

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 271

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 6-1.1-10-10, AS AMENDED BY P.L.146-2008, SECTION 104, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 10. (a) The owner of an industrial waste control facility who wishes to obtain the exemption provided in section 9 of this chapter shall file an exemption claim along with the owner's annual personal property return. The claim shall describe and state the assessed value of the property for which an exemption is claimed.

(b) ~~The owner shall, by registered or certified mail, forward a copy of the exemption claim to the department of environmental management. The department shall acknowledge its receipt of the claim. must:~~

- (1) provide a written statement attesting that the property claimed as exempt meets the requirements for the exemption under section 9 of this chapter; and**
- (2) file the statement along with the owner's exemption claim and annual personal property return.**

(c) ~~The department of environmental management township assessor (if any) or county assessor may investigate any claim The department may also and determine if the property for which the exemption is claimed is being utilized as an industrial waste control facility. Within one hundred twenty (120) days after a claim is mailed~~

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to the department, the department may certify its written determination to the township or county assessor with whom the claim was filed. **The assessor may require additional documents from the property owner to support the owner's exemption claim.**

(d) ~~The A~~ determination of the department under subsection (c) **concerning an exemption claim** remains in effect:

(1) as long as the owner owns the property and uses the property as an industrial waste control facility; or

(2) for five (5) years;

whichever is less. In addition, during the five (5) years after the ~~department's~~ determination, the owner of the property must notify the ~~county assessor and the department~~ in writing if any of the property on which the ~~department's~~ determination was based is disposed of or removed from service as an industrial waste control facility.

(e) The ~~department assessor~~ may revoke a determination **made under subsection (c)** if the ~~department assessor~~ finds that the property is not predominantly used as an industrial waste control facility.

(f) The township or county assessor ~~in accord with the determination of the department~~ shall allow or deny in whole or in part each exemption claim. ~~However, if the owner provides the assessor with proof that a copy of the claim has been mailed to the department, and if the department has not certified a determination to the assessor within one hundred twenty (120) days after the claim has been mailed to the department, the assessor shall allow the total exemption claimed by the owner.~~

(g) The assessor shall reduce the assessed value of the owner's personal property for the year for which an exemption is claimed by the amount of exemption allowed.

SECTION 2. IC 6-1.1-10-11, AS AMENDED BY P.L.84-2016, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. A determination ~~by the department of environmental management concerning an exemption claim~~ under section 10 of this chapter may be appealed by the property owner to the circuit court, superior court, or probate court of the county in which the property is located. The court shall try the appeal without a jury. ~~Either party the property owner or the township or county assessor~~ may appeal the court's decision in the same manner that other civil cases may be appealed.

SECTION 3. IC 13-11-2-30.8, AS ADDED BY P.L.1-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30.8. "Coal combustion residuals", for purposes of **IC 13-15-1-3 and IC 13-19-3-3**, has the meaning set forth



in IC 13-19-3-3(a).

SECTION 4. IC 13-11-2-77.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 77.8. "Federal CCR rule", for purposes of IC 13-19-3, has the meaning set forth in IC 13-19-3-3(b).**

SECTION 5. IC 13-11-2-87, AS AMENDED BY P.L.189-2018, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers to the environmental management special fund.

(b) "Fund", for purposes of IC 13-15-10, refers to the waste facility operator trust fund.

(c) "Fund", for purposes of IC 13-15-11, refers to the environmental management permit operation fund.

(d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust fund.

(e) "Fund", for purposes of IC 13-17-8, refers to the Title V operating permit program trust fund.

(f) "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

(g) "Fund", for purposes of IC 13-19-3-3.2, refers to the CCR program fund.

~~(g)~~ **(h)** "Fund", for purposes of IC 13-20-13, refers to the waste tire management fund.

~~(h)~~ **(i)** "Fund", for purposes of IC 13-20-22, refers to the state solid waste management fund.

