



February 24, 2012

**ENGROSSED
SENATE BILL No. 133**

DIGEST OF SB 133 (Updated February 22, 2012 12:27 pm - DI 69)

Citations Affected: IC 13-14; IC 13-23; IC 13-25.

Synopsis: Underground storage tanks. Allows the solid waste management board to adopt rules and establish requirements for underground storage tanks in conformance with the delivery prohibition program under 42 U.S.C. 6991k. Provides that the commissioner of the department of environmental management (commissioner) may: (1) determine whether an underground storage tank (tank) is eligible for delivery, deposit, or acceptance of a regulated substance; and (2) issue a temporary order to enforce compliance. Allows the commissioner to enforce the delivery prohibition program if an owner or operator of an underground petroleum storage tank fails to register the tank or pay annual registration fees. Requires the commissioner to provide notice before issuing such a temporary order. Requires compliance with such an order by the new owner of an underground storage tank after ownership of the tank is transferred. Allows the commissioner to implement the delivery prohibition program prior to the adoption of rules by the board. Repeals requirements to pay certain tank fees. Exempts the implementation of the delivery prohibition program from certain administrative procedures. Provides a defense to noncompliance with such an order if the owner or operator of the underground storage tank has not been notified that the tank is ineligible. Makes a technical correction.

Effective: July 1, 2012.

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Gard, Charbonneau, Breaux

(HOUSE SPONSOR — WOLKINS)

January 4, 2012, read first time and referred to Committee on Energy and Environmental Affairs.

January 9, 2012, amended, reported favorably — Do Pass.

January 17, 2012, read second time, amended, ordered engrossed.

January 18, 2012, engrossed.

January 19, 2012, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

January 31, 2012, read first time and referred to Committee on Environmental Affairs.

February 23, 2012, reported — Do Pass.

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February 24, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 133

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 13-14-6-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **Except as provided**
3 **in IC 13-23-1-4**, this chapter applies to a department enforcement
4 action, regardless of the application of IC 4-21.5 to the enforcement
5 action.

6 SECTION 2. IC 13-23-1-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The board shall
8 adopt rules under IC 4-22-2, **and** IC 13-14-8, **and IC 13-14-9** for the
9 establishment and operation of the program established under section
10 1 of this chapter.

11 (b) The rules must not be less stringent than the regulations adopted
12 by the Administrator of the United States Environmental Protection
13 Agency under Section 9003 of the federal Solid Waste Disposal Act,
14 as amended (42 U.S.C. 6991b, as amended).

15 (c) The rules adopted under subsection (a) must include the
16 following:

17 (1) Requirements for maintaining:

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- 1 (A) a leak detection system;
 2 (B) an inventory control system coupled with tank testing; or
 3 (C) a comparable system or method;
 4 designed to identify releases in a manner consistent with the
 5 protection of human health and the environment.
 6 (2) Requirements for maintaining records of any:
 7 (A) monitoring;
 8 (B) leak detection system;
 9 (C) inventory control system or tank testing; or
 10 (D) comparable system.
 11 (3) Requirements for reporting of:
 12 (A) any releases; and
 13 (B) corrective action taken in response to a release.
 14 (4) Requirements for ordering or taking corrective action in
 15 response to a release.
 16 (5) Requirements for closure of underground storage tanks to
 17 prevent future releases of regulated substances into the
 18 environment.
 19 (6) Requirements for maintaining evidence of financial
 20 responsibility for:
 21 (A) taking corrective action; and
 22 (B) compensating third parties for bodily injury and property
 23 damage caused by sudden and nonsudden accidental releases
 24 arising from the operation of an underground storage tank.
 25 (7) Standards of performance for new underground storage tanks.
 26 (8) Requirements for the following:
 27 (A) Providing notice to the department of the existence of
 28 operational and nonoperational underground storage tanks, as
 29 required under 42 U.S.C. 6991a(a).
 30 (B) Providing the information required on the form prescribed
 31 under 42 U.S.C. 6991a(b)(2).
 32 (C) Providing notice, by any person who sells a tank intended
 33 to be used as an underground storage tank, to the purchaser of
 34 that tank of the owner's notification requirements established
 35 by this article and 42 U.S.C. 6991a(a).
 36 **(9) Requirements for the delivery prohibition program**
 37 **prescribed under 42 U.S.C. 6991k, including:**
 38 **(A) notice to owners or operators when an underground**
 39 **storage tank is declared ineligible for delivery, deposit, or**
 40 **acceptance of a regulated substance; and**
 41 **(B) procedures to enforce the delivery prohibition that**
 42 **include the use of a temporary emergency order under**

