



January 29, 2016

HOUSE BILL No. 1299

DIGEST OF HB 1299 (Updated January 27, 2016 5:02 pm - DI 69)

Citations Affected: IC 13-25.

Synopsis: Voluntary remediation plans. Revises the law concerning the voluntary remediation of hazardous substances and petroleum. Authorizes the department of environmental management (department) to reject an application for participation in the voluntary remediation program if the applicant or an affiliate of the applicant was previously a party to a voluntary remediation agreement involving the same or substantially the same release or threatened release described in the application and the participation of the applicant or affiliate was terminated for one of the reasons for which termination is allowed. Requires an applicant to submit to the department: (1) a voluntary remediation investigation plan for either a proposed investigation or a completed investigation; and (2) a voluntary remediation work plan for either a proposed remediation project or a completed remediation project. Establishes requirements and deadlines for voluntary remediation investigation plans and voluntary remediation work plans. Provides that a voluntary remediation agreement between the department and an applicant must include: (1) a requirement that the applicant adequately determine the nature and extent of the actual or threatened release within a certain period; and (2) a requirement that the applicant submit to the department a proposed voluntary remediation work plan or a voluntary remediation work plan for a completed remediation project within a certain period. Provides for the extension of a deadline by mutual agreement of the department and the applicant, and requires the department to grant an extension to a deadline if the applicant demonstrates the need for an extension due to
(Continued next page)

Effective: July 1, 2016.

Wolkins

January 12, 2016, read first time and referred to Committee on Environmental Affairs.
January 28, 2016, amended, reported — Do Pass.

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Digest Continued

circumstances beyond the control of the applicant. Provides that if an applicant's voluntary remediation work plan is approved and the applicant proceeds with the work plan, the applicant is required to report to the commissioner on the remediation at least annually. Provides that a civil or administrative action against an applicant is not barred after the applicant and the department enter into a voluntary remediation agreement if: (1) the applicant withdraws from the agreement; (2) the commissioner withdraws from the agreement and the withdrawal is upheld in any appeal; or (3) the commissioner terminates the applicant's participation in the program and the termination is upheld in any appeal. Recognizes circumstances under which the commissioner may terminate an applicant's participation in the program, including the failure of the applicant to make reasonable progress to meet deadlines set forth in the work plan approval notification given by the department.



January 29, 2016

Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1299

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 13-25-5-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) The department
3 may reject an application submitted under section 2 of this chapter only
4 for one (1) or more of the following reasons:
5 (1) A state or federal enforcement action that concerns the
6 remediation of the hazardous substance or petroleum described in
7 the application is pending.
8 (2) A federal grant requires an enforcement action at the site.
9 (3) The condition of the hazardous substance or petroleum
10 described in the application constitutes an imminent and
11 substantial threat to human health or the environment.
12 (4) The application is not complete.
13 (5) **The applicant, or an affiliate of the applicant, was**
14 **previously a party to a voluntary remediation agreement**
15 **involving the same or substantially the same release or**

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1 **threatened release of a hazardous substance or petroleum**
 2 **described in the application, and the participation of the**
 3 **applicant or affiliate under that previous agreement was**
 4 **terminated for one (1) or more of the reasons allowed under**
 5 **this chapter.**

6 (b) If an application is rejected under subsection (a)(4), the
 7 department, not more than forty-five (45) days after the department
 8 receives the application, shall provide the applicant with a list of all
 9 information needed to make the application complete. If the department
 10 fails to comply with this subsection, the application shall be considered
 11 completed for the purposes of this chapter.

12 (c) If the department rejects an application, the department shall do
 13 the following:

14 (1) As described under IC 4-21.5-3-4(b) and IC 4-21.5-3-4(c),
 15 notify the applicant that the department rejected the application.

16 (2) Explain the reason the department rejected the application.