~~(i)~~ **(j)** "Fund", for purposes of IC 13-21-7, refers to the waste management district bond fund.

~~(j)~~ **(k)** "Fund", for purposes of IC 13-21-13-2, refers to a district solid waste management fund.

~~(k)~~ **(l)** "Fund", for purposes of IC 13-23-6, refers to the underground petroleum storage tank trust fund.

~~(l)~~ **(m)** "Fund", for purposes of IC 13-23-7 and IC 13-23-8, refers to the underground petroleum storage tank excess liability trust fund (or ELTF).

~~(m)~~ **(n)** "Fund", for purposes of IC 13-25-4, refers to the hazardous substances response trust fund.

~~(n)~~ **(o)** "Fund", for purposes of IC 13-25-5, refers to the voluntary remediation fund.

~~(o)~~ **(p)** "Fund", for purposes of IC 13-28-2, refers to the voluntary compliance fund.

SECTION 6. IC 13-15-1-3, AS AMENDED BY P.L.133-2012, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



UPON PASSAGE]: Sec. 3. The board shall establish requirements for the issuance of permits to control solid waste, hazardous waste, and atomic radiation, including the following:

- (1) Permits to control or limit the disposal of any contaminants onto or into the land.
- (2) Permits for the construction, installation, or modification of facilities, equipment, or devices:
 - (A) to control or limit any discharge, emission, or disposal of contaminants into the land; or
 - (B) for the storage, treatment, processing, transferring, or disposal of solid waste or hazardous waste.
- (3) Permits for the operation of facilities, equipment, or devices:
 - (A) to control or limit the discharge, emission, transfer, or disposal of any contaminants into the land; or
 - (B) for the storage, transportation, treatment, processing, transferring, or disposal of solid waste or hazardous waste.
- (4) Permits for the disposal of coal combustion residuals in landfills and surface impoundments.**

SECTION 7. IC 13-18-2-3, AS AMENDED BY P.L.78-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with federal regulations implementing Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)). In determining whether a water body is impaired, the department shall consider all existing and readily available water quality data and related information. The department, before submitting the list to the United States Environmental Protection Agency, shall:

- (1) post the list to the department's Internet web site;**
 - ~~(1)~~ **(2) publish the list in the Indiana Register a link to the list posted to the department's Internet web site;**
 - ~~(2)~~ **(3) make the list available for public comment for at least ninety (90) forty-five (45) days; and**
 - ~~(3)~~ **(4) present provide information about the list to the board.**
- If the United States Environmental Protection Agency changes the list, the board shall publish the changes in the Indiana Register and conduct a public hearing within ninety (90) days after receipt of the changes.

- (b) The board shall adopt a rule that:
 - (1) establishes the methodology to be used in identifying waters as impaired; and
 - (2) specifies the methodology and criteria for including and removing waters from the list of impaired waters.
- (c) In the establishment of the total maximum daily load for a



surface water under Section 303(d)(1)(C) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(C)), the department shall, in identifying the surface water under Section 303(d)(1)(A) of the federal Clean Water Act (33 U.S.C. 1313(d)(1)(A)), make every reasonable effort to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load.

(d) The department shall comply with subsection (e) if either of the following applies:

(1) The department:

(A) is unable, in identifying the surface water as described in subsection (c), to identify the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the surface water as described in subsection (c), that one (1) or more pollutants should be under consideration for establishment of the total maximum daily load.

(2) The department:

(A) in identifying the surface water as described in subsection (c), identifies the pollutant or pollutants under consideration for the establishment of the total maximum daily load; and

(B) determines, after identifying the pollutant or pollutants as described in clause (A), that one (1) or more other pollutants should be under consideration for establishment of the total maximum daily load.

(e) The department complies with subsection (d) if the department does the following before making a pollutant or pollutants the subject of consideration for the establishment of the total maximum daily load:

(1) Determines and demonstrates that either or both of the following apply:

(A) The surface water does not attain water quality standards (as established in 327 IAC 2-1 and 327 IAC 2-1.5) due to an individual pollutant, multiple pollutants, pollution, or an unknown cause of impairment.

