C) township; or

(D) municipality;

potentially affected by the proposed discharge.

C o p y

(18) Any other action or recommendation relevant to the antidegradation demonstration received during the public participation process.

(19) Any other factors that the commissioner:

(A) finds relevant; or

(B) is required to consider under the Clean Water Act.

(t) In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures, the commissioner:

(1) must give substantial weight to any applicable determinations by governmental entities; and

(2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (s).

(u) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law.

(v) Beginning June 1, 2009, all waters of the state are classified in the following categories:

(1) Outstanding national resource waters.

(2) Outstanding state resource waters.

(3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.

(4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.

(5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.

(6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.

SECTION 2. IC 13-18-3-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15. (a) Subject to subsection (c), the board shall amend 327 IAC 15 to eliminate:**

(1) the requirement that NPDES general permit terms and conditions be contained in a rule; and

(2) the terms and conditions of each NPDES general permit that is:

(A) contained in that article; and

(B) in effect on the effective date of this section.

(b) The department may develop and issue NPDES general permits in accordance with 40 CFR 122.28.

C o p y

(c) After 327 IAC 15 is amended under subsection (a), the terms and conditions of an NPDES general permit under that article as they existed before the amendment remain in effect and are binding on any person regulated under the NPDES general permit until the person submits a notice of intent to be covered by an NPDES general permit developed and issued under subsection (b).

(d) Any person regulated under an NPDES general permit on the effective date of the amendment required by subsection (a) must:

(1) submit a notice of intent described in subsection (c) not later than ninety (90) days after the department makes the form of the notice of intent available to the person; or

(2) apply for an NPDES individual permit under 327 IAC 5 to maintain permit coverage required under the Clean Water Act.

(e) This section does not affect the authority of the board to adopt rules that authorize NPDES general permits.

SECTION 3. IC 13-18-18-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. The ~~board with jurisdiction over National Pollutant Discharge Elimination System permits for coal mines~~ **department** shall ~~adopt rules under IC 4-22-2 to~~ establish a general coal mine permit that may be obtained for a facility instead of obtaining another more specialized National Pollutant Discharge Elimination System coal mine permit.

SECTION 4. IC 13-18-18-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. The ~~board~~ **department** shall determine the criteria that must be met to qualify for the general permit.

SECTION 5. IC 13-18-18-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. The ~~rules adopted~~ **general permit established** under this chapter must allow a coal mine operator the option of submitting a notice of intent to be governed by the general permit requirements before the requirements apply to the coal mine operator.

SECTION 6. **An emergency is declared for this act.**

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 200, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 200 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 200 be amended to read as follows:

Page 7, line 10, delete "when" and insert "**not later than ninety (90) days after**".

(Reference is to SB 200 as printed January 21, 2011.)

GARD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 200, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

WOLKINS, Chair

Committee Vote: yeas 10, nays 0.

C o p y