

## SENATE BILL No. 586

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-14-5-3; IC 13-18-4-6; IC 13-20; IC 13-26-2; IC 13-30-3-4.

**Synopsis:** IDEM certified mail. Eliminates certain provisions that require the department of environmental management (IDEM) to use certified mail to provide information to the public. Allows IDEM to use electronic mail and United States mail to provide information to the public.

**Effective:** July 1, 2013.

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## Charbonneau

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January 15, 2013, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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# SENATE BILL No. 586



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

9 (b) **If requested by the property owner, mailing of the written**  
10 **summary of the inspection under subsection (a) must be by United**  
11 **States mail rather than electronic mail.**

12 SECTION 2. IC 13-18-4-6 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Whenever the  
14 commissioner determines that a person:

- 15 (1) is violating; or
  - 16 (2) is about to violate;
- 17 section 5 of this chapter, the department shall serve notice **of the**



1 **commissioner's determination** on the person by ~~certified mail of the~~  
 2 ~~commissioner's determination.~~ **electronic mail or United States mail.**

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

5 (1) cease the violation; and

6 (2) abate the condition of pollution;  
 7 fixing in the order a reasonable time within which the correction and  
 8 abatement must take place.

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

11 SECTION 3. IC 13-20-6-4, AS AMENDED BY P.L.154-2005,  
 12 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2013]: Sec. 4. (a) The commissioner may, by order, do the  
 14 following:

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

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

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

25 (c) After issuing an order requiring an operator or transfer station to  
 26 suspend waste transfer activities but before the date by which the  
 27 activities must be suspended, the department must provide notice by  
 28 ~~certified mail; return receipt requested;~~ **electronic mail or United**  
 29 **States mail** to the following:

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

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

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

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

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

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

40 (e) Upon a determination by the commissioner that an operator  
 41 previously ordered to suspend waste transfer activities may engage  
 42 again in waste transfer activities, the department shall immediately

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1 provide notice by ~~certified mail, return receipt requested, electronic~~  
 2 ~~mail or United States mail~~ to each:

- 3 (1) regulated solid waste processing facility in Indiana; and  
 4 (2) regulated solid waste disposal facility in Indiana;

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

9 SECTION 4. IC 13-20-13-5.5 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.5. (a) A certificate of  
 11 registration issued by the department under this chapter may be  
 12 revoked or modified by the commissioner, or by a designated staff  
 13 member of the department, after notification in writing is sent by  
 14 ~~certified mail~~ **electronic mail or United States mail** to the holder of  
 15 the certificate for:

- 16 (1) failure to disclose all relevant facts;  
 17 (2) making a misrepresentation in obtaining the registration; or  
 18 (3) failure to correct, within the time established by the  
 19 department:  
 20 (A) a violation of a condition of the registration; or  
 21 (B) a violation of this chapter or a rule adopted by the board  
 22 under section 11 of this chapter.

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

30 SECTION 5. IC 13-20-14-5.6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.6. (a) A certificate of  
 32 registration issued by the department under this chapter may be  
 33 revoked or modified by the commissioner, or by a designated staff  
 34 member of the department, after notification in writing is sent by  
 35 ~~certified mail~~ **electronic mail or United States mail** to the holder of  
 36 the certificate, for:

- 37 (1) failure to disclose all relevant facts;  
 38 (2) making a misrepresentation in obtaining the registration; or  
 39 (3) failure to correct, within the time established by the  
 40 department, a violation of:  
 41 (A) a condition of the registration;  
 42 (B) this chapter; or

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- 1 (C) a rule adopted by the board under section 6 of this chapter.  
 2 (b) A person aggrieved by the revocation or modification of a  
 3 certificate of registration may appeal the revocation or modification to  
 4 the office of environmental adjudication under IC 4-21.5-7. Pending  
 5 the decision resulting from a hearing under IC 4-21.5-3 concerning the  
 6 revocation or modification, the registration remains in force. However,  
 7 subsequent to revocation or modification, the commissioner may seek  
 8 injunctive relief concerning the activity described in the registration.
- 9 SECTION 6. IC 13-26-2-6 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Except as  
 11 provided in section 9 of this chapter, the hearing officer shall fix a time  
 12 and place inside or within ten (10) miles of the proposed district for the  
 13 hearing on any matter for which a hearing is authorized under this  
 14 chapter.
- 15 (b) The hearing officer shall make a reasonable effort to provide  
 16 notice of the hearing as follows:
- 17 (1) By publication of notice two (2) times each week for two (2)  
 18 consecutive weeks in at least two (2) newspapers of general  
 19 circulation in each of the counties, in whole or in part, in the  
 20 district. The publication of notice must, at a minimum, include a  
 21 legal notice and a prominently displayed three (3) inches by five  
 22 (5) inches advertisement.
- 23 (2) By ~~certified mail, return receipt requested, mailed electronic~~  
 24 **mail sent** at least two (2) weeks before the hearing to the  
 25 following:
- 26 (A) The fiscal and executive bodies of each county with  
 27 territory in the proposed district.
- 28 (B) The executive of all other eligible entities with territory in  
 29 the proposed district.
- 30 (C) The state and any of its agencies owning, controlling, or  
 31 leasing land within the proposed district, excluding highways  
 32 and public thoroughfares owned or controlled by the Indiana  
 33 department of transportation.
- 34 (D) Each sewage disposal company holding a certificate of  
 35 territorial authority under IC 8-1-2-89 respecting territory in  
 36 the proposed district.
- 37 (3) By making a reasonable effort to provide notice of the hearing  
 38 by regular United States mail, postage prepaid, mailed at least two  
 39 (2) weeks before the hearing to each freeholder within the  
 40 proposed district.
- 41 (4) By including the date on which the hearing is to be held and  
 42 a brief description of:

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

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

6 SECTION 7. IC 13-26-2-9 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) If the department  
 8 of natural resources has filed a petition, the commissioner may waive  
 9 the requirement for notice and hearing provided in section 6 of this  
 10 chapter.

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

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

20 (1) received by the hearing officer; or

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

23 SECTION 8. IC 13-30-3-4 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The  
 25 commissioner shall issue written ~~notice, by certified mail with return~~  
 26 ~~receipt requested, notice:~~

27 **(1) by United States mail** addressed to the alleged violator at the  
 28 alleged violator's last known place of residence or place of  
 29 business; **or**

30 **(2) by electronic mail addressed to the alleged violator at the**  
 31 **alleged violator's last known electronic mail address.**

32 (b) The notice must:

33 (1) specify the provision of:

34 (A) the environmental management laws;

35 (B) the air pollution control laws; or

36 (C) the water pollution control laws; or

37 (D) the rule;

38 allegedly being violated;

39 (2) include:

40 (A) a statement of:

41 (i) the manner in which; and

42 (ii) the extent to which;

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- 1 the alleged violation exists; and
- 2 (B) an order under sections 10 through 12 of this chapter:
  - 3 (i) requiring that the alleged violator take specific action to
  - 4 correct the violation;
  - 5 (ii) assessing a civil penalty under IC 13-30-4-1,
  - 6 IC 13-30-4-2, and section 11 of this chapter for the
  - 7 violation; or
  - 8 (iii) containing the substance of both item (i) and item (ii);
  - 9 and
  - 10 (3) include a brief description of the procedure for requesting
  - 11 review under IC 4-21.5.
- 12 (c) A copy of the notice and order may also be sent to a local
- 13 governmental unit that is a party to the action.

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