

IC 13-19-4

Chapter 4. Good Character Requirements for Solid Waste and Hazardous Waste Management Permits

IC 13-19-4-1

Chapter not applicable to certain transfer station and solid waste disposal facility permits

Sec. 1. (a) Except as provided in section 8(e) of this chapter, this chapter does not apply to:

- (1) an applicant for a transfer station permit that holds a permit for and continuously operates; or
- (2) the transfer of a permit for a transfer station to an applicant that holds a permit for and is operating;

a transfer station, solid waste disposal facility, or hazardous waste facility in Indiana after December 31, 2004.

(b) Except as provided in section 8(e) of this chapter, this chapter does not apply to the transfer of a permit for a solid waste disposal facility to an applicant that holds a permit for and is operating a solid waste disposal facility or hazardous waste facility in Indiana after December 31, 2004.

As added by P.L.1-1996, SEC.9. Amended by P.L.154-2005, SEC.4.

IC 13-19-4-2

Requirement to submit permit disclosure statement or other information

Sec. 2. Before an application for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

- (1) a disclosure statement that:
 - (A) meets the requirements set forth in section 3(a) of this chapter; and
 - (B) is executed under section 3(b) of this chapter; or
- (2) all of the following information:
 - (A) The information concerning legal proceedings that:
 - (i) is required under Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and
 - (ii) the applicant or responsible party has reported under form 10-K.
 - (B) A description of all judgments that:
 - (i) have been entered against the applicant or responsible party in a proceeding described in section 3(a)(3) of this chapter; and
 - (ii) have imposed upon the applicant or responsible party a fine or penalty described in section 3(a)(3)(A) of this chapter.

(C) A description of all judgments of conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(D) Any other related information to support the application requested by the department concerning either of the following:

(i) The applicant.

(ii) The responsible party.

As added by P.L.1-1996, SEC.9. Amended by P.L.154-2005, SEC.5; P.L.114-2008, SEC.15.

IC 13-19-4-3

Permit applicant disclosure statement; contents; oath

Sec. 3. (a) In a disclosure statement required by section 2 of this chapter, the applicant or responsible party shall set forth the following information:

(1) The name and business address of the applicant or responsible party.

(2) A description of the applicant's or responsible party's experience in managing the type of waste that will be managed under the permit.

(3) A description of all civil and administrative complaints against the applicant or responsible party for the violation of any state or federal environmental protection law that:

(A) have resulted in a fine or penalty of more than ten thousand dollars (\$10,000) within five (5) years before the date of the submission of the application; or

(B) allege an act or omission that:

(i) constitutes a material violation of the state or federal environmental protection law; and

(ii) presented a substantial endangerment to the public health or the environment.

(4) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that have been filed against the applicant or responsible party within five (5) years before the date of submission of the application.

(5) A description of all judgments of criminal conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

(6) A description of all judgments of criminal conviction of a felony constituting a crime of moral turpitude under the laws of any state or the United States that are entered against the applicant or responsible party within five (5) years before the date of submission of the application.

(7) The location of all facilities at which the applicant or responsible party manages the type of waste that would be managed under the permit to which the application refers.

(b) A disclosure statement submitted under section 2(1) of this chapter:

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44.1-2-1.

As added by P.L.1-1996, SEC.9. Amended by P.L.114-2008, SEC.16; P.L.126-2012, SEC.33.

IC 13-19-4-4

Permit applicant disclosure statement; verification

Sec. 4. The department may investigate and verify the information set forth in a disclosure statement required by section 2 of this chapter.

As added by P.L.1-1996, SEC.9. Amended by P.L.2-1997, SEC.43.

IC 13-19-4-5

Denial; grounds

Sec. 5. (a) Subject to subsection (b), the commissioner may deny an application for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility if the commissioner finds that:

(1) the applicant or a responsible party has intentionally misrepresented or concealed any material fact in a statement required by section 2 or 3 of this chapter;

(2) a civil or administrative complaint described in section 3(a)(3) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(3) a criminal complaint described in section 3(a)(4) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(4) a judgment of criminal conviction described in section 3(a)(5) or 3(a)(6) of this chapter has been entered against the applicant or a responsible party within five (5) years before the date of submission of the application; or

(5) the applicant or a responsible party has knowingly and repeatedly violated any state or federal environmental protection laws.

