

**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.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House 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:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 13-14-2-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 1. (a) This section**
4 **applies to any:**
5 **(1) determination made by the commissioner;**
6 **(2) order issued by the commissioner; and**
7 **(3) notice issued by the department;**
8 **under this title.**
9 ~~(a) (b)~~ **(b)** The commissioner may issue orders and make
10 determinations. ~~under this title.~~
11 ~~(b) (c)~~ **(c)** An order issued under this section may address multiple sites
12 for the purpose of arranging for site investigations and the
13 establishment of priority of sites.
14 **(d) Notice of a determination made or an order issued by the**
15 **commissioner must be given under IC 4-21.5-3-1, unless a person**
16 **provides a written request to the department for a different**
17 **method of notice that is reasonably available to the department.**
18 **(e) The department:**
19 **(1) shall make a good faith effort to provide notice of an order**
20 **or a determination according to subsection (d); and**
21 **(2) bears the burden of persuasion that the notice has been**
22 **provided.**

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

6 SECTION 2. IC 13-14-5-3 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. If the designated
 8 agent of the department completes the inspection at a time when the
 9 property owner is not available to receive an oral report under section
 10 2 of this chapter, the designated agent shall ~~mail send~~ a written
 11 summary of the inspection ~~by certified mail; return receipt requested;~~
 12 **in accordance with IC 13-14-2-1** to the property owner not later than
 13 forty-five (45) calendar days following the inspection.

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

17 (1) is violating; or

18 (2) is about to violate;

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

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

24 (1) cease the violation; and

25 (2) abate the condition of pollution;

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

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

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

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

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

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

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

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

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

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

- 3 (1) The name of the operator or transfer station subject to the
4 order.
5 (2) The date on which waste transfer activities are suspended
6 under the order.
7 (3) If the order applies to a transfer station, the location of the
8 transfer station.

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

- 14 (1) regulated solid waste processing facility in Indiana; and
15 (2) regulated solid waste disposal facility in Indiana;

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

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

- 27 (1) failure to disclose all relevant facts;
28 (2) making a misrepresentation in obtaining the registration; or
29 (3) failure to correct, within the time established by the
30 department:
31 (A) a violation of a condition of the registration; or
32 (B) a violation of this chapter or a rule adopted by the board
33 under section 11 of this chapter.

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

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

- 48 (1) failure to disclose all relevant facts;
49 (2) making a misrepresentation in obtaining the registration; or
50 (3) failure to correct, within the time established by the

1 department, a violation of:

2 (A) a condition of the registration;

3 (B) this chapter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 15 (1) received by the hearing officer; or
16 (2) obtained at the hearing officer's discretion through the hearing
17 officer's own investigation.

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

24 (b) The notice must:

- 25 (1) specify the provision of:
26 (A) the environmental management laws;
27 (B) the air pollution control laws; or
28 (C) the water pollution control laws; or
29 (D) the rule;
30 allegedly being violated;
31 (2) include:
32 (A) a statement of:
33 (i) the manner in which; and
34 (ii) the extent to which;
35 the alleged violation exists; and
36 (B) an order under sections 10 through 12 of this chapter:
37 (i) requiring that the alleged violator take specific action to
38 correct the violation;
39 (ii) assessing a civil penalty under IC 13-30-4-1,
40 IC 13-30-4-2, and section 11 of this chapter for the
41 violation; or
42 (iii) containing the substance of both item (i) and item (ii);
43 and

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

46 (c) A copy of the notice and order may also be sent to a local
47 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