

IC 13-14-8

Chapter 8. Rules and Standards

IC 13-14-8-0.3

Application of rule that does not comply with IC 13-20-7-1

Sec. 0.3. A rule that:

- (1) was adopted by the solid waste management board (established by IC 13-19-2, before its repeal) before May 13, 1999; and
- (2) does not comply with IC 13-20-7-1 (as amended by P.L.224-1999 and before its repeal);

applies only to special waste that is disposed of at a solid waste landfill that does not meet Subtitle D design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR Part 258.

As added by P.L.220-2011, SEC.279. Amended by P.L.113-2014, SEC.62.

IC 13-14-8-1

Adoption or modification of rules and standards

Sec. 1. (a) The board may:

- (1) adopt;
- (2) repeal;
- (3) rescind; or
- (4) amend;

rules and standards by proceeding in the manner prescribed in IC 4-22-2 and IC 13-14-9.

(b) The board may adopt an emergency rule under IC 4-22-2-37.1 to comply with a deadline required by or other date provided by federal law if:

- (1) the variance procedures are included in the rule; and
- (2) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

An emergency rule adopted under this subsection may be extended for two (2) extension periods by adopting another rule under IC 4-22-2-37.1. IC 4-22-2-37.1(g)(3) does not apply to an emergency rule adopted under this subsection.

As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.85; P.L.140-2013, SEC.13.

IC 13-14-8-2

Proposal for adoption or modification of rules and standards

Sec. 2. (a) The department may propose to the board the:

- (1) adoption;
- (2) repeal;
- (3) rescission; or
- (4) amendment;

of any rule or standard.

(b) The rules proposed by the department must be adopted by the board under IC 4-22-2 and IC 13-14-9 before the rules become effective.

As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.86.

IC 13-14-8-3

Scope

Sec. 3. A rule or standard adopted by a board may:

- (1) make different provisions as required by varying circumstances and conditions for different contaminant sources and for different geographical areas;
- (2) be made applicable to sources outside Indiana that:
 - (A) are causing;
 - (B) are contributing to; or
 - (C) could cause or contribute to;environmental pollution in Indiana; and
- (3) make provision for abatement standards and procedures:
 - (A) concerning occurrences, emergencies, or pollution; or
 - (B) on other short term conditions constituting an acute danger to health or to the environment.

As added by P.L.1-1996, SEC.4.

IC 13-14-8-4

Considerations in adoption

Sec. 4. In adopting rules and establishing standards, a board shall take into account the following:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as appropriate.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

As added by P.L.1-1996, SEC.4.

IC 13-14-8-5

Proposals for rule

Sec. 5. (a) Any person may present written proposals for the adoption, amendment, or repeal of a rule by the board. A proposal

presented under this section must be:

- (1) supported by a statement of reasons; and
 - (2) accompanied by a petition signed by at least two hundred (200) persons.
- (b) If the board finds that the proposal:
- (1) is not plainly devoid of merit; and
 - (2) does not deal with a subject on which a hearing was held within the previous six (6) months of the submission of the proposal;

the board shall give notice and hold a hearing on the proposal.

As added by P.L.1-1996, SEC.4. Amended by P.L.133-2012, SEC.87.

IC 13-14-8-6

Hearings

Sec. 6. (a) Each hearing on a proposed rule must be open to the public, and a reasonable opportunity to be heard with respect to the subject of a hearing shall be afforded to any person.

(b) All testimony taken at a hearing shall be recorded. The transcript of the hearing and any written submissions to the board at the hearing shall be open to public inspection, and copies of the transcript and written submissions shall be made available to any person upon payment of the cost of reproducing the original.

(c) A person who:

- (1) is heard or represented at a hearing; or
- (2) requests notice;

shall be given written notice of the action of the board with respect to the subject of the hearing.

As added by P.L.1-1996, SEC.4.

