

IC 8-1-28

Chapter 28. Water Utility Environmental Compliance Plans

IC 8-1-28-1

"Clean Water Act" defined

Sec. 1. As used in this chapter, "Clean Water Act" refers to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and regulations adopted under the Federal Water Pollution Control Act. *As added by P.L.76-1991, SEC.2.*

IC 8-1-28-2

"Environmental compliance plan" defined

Sec. 2. As used in this chapter, "environmental compliance plan" means a plan developed by a public utility to comply in whole or in part with the requirements of the Safe Drinking Water Act or the Clean Water Act.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-3

"Public utility" defined

Sec. 3. As used in this chapter, "public utility" means a public utility, a municipally owned utility, or a cooperatively owned utility.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-4

"Safe Drinking Water Act" defined

Sec. 4. As used in this chapter, "Safe Drinking Water Act" refers to the federal Safe Drinking Water Act (Public Health Service Act, 42 U.S.C. 300f et seq.) and regulations adopted under the Safe Drinking Water Act.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-5

Submission of plan to commission; required information

Sec. 5. (a) A public utility that is subject to provisions of the Safe Drinking Water Act or Clean Water Act may voluntarily submit an environmental compliance plan that sets forth the manner in which the public utility intends to comply with requirements of the Safe Drinking Water Act or the Clean Water Act to the commission for the commission's review and approval under this chapter.

(b) An environmental compliance plan described in subsection (a) must include any information that the commission may require. The commission shall require a plan described in subsection (a) to include at least the following information:

- (1) A description of the requirements of the Safe Drinking Water Act or Clean Water Act applicable to the operations of the public utility.
- (2) A description of the measures the public utility proposes to implement to comply with the requirements.
- (3) The schedule under which the public utility proposes to

implement the measures.

(4) An estimate of the cost of implementing each of the measures proposed by the public utility.

(5) An analysis of the comparative estimated costs of meeting the applicable requirements of the Safe Drinking Water Act or Clean Water Act through the measures proposed by the public utility and other alternative compliance measures considered by the public utility.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-6

Public hearing on plan; notice

Sec. 6. The commission shall hold a public hearing for each environmental compliance plan submitted by a public utility under this chapter. The public utility shall publish a notice of the filing of its petition for approval of an environmental compliance plan in one (1) newspaper of general circulation published in each county in which the utility renders service. The provisions of IC 8-1-2-62 through IC 8-1-2-67 shall apply to a public hearing under this section.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-7

Order approving plan; conditions

Sec. 7. The commission shall issue an order approving an environmental compliance plan if the commission:

(1) finds that the environmental compliance plan:

(A) is reasonably designed to meet or exceed applicable requirements of the Safe Drinking Water Act or Clean Water Act;

(B) constitutes a reasonable and least cost strategy consistent with providing reliable, efficient, and economical water service; and

(C) is in the public interest; and

(2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-8

Rejection of plan; modified plan; withdrawal of plan without prejudice

Sec. 8. (a) If the commission finds that an environmental compliance plan submitted by a public utility does not satisfy the requirements of section 7 of this chapter, the commission may reject the plan.

(b) If the public utility's environmental compliance plan is rejected by the commission, the public utility may voluntarily submit to the commission a modified plan intended to satisfy the requirements of section 7 of this chapter.

(c) A modified plan submitted under subsection (b) shall be

considered by the commission under sections 6 and 7 of this chapter.

