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# HOUSE BILL No. 1059

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-17-7-1; IC 13-30; IC 32-21-5-7; IC 34-11-2-4.5.

**Synopsis:** Chromated copper arsenate treated wood issues. Prohibits the sale of wood treated with chromated copper arsenate (CCA) for a residential use that is not a use permitted by the United States Environmental Protection Agency. Excepts the sale of wood treated with CCA that is part of a residential structure. Requires disclosure by the owner on a residential real estate sales disclosure form of any wood treated with CCA that is part of a structure located on the property. Establishes a two year statute of limitations for an action based on personal injury, disability, disease, or death resulting from exposure to wood treated with CCA. Provides that the action accrues on the date when the person knows that the person has a disease or injury related to exposure to wood treated with CCA.

**Effective:** July 1, 2011.

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**Cheatham**

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January 5, 2011, read first time and referred to Committee on Environmental Affairs.

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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.

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**HOUSE BILL No. 1059**



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 13-17-7-1 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. Except as otherwise  
 3 provided in this chapter, if a person:  
 4 (1) constructed, reconstructed, modified, or operated a facility or  
 5 source that emits or is capable of emitting into the atmosphere a  
 6 regulated pollutant in an amount for which:  
 7 (A) a registration;  
 8 (B) a construction permit; or  
 9 (C) an operating permit;  
 10 is required under ~~IC 13-30-2-1(7)~~ **IC 13-30-2-1(a)(7)** and rules  
 11 adopted by the board under IC 13-15-1-1;  
 12 (2) fails to obtain the:  
 13 (A) registration;  
 14 (B) construction permit; or  
 15 (C) operating permit;  
 16 as required by Indiana law;  
 17 (3) meets the conditions described in section 2 of this chapter;



1 and  
2 (4) pays a civil penalty described in section 6 of this chapter;  
3 the person's failure to obtain the registration, construction permit, or  
4 operating permit does not result in any liability beyond the liability  
5 described in this chapter.

6 SECTION 2. IC 13-30-2-1 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) A person may not  
8 do any of the following:

9 (1) Discharge, emit, cause, allow, or threaten to discharge, emit,  
10 cause, or allow any contaminant or waste, including any noxious  
11 odor, either alone or in combination with contaminants from other  
12 sources, into:

13 (A) the environment; or  
14 (B) any publicly owned treatment works;  
15 in any form that causes or would cause pollution that violates or  
16 would violate rules, standards, or discharge or emission  
17 requirements adopted by the appropriate board under the  
18 environmental management laws.

19 (2) Increase the quantity or strength of a discharge of  
20 contaminants into the waters or construct or install a sewer or  
21 sewage treatment facility or a new outlet for contaminants into the  
22 waters of Indiana without prior approval of the department.

23 (3) Deposit any contaminants upon the land in a place and manner  
24 that creates or would create a pollution hazard that violates or  
25 would violate a rule adopted by one (1) of the boards.

26 (4) Deposit or cause or allow the deposit of any contaminants or  
27 solid waste upon the land, except through the use of sanitary  
28 landfills, incineration, composting, garbage grinding, or another  
29 method acceptable to the solid waste management board.

30 (5) Dump or cause or allow the open dumping of garbage or of  
31 any other solid waste in violation of rules adopted by the solid  
32 waste management board.

33 (6) Dispose of solid waste in, upon, or within the limits of or  
34 adjacent to a public highway, state park, state nature preserve, or  
35 recreation area or in or immediately adjacent to a lake or stream,  
36 except:

37 (A) in proper containers provided for sanitary storage of the  
38 solid waste; or

39 (B) as a part of a sanitary landfill operation or other land  
40 disposal method approved by the department.

41 (7) Construct, install, operate, conduct, or modify, without prior  
42 approval of the department, any equipment or facility of any type

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that may:

- (A) cause or contribute to pollution; or
- (B) be designed to prevent pollution.

However, the commissioner or the appropriate board may approve experimental uses of any equipment, facility, or pollution control device that is considered necessary for the further development of the state of the art of pollution control.

(8) Conduct any salvage operation or open dump by open burning or burn, cause, or allow the burning of any solid waste in a manner that violates either:

- (A) the air pollution control laws; or
- (B) the rules adopted by the air pollution control board.

(9) Commence construction of a proposed hazardous waste facility without having first:

- (A) filed an application for; and
- (B) received;

a permit from the department.

(10) Commence or engage in the operation of a hazardous waste facility without having first obtained a permit from the department.

(11) Deliver any hazardous waste to a hazardous waste facility that:

- (A) is not approved; or
- (B) does not hold a permit from the department.

(12) Cause or allow the transportation of a hazardous waste without a manifest if a manifest is required by law.

