

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE ENROLLED ACT No. 312

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 13-11-2-0.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 0.6. "Above ground storage tank", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-1.**

SECTION 2. IC 13-11-2-2.3 IS ADDED TO THE INDIANA CODE A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 2.3. "Agribusiness", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-2.**

SECTION 3. IC 13-11-2-48.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 48.3. "Critical zone of concern", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-3.**

SECTION 4. IC 13-11-2-55 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 55. "Discharge", for purposes of IC 13-24-2 **and IC 13-18-5.5**, means any emission or spill, other than natural seepage, that is intentional or unintentional. The term includes any of the following:

- (1) Spilling.
- (2) Leaking.
- (3) Pumping.

SEA 312 — Concur



- (4) Pouring.
- (5) Emitting.
- (6) Emptying.
- (7) Dumping.

SECTION 5. IC 13-11-2-57.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 57.7. "Disruption", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-5.**

SECTION 6. IC 13-11-2-96, AS AMENDED BY P.L.113-2014, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 96. (a) "Hazardous material", for purposes of IC 13-18-5, means any of the following:

- (1) A hazardous chemical (as defined in 42 U.S.C. 11021(e), as in effect on January 1, 1990).
- (2) A hazardous waste.
- (3) A hazardous substance (as defined in 42 U.S.C. 9601(14), as in effect on January 1, 1990).
- (4) A substance that is on the list of extremely hazardous substances published by the Administrator of the United States Environmental Protection Agency under 42 U.S.C. 11002(a)(2).
- (5) A material that is identified by the board as potentially harmful to surface water or groundwater if accidentally released from a storage or handling facility.

(b) "Hazardous material", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-6.

(c) "Hazardous material", for purposes of IC 13-25-6, means a material or waste that has been determined to be hazardous or potentially hazardous to human health, to property, or to the environment by:

- (1) the United States:
 - (A) Environmental Protection Agency;
 - (B) Nuclear Regulatory Commission;
 - (C) Department of Transportation; or
 - (D) Occupational Safety and Health Administration; or
- (2) the board.

The term includes all of the hazardous materials identified in 49 CFR 172.101.

SECTION 7. IC 13-11-2-119.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 119.5. "Liquid", for purposes of IC 13-18-5.5, has the meaning set forth in IC 13-18-5.5-7.**

SECTION 8. IC 13-11-2-177.3 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 177.3. "Public water system", for purposes of this chapter, **IC 13-18-5.5**, IC 13-18-11, **IC 13-18-16**, IC 13-18-20.5, IC 13-18-21, and other environmental management laws, has the meaning set forth in 42 U.S.C. 300f.

SECTION 9. IC 13-11-2-192 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 192. (a) "Responsible person", for purposes of IC 13-24-1, means a person who has caused a release at a petroleum facility.

(b) "Responsible person", for purposes of IC 13-25-4, means a person that is:

(1) liable to:

- (A) the United States government;
- (B) the state; or
- (C) any other person;

under Section 107 of CERCLA (42 U.S.C. 9607); or

(2) liable to the state under IC 13-25-4-8.

(c) "Responsible person", for purposes of IC 13-18-16-7.5, has the meaning set forth in IC 13-18-16-7.5(a).

SECTION 10. IC 13-18-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 5.5. Reporting of Above Ground Storage Tanks

Sec. 1. As used in this chapter, "above ground storage tank" or "AST" means a device:

- (1) at least ten percent (10%) of the outer surface of which is exposed above the ground; and**
- (2) that is designed to contain more than six hundred sixty (660) gallons above ground of a matter that is a liquid.**

Sec. 2. As used in this chapter, "agribusiness" means a business that is primarily engaged in:

- (1) the distribution of farm equipment and supplies; or**
- (2) the processing, storage, and distribution of farm commodities.**

Sec. 3. (a) As used in this chapter, "critical zone of concern" means:

- (1) an area in which a hazardous material could:**
 - (A) travel to a water intake of a public water system that uses surface water as a source of drinking water; and**
 - (B) cause a disruption; or**
- (2) another area designated in subsection (b) as a critical zone of concern.**

(b) The term includes the following:



(1) In the case of a flowing stream on which an intake of a public water system is located, the area:

(A) within one-quarter (1/4) mile of each bank of the stream and of every tributary of the stream from the location of the intake on the main stream to the point on the main stream and on each tributary twenty-five (25) miles upstream of the intake; and

(B) within one-quarter (1/4) mile of each bank of the main stream from the intake to fifty (50) feet downstream of the intake.

