SENATE BILL No. 300

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-30-10-1.5.

Synopsis: Environmental crimes. Makes it a Class C misdemeanor for a regulated person to knowingly violate certain rules of the air pollution control board or to fail to keep or maintain certain records required by the federal Clean Air Act. Makes it a Class C misdemeanor for a regulated person to knowingly violate certain rules of the water pollution control board or to negligently violate certain permit conditions or permit filing requirements.

Effective: July 1, 2012.

Charbonneau

January 5, 2012, read first time and referred to Committee on Energy and Environmental Affairs.

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Introduced

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.

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SENATE BILL No. 300

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 13-30-10-1.5, AS AMENDED BY P.L.57-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1.5. (a) Except as provided in subsection (b), a person regulated under IC 13-22 who knowingly does any of the following commits a Class B misdemeanor:

(1) Transports hazardous waste to an unpermitted facility.

(2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.

(3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.

(4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.

(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the environment unfit

for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding the maximum fine under IC 35-50-3-3, the court shall order a person convicted under subsection (a) to pay a fine of at least five thousand dollars ($5,000) per day for each violation and not more than twenty-five thousand dollars ($25,000) per day for each violation.

(e) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (b) to pay:

(1) a fine of at least five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars ($5,000) and not more than one hundred thousand dollars ($100,000) for each day of violation.

(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:

(1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, or IC 13-17-13, **including rules of the board implementing those chapters.**

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(2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.

(3) Knowingly violates any fee or filing requirement in IC 13-17.

(4) Knowingly fails to file or maintain any notice, application, record, report, or plan required under the federal Clean Air Act (42 U.S.C. 7401 et seq.).

~~(4)~~ **(5)** Knowingly makes any false material statement, representation, or certification in any form, notice, or report required by an air pollution registration, construction, or operating permit issued by the department.

(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.

(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(i) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (f) to pay a fine of at least five thousand dollars ($5,000) per day for each violation and not more than twenty-five thousand dollars ($25,000) per day for each violation.

(j) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (g) to pay:

(1) a fine of at least five thousand dollars ($5,000) and not more

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than fifty thousand dollars ($50,000) for each day of violation; or (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars ($5,000) and not more than one hundred thousand dollars ($100,000) for each day of violation.

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

(1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16, **including rules of the board implementing those chapters.**

(2) Willfully or ~~recklessly~~ **negligently** violates any National Pollutant Discharge Elimination System permit condition issued by the department under IC 13-18-19.

(3) Willfully or ~~recklessly~~ **negligently** violates any National Pollutant Discharge Elimination System Permit filing requirement.

(4) Knowingly makes any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider any or a combination of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a

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threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(1), (k)(2), or (k)(3) to pay a fine of at least five thousand dollars ($5,000) a day for each violation and not more than twenty-five thousand dollars ($25,000) a day for each violation.

(o) Notwithstanding the maximum fine under IC 35-50-3-4, the court shall order a person convicted under subsection (k)(4) to pay a fine of at least five thousand dollars ($5,000) for each instance of violation and not more than ten thousand dollars ($10,000) for each instance of violation.

(p) Notwithstanding the maximum fine under IC 35-50-2-6(a) or IC 35-50-2-7(a), the court shall order a person convicted under subsection (l) to pay:

(1) a fine of at least five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars ($5,000) and not more than one hundred thousand dollars ($100,000) for each day of violation.

(q) The penalties under this section apply regardless of whether a person uses electronic submissions or paper documents to accomplish the actions described in this section.

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