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IC 4-21.5-4 for violations of section 4(a) of this chapter.
SECTION 3. IC 13-23-1-4 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2012]: **Sec. 4. (a) This section shall be enforced under
IC 4-21.5-4.**

**(b) To fully implement the delivery prohibition program
requirements under 42 U.S.C. 6991k, the commissioner may:**

**(1) determine whether an underground storage tank is eligible
for delivery, deposit, or acceptance of a regulated substance;
and**

**(2) issue a temporary order to prohibit the use of an
underground storage tank that has been determined to be
ineligible under subdivision (1), and demand compliance with
the rules adopted under this chapter as follows:**

**(A) If an underground storage tank inspection shows
failure to install equipment for:**

- (i) corrosion protection;**
- (ii) leak detection;**
- (iii) overfill protection; or**
- (iv) spill prevention.**

**The commissioner must give the owner or operator written
notice before implementing a temporary order under this
clause.**

**(B) If the owner or operator fails to properly operate or
maintain equipment for corrosion protection, leak
detection, overfill protection, and spill prevention. The
commissioner must give the owner or operator:**

- (i) a written warning; and**
- (ii) at least thirty (30) days to take corrective action to
bring the underground storage tank into compliance.**

**(C) If the owner or operator fails to register an
underground petroleum storage tank or pay annual
registration fees that are due under IC 13-23-12. The
commissioner must give the owner or operator at least
thirty (30) days to take corrective action to bring the
underground storage tank into compliance.**

**(c) If ownership of an ineligible underground storage tank is
transferred, the new owner must complete the corrective actions
required to comply with an order issued by the commissioner to
the previous owner.**

**(d) The commissioner may act to carry out this section prior to
the adoption of rules by the board under section 2 of this chapter.**

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This subsection expires January 1, 2015.

SECTION 4. IC 13-23-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. The sources of money for the fund are as follows:

- (1) Grants made by the United States Environmental Protection Agency to the state under cooperative agreements under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)).
- (2) Costs recovered by the state under IC 13-23-13-8 in connection with any corrective action undertaken under IC 13-23-13-2 with respect to a release of petroleum.
- (3) Costs recovered by the state in connection with the enforcement of this article with respect to any release of petroleum.
- (4) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.
- (5) Penalties imposed under IC 13-23-14. ~~and fifty percent (50%) of penalties imposed under IC 13-23-12 against owners and operators of underground petroleum storage tanks.~~
- (6) Revenue from the underground petroleum storage tank registration fee deposited in the fund under IC 13-23-12-4.

SECTION 5. IC 13-23-12-7 IS REPEALED [EFFECTIVE JULY 1, 2012]. Sec. 7: (a) Except as provided in subsection (c); an owner of an underground storage tank who:

- (1) is required to pay the fee under section 1 of this chapter; and
- (2) fails to pay the fee when due as established under section 2 of this chapter;

shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid.

(b) Except as provided in subsection (c); each penalty assessed under this section and collected from the owner of an underground petroleum storage tank shall be deposited as follows:

- (1) Fifty percent (50%) shall be deposited in the petroleum trust fund.
- (2) Fifty percent (50%) shall be deposited in the excess liability trust fund.

(c) Penalties assessed under this section and collected from owners of underground storage tanks used to contain regulated substances other than petroleum shall be deposited in the hazardous substances response trust fund.

(d) The penalty set forth in this section is in addition to the penalties

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1 that may be imposed for the violation of a criminal law or under the
2 following:

- 3 (1) IC 13-23-14-2.
- 4 (2) IC 13-23-14-3.
- 5 (3) IC 13-23-14-4.
- 6 (4) IC 13-30-4.
- 7 (5) IC 13-30-5.
- 8 (6) IC 13-30-8.

