



January 22, 2010

SENATE BILL No. 127

DIGEST OF SB 127 (Updated January 19, 2010 5:23 pm - DI 52)

Citations Affected: IC 13-23.

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) specifies that the action is not limited to claims brought under UST statutes; (3) indicates which types of costs incurred for corrective action are subject to contribution; (4) allows a court to award attorney's fees and court costs and past, present, and future corrective action costs; (5) prohibits an award for contribution toward corrective action costs and attorney's fees and court costs incurred after a responsible party agrees to remediate the release in accordance with rules and guidelines of the department of environmental management (IDEM); (6) provides that if the person who agrees in writing to remediate the release does not remediate the release in substantial compliance with rules and IDEM's guidelines, the person who provided the notice may recover reasonable attorney's fees to enforce the agreement; (7) requires a person to notify each reasonably known person allegedly responsible for the UST release before incurring significant corrective action costs and attorney's fees or initiating an action; (8) specifies that notice may be by certified mail, registered mail, United States mail, or personal service; and (9) limits the recovery of corrective action costs and attorney's fees if a responsible party agrees to remediate the release.

Effective: Upon passage.

**Gard, Bray, Tallian, Randolph,
Charbonneau**

January 5, 2010, read first time and referred to Committee on Energy and Environmental Affairs.
January 21, 2010, amended, reported favorably — Do Pass.

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January 22, 2010

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 overflow 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 overflow by a person ~~described in section~~
 12 ~~8(b)(1) or 8(b)(2) of this chapter.~~ **who caused the spill or overflow.**
 13 Except as otherwise provided in subsection (c) and (d), an action for
 14 contribution under this section may be brought in the same manner and
 15 is subject to the same provisions as an action brought under section
 16 ~~8(b) 8~~ of this chapter.

17 (c) Before a person ~~brings~~ **initiates** a contribution action under this

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1 section, the person must provide written notice of intent to ~~bring~~
2 **initiate** the action by certified mail, **registered mail, United States**
3 **mail, or personal service** to:

- 4 (1) the department; and
- 5 (2) each **reasonably known** person allegedly responsible for the
- 6 surface spill or overflow that occurred during the delivery of a
- 7 regulated substance into the underground storage tank.

8 (d) A person that provides notice under subsection (c) may not ~~bring~~
9 **initiate** a contribution action if:

- 10 (1) the department commences an administrative proceeding or
- 11 a civil action concerning the alleged surface spill or overflow not
- 12 later than ninety (90) days after receiving notice under subsection
- 13 (c)(1); or
- 14 (2) the person who receives the notice under subsection (c)(2)
- 15 agrees in writing, within ninety (90) days after receipt of the
- 16 notice, to remediate the surface spill or overflow in accordance
- 17 with the state's rules governing spills and overfills.

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

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

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

36 (b) A person who:

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

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

10 (b) A person who pays to the state the reasonable corrective
 11 action costs described under subsection (a), regardless of whether
 12 the corrective action is undertaken voluntarily or under an order
 13 issued under this chapter, may recover those costs from a person
 14 who owned or operated the underground storage tank at the time
 15 the release occurred.

16 (c) Subject to subsections (e) through (h), a person who
 17 undertakes corrective action, regardless of whether the corrective
 18 action is undertaken voluntarily or under an order issued under
 19 this chapter, that results from a release from an underground
 20 storage tank and that is:

21 (1) to investigate, minimize, contain, eliminate, remediate,
 22 mitigate, or clean up a release from an underground storage
 23 tank, including emergency measures taken as part of an initial
 24 response to the release; or

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

28 may receive a contribution toward those costs from a person who
 29 owned or operated the underground storage tank at the time the
 30 release occurred.

31 (d) An action brought under subsection (b) or (c) may be
 32 brought in a circuit or superior court. Nothing in this section
 33 requires that the action be limited to claims brought under this
 34 article.

35 (e) Before a person:

36 (1) incurs significant investigative costs, corrective action
 37 costs, or attorney's fees; or

38 (2) initiates an action under subsection (b) or (c) on or after
 39 the effective date of this subsection;

40 the person must provide written notice by certified mail, registered
 41 mail, United States mail, or personal service to each reasonably
 42 known person allegedly responsible for the release from the

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underground storage tank.

(f) If:

- (1) a person provides notice to a person under subsection (e);**
- and**
- (2) the person who receives the notice agrees in writing to remediate the release in accordance with rules and the department's guidelines, including time frames for remediation, that govern releases from underground storage tanks;**

the person providing notice may recover under this article only past corrective action costs, court costs, and attorney's fees reasonably incurred before the date of the written agreement under subdivision (2).