(2) In the case of a reservoir or lake other than Lake Michigan on which an intake of a public water system is located, the area:

(A) within one-quarter (1/4) mile of each bank of the reservoir or lake; and

(B) within one-quarter (1/4) mile of each bank of every stream or tributary flowing into the lake or reservoir from the point where the stream or tributary flows into the lake or reservoir to the point twenty-five (25) miles upstream of where the stream or tributary flows into the lake or reservoir.

(3) In the case of a stream or tributary flowing into Lake Michigan, the area that is:

(A) within one-quarter (1/4) mile of each bank of the stream or tributary; and

(B) within five (5) miles of an intake of a public water system.

(4) In the case of Lake Michigan, the area of land that is within one-quarter (1/4) mile of the ordinary high water mark of Lake Michigan.

(5) Any other areas established by the board in rules adopted by the board under section 9 of this chapter.

Sec. 4. As used in this chapter, "discharge" has the meaning set forth in IC 13-11-2-55.

Sec. 5. As used in this chapter, "disruption" means an interruption in the ability of a public water system to provide safe drinking water at a rate adequate to meet the demand on the public water system for a period exceeding twenty-four (24) hours.

Sec. 6. As used in this chapter, "hazardous material" means a liquid that:

(1) contains a hazardous material (as defined in IC 13-11-2-96(a)); and



(2) is capable of causing a disruption if discharged from an above ground storage tank.

Sec. 7. As used in this chapter, "liquid" means matter that:

(1) is in a nongaseous state; and

(2) will, at:

(A) sixty (60) degrees Fahrenheit; and

(B) ambient atmospheric pressure;

take the shape of the interior of a container immediately upon being placed in the container.

Sec. 8. As used in this chapter, "public water system" has the meaning set forth in IC 13-11-2-177.3.

Sec. 9. (a) Except as provided in subsection (c) and sections 10(b)(3) and 11 of this chapter, the owner or operator of an above ground storage tank located in a critical zone of concern shall report to the department the following information concerning the AST:

(1) The location of the AST.

(2) The materials stored in the AST.

(3) The capacity of the AST.

(4) The name and contact information of a person who may be contacted for information about the AST.

The owner or operator shall submit the report before January 1, 2016.

(b) After submitting a report under subsection (a), the owner or operator of an above ground storage tank shall submit to the department a supplemental report concerning the AST whenever:

(1) the location of the AST;

(2) the classification of the materials stored in the AST;

(3) the capacity of the AST; or

(4) the name or contact information of the person who may be contacted for information about the AST;

is changed, so that the information concerning the AST in the possession of the department will remain accurate.

(c) If the owner or operator of an above ground storage tank has reported the existence of the AST to the department or another agency of the state pursuant to another statute or administrative rule, the owner or operator is not required to report to the department concerning the AST under this chapter.

(d) The owner or operator of an above ground storage tank who is required to report under this chapter shall report to the department concerning the AST:

(1) according to rules adopted by the board under section 10



of this chapter; and

(2) either:

(A) on a form adopted by the board or the department; or

(B) through an electronic mail or Internet based means established by the board or the department;

until rules concerning reporting are adopted under section 9 of this chapter.

Sec. 10. (a) The board shall adopt rules under IC 13-14-9 and IC 4-22-2 concerning the reporting required under this chapter.

(b) The rules adopted by the board under this section must do the following:

(1) Establish at least three (3) different classifications of above ground storage tanks for the purposes of this chapter, according to the relative danger of a disruption from an AST discharge, based on:

(A) the liquid stored in the AST;

(B) the capacity and location of the AST; and

(C) the proximity of the AST to the water intake of a public water system.

(2) Require reports to the department under this chapter concerning all ASTs that:

(A) are used to store hazardous materials; and

(B) are located in a critical zone of concern.

(3) Establish certain conditions under which an AST shall be recognized as exempt from the reporting requirements of this chapter because the AST does not pose a threat to cause a disruption from a discharge of the contents of the AST.