17 SECTION 2. IC 13-25-5-7 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) If the department
 19 determines **under section 4 of this chapter that an application**
 20 **applicant is eligible under section 4 of this chapter to participate in**
 21 **the voluntary remediation program, the applicant may must submit**
 22 **to the department:**

23 (1) a ~~proposed~~ voluntary remediation investigation plan ~~to the~~
 24 ~~department; in accordance with the requirements of subsection~~
 25 **(b) or (c), as applicable, within the time frame established in**
 26 **section 8(a)(8) of this chapter, which may be for either:**

27 (A) a **proposed investigation; or**

28 (B) a **completed investigation; and**

29 (2) a ~~proposed~~ voluntary remediation work plan, ~~to the~~
 30 ~~department; or within the time frame established in section~~
 31 **8(a)(10) of this chapter, which may be for either:**

32 (A) a **proposed remediation project in accordance with the**
 33 **requirements of subsection (d); or**

34 (B) a **completed remediation project in accordance with**
 35 **the requirements of subsection (e).**

36 (3) a ~~voluntary remediation work plan for a completed~~
 37 ~~remediation project to the department.~~

38 **(b) A proposed voluntary remediation investigation plan must**
 39 **include the following:**

40 (1) **Detailed documentation of the investigation conducted by**
 41 **the applicant in preparing the voluntary remediation**
 42 **investigation plan.**



- 1 **(2) A statement of work to determine the nature and extent of**
 2 **the actual or threatened release, including vapor intrusion if**
 3 **applicable, in accordance with guidelines established by the**
 4 **department.**
- 5 **(3) Plans concerning the following:**
- 6 **(A) Quality assurance for the implementation of the**
 7 **investigation.**
- 8 **(B) Descriptions of sampling and analysis.**
- 9 **(C) Health and safety considerations.**
- 10 **(4) A schedule concerning the implementation of all tasks set**
 11 **forth in the statement of work.**
- 12 **(c) Documentation for a completed voluntary remediation**
 13 **investigation must include:**
- 14 **(1) information on work done to determine the nature and**
 15 **extend of the actual or threatened release, including vapor**
 16 **intrusion, if applicable;**
- 17 **(2) information to demonstrate that the investigation was**
 18 **done in accordance with guidelines established by the**
 19 **department; and**
- 20 **(3) information on quality assurance for the results of the**
 21 **investigation, including sampling and analysis.**
- 22 ~~(b)~~ **(d) A proposed voluntary remediation work plan must include**
 23 the following:
- 24 (1) Detailed documentation of the investigation conducted by the
 25 applicant in preparing the proposed voluntary remediation work
 26 plan and a description of the work to be performed by the
 27 applicant to determine the nature and extent of the actual or
 28 threatened release.
- 29 (2) A proposed statement of work to accomplish the remediation
 30 in accordance with guidelines established by the department.
- 31 (3) Plans concerning the following:
- 32 (A) Quality assurance for the implementation of the proposed
 33 remediation project.
- 34 (B) Descriptions of sampling and analysis.
- 35 (C) Health and safety considerations.
- 36 (D) Community relations and community comment in
 37 planning, cleanup objectives, and implementation processes.
- 38 (E) Data management and record keeping.
- 39 ~~(f)~~ **(4) A proposed schedule concerning the implementation of all**
 40 **tasks set forth in the proposed statement of work.**
- 41 ~~(e)~~ **(e) A voluntary remediation work plan for a completed**
 42 remediation project must include the following:



- 1 (1) Detailed documentation of the investigation conducted by the
 2 applicant in preparing the proposed voluntary remediation work
 3 plan and a description of the work performed by the applicant to
 4 determine the nature and extent of the actual or threatened
 5 release.
- 6 (2) A statement of work performed to accomplish the remediation
 7 in accordance with rules or guidelines established by the
 8 department **or board**.
- 9 (3) Plans concerning the following:
- 10 (A) Quality assurance for the implementation of and, if
 11 appropriate, plans for future oversight of the remediation
 12 project.
- 13 (B) Descriptions of sampling and analysis conducted before
 14 and after the remediation is performed.
- 15 (C) Health and safety considerations.
- 16 (D) Community comment.
- 17 (E) Data management and record keeping.
- 18 (F) Criteria used to determine remediation levels and
 19 remediation methodology.
- 20 (4) Other information the department determines **is to be**
 21 necessary to evaluate the work plan and determine **if whether** the
 22 remediation objectives have been achieved.
- 23 SECTION 3. IC 13-25-5-8 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2016]: JULY 1, 2016] Sec. 8. (a)
 25 Before the department evaluates a **voluntary remediation**
 26 **investigation plan or a proposed** voluntary remediation work plan, the
 27 applicant ~~who submitted the work plan~~ and the commissioner must
 28 enter into a voluntary remediation agreement that sets forth the terms
 29 and conditions of the evaluation and the implementation of the work
 30 plan. A voluntary remediation agreement must include the following:
- 31 (1) Provisions for the following:
- 32 (A) A requirement that the department provide the applicant
 33 with an itemized list of estimated costs the department may
 34 incur under this chapter.
- 35 (B) The recovery of all reasonable costs that:
- 36 (i) are incurred by the department in the review and
 37 oversight of the work plan;
- 38 (ii) are attributable to the voluntary remediation agreement;
 39 and
- 40 (iii) exceed the fee submitted by the applicant under section
 41 2 of this chapter.
- 42 (C) A schedule of payments to be made by the applicant to the



- 1 department to recover the costs to the department.
- 2 (2) A mechanism to resolve disputes arising from the evaluation,
- 3 analysis, and oversight of the implementation of the work plan,
- 4 including any of the following:
- 5 (A) Arbitration.
- 6 (B) Adjudication under IC 4-21.5.
- 7 (C) A dispute resolution procedure provided under the Indiana
- 8 Rules of Court.
- 9 (3) A provision concerning the indemnification of the parties.
- 10 (4) A provision concerning retention of records.
- 11 (5) A timetable for the department to do the following:
- 12 **(A) Reasonably review and evaluate the adequacy of the**
- 13 **investigation plan.**
- 14 **(B) Make a determination concerning the approval or**
- 15 **rejection of the investigation plan.**
- 16 ~~(A)~~ (C) Reasonably review and evaluate the adequacy of the
- 17 work plan.
- 18 ~~(B)~~ **(D) Make a determination concerning the approval or**
- 19 **rejection of the work plan.**
- 20 (6) A provision concerning applicable interagency coordination.
- 21 (7) A provision specifying the proposed remediation objectives to
- 22 be achieved on the site, as described in section 8.5 of this chapter.
- 23 (8) The requirement that the applicant submit to the department
- 24 a proposed voluntary remediation ~~work~~ **investigation plan or a**
- 25 **voluntary remediation investigation plan for a completed**
- 26 **investigation:**
- 27 (A) not later than ~~one hundred eighty (180)~~ **sixty (60)** days
- 28 after the date the voluntary remediation agreement is signed;
- 29 or
- 30 (B) after a longer period if the extension is agreed to by the
- 31 department and the applicant.
- 32 **(9) The requirement that the applicant adequately determine**
- 33 **the nature and extent of the actual or threatened release in**
- 34 **accordance with an approved voluntary remediation**
- 35 **investigation plan not later than two (2) years after the date**
- 36 **the voluntary remediation agreement is signed.**
- 37 **(10) The requirement that the applicant submit to the**
- 38 **department a proposed voluntary remediation work plan or**
- 39 **a voluntary remediation work plan for a completed**
- 40 **remediation project not later than sixty (60) days after the**
- 41 **department notifies the applicant in writing that the applicant**
- 42 **has adequately determined the nature and extent of the actual**