(d) A public utility may withdraw a proposed environmental compliance plan without prejudice.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-9

Submission of plan to government environmental agency; conflicts

Sec. 9. A public utility shall submit its environmental compliance plan or modified environmental compliance plan to any applicable state government environmental agency on or before the date that the public utility submits the plan to the commission under this chapter. If there is a conflict between the commission and a federal or state government environmental agency concerning the necessary components of a public utility's environmental compliance plan or modified environmental compliance plan, the determination by the government environmental agency shall control.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-10

Modification of previously approved plan; review by commission

Sec. 10. If a public utility:

(1) chooses to; or

(2) because of action by a federal or state government environmental agency, is required to;

modify a portion of an environmental compliance plan that has previously been approved by the commission in order to comply with the requirements of the Safe Drinking Water Act or Clean Water Act, the public utility shall submit a modified environmental compliance plan to the commission for the commission's review. The conflict provisions of section 9 of this chapter apply to a modified environmental compliance plan submitted under this section.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-11

Recovery of costs by public utility for capital projects or implemented plan

Sec. 11. (a) If the commission issues an order approving an environmental compliance plan submitted by a public utility under this chapter, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to do the following:

(1) If a public utility is allowed by law to earn a return on the public utility's investment, the public utility may add to the fair value of the public utility's property the fair value of a completed capital project, or part of a capital project, that:

(A) is constructed and consists of:

(i) new systems, equipment, or facilities; or

(ii) modifications to existing systems, equipment, or facilities; and

(B) is part of the environmental compliance plan approved

by the commission;
up to the amount approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable.

(2) The public utility may recover the costs and expense incurred by the public utility in the development and implementation of the approved environmental compliance plan, up to the amount approved under section 7(2) or 12 of this chapter, whichever is applicable.

(b) The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

As added by P.L. 76-1991, SEC. 2.

IC 8-1-28-12

Revised cost and schedule estimate for developing and implementing plan; submission to commission

Sec. 12. (a) If a public utility makes a substantial change in a cost and schedule estimate for developing and implementing an environmental compliance plan or a modified environmental compliance plan after the estimate has been approved by the commission under this chapter, the public utility shall file with the commission for the commission's review and approval the revised cost and schedule estimate.

(b) To the extent the commission approves a revised cost and schedule estimate, the estimate shall be the approved cost and schedule estimate for the plan.

As added by P.L. 76-1991, SEC. 2.

IC 8-1-28-13

Utility's recovery of expenditures as result of plan modification

Sec. 13. If the commission issues an order under section 7 or 15 of this chapter that approves modifications to a public utility's environmental compliance plan, the commission shall, absent fraud, concealment, gross mismanagement, or inadequate quality control, allow the public utility to recover under section 11 of this chapter, to the extent permitted under section 11 of this chapter, the following:

(1) The public utility's expenditures made under the environmental compliance plan before the date the commission issued the order approving the modified environmental compliance plan.

(2) The public utility's expenditures made under the modified environmental compliance plan after the date the commission issued the order approving the modified environmental compliance plan.

As added by P.L. 76-1991, SEC. 2.

IC 8-1-28-14

Recovery of costs incurred by utility in implementing measure set forth in plan but disapproved by commission upon review

Sec. 14. If a public utility cancels the implementation of a measure set forth in an environmental compliance plan as a result of an order issued by the commission under section 15 or 16 of this chapter that withdraws the commission's approval of the inclusion of the measure in the environmental compliance plan, the public utility may, absent fraud, concealment, or gross mismanagement, recover:

- (1) over a reasonable time; and
- (2) through the rates of the public utility;

the costs incurred by the public utility in implementing the measure and a reasonable return on the unamortized balance, to the extent the implementation and the costs were approved previously by the commission. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) of this chapter unless the commission finds that the additional costs were necessary and prudent.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-15

Review of plan by commission; withdrawal of approval or modification of plan

Sec. 15. (a) If the commission, after an investigation commenced upon its own initiative or upon a petition of a class of persons satisfying the standing requirements of IC 8-1-2-54 (including the office of the utility consumer counselor), finds that substantial changes:

- (1) in the need for or estimated cost of an approved environmental compliance plan have occurred; or
- (2) in the estimated cost of alternative compliance measures have occurred;

the commission may commence a review of the approval of the environmental compliance plan.

(b) If the commission finds that all or part of an environmental compliance plan no longer meets the requirements of section 7 of this chapter, the commission may, consistent with sections 7 and 9 of this chapter, issue an order:

- (1) withdrawing the commission's approval of all or part of the environmental compliance plan, whichever is applicable; or
- (2) approving modifications to the environmental compliance plan.