IC 13-14-8-7

Duties of board

Sec. 7. (a) Without limiting the generality of the regulatory authority of the board under this title, the board may adopt rules under IC 4-22-2 and IC 13-14-9 prescribing the following:

- (1) Standards or requirements for discharge or emission specifying the maximum permissible short term and long term concentrations of various contaminants of the air, water, or land.
- (2) Procedures for the administration of a system of permits for:
 - (A) the discharge of any contaminants;
 - (B) the construction, installation, or modification of any:
 - (i) facility;
 - (ii) equipment; or
 - (iii) device;that may be designed to control or prevent pollution; or
 - (C) the operation of any:
 - (i) facility;
 - (ii) equipment; or

- (iii) device;
to control or to prevent pollution.
- (3) Standards and conditions for the use of any fuel or vehicle determined to constitute an air pollution hazard.
- (4) Standards for the filling or sealing of abandoned:
 - (A) water wells;
 - (B) water holes; and
 - (C) drainage holes;to protect ground water against contamination.
- (5) Alert criteria and abatement standards for pollution episodes or emergencies constituting an acute danger to health or to the environment, including priority lists for terminating activities that contribute to the hazard, whether or not the activities would meet all discharge requirements of the board under normal conditions.
- (6) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to pollution.
- (7) Requirements and standards for equipment and procedures for:
 - (A) monitoring contaminant discharges at their sources;
 - (B) the collection of samples; and
 - (C) the collection, reporting, and retention, in accordance with record retention schedules adopted under IC 5-15-5.1, of data resulting from that monitoring.
- (8) Standards or requirements to control:
 - (A) the discharge; or
 - (B) the pretreatment;of contaminants introduced or discharged into publicly owned treatment works.

(b) If the board is required to adopt new rules or amend existing rules to implement an amendment to the federal Resource Conservation and Recovery Act or an amendment to or addition of a National Emission Standard for Hazardous Air Pollutants under the federal Clean Air Act, the board shall adopt the new rules or amend the existing rules not more than nine (9) months after the date the federal law becomes effective. This subsection does not limit the board's authority to amend at any time the rules adopted under this subsection.

As added by P.L.1-1996, SEC.4. Amended by P.L.123-1996, SEC.10; P.L.133-2012, SEC.88.

IC 13-14-8-8

Variance from rules; application; hearing; five year limit; revocation of variance

Sec. 8. (a) Except as provided in section 9 of this chapter, if a person who is affected by a rule adopted by a board believes that the imposition of the rule would impose an undue hardship or burden

upon the person, the person may apply to the commissioner for a variance from the rule.

(b) If the variance for which a person applies under subsection (a) would be in effect for more than one (1) year, the person's application must include a demonstration of how the person would come into compliance with the rule within the period for which the variance would be in effect.

(c) The commissioner may hold a public hearing on an application submitted under subsection (a).

(d) If the commissioner determines that immediate compliance with the rule would impose an undue hardship or burden upon the applicant, the commissioner may grant a variance from the rule, except as provided in section 9 of this chapter. A variance from a rule may be granted for a period of not more than five (5) years.

(e) If a variance from a rule granted to a person under this section will be in effect for more than one (1) year, the variance must include a schedule requiring the person to come into compliance with the rule within the period for which the variance will be in effect.

(f) The commissioner may revoke a variance granted to a person under this section if the person:

- (1) fails to meet the requirements of the compliance schedule set forth in the variance;
- (2) receives a notice of noncompliance from the commissioner; and
- (3) after receiving the notice of noncompliance, fails to take corrective action in order to comply with the compliance schedule.

If a variance is revoked under this subsection, the person granted the variance shall comply with the rule for which the variance was granted.

As added by P.L.1-1996, SEC.4. Amended by P.L.231-2003, SEC.1; P.L.147-2015, SEC.2; P.L.112-2016, SEC.16.

IC 13-14-8-9

Conditions for variance from water quality standard; duration of variance; renewal

Sec. 9. (a) A variance from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System (NPDES) permit issued under this title must meet the conditions specified in:

- (1) 40 CFR Part 132, Appendix F, Procedure 2.C; and
- (2) rules adopted by the board.

