

IC 13-17-7

Chapter 7. Clean Air Act Permit Compliance Program

IC 13-17-7-1

Limitation on liability

Sec. 1. Except as otherwise provided in this chapter, if a person:

(1) constructed, reconstructed, modified, or operated a facility or source that emits or is capable of emitting into the atmosphere a regulated pollutant in an amount for which:

- (A) a registration;
- (B) a construction permit; or
- (C) an operating permit;

is required under IC 13-30-2-1(7) and rules adopted by the board under IC 13-15-1-1;

(2) fails to obtain the:

- (A) registration;
- (B) construction permit; or
- (C) operating permit;

as required by Indiana law;

(3) meets the conditions described in section 2 of this chapter; and

(4) pays a civil penalty described in section 6 of this chapter;

the person's failure to obtain the registration, construction permit, or operating permit does not result in any liability beyond the liability described in this chapter.

As added by P.L.1-1996, SEC.7.

IC 13-17-7-2

Conditions

Sec. 2. (a) All of the following conditions must be satisfied for a person to qualify for the exemption from liability established in section 1 of this chapter:

(1) If the source is required to obtain a Title V operating permit, a complete permit application for a Title V operating permit, a FESOP, or an enforceable operating agreement that includes the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996, or a date established by the board for timely submission of an application for a Title V operating permit, whichever is earlier. The permit application submitted under this subdivision must comply with:

- (A) the requirements of 40 CFR 70.5(a)(2); and
- (B) all rules adopted by the board implementing 40 CFR 70.5(a)(2).

(2) If the source is not required to obtain a Title V operating permit, a complete application for a registration or construction permit, as applicable, for the existing and unpermitted facility or source is submitted to the commissioner not later than November 16, 1996. The registration or construction permit

application must comply with all rules adopted by the board.

(3) Each existing emitting facility or source for which limited liability is claimed under this chapter is clearly identified in the application submitted under subdivision (1) or (2), whichever is applicable.

(4) The emitting facility or source was constructed or modified before January 1, 1994.

(5) The emitting source was not the subject of a completed administrative or civil action for failure to obtain a necessary air construction or operation permit:

(A) after January 1, 1989; and

(B) before January 1, 1994.

(6) The source is not the subject of a pending administrative or civil action for failure to obtain a necessary air construction or operation permit.

(b) The department may not require:

(1) a separate registration application;

(2) a construction permit application; or

(3) an additional operating permit application;

if the Title V operating permit application submitted for the sources or facilities qualifying for an exemption from liability under section 1 of this chapter and identified under subsection (a)(3) contains information that satisfies all requirements of the rules adopted by the board and all Indiana statutes concerning new or modified sources and facilities.

(c) This section does not relieve a person from any obligation to:

(1) apply for or obtain a permit required for the prevention of significant deterioration or by new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D); or

(2) obtain a registration or construction permit required under an Indiana law or rules adopted by the board.

As added by P.L.1-1996, SEC.7.

IC 13-17-7-3

Applicability of chapter; limitations

Sec. 3. This chapter does not do any of the following:

(1) Limit the scope of a person's liability for criminal penalties or for civil penalties under IC 13-30-4, IC 13-30-5, and IC 13-30-8.

(2) Excuse or prohibit enforcement of violations of any state or federal health based or technology based standard, including national primary and secondary ambient air quality standards.

(3) Excuse a facility or source for failure to obtain in advance a construction permit required by the prevention of significant deterioration or new source review requirements of the federal Clean Air Act under 42 U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D).

(4) Apply to an individual facility at a source:

- (A) that has potential emissions of more than one hundred (100) tons per year of any regulated pollutant;
- (B) to which the board had established permit requirements under rules in effect on January 1, 1994; and
- (C) that never received an operating permit under 326 IAC 2-1-4 as in effect on January 1, 1994.

As added by P.L.1-1996, SEC.7. Amended by P.L.137-2007, SEC.9.

IC 13-17-7-4

Prohibition on reopening of enforcement action

Sec. 4. An enforcement action that has been resolved or settled with the commissioner or any other person may not be reopened on the basis of this chapter.

As added by P.L.1-1996, SEC.7.

IC 13-17-7-5

Basis for civil action

Sec. 5. A private citizen, the commissioner, the governor, or the attorney general may initiate a civil action under:

- (1) IC 13-14-10-2;
- (2) IC 13-15-3-6;
- (3) IC 13-17-4;
- (4) IC 13-30-1-1 through IC 13-30-1-7;
- (5) IC 13-30-3-2 through IC 13-30-3-9; or
- (6) IC 32-30-6-7;

whichever is applicable, to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

As added by P.L.1-1996, SEC.7. Amended by P.L.1-1998, SEC.105; P.L.2-2002, SEC.56.

IC 13-17-7-6

Civil penalty for failure to possess a permit or registration

Sec. 6. The sole civil penalty for a failure to possess a permit or registration as described in section 1 of this chapter, regardless of the number of facilities identified in the application filed under section 2 of this chapter, is as follows:

- (1) For a person who submits a timely and complete Title V operating permit application under section 2 of this chapter:
 - (A) three thousand dollars (\$3,000); and
 - (B) an amount equal to the amount charged for an annual operation fee for all facilities or sources owned or operated by the person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).
- (2) For a person who submits a timely and complete application for a FESOP, an enforceable operating agreement under section 2(a)(1) of this chapter, or a timely and complete application for a registration or construction permit under section 2(a)(2) of this chapter:

- (A) two thousand dollars (\$2,000); and
- (B) an amount equal to the amount charged for an annual operation fee for all facilities or sources owned or operated by that person that should have been permitted or registered based on fees established for 1993 in 326 IAC 2-1-7.1(a)(4) or 326 IAC 2-1-7.1(a)(5).

As added by P.L.1-1996, SEC.7.

IC 13-17-7-7

Applicability of chapter

Sec. 7. The limitation on liability provided under section 1 of this chapter only applies to an administrative or a judicial enforcement action brought against a person for failure to possess a valid state construction permit, operating permit, or registration. This chapter does not apply to any other type of violation.

As added by P.L.1-1996, SEC.7.

IC 13-17-7-8

Rules

Sec. 8. The board may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.1-1996, SEC.7.