(g) If the person who agrees in writing to remediate the release under subsection (f) does not remediate the release in substantial compliance with rules and the department's guidelines governing releases from underground storage tanks, the person who provided the notice may recover reasonable attorney's fees to enforce the agreement.

(h) In resolving a claim in an action initiated to recover costs or for contribution under this section, a court may use any legal and equitable factors that the court determines are appropriate in deciding whether to do any of the following:

- (1) Award costs of corrective action reasonably incurred under subsection (b).**
- (2) Award past, present, and future costs of undertaking corrective action reasonably incurred under subsection (c).**
- (3) 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), (c), or (g).**
- (4) Allocate any amounts awarded under subdivisions (1) through (3) among the parties to the action.**

(i) 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.

(j) 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.

(k) 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

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1 action to recover corrective action costs under this section may be
2 combined, as appropriate, with an action to enforce an order issued
3 under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal)
4 to require corrective action not already undertaken by the
5 commissioner.

6 SECTION 3. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 127, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 11, strike "described in section".

Page 1, line 12, delete "8(b)".

Page 1, line 12, strike "or".

Page 1, line 12, delete "8(c)".

Page 1, line 12, strike "of this chapter." and insert "**who caused the spill or overflow.**".

Page 1, line 15, delete "8(c)" and insert "**8**".

Page 2, line 1, after "mail" insert ", **registered mail, United States mail, or personal service**".

Page 2, line 3, after "each" insert "**reasonably known**".

Page 2, delete lines 16 through 42, begin a new paragraph and insert:

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

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

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

~~(b) A person who:~~

- ~~(1) pays to the state the costs described under subsection (a); or~~
- ~~(2) undertakes corrective action resulting from a release from an underground storage tank, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter; IC 13-23-14-1; IC 13-7-20-19 (before its repeal); or~~

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~~IC 13-7-20-26 (before its repeal);~~

is entitled to receive a contribution from a person who owned or operated the underground storage tank at the time the release occurred. A person who brings a successful action to receive a contribution from an owner or operator is also entitled to receive reasonable attorney's fees and court costs from the owner or operator. An action brought under this subsection may be brought in a circuit or superior court. In resolving a contribution claim, a court may allocate the cost of a corrective action among the parties to the action using equitable factors that the court determines are appropriate.

(b) A person who pays to the state the reasonable corrective action costs described under subsection (a), regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, may recover those costs from a person who owned or operated the underground storage tank at the time the release occurred.

(c) Subject to subsections (e) through (h), a person who undertakes corrective action, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, that results from a release from an underground storage tank and that is:

- (1) to investigate, minimize, contain, eliminate, remediate, mitigate, or clean up a release from an underground storage tank, including emergency measures taken as part of an initial response to the release; or**
- (2) under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);**

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

(d) An action brought under subsection (b) or (c) may be brought in a circuit or superior court. Nothing in this section requires that the action be limited to claims brought under this article.

(e) Before a person:

- (1) incurs significant investigative costs, corrective action costs, or attorney's fees; or**
- (2) initiates an action under subsection (b) or (c) on or after the effective date of this subsection;**

the person must provide written notice by certified mail, registered mail, United States mail, or personal service to each reasonably

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known person allegedly responsible for the release from the underground storage tank.

(f) If:

- (1) a person provides notice to a person under subsection (e); and
- (2) the person who receives the notice agrees in writing to remediate the release in accordance with rules and the department's guidelines, including time frames for remediation, that govern releases from underground storage tanks;

the person providing notice may recover under this article only past corrective action costs, court costs, and attorney's fees reasonably incurred before the date of the written agreement under subdivision (2).

(g) If the person who agrees in writing to remediate the release under subsection (f) does not remediate the release in substantial compliance with rules and the department's guidelines governing releases from underground storage tanks, the person who provided the notice may recover reasonable attorney's fees to enforce the agreement.

(h) In resolving a claim in an action initiated to recover costs or for contribution under this section, a court may use any legal and equitable factors that the court determines are appropriate in deciding whether to do any of the following:

- (1) Award costs of corrective action reasonably incurred under subsection (b).
- (2) Award past, present, and future costs of undertaking corrective action reasonably incurred under subsection (c).
- (3) 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), (c), or (g).
- (4) Allocate any amounts awarded under subdivisions (1) through (3) among the parties to the action.

(i) 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.

(j) 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.

(k) 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,

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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."

Delete pages 3 through 4.

Page 5, delete lines 1 through 34.

and when so amended that said bill do pass.

(Reference is to SB 127 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 10, Nays 0.

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