Reprinted
January 18, 2012

SENATE BILL No. 133

DIGEST OF SB 133 (Updated January 17, 2012 2:11 pm - DI 118)

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.

Gard, Charbonneau, Breaux

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.

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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. 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:

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

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

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

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

(1) Requirements for maintaining:

(A) a leak detection system;
(B) an inventory control system coupled with tank testing; or
(C) a comparable system or method;
designed to identify releases in a manner consistent with the protection of human health and the environment.
(2) Requirements for maintaining records of any:
(A) monitoring;
(B) leak detection system;
(C) inventory control system or tank testing; or
(D) comparable system.
(3) Requirements for reporting of:
(A) any releases; and
(B) corrective action taken in response to a release.
(4) Requirements for ordering or taking corrective action in response to a release.
(5) Requirements for closure of underground storage tanks to prevent future releases of regulated substances into the environment.
(6) Requirements for maintaining evidence of financial responsibility for:
(A) taking corrective action; and
(B) compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.
(7) Standards of performance for new underground storage tanks.
(8) Requirements for the following:
(A) Providing notice to the department of the existence of operational and nonoperational underground storage tanks, as required under 42 U.S.C. 6991a(a).
(B) Providing the information required on the form prescribed under 42 U.S.C. 6991a(b)(2).
(C) Providing notice, by any person who sells a tank intended to be used as an underground storage tank, to the purchaser of that tank of the owner's notification requirements established by this article and 42 U.S.C. 6991a(a).
(9) Requirements for the delivery prohibition program prescribed under 42 U.S.C. 6991k, including:
(A) notice to owners or operators when an underground storage tank is declared ineligible for delivery, deposit, or acceptance of a regulated substance; and
(B) procedures to enforce the delivery prohibition that 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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~~that may be imposed for the violation of a criminal law or under the following:~~

~~(1) IC 13-23-14-2.~~

~~(2) IC 13-23-14-3.~~

~~(3) IC 13-23-14-4.~~

~~(4) IC 13-30-4.~~

~~(5) IC 13-30-5.~~

~~(6) IC 13-30-8.~~

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

~~(1) in connection with the underground storage tank; and~~

~~(2) that was due before January 1, 2004.~~

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

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

(1) IC 13-30-4.

(2) IC 13-30-5.

(3) IC 13-30-8.

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

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

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

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

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

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