(c) The rules adopted under this section must:

(1) provide for the filing of a supplemental report concerning an AST when a change as described in section 9(b) of this chapter occurs so that the information in the possession of the department concerning the AST will remain accurate; and

(2) specify the means by which the owner or operator of an AST will comply with the reporting requirements of this chapter, as described in section 9(d)(2) of this chapter.

(d) Notwithstanding subsection (a), the board may adopt emergency rules under IC 4-22-2-37.1 to create a temporary reporting form for use under this chapter.

Sec. 11. The following are exempt from the reporting requirements of this chapter:

(1) An AST used to contain only uncontaminated drinking water, demineralized water, noncontact or circulating cooling



water, or water stored for fire or emergency purposes.

(2) An AST located on a farm or the premises of an agribusiness, the contents of which are:

(A) used by the AST owner or operator for farming purposes; or

(B) produced as an agricultural commodity.

(3) An AST:

(A) that is located on a farm, the premises of an agribusiness, or residential property;

(B) the capacity of which is not more than ten thousand (10,000) gallons; and

(C) that is used for storing motor fuel for noncommercial purposes.

(4) An AST:

(A) the capacity of which is not more than one thousand one hundred (1,100) gallons; and

(B) that is used for storing heating oil for consumption on the premises on which the AST is located.

(5) An AST that is used for storing heating oil, natural gas, or propane and that is regulated under NFPA 58-30A or NFPA 58-30B of the Liquefied Petroleum Gas Code of the National Fire Protection Association through 49 CFR 192.11(b).

(6) An AST that is part of a stormwater or wastewater collection and treatment system.

(7) An AST located on a site regulated under IC 14-34.

(8) Machinery and equipment containing integral operating fluids that are necessary for the proper operation of the machinery or equipment, including, but not limited to, hydraulic reservoirs, lubricating oil reservoirs, electrical equipment, heating and cooling equipment, and fuel tanks for emergency generators and fire pumps.

(9) An AST that is:

(A) located inside a building; and

(B) resting on or elevated above a floor of the building; a discharge from which would be contained in a secondary containment structure or would, through other means, be prevented from escaping in a manner that could cause a disruption.

(10) An AST that:

(A) is regulated by the United States Department of Transportation; and

(B) is located on a particular site for less than one hundred



- eighty (180) consecutive calendar days.
- (11) A surface impoundment, pit, pond, or lagoon.
- (12) An AST:
- (A) that is otherwise regulated through individual, site specific permits issued under the National Pollutant Discharge Elimination System or another regulatory program; or
 - (B) for which appropriate containment and diversionary structures or equipment to prevent unregulated discharge of materials from reaching the waters of Indiana are in place in compliance with law or administrative rules.
- (13) An AST that is regulated under section 1321 of the federal Water Pollution Control Act (section 311 of the federal Clean Water Act, 33 U.S.C. 1321) and the regulations adopted thereunder, 40 CFR 112, et seq.
- (14) Any flow-through or process AST, including, but not limited to, a pressure vessel and oil and water separators.
- (15) A pipeline facility, including gathering lines, that:
- (A) is regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.);
 - (B) is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 et seq.); or
 - (C) is an intrastate pipeline facility regulated under state laws comparable to the laws identified in clauses (A) and (B).
- (16) Electrical equipment such as transformers, circuit breakers, and voltage regulators.
- (17) An AST used in a process operation:
- (A) in which liquids are altered through biological, chemical, or physical means; or
 - (B) that is used strictly to regulate liquid volumes in a process operation.
- (18) An AST containing pesticides or fertilizers regulated by the state chemist under 355 IAC.
- (19) An emergency spill or overflow containment AST that is maintained to preserve its capacity.
- (20) An AST that contains a de minimis concentration of hazardous material.
- (21) An AST that is used for the storage of products that are regulated under the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.
- (22) A device that is subject to IC 13-23 or other laws, rules,



or regulations concerning underground storage tanks (as defined in IC 13-11-2-241).

(23) An AST containing mineral oil used solely for dust suppression.

(24) Any other AST exempted by a rule adopted by the board under section 10(b)(3) of this chapter.

