CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 586

Citations Affected: IC 13-14; IC 13-18-4-6; IC 13-20; IC 13-26-2; IC 13-30-3-4.

Synopsis: IDEM notice procedures. Allows a person to request that the department of environmental management (department) provide notice of an order or a determination issued by the commissioner of the department in an alternate manner that is reasonably available to the department. Makes conforming amendments. **(This conference committee report: (1) removes provisions requiring: (A) that all state public works projects must be designed, constructed, operated, and maintained to achieve maximum energy efficiency to the extent that this goal can be accomplished on a cost effective basis considering construction and operating costs over the life cycle of the building or structure; and (B) that Indiana hardwood lumber be considered for use in all state public works projects as a local source material, where practicable; and (2) makes a technical correction.)**

Effective: July 1, 2013.

Adopted	Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 586 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 13-14-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 1. (a) This section applies to any:**

(1) determination made by the commissioner;

(2) order issued by the commissioner; and

(3) notice issued by the department;

under this title.

~~(a)~~ **(b)** The commissioner may issue orders and make determinations. ~~under this title.~~

~~(b)~~ **(c)** An order issued under this section may address multiple sites for the purpose of arranging for site investigations and the establishment of priority of sites.

(d) Notice of a determination made or an order issued by the commissioner must be given under IC 4-21.5-3-1, unless a person provides a written request to the department for a different method of notice that is reasonably available to the department.

(e) The department:

(1) shall make a good faith effort to provide notice of an order or a determination according to subsection (d); and

(2) bears the burden of persuasion that the notice has been provided.

(f) Failure to receive notice does not invalidate an order or a determination, unless the person required to receive notice of an order or a determination is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the person claiming the lack of notice.

SECTION 2. IC 13-14-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. If the designated agent of the department completes the inspection at a time when the property owner is not available to receive an oral report under section 2 of this chapter, the designated agent shall ~~mail~~ **send** a written summary of the inspection ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to the property owner not later than forty-five (45) calendar days following the inspection.

SECTION 3. IC 13-18-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Whenever the commissioner determines that a person:

(1) is violating; or

(2) is about to violate;

section 5 of this chapter, the department shall serve notice **of the commissioner's determination** on the person ~~by certified mail of the commissioner's determination.~~ **in accordance with IC 13-14-2-1.**

(b) The commissioner shall include in the notice an order against the person to:

(1) cease the violation; and

(2) abate the condition of pollution;

fixing in the order a reasonable time within which the correction and abatement must take place.

(c) Proceedings concerning an order issued under this section are governed by IC 4-21.5.

SECTION 4. IC 13-20-6-4, AS AMENDED BY P.L.154-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The commissioner may, by order, do the following:

(1) Suspend the waste transfer activities of an operator who is not a resident of Indiana if the operator is not properly licensed, certified, or permitted to conduct waste transfer activities in another state in which the operator does business.

(2) Suspend the waste transfer activities of a transfer station that does not meet the requirements of the inspection program established under section 7 of this chapter.

(b) An order issued by the commissioner under this section requiring an operator or transfer station to suspend operations must contain the date by which waste transfer activities must be suspended.

(c) After issuing an order requiring an operator or transfer station to suspend waste transfer activities but before the date by which the activities must be suspended, the department must provide notice ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to the following:

(1) Each regulated solid waste processing facility in Indiana.

(2) Each regulated solid waste disposal facility in Indiana.

(d) The notice described under subsection (c) must contain the following:

(1) The name of the operator or transfer station subject to the order.

(2) The date on which waste transfer activities are suspended under the order.

(3) If the order applies to a transfer station, the location of the transfer station.

(e) Upon a determination by the commissioner that an operator previously ordered to suspend waste transfer activities may engage again in waste transfer activities, the department shall immediately provide notice ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to each:

(1) regulated solid waste processing facility in Indiana; and

(2) regulated solid waste disposal facility in Indiana;

that the operator or transfer station will be allowed to resume waste transfer activities. The notice required under this subsection must contain the date on which the operator or transfer station will be allowed to resume waste transfer activities.