(c) If the commission approves modifications to an environmental compliance plan under subsection (b), the modified environmental compliance plan shall constitute the public utility's approved environmental compliance plan for purposes of this chapter.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-16

Ongoing review of cost and implementation of plan; progress report; recovery of costs; final approval by commission

Sec. 16. (a) In addition to the review of the continued appropriateness of an environmental compliance plan under section

15 of this chapter, the commission shall, at the request of a public utility, conduct an ongoing review of the cost and implementation of the public utility's approved environmental compliance plan. The public utility shall submit to the commission:

- (1) each year; or
- (2) at other times the commission and the public utility agree on;

a progress report that includes any information the commission may require.

(b) If the commission approves the cost and implementation of the part of the environmental compliance plan under review, then, absent fraud, concealment, or gross mismanagement, the approval forecloses subsequent challenges to:

- (1) the recovery in rates of those costs; and
- (2) if the public utility is allowed by law to earn a return on the public utility's investment, the addition to the fair value of the public utility's property of the fair value of a completed capital project, or portion of a capital project, that:

(A) is constructed and consists of:

- (i) new systems, equipment, or facilities; or
- (ii) modifications to existing systems, equipment, or facilities; and

(B) is part of the environmental compliance plan implementation approved by the commission;

up to the amount approved under section 7(2) or 12 of this chapter, whichever is applicable. The public utility may not recover costs in excess of the cost estimate approved by the commission under section 7(2) or 12 of this chapter, whichever is applicable, unless the commission finds that the additional costs were necessary and prudent.

(c) If the commission does not issue an order disapproving all or part of the implementation of the part of the environmental compliance plan under review within six (6) months of the commencement of the action seeking the commission's approval, the commission shall be considered to have approved all of the implementation of that part of the environmental compliance plan unless the commission issues an order extending the time for such review.

As added by P.L.76-1991, SEC.2.

IC 8-1-28-17

Disapproval or approval of all or part of plan; effect

Sec. 17. If the commission disapproves all or part of the implementation of the part of the environmental compliance plan under review:

- (1) the commission may, consistent with section 9 of this chapter, issue an order withdrawing the commission approval of all or part of the environmental compliance plan; and
- (2) the public utility may voluntarily submit a modified environmental compliance plan to the commission for the

commission's approval under this chapter.
If the commission issues an order approving all or part of the modified environmental compliance plan, the environmental compliance plan constitutes the public utility's approved environmental compliance plan to the extent of the approval for purposes of this chapter.

As added by P.L. 76-1991, SEC.2.

IC 8-1-28-18

General rate proceedings; consideration of change in risk to utility following approval of plan

Sec. 18. In a general rate proceeding following the issuance of an order by the commission approving an environmental compliance plan under this chapter, the commission shall, in reviewing and authorizing the public utility's return, give due consideration to any change in risk to the public utility as a result of the commission's approval of the environmental compliance plan and include in the order issued with respect to the general rate proceeding a finding on the change.

As added by P.L. 76-1991, SEC.2.

IC 8-1-28-19

Voluntary nature of chapter procedure

Sec. 19. (a) Use of the procedure in this chapter is voluntary to a public utility. The failure of a public utility to use the approval provisions of this chapter may not create a presumption of imprudence or nonrecovery in rates for environmental compliance plan costs.

(b) This chapter does not require a public utility to utilize this chapter to recover a cost or expense otherwise recoverable in the public utility's rates. A higher standard for the recovery of such costs or for determining the appropriateness of an environmental compliance plan may not be imposed because of a public utility's election not to use the provisions of this chapter.

(c) An order of the commission approving an environmental compliance plan under this chapter may not limit or define the measures that may be proposed in a compliance plan submitted by another public utility or approved by the commission.

As added by P.L. 76-1991, SEC.2.