(B) The surface water:

(i) receives a thermal discharge from one (1) or more point sources; and

(ii) does not have or maintain a balanced indigenous population of shellfish, fish, and wildlife.

(2) **Publishes in the Indiana Register Posts on the department's Internet web site** the determination referred to in subdivision (1).

(3) Makes the determination referred to in subdivision (1)



available for public comment for at least ~~ninety (90)~~ **forty-five (45)** days.

(4) Presents the determination referred to in subdivision (1) to the commissioner for final approval after the comment period under subdivision (3).

SECTION 8. IC 13-19-3-1, AS AMENDED BY P.L.97-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The board shall do the following:

(1) Except as otherwise provided in this chapter, adopt rules under IC 4-22-2 and IC 13-14-9 to regulate solid and hazardous waste and atomic radiation in Indiana, including:

(A) rules necessary to implement the federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), as amended; **and**

(B) **rules necessary for the establishment of a state permit program under Section 2301 of the federal Water Infrastructure Improvements for the Nation Act (42 U.S.C. 6945(d)) for the implementation in Indiana of the federal CCR rule.**

(2) Consult with the department concerning the regulation of solid waste and hazardous waste.

(3) Carry out other duties imposed by law.

SECTION 9. IC 13-19-3-3, AS AMENDED BY P.L.1-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) As used in this section, "coal combustion residuals" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(b) ~~Except as provided in subsection (c), the board may not adopt rules under section 1 of this chapter to regulate the following:~~

~~(1) The disposal of waste indigenous to the coal mining process and coal combustion products (as defined by ASTM E-2201-02a); including fly ash, bottom ash, boiler slag, fluidized bed combustion ash, or flue gas desulfurization material produced from the combustion of coal or the cleaning of stack gases on coal combustion units if the material:~~

~~(A) is not included in the definition of hazardous waste or is exempt from regulation as a hazardous waste under 42 U.S.C. 6921; and~~

~~(B) is disposed of at a facility regulated under IC 14-34.~~

~~(2) The use of coal combustion products (as defined by ASTM~~



E-2201-02a); including fly ash, bottom ash, boiler slag, fluidized bed combustion ash, or flue gas desulfurization material produced from the combustion of coal or the cleaning of stack gases on coal combustion units; if the use includes one (1) of the following uses:

- (A) The extraction or recovery of materials and compounds contained within coal combustion products.
- (B) Bottom ash as an antiskid material.
- (C) Raw material for manufacturing another product.
- (D) Mine subsidence, mine fire control, and mine sealing.
- (E) Structural fill when combined with cement, sand, or water to produce a controlled strength fill material.
- (F) A base in road construction.
- (G) Cover for coal processing waste disposal locations to inhibit infiltration at surface and underground mines subject to IC 14-34, so long as a demonstration is made in concurrence with the department of natural resources that the materials and methods to be employed are appropriate for the intended use.
- (H) Providing buffering or enhancing structural integrity for refuse piles at surface and underground mines subject to IC 14-34, so long as a demonstration is made in concurrence with the department of natural resources that the materials and methods to be employed are appropriate for the intended use.
- (I) Agricultural applications; when applied using appropriate agronomic amounts to improve crop or vegetative production.

(b) As used in this section, "federal CCR rule" refers to 40 CFR 257, Subpart D, the federal standards for the disposal of coal combustion residuals in landfills and surface impoundments.