(b) With respect to a variance relating to an NPDES permit for a combined sewer overflow discharge, this subsection is satisfied if the NPDES permit holder has prepared a long term control plan and is implementing the nine (9) minimum controls pursuant to:

- (1) 33 U.S.C. 1342(q); and
- (2) 59 FR 18688.

(c) Subject to subsection (d), a variance described in subsection (a) may be granted for a period not to exceed the term of the NPDES permit affected by the variance.

(d) If an NPDES permit remains in effect beyond its stated term under IC 13-15-3-6, a variance described in subsection (a) remains in effect for as long as the NPDES permit requirements affected by the variance are in effect.

(e) A variance described in subsection (a) may be renewed each time the NPDES permit affected by the variance is renewed if the conditions of subsections (a) and (b) continue to be met.

As added by P.L.1-1996, SEC.4. Amended by P.L.231-2003, SEC.2; P.L.54-2005, SEC.1; P.L.147-2015, SEC.3.

IC 13-14-8-10

Undue hardship; criteria

Sec. 10. A board may adopt rules under IC 4-22-2 to specify the following with respect to any of the board's rules:

(1) Criteria to define what constitutes an undue hardship or burden, as used in section 8 of this chapter, for the purposes of that rule.

(2) Procedures for making determinations on applications for variances from that rule.

As added by P.L.1-1996, SEC.4.

IC 13-14-8-11

Appeals

Sec. 11. (a) A person affected by a decision of the commissioner under sections 8 and 9 of this chapter may, within fifteen (15) days after receipt of notice of the decision, appeal the decision to the office of environmental adjudication. All proceedings under this section to appeal the commissioner's decision are governed by IC 4-21.5.

(b) The commissioner's decision to grant a variance does not take effect until available administrative remedies are exhausted.

As added by P.L.1-1996, SEC.4. Amended by P.L.25-1997, SEC.4.

IC 13-14-8-11.5

Site-specific limitation for NPDES permit; application process and criteria

Sec. 11.5. (a) The department shall prepare and publish in the Indiana Register guidance on the application process and criteria for obtaining a site-specific limitation for a National Pollutant Discharge Elimination System (NPDES) permit. Criteria to be considered must include wet weather events, water effects ratio, and other site-specific considerations as determined by the department. Water effects ratio shall be the ratio of the aquatic toxicity of a parameter in the water of the receiving stream compared to the aquatic toxicity of the parameter in the laboratory water used to determine the

standard.

(b) Beginning January 1, 1997, the department shall review any application and make a preliminary determination for a site-specific limitation not later than one hundred eighty (180) days after receipt of the application. The department may request additional information necessary to make the preliminary determination consistent with the guidance published under subsection (a). The one hundred eighty (180) day period does not include any days between the date the department requests additional information and the date the additional information is received by the department.

(c) The final determination on a site-specific limitation will be part of the NPDES permit decision under 327 IAC 5.

(d) If the agency does not issue a preliminary determination within the one hundred eighty (180) days provided for in subsection (b), the applicant may require that the department hire a qualified outside consultant to prepare the preliminary determination as expeditiously as possible.

(e) The department and the applicant may agree to extend the one hundred eighty (180) day period provided for in subsection (b).

As added by P.L.123-1996, SEC.3.

IC 13-14-8-11.6

Permits for modification or construction of water pollution facility

Sec. 11.6. (a) A discharger is not required to obtain a state permit for the modification or construction of a water pollution treatment or control facility if the discharger has an effective:

(1) National Pollutant Discharge Elimination System (NPDES) industrial permit for direct discharges to surface water; or

(2) industrial waste pretreatment permit not issued by the department for discharges to a publicly owned treatment works.

(b) If a modification is for the treatment or control of any new influent pollutant or increased levels of any existing pollutant, within thirty (30) days after commencement of operation, the discharger shall file with the department a notice of installation for the additional pollutant control equipment and a design summary of any modifications.

(c) The board shall adopt a general permit rule for the approval of sanitary collection system plans, lift station plans, and force main plans.

As added by P.L.72-1999, SEC.2. Amended by P.L.113-2014, SEC.63.