SECTION 5. IC 13-20-13-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.5. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent ~~by certified mail~~ **in accordance with IC 13-14-2-1** to the holder of the certificate for:

(1) failure to disclose all relevant facts;

(2) making a misrepresentation in obtaining the registration; or

(3) failure to correct, within the time established by the department:

(A) a violation of a condition of the registration; or

(B) a violation of this chapter or a rule adopted by the board under section 11 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 6. IC 13-20-14-5.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.6. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent ~~by certified mail~~ **in accordance with IC 13-14-2-1** to the holder of the certificate, for:

(1) failure to disclose all relevant facts;

(2) making a misrepresentation in obtaining the registration; or

(3) failure to correct, within the time established by the

department, a violation of:

(A) a condition of the registration;

(B) this chapter; or

(C) a rule adopted by the board under section 6 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 7. IC 13-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Except as provided in section 9 of this chapter, the hearing officer shall fix a time and place inside or within ten (10) miles of the proposed district for the hearing on any matter for which a hearing is authorized under this chapter.

(b) The hearing officer shall make a reasonable effort to provide notice of the hearing as follows:

(1) By publication of notice two (2) times each week for two (2) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, in the district. The publication of notice must, at a minimum, include a legal notice and a prominently displayed three (3) inches by five (5) inches advertisement.

(2) By ~~certified mail, return receipt requested, mailed~~ **United States mail sent** at least two (2) weeks before the hearing to the following:

(A) The fiscal and executive bodies of each county with territory in the proposed district.

(B) The executive of all other eligible entities with territory in the proposed district.

(C) The state and any of its agencies owning, controlling, or leasing land within the proposed district, excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation.

(D) Each sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 respecting territory in the proposed district.

(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each freeholder within the proposed district.

(4) By including the date on which the hearing is to be held and a brief description of:

(A) the subject of the petition, including a description of the general boundaries of the area to be included in the proposed district; and

(B) the locations where copies of the petition are available for viewing.

SECTION 8. IC 13-26-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) If the department of natural resources has filed a petition, the commissioner may waive the requirement for notice and hearing provided in section 6 of this chapter.

(b) If the commissioner waives the notice and hearing requirement, the hearing officer shall give written notice ~~by certified mail~~ **in the manner provided** under section ~~6~~ **6(b)(2) or 6(b)(3)** of this chapter. Each recipient of notice has thirty (30) days from the mailing of the notice within which to file objections or material with the hearing officer.

(c) The hearing officer shall then proceed to make findings and recommendations as provided in section 8 of this chapter, based upon any material:

(1) received by the hearing officer; or

(2) obtained at the hearing officer's discretion through the hearing officer's own investigation.

SECTION 9. IC 13-30-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The commissioner shall issue written ~~notice, by certified mail with return receipt requested, addressed to the alleged violator at the alleged violator's last known place of residence or place of business;~~ **notice to an alleged violator in accordance with IC 13-14-2-1.**

(b) The notice must:

(1) specify the provision of:

(A) the environmental management laws;

(B) the air pollution control laws; or

(C) the water pollution control laws; or

(D) the rule;

allegedly being violated;

(2) include:

(A) a statement of:

(i) the manner in which; and

(ii) the extent to which;

the alleged violation exists; and

(B) an order under sections 10 through 12 of this chapter:

(i) requiring that the alleged violator take specific action to correct the violation;

(ii) assessing a civil penalty under IC 13-30-4-1, IC 13-30-4-2, and section 11 of this chapter for the violation; or

(iii) containing the substance of both item (i) and item (ii); and

(3) include a brief description of the procedure for requesting review under IC 4-21.5.

(c) A copy of the notice and order may also be sent to a local governmental unit that is a party to the action.

(Reference is to ESB 586 as reprinted March 22, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 586

Signed by:

Senator Charbonneau Chairperson	Representative Wolkins
Senator Stoops	Representative Zent
Senate Conferees	**House Conferees**