
SENATE BILL No. 127

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-23-13-5.5; IC 13-23-13-8.

Synopsis: Underground storage tank corrective action. With respect to an action against a person who owned or operated an underground storage tank (UST) at the time a release occurred for recovery of costs paid to the state for corrective action or for contribution for costs directly incurred for corrective action: (1) permits recovery or contribution only to the extent the costs are reasonable; (2) indicates which types of costs incurred for corrective action are subject to contribution; (3) allows a court to award attorney's fees and court costs and past, present, and future corrective action costs; (4) prohibits an award for contribution toward corrective action costs and attorney's fees and court costs incurred after a responsible party agrees to assume responsibility for corrective action; (5) requires a person who intends to initiate an action to first file a notice of intent with the department of environmental management (IDEM) and with each person allegedly responsible for the UST release; and (6) limits the authority to pursue a contribution action if IDEM commences an administrative proceeding or court action concerning the UST release or the person who owned or operated the UST at the time the release occurred agrees to remediate the release.

Effective: Upon passage.

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January 5, 2010, read first time and referred to Committee on Energy and Environmental Affairs.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 127



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 13-23-13-5.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a)
3 Notwithstanding any other provision of this chapter, a person who is
4 not an owner or operator of an underground storage tank is liable to the
5 state only for corrective action to address a surface spill or overfill of
6 a regulated substance from the underground storage tank that is
7 intentionally caused by the person during the delivery of the regulated
8 substance into the underground storage tank.

9 (b) A person who is liable for corrective action under subsection (a)
10 is subject to a claim for contribution to corrective action costs arising
11 solely from the surface spill or overfill by a person described in section
12 ~~8(b)(1)~~ **8(b)** or ~~8(b)(2)~~ **8(c)** of this chapter. Except as otherwise
13 provided in subsection (c) and (d), an action for contribution under this
14 section may be brought in the same manner and is subject to the same
15 provisions as an action brought under section ~~8(b)~~ **8(c)** of this chapter.

16 (c) Before a person ~~brings~~ **initiates** a contribution action under this
17 section, the person must provide written notice of intent to ~~bring~~



1 **initiate** the action by certified mail to:
 2 (1) the department; and
 3 (2) each person allegedly responsible for the surface spill or
 4 overfill that occurred during the delivery of a regulated substance
 5 into the underground storage tank.

6 (d) A person that provides notice under subsection (c) may not ~~bring~~
 7 **initiate** a contribution action if:
 8 (1) the department commences an administrative proceeding or
 9 a civil action concerning the alleged surface spill or overfill not
 10 later than ninety (90) days after receiving notice under subsection
 11 (c)(1); or
 12 (2) the person who receives the notice under subsection (c)(2)
 13 agrees in writing, within ninety (90) days after receipt of the
 14 notice, to remediate the surface spill or overfill in accordance
 15 with the state's rules governing spills and overfills.

16 SECTION 2. IC 13-23-13-8 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except where
 18 an owner or operator can prove that a release from an underground
 19 storage tank was caused solely by:

- 20 (1) an act of God;
- 21 (2) an act of war;
- 22 (3) negligence on the part of the state or the United States
- 23 government; or
- 24 (4) any combination of the causes set forth in subdivisions (1)
- 25 through (3);

26 the owner or operator of an underground storage tank is liable to the
 27 state for the ~~actual~~ **reasonable** costs of any corrective action taken
 28 under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal)
 29 involving the underground storage tank and is responsible for
 30 undertaking any corrective action, including undertaking an exposure
 31 assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19
 32 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by
 33 this title or a rule adopted under this title.

34 (b) A person who:
 35 (1) pays to the state the costs described under subsection (a); or
 36 (2) undertakes corrective action resulting from a release from an
 37 underground storage tank, regardless of whether the corrective
 38 action is undertaken voluntarily or under an order issued under
 39 this chapter, ~~IC 13-23-14-1, IC 13-7-20-19~~ (before its repeal); or
 40 ~~IC 13-7-20-26~~ (before its repeal);

41 is entitled to receive a contribution from a person who owned or
 42 operated the underground storage tank at the time the release occurred:

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1 A person who brings a successful action to receive a contribution from
 2 an owner or operator is also entitled to receive reasonable attorney's
 3 fees and court costs from the owner or operator. An action brought
 4 under this subsection may be brought in a circuit or superior court. In
 5 resolving a contribution claim, a court may allocate the cost of a
 6 corrective action among the parties to the action using equitable factors
 7 that the court determines are appropriate.

8 (b) A person who pays to the state the reasonable corrective
 9 action costs described under subsection (a) may recover those costs
 10 from a person who owned or operated the underground storage
 11 tank at the time the release occurred.

