

SENATE BILL No. 311

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-25-4-23.

Synopsis: Recovery of remedial action oversight costs. Amends the definitions of the terms "remedial action", "removal", and "response" to provide that those definitions apply to the law concerning releases of petroleum. Provides that an agreement that the commissioner of the department of environmental management enters into with a potentially responsible person concerning removal and remedial action at a contaminated site may allow the commissioner to obtain reimbursement of oversight costs incurred by the department in reviewing the removal and remedial action undertaken by the potentially responsible person.

Effective: July 1, 2015.

Charbonneau

January 8, 2015, read first time and referred to Committee on Environmental Affairs.



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 BILL No. 311



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 13-11-2-185 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 185. (a) "Remedial
3 action", for purposes of **IC 13-24 and** IC 13-25-4, means actions
4 consistent with a permanent remedy **that are** taken instead of or in
5 addition to removal actions if a release or threatened release of a
6 hazardous substance **or petroleum** into the environment occurs, to
7 prevent or minimize the release of hazardous substances **or petroleum**
8 so that the hazardous substances ~~do~~ **or petroleum does** not migrate to
9 cause substantial danger to present or future public health or welfare
10 or the environment.

- 11 (b) The term includes actions necessary to:
12 (1) monitor;
13 (2) assess; or
14 (3) evaluate;

15 the continuing effectiveness of other response actions.

16 SECTION 2. IC 13-11-2-187 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 187. "Removal", for
 2 purposes of **IC 13-24 and IC 13-25-4**, means any of the following:

3 (1) The cleanup or removal of released hazardous substances **or**
 4 **petroleum** from the environment.

5 (2) Actions necessary to be taken if the threat of release of
 6 hazardous substances **or petroleum** into the environment occurs.

7 (3) Actions necessary to monitor, assess, and evaluate:

8 (A) the release or threat of release of hazardous substances **or**
 9 **petroleum**; or

10 (B) the continuing effectiveness of other response actions.

11 (4) The disposal of removed material.

12 (5) Actions necessary to prevent, minimize, or mitigate damage
 13 to:

14 (A) the public health or welfare; or

15 (B) the environment;

16 that may otherwise result from a release or threat of release.

17 (6) The extension of a municipal water or sewer service to a
 18 residence or an industry to:

19 (A) prevent;

20 (B) minimize; or

21 (C) mitigate;

22 damage to public health that may result from a release or threat of
 23 release.

24 SECTION 3. IC 13-11-2-189 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 189. (a) "Response",
 26 for purposes of **IC 13-24 and IC 13-25-4**, means removal and remedial
 27 action.

28 (b) The term includes enforcement activities related to removal and
 29 remedial action.

30 SECTION 4. IC 13-25-4-23 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23. (a) The
 32 commissioner may enter into an agreement with one (1) or more
 33 potentially responsible persons concerning removal and remedial
 34 action at a site in Indiana. An agreement entered into under this section
 35 may call for one (1) or more parties, at the party's own expense, to
 36 conduct any response ~~action~~ at a site if the commissioner determines
 37 that the **removal and remedial** action called for in the agreement will
 38 be performed properly.

39 (b) An agreement entered into under this section may:

40 (1) **allow the commissioner to obtain from a potentially**
 41 **responsible person that enters into an agreement under**
 42 **subsection (a) the reimbursement of oversight costs incurred**



1 **by the department in reviewing the removal and remedial**
 2 **action undertaken by the potentially responsible person; and**

3 ~~(1)~~ **(2)** provide that the commissioner will:

4 **(A)** reimburse one (1) or more parties for certain costs of the
 5 actions that those parties have agreed to perform under the
 6 agreement; or

7 ~~(2)~~ **(B)** perform a part of the response action called for in the
 8 agreement.

9 Money from the fund may be used for the reimbursement. An
 10 agreement may provide for the commissioner to pay interest on the
 11 principal amount to be reimbursed. Money from the fund may be used
 12 to pay the interest.

13 (c) The commissioner may not enter into an agreement subject to
 14 subsection (b) if, in the commissioner's opinion, there is not a
 15 reasonable likelihood of recovering:

16 (1) the amount of the reimbursement agreed to under subsection
 17 (b); and

18 (2) other costs incurred by the department in the response action;
 19 unless the commissioner determines that the agreement is nonetheless
 20 in the public interest.

21 (d) After entering into an agreement that provides for
 22 reimbursement under subsection (b), the commissioner shall make
 23 every reasonable effort to recover the amount of the reimbursement
 24 under section 10 of this chapter from persons other than the parties.

25 (e) An agreement entered into under this section may be established:

26 (1) in an administrative order issued by the commissioner; or

27 (2) by a consent decree entered in an appropriate court.