(b) The commissioner may not deny a permit under this section based solely upon pending complaints disclosed under section 3(a)(3)(B) or 3(a)(4) of this chapter.

As added by P.L.1-1996, SEC.9. Amended by P.L.154-2005, SEC.6.

IC 13-19-4-6

Denial; mitigating factors

Sec. 6. Before making a determination to deny an application for the issuance, transfer, or major modification of a permit under section 5 of this chapter, the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal); or

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal);

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal);

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal); or

(C) a judgment of conviction referred to in section 5(a)(4) of this chapter or IC 13-7-10.2-4(a)(4);

whether any appeal is pending.

(4) The degree of culpability of the applicant or responsible party.

(5) The applicant's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(6) The applicant's or responsible party's dissociation from any other persons or entities convicted of acts referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(7) Prior or subsequent self-policing or internal education programs established by the applicant to prevent activities referred to in section 5(a) of this chapter or IC 13-7-10.2-4(a) (before its repeal).

(8) Whether the best interests of the public will be served by denial of the permit.

(9) Any demonstration of good citizenship by the applicant or responsible party.

As added by P.L. 1-1996, SEC.9. Amended by P.L. 154-2005, SEC.7.

IC 13-19-4-7

Findings of fact

Sec. 7. (a) In taking action under this chapter on an application for the issuance, transfer, or major modification of a permit for a solid

waste processing facility, solid waste disposal facility, or hazardous waste facility, the commissioner shall make separately stated findings of fact to support the action taken.

(b) The findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. However, when the commissioner denies an application, the commissioner is not required to explain the extent to which any of the mitigating factors set forth in section 6 of this chapter influenced the commissioner's determination to deny the application. *As added by P.L.1-1996, SEC.9. Amended by P.L.154-2005, SEC.8.*

IC 13-19-4-8

Change of ownership; procedure; exemption; revocation by commissioner

Sec. 8. (a) This section does not apply to the transfer of ownership of a facility from a permittee whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste to a prospective owner whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste.

(b) If there is a prospective change of the entire ownership interest in a facility for which a permit described in IC 13-15-1-3 is required, the prospective owner, at least one hundred eighty (180) days before the proposed change in ownership, shall submit to the commissioner a disclosure statement that:

- (1) includes the information required by section 3(a) of this chapter; and
- (2) was executed under section 3(b) of this chapter.

(c) The commissioner:

- (1) shall review the disclosure statement submitted under subsection (b); and
- (2) may investigate and verify the information set forth in the disclosure statement.

(d) If the commissioner determines that:

- (1) the information disclosed by the disclosure statement submitted under subsection (b); and
- (2) any investigation by the commissioner;

would require the commissioner to deny the prospective owner's permit application if the prospective owner were applying for a permit under section 2 of this chapter, the commissioner shall disapprove the transfer of ownership of the facility to the prospective owner.

(e) If:

- (1) subsection (b) does not apply; and
- (2) there is a change of at least fifty percent (50%) ownership control of an entity that holds a permit described in IC 13-15-1-3, including an entity referred to in section 1 of this chapter (other than an entity referred to in subsection (a));

the entity must, not later than thirty (30) days after the change of ownership control is completed, submit to the department the disclosure statement referred to in subsection (b).

(f) The commissioner:

(1) shall review the disclosure statement submitted under subsection (e); and

(2) may investigate and verify the information set forth in the disclosure statement.

(g) If the commissioner determines:

(1) that:

(A) the information disclosed by the disclosure statement submitted under subsection (e); and

(B) any investigation by the commissioner;

would require the commissioner to deny an application for a permit described in IC 13-15-1-3 if the entity that submits the disclosure statement were applying for a permit under section 2 of this chapter; or

(2) that an entity failed to submit to the department a timely disclosure statement under subsection (e);

the commissioner shall revoke any permit described in IC 13-15-1-3 held by the entity.

As added by P.L.1-1996, SEC.9. Amended by P.L.154-2005, SEC.9.

IC 13-19-4-9

Administrative procedure

Sec. 9. IC 4-21.5 governs determinations, notice, hearings, and appeal of determinations under this chapter.

As added by P.L.1-1996, SEC.9.

IC 13-19-4-10

Rules of administration

Sec. 10. The board may adopt rules under IC 4-22-2 and IC 13-14-9 to administer this chapter.

As added by P.L.1-1996, SEC.9. Amended by P.L.133-2012, SEC.134.