12 (c) Subject to subsection (e) and except as provided in
 13 subsections (f) through (i), a person who incurs costs or will incur
 14 costs for corrective action that is undertaken:

15 (1) to investigate, minimize, contain, eliminate, remediate,
 16 mitigate, or clean up a release from an underground storage
 17 tank, including emergency measures taken as part of an initial
 18 response to the release; and

19 (2) under an order issued under this chapter, IC 13-23-14-1,
 20 IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its
 21 repeal);

22 may receive a contribution toward those costs from a person who
 23 owned or operated the underground storage tank at the time the
 24 release occurred.

25 (d) An action brought under subsection (b) or (c) may be
 26 brought in a circuit or superior court.

27 (e) Before a person initiates an action under subsection (c) on or
 28 after the effective date of this subsection, the person must provide
 29 written notice of intent to initiate the action by certified mail to:

30 (1) the department; and

31 (2) each person allegedly responsible for the release from the
 32 underground storage tank.

33 (f) If:

34 (1) a person provides notice of intent to initiate an action
 35 under subsection (e); and

36 (2) the department commences an administrative proceeding
 37 or a civil action concerning the alleged release:

38 (A) before the person initiates the action; and

39 (B) not later than ninety (90) days after receiving the
 40 notice;

41 the person may not initiate the action.

42 (g) If:

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1 (1) a person provides notice of intent to initiate an action
 2 under subsection (e);
 3 (2) the person initiates the action; and
 4 (3) the department commences an administrative proceeding
 5 or a civil action concerning the alleged release:
 6 (A) after the person initiates the action; and
 7 (B) not later than ninety (90) days after receiving the
 8 notice;
 9 the person may not continue to prosecute the action.
 10 (h) If:
 11 (1) a person provides notice of intent to initiate an action
 12 under subsection (e); and
 13 (2) the person who receives the notice agrees in writing:
 14 (A) before the person referred to in subdivision (1) initiates
 15 the action; and
 16 (B) not later than ninety (90) days after receiving the
 17 notice;
 18 to remediate the release in accordance with the state's rules
 19 governing releases from underground storage tanks;
 20 the person referred to in subdivision (1) may not initiate the action.
 21 (i) If:
 22 (1) a person provides notice of intent to initiate an action to a
 23 person under subsection (e);
 24 (2) the person referred to in subdivision (1) initiates the
 25 action; and
 26 (3) the person who receives the notice agrees in writing:
 27 (A) after the person referred to in subdivision (1) initiates
 28 the action; and
 29 (B) not later than ninety (90) days after receiving the
 30 notice;
 31 to remediate the release in accordance with the state's rules
 32 governing releases from underground storage tanks;
 33 the person referred to in subdivision (1) may not continue to
 34 prosecute the action.
 35 (j) This subsection applies to actions initiated to recover costs or
 36 for contribution under this section on or after the effective date of
 37 this subsection and to actions initiated to recover costs or for
 38 contribution under this section that are not finally adjudicated
 39 before the effective date of this subsection. In resolving a claim in
 40 an action initiated to recover costs or for contribution under this
 41 section, a court may use any legal and equitable factors that the
 42 court determines are appropriate in deciding whether to do any of

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the following:

(1) Award costs of corrective action reasonably incurred in pursuing the recovery of costs under subsection (b).

(2) Except as provided in subsection (k), award past, present, and future costs of undertaking corrective action reasonably incurred in pursuing a contribution under subsection (c).

(3) Except as provided in subsection (k), award attorney's fees and court costs to a person who reasonably incurred those fees and costs in prosecuting a successful action under subsection (b) or (c).

(4) Allocate any amounts awarded under subdivisions (1) through (3) among the parties to the action.

(k) The following that are incurred after a responsible party agrees to assume responsibility for corrective action are not recoverable under this article:

(1) Costs of undertaking corrective action incurred in pursuing a contribution under subsection (c).

(2) Attorney's fees and court costs incurred in prosecuting a successful action under subsection (c).

~~(l)~~ (l) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of petroleum shall be deposited in the petroleum trust fund.

~~(m)~~ (m) Money recovered by the state under this section in connection with any corrective action undertaken with respect to a release of a regulated substance other than petroleum shall be deposited in the hazardous substances response trust fund.

~~(n)~~ (n) The state may recover corrective action costs under this section in an action commenced under IC 13-14-2-6, IC 13-14-2-7, IC 13-7-5-7 (before its repeal), or IC 13-7-5-8 (before its repeal). An action to recover corrective action costs under this section may be combined, as appropriate, with an action to enforce an order issued under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal) to require corrective action not already undertaken by the commissioner.

SECTION 3. An emergency is declared for this act.

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