9 (e) If an owner described in subsection (a) registered an
10 underground storage tank before January 1, 2004, the penalty
11 established in subsection (a) may not be assessed against the owner for
12 any failure to pay an annual registration fee under section 1 of this
13 chapter:

- 14 (1) in connection with the underground storage tank; and
- 15 (2) that was due before January 1, 2004.

16 SECTION 6. IC 13-23-14-1, AS AMENDED BY P.L.137-2007,
17 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2012]: Sec. 1. (a) **Except as provided in IC 13-23-1-4**, this
19 article shall be enforced under IC 13-30-3.

20 (b) Except as provided in sections 2, 3, and 4 of this chapter,
21 violations of this article are subject to the penalties imposed by the
22 following:

- 23 (1) IC 13-30-4.
- 24 (2) IC 13-30-5.
- 25 (3) IC 13-30-8.

26 In addition, a violation of this article may lead to criminal prosecution
27 under IC 13-30-10.

28 SECTION 7. IC 13-23-14-4 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) A person who
30 fails to comply with an order issued by the commissioner under this
31 article or IC 13-7-20 (before its repeal) after the order becomes
32 effective is subject to a civil penalty of not more than twenty-five
33 thousand dollars (\$25,000) for each day of continued noncompliance.

34 (b) **It is a defense to a violation of this section due to
35 noncompliance with an order issued under IC 13-23-1-4 that the
36 person has not been notified that an underground storage tank that
37 is the subject of the order is ineligible for delivery, deposit, or
38 acceptance of a regulated substance as determined by the
39 commissioner.**

40 SECTION 8. IC 13-25-4-2 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. The sources of
42 money for the fund are the following:

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- 1 (1) Revenue produced by the levy under IC 6-6-6.6.
- 2 (2) Any payment to the state or the fund as:
 - 3 (A) reimbursement for amounts expended by the state in a
 - 4 response action; or
 - 5 (B) a settlement or judgment stemming from a lawsuit by the
 - 6 state or federal government to recover amounts expended by
 - 7 the state in a response action, including recoveries under
 - 8 section 10 of this chapter.
- 9 (3) Accrued interest and other investment earnings of the fund.
- 10 (4) Fees paid under IC 13-23-12-4(2) and penalties paid under
- 11 ~~IC 13-23-12-7~~ by owners and operators of underground storage
- 12 tanks used to contain regulated substances other than petroleum.
- 13 (5) Appropriations made by the general assembly and gifts and
- 14 donations from private and public entities intended for deposit in
- 15 the fund.
- 16 (6) Grants and other payments made by the United States
- 17 government under:
 - 18 (A) the federal Solid Waste Disposal Act (42 U.S.C. 6901 et
 - 19 seq.) in relation to regulated substances other than petroleum;
 - 20 or
 - 21 (B) CERCLA.
- 22 (7) Money received from responsible parties under agreements
- 23 under section 23 of this chapter for response actions at specific
- 24 sites.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 133, 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 3, line 14, delete "chapter:" and insert "**chapter as follows:**".

Page 3, line 15, delete "if" and insert "**If**".

Page 3, line 20, delete "prevention; or" and insert "**prevention.**".

Page 3, line 21, delete "after providing:" and insert "**If the owner or operator fails**".

Page 3, delete line 22.

Page 3, run in lines 21 through 23.

Page 3, delete lines 25 through 27 and insert "**prevention. The commissioner must give the owner or operator:**

(i) a written warning; and

(ii) at least thirty (30) days to take corrective action to bring the underground storage tank into compliance.

(C) If the owner or operator fails to register an underground petroleum storage tank or pay annual registration fees that are due under IC 13-23-12. The commissioner must give the owner or operator at least thirty (30) days to take corrective action to bring the underground storage tank into compliance."

and when so amended that said bill do pass.

(Reference is to SB 133 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 10, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 133 be amended to read as follows:

Page 3, line 1, delete "IC 13-23-1-4(a)" and insert "**section 4(a) of this chapter**".

Page 3, between lines 20 and 21, begin a new line double block indented and insert:

"The commissioner must give the owner or operator

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written notice before implementing a temporary order under this clause."

Page 3, delete lines 34 through 37.

Page 3, line 38, delete "(d)" and insert "(c)".

Page 3, line 42, delete "(e)" and insert "(d)".

(Reference is to SB 133 as printed January 10, 2012.)

GARD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 133, 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 11, nays 0.

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