(13) Violate any:

- (A) condition;
- (B) limitation; or
- (C) stipulation;

placed upon a certificate of environmental compatibility by the hazardous waste facility site approval authority or any other provision of IC 13-22-10.

(14) Apply or allow the application of used oil to any ground surface, except for purposes of treatment in accordance with a permit issued by the department under any of the following:

- (A) IC 13-15, except IC 13-15-9.
- (B) IC 13-17-11.
- (C) IC 13-18-18.
- (D) IC 13-20-1.

(15) Commence construction of a solid waste incinerator without first obtaining a permit from the department under IC 13-20-8.

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1 (16) Commence operation of a solid waste incinerator without  
 2 first obtaining the approval of the department under IC 13-20-8.  
 3 **(17) Sell wood treated with chromated copper arsenate for a**  
 4 **residential use that is not included as a permitted use in a**  
 5 **notice of cancellation order issued by the United States**  
 6 **Environmental Protection Agency as published in the Federal**  
 7 **Register on April 9, 2003.**

8 **(b) Subsection (a)(17) does not apply to the sale of wood treated**  
 9 **with chromated copper arsenate that is part of a residential**  
 10 **structure.**

11 SECTION 3. IC 13-30-3-13 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 13. (a) Except as  
 13 provided in subsection (c), an enforcement action may not be taken  
 14 under this chapter for a violation of ~~IC 13-30-2-1(5)~~  
 15 **IC 13-30-2-1(a)(5)** against a landowner on whose land garbage or  
 16 other solid waste, except hazardous waste, has been illegally dumped  
 17 without the landowner's consent unless the commissioner has made a  
 18 diligent and good faith effort to identify, locate, and take enforcement  
 19 action against a person who appears likely to have committed or caused  
 20 the illegal dumping.

21 (b) A landowner described in subsection (a) who in good faith  
 22 provides information to the commissioner concerning:

- 23 (1) a name;
  - 24 (2) an address; or
  - 25 (3) any other evidence of a responsible person's identity found in  
 26 garbage or other solid waste dumped on the landowner's land;
- 27 is not liable to a person for an action taken by the commissioner against  
 28 the person as a result of the information provided **by** the landowner.

29 (c) The commissioner may include the owner of land on which a  
 30 violation of ~~IC 13-30-2-1(5)~~ **IC 13-30-2-1(a)(5)** has apparently  
 31 occurred as a party in any enforcement action against a person who  
 32 allegedly committed the violation of ~~IC 13-30-2-1(5)~~  
 33 **IC 13-30-2-1(a)(5)** so that the commissioner may order the landowner  
 34 to allow the alleged violator access to the land to remove and dispose  
 35 of the solid waste allegedly dumped on the land in violation of  
 36 ~~IC 13-30-2-1(5)~~ **IC 13-30-2-1(a)(5)**.

37 (d) A landowner on whose land garbage or other solid waste has  
 38 been illegally dumped without the landowner's consent may, in addition  
 39 to any other legal or equitable remedy available to the landowner,  
 40 recover from the person responsible for the illegal dumping:

- 41 (1) reasonable expenses incurred by the landowner in disposing  
 42 of the garbage or other solid waste; and

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(2) reasonable attorney's fees.  
SECTION 4. IC 32-21-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

- (1) Disclosure by the owner of the known condition of the following:
  - (A) The foundation.
  - (B) The mechanical systems.
  - (C) The roof.
  - (D) The structure.
  - (E) The water and sewer systems.
  - (F) Additions that may require improvements to the sewage disposal system.
  - (G) Other areas that the Indiana real estate commission determines are appropriate.

(2) A notice to the prospective buyer that contains substantially the following language:  
"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

(3) A notice to the prospective buyer that contains substantially the following language:  
"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

(4) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

- (5) A disclosure by the owner of any wood that is:**
  - (A) part of a structure located on the property; and**
  - (B) treated with chromated copper arsenate.**

SECTION 5. IC 34-11-2-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.5. (a) An action commenced after June 30, 2011, that is based on personal injury, disability, disease, or death**

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1       **resulting from exposure to wood that is treated with chromated**  
2       **copper arsenate must be commenced not later than two (2) years**  
3       **after the cause of action accrues as described in subsection (b). The**  
4       **subsequent development of an additional disease or injury related**  
5       **to exposure to wood that is treated with chromated copper**  
6       **arsenate is a new disease or injury and is a separate cause of**  
7       **action.**

8       **(b) An action for personal injury, disability, disease, or death**  
9       **resulting from exposure to wood that is treated with chromated**  
10       **copper arsenate accrues on the date when the person knows that**  
11       **the person has a disease or injury related to exposure to wood that**  
12       **is treated with chromated copper arsenate.**

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