Sec. 12. Information about above ground storage tanks that is reported to the department under this chapter may be considered confidential under IC 5-14-3-4(a)(1), IC 5-14-3-4(a)(4), IC 5-14-3-4(a)(8), or IC 5-14-3-4(b)(19) for purposes of public disclosure. However, the information may be disclosed to a responsible person developing or updating a surface water quality threat minimization and response plan for a public water system under IC 13-18-16-7.5.

SECTION 11. IC 13-18-16-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) All public water systems shall be continuously operated and maintained so that water is:

- (1) safe in quality;
- (2) clean and adequate in quantity; and
- (3) chemically satisfactory for ordinary domestic consumption.

(b) The person responsible for the operation of a public water system shall take all measures that are necessary to carry out the requirements of subsection (a) so as to protect the quality and quantity of the raw water supply from actual or threatened contamination. These measures include the relocation of the point of raw water collection to a site that is not contaminated or threatened by contamination.

(c) The person responsible for the operation of a public water system that uses surface water as a source of drinking water shall implement the surface water quality threat minimization and response plan developed and maintained under section 7.5 of this chapter immediately upon discovering:

- (1) the contamination; or**
- (2) a threat of contamination;**

of the surface water used by the public water system as a source of drinking water.

~~(e)~~ (d) The failure to carry out a duty set forth in subsection (a) or (b) constitutes a violation subject to the penalties imposed under this chapter. Each day a violation occurs under this section constitutes a separate violation.

SECTION 12. IC 13-18-16-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7.5. (a) For purposes of this**



section, "responsible person" means the person responsible for the operation of a public water system that uses surface water as a source of drinking water.

(b) A responsible person shall do the following or ensure that the following are done:

(1) Develop, maintain, and update a surface water quality threat minimization and response plan for the public water system for which the person is responsible. A plan developed under this subdivision must include the following:

(A) An identification of critical drinking water intake facilities, including specific locations of wells, intake structures, and critical drinking water distribution infrastructure.

(B) An identification of potential threats to raw water quality.

(C) An assessment of the risks posed by potential threats identified in clause (B).

(D) A communication, education, and risk minimization plan.

(E) An incident response plan.

A plan described in this subdivision, as well as its component parts, is confidential under IC 5-14-3-4(b)(19).

(2) With respect to a plan described in subdivision (1):

(A) Submit the plan to the department when the plan is developed.

(B) Submit an updated plan to the department every five (5) years thereafter.

SECTION 13. IC 13-18-16-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 establishing requirements for the issuance of permits to control public water systems, including the following:

(1) ~~The requirement to obtain a permits permit~~ for the construction, installation, or modification of facilities, equipment, or devices for any public water system.

(2) ~~The requirement to obtain a permits permit~~ for the operation of sources, facilities, equipment, or devices for any public water system.

(3) ~~Requirements for the development of surface water quality threat minimization and response plans under section 7.5 of this chapter.~~

(b) The board shall adopt a permit by rule for water main extensions



(as defined in 327 IAC 8-3-1) to satisfy the permit requirement in section 1(a) of this chapter.

SECTION 14. [EFFECTIVE JULY 1, 2015] (a) As used in this SECTION, "above ground storage tank" or "AST" means a device:

(1) at least ten percent (10%) of the outer surface of which is exposed above the ground; and

(2) that is designed to contain more than six hundred sixty (660) gallons of a matter that is a liquid above ground.

(b) The department of environmental management established by IC 13-13-1 shall do the following before November 1, 2015:

(1) Compile a list of all requirements for the reporting of information about above ground storage tanks that exist under federal law, federal regulations, Indiana law, and Indiana administrative rules.

(2) Obtain:

(A) copies of all publicly available forms for the reporting of information about above ground storage tanks in compliance with the requirements described in subdivision (1); or

(B) a representative sample of the forms described in clause (A).

(3) Submit a report containing the list of requirements and the copies of forms to the legislative council in an electronic format under IC 5-14-6.

(c) The report submitted under subsection (b)(3) must include an analysis of the existing requirements for the reporting of information about above ground storage tanks described in subsection (b)(1) that identifies:

(1) instances in which reporting requirements might be considered insufficient; and

(2) instances in which the reporting of information is already adequate.

(d) This SECTION expires January 1, 2016.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 312 — Concur