(c) The board may adopt rules under section 1(1) of this chapter that are consistent with the regulations of the United States Environmental Protection Agency concerning standards for the disposal of coal combustion residuals in landfills and surface impoundments, as set forth in 40 CFR 257.50 et seq. **the federal CCR rule.**

(d) The department shall do the following:

- (1) Establish a state permit program under Section 2301 of the federal Water Infrastructure Improvements for the Nation Act (42 U.S.C. 6945(d)) for the implementation in Indiana of the federal CCR rule.**
- (2) Submit to the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1)(A) evidence of the state permit program.**
- (3) Take other necessary or appropriate actions to obtain**



approval of the state permit program.

(e) Not later than May 15, 2021, the department shall notify the United States Environmental Protection Agency of its intention to establish a state permit program described in subsection (d)(1) and to seek approval of the state permit program under 42 U.S.C. 6945(d)(1).

(f) Under IC 4-22-2 and IC 13-14-9:

(1) the department shall initiate rulemaking for the establishment of the state permit program not more than sixty (60) days after the effective date of the SECTION of Senate Enrolled Act 271-2021 amending this section; and

(2) the board shall adopt a final rule for the establishment of the state permit program not more than sixteen (16) months after initiation of the rulemaking under subdivision (1).

(g) The state permit program established under this section must not establish requirements for any surface impoundment of coal combustion residuals unless and until the state permit program is approved by the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1).

(h) Not later than July 1, 2027, and before the end of each succeeding period of five (5) years, the board shall review the costs to the department of operating the state permit program established under this section.

(i) Upon the effective date that the board adopts rules to implement the federal CCR rule, annual fees for CCR landfills that were previously regulated as restricted waste sites shall be deposited in the CCR program fund established by section 3.2 of this chapter.

SECTION 10. IC 13-19-3-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.2. (a) The CCR program fund is established for the purpose of paying costs incurred by the department in operating the state permit program established under section 3 of this chapter, including:

(1) the personnel costs incurred in employing staff needed to perform the duties associated with the state permit program; and

(2) the cost of conducting the funding reviews required by section 3(h) of this chapter.

(b) The fund shall be administered by the department.

(c) The expenses of administering the fund shall be paid from money in the fund.



(d) The fund consists of:

- (1) money appropriated by the general assembly;**
- (2) fees deposited under section 3 of this chapter; and**
- (3) donations, gifts, and money received from any other source, including transfers from other funds or accounts.**

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 11. P.L.250-2019, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: SECTION 35. (a) The environmental rules board shall, before January 1, ~~2022~~, **2023**, adopt rules under IC 4-22-2 and IC 13-14-9 to increase the amount of the fees referred to in subsections (c) and (d). The fee increase under this SECTION shall be in accordance with IC 13-16-1, as amended by this act, except as provided in subsection (e).

(b) The board shall increase the fees referred to in subsections (c) and (d) only one (1) time under this SECTION.

(c) The board shall increase the fees established by:

- (1) IC 13-18-10;
- (2) IC 13-18-20;
- (3) IC 13-18-20.5;
- (4) IC 13-20-21; and
- (5) IC 13-22-12;

to the extent calculated to cause annual aggregate fee revenue after the fee increase under this subsection to be three million two hundred thousand dollars (\$3,200,000) greater than the aggregate fee revenue actually received in the year immediately preceding the fee increase under this subsection from the fees established by the statutes listed in subdivisions (1) through (5).

(d) The board shall increase the fees established by IC 13-17-8 to the extent calculated to cause annual aggregate fee revenue after the fee increase under this subsection to be two million dollars (\$2,000,000) greater than the aggregate fee revenue actually received from the fees established by IC 13-17-8 in the year immediately preceding the fee increase under this subsection. The fee increase under this subsection shall occur in accordance with the requirements of 326 IAC 2-1.1-7(b)(1) and 326 IAC 2-7-19.

(e) Notwithstanding IC 13-16-1-6(b), as added by this act, a fee may be increased under this SECTION by more than ten percent (10%).

(f) This SECTION expires on the earlier of the following:

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(1) The effective date of the rules adopted under this SECTION.

(2) January 1, ~~2022~~ **2023**.

SECTION 12. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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