

SENATE BILL No. 275

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-30-10.

Synopsis: Environmental remediation. Requires certain environmental remediation plans to specify remediation objectives based on specified factors. Directs the department of environmental management to certify completion of plans and to issue covenants not to sue with respect to completed plans.

Effective: July 1, 2003.

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January 9, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 275



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 13-30-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 10. Risk Based Remediation Objectives**

5 **Sec. 1. As used in this chapter, "plan" refers to a corrective**
6 **action plan or remedial action plan under:**

- 7 (1) IC 13-22-13;
- 8 (2) IC 13-23-13;
- 9 (3) IC 13-24-1;
- 10 (4) IC 13-25-4; or
- 11 (5) IC 13-30-3.

12 **Sec. 2. (a) A plan for which a certificate of completion is**
13 **requested under section 3 of this chapter must specify the**
14 **remediation objectives for the site.**

15 **(b) The remediation objectives for each hazardous substance**
16 **and any petroleum on the site must be based on:**

- 17 (1) background levels of hazardous substances and petroleum



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that occur naturally on the site; or
(2) an assessment of the risks posed by the levels of hazardous substances and petroleum developed under subsection (d) found on the site at the time the corrective action plan or remedial action plan is approved, taking into consideration the following:

(A) Expected future use of the site, including any institutional controls proposed that might be placed on the site as a part of remediation.

(B) Measurable risks to human health, natural resources, or the environment based on the:

(i) activities that take place; and

(ii) environmental impact;

on the site.

(c) If the:

(1) nature and extent of the hazardous substances or petroleum are adequately characterized under the plan; and

(2) the level of the hazardous substances or petroleum is demonstrated to be below:

(A) background levels of the hazardous substances and petroleum that occur naturally on the site; or

(B) the risk based levels developed under subsection (d); additional action is not necessary to protect human health or the environment.

(d) Risk based remediation objectives must be based on levels of hazardous substances and petroleum:

(1) calculated by the department using standard equations and default values for particular hazardous substances or petroleum;

(2) calculated using site specific data, including any institutional controls that may be placed on the site as a part of remediation, for the default values in the department's standard equations; or

(3) developed based on site specific risk assessments that take into account site specific factors, including any institutional controls that may be placed on the site as a part of remediation.

Sec. 3. (a) If the department determines that a person has successfully completed a plan under a statute referred to in section 1 of this chapter, the department shall certify that the plan has been completed by issuing to the person a certificate of completion.

(b) The issuance of a certificate of completion under this section

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1 is a final agency action for purposes of IC 4-21.5.

2 (c) A person who receives a certificate of completion under this
3 section shall attach a copy of the certificate of completion to the
4 recorded deed for the property on which the corrective action or
5 remediation took place.

6 Sec. 4. (a) If the department issues a certificate of completion to
7 a person under section 3 of this chapter, the governor shall, upon
8 request by the person, provide the person with a covenant not to
9 sue for:

10 (1) any liability, including future liability; or

11 (2) a claim;

12 resulting from or based on the release or threatened release of a
13 hazardous substance or petroleum that is addressed by an
14 approved plan under a statute referred to in section 1 of this
15 chapter.

16 (b) Except as provided in subsection (c), a covenant not to sue
17 issued under this section bars suit against:

18 (1) a person who receives the certificate of completion under
19 section 3 of this chapter; or

20 (2) any other person who receives the certificate of
21 completion:

22 (A) through a legal transfer of the certificate of
23 completion; or

24 (B) by acquiring property to which the certificate of
25 completion applies;

26 from all public or private claims arising under this title or rules
27 adopted under this title in connection with the release or
28 threatened release of a hazardous substance or petroleum that was
29 the subject of the approved plan under a statute referred to in
30 section 1 of this chapter.

31 (c) A covenant not to sue issued under this section does not
32 apply to future liability for a condition or the extent of a condition
33 that:

34 (1) was present on property that was involved in an approved
35 and completed plan; and

36 (2) was not known to the department at the time the
37 department issued the certificate of completion under section
38 3 of this chapter.

39 (d) Except as:

40 (1) provided under federal law; or

41 (2) agreed to by a federal governmental entity;

42 a covenant not to sue issued under this section does not release a

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1 person from liability to the federal government for claims based on
2 federal law.
3 Sec. 5. (a) This chapter does not affect an action or a claim,
4 including a claim for contribution, that a person who completes an
5 approved plan has or may have against a third party.
6 (b) A person who implements or completes an approved plan
7 under this chapter is not liable for claims for contributions
8 concerning matters addressed in:
9 (1) the plan; or
10 (2) a certificate of completion issued to the person under
11 section 3 of this chapter.

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