- 1 **or threatened release in accordance with an approved**
 2 **voluntary remediation investigation plan.**
 3 ~~(9)~~ **(11)** Any other conditions considered necessary by the
 4 commissioner or the applicant concerning the effective and
 5 efficient implementation of this chapter.
 6 **(12) The deadlines described in subdivisions (9) and (10) may**
 7 **be extended by mutual agreement of the parties. The**
 8 **department shall grant an extension to a deadline described**
 9 **in subdivision (9) or (10) if the applicant demonstrates the**
 10 **need for an extension due to circumstances beyond the control**
 11 **of the applicant.**
 12 (b) If an agreement is not reached between an applicant and the
 13 commissioner within a reasonable time after good faith negotiations
 14 have begun between the applicant and the commissioner:
 15 (1) the applicant or the commissioner may withdraw from the
 16 negotiations; and
 17 (2) the department shall refund the unexpended part of the
 18 applicant's application fee.
 19 SECTION 4. IC 13-25-5-8.5, AS AMENDED BY P.L.159-2011,
 20 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2016]: Sec. 8.5. (a) A voluntary remediation work plan must
 22 specify the remediation objectives for the site. Subsections (b) through
 23 (e) apply to a site regardless of whether the site was entered into the
 24 voluntary remediation program before July 1, 2009, or after June 30,
 25 2009.
 26 (b) The remediation objectives for each hazardous substance and
 27 any petroleum on the site shall be based on:
 28 (1) background levels of hazardous substances and petroleum that
 29 occur naturally on the site; or
 30 (2) an assessment of the risks pursuant to subsection (d) posed by
 31 the hazardous substance or petroleum presently found on the site
 32 taking into consideration the following:
 33 (A) Expected future use of the site.
 34 (B) Measurable risks to human health, natural resources, or the
 35 environment based on the:
 36 (i) activities that take place; and
 37 (ii) environmental impact;
 38 on the site.
 39 (c) ~~If: the:~~
 40 (1) ~~the~~ nature and extent of the hazardous substance or petroleum
 41 is adequately characterized ~~under the voluntary remediation work~~
 42 ~~plan; in accordance with an approved voluntary remediation~~



- 1 **investigation plan**, considering the remediation objectives
 2 developed under this section; and
 3 (2) the level of the hazardous substance or petroleum is
 4 demonstrated to be below:
 5 (A) background levels of the hazardous substances and
 6 petroleum that occur naturally on the site; or
 7 (B) the risk based levels developed under subsection (d);
 8 additional action is not necessary to protect human health or the
 9 environment.
 10 (d) Risk based remediation objectives shall be based on one (1) of
 11 the following:
 12 (1) Levels of hazardous substances and petroleum calculated by
 13 the department using standard equations and default values for
 14 particular hazardous substances or petroleum.
 15 (2) Levels of hazardous substances and petroleum calculated
 16 using site specific data for the default values in the department's
 17 standard equations.
 18 (3) Levels of hazardous substances and petroleum developed
 19 based on site specific risk assessments that take into account site
 20 specific factors, including remedial measures, restrictive
 21 covenants, and environmental restrictive ordinances that:
 22 (A) manage risk; and
 23 (B) control completed or potential exposure pathways.
 24 (e) The department shall consider and give effect to restrictive
 25 covenants and environmental restrictive ordinances in evaluating risk
 26 based remediation proposals.
 27 (f) The department, or a person authorized under subsection (g),
 28 shall give written notice to a municipal corporation that the department
 29 is relying on an environmental restrictive ordinance adopted by the
 30 municipal corporation as part of a risk based remediation proposal:
 31 (1) approved by the department; and
 32 (2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4, or
 33 IC 13-25-5.
 34 (g) The department may delegate authority to give the written notice
 35 referred to in subsection (f) to the person who proposed the risk based
 36 remediation.
 37 SECTION 5. IC 13-25-5-9 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) After the
 39 commissioner and an applicant have signed a voluntary remediation
 40 agreement described under section 8 of this chapter, the department or
 41 a person under contract with the department shall do the following:
 42 (1) Review and evaluate the site and the affected area surrounding



- 1 the site.
- 2 (2) Review and evaluate the ~~documentation of the investigation~~
 3 ~~and feasibility study conducted by the applicant or the applicant's~~
 4 ~~representative for accuracy and thoroughness.~~ **voluntary**
 5 **remediation investigation plan for quality, efficiency, and**
 6 **safety.**
- 7 (3) Review and evaluate the ~~proposed~~ voluntary remediation work
 8 plan for quality, efficiency, and safety. ~~based on guidelines~~
 9 ~~established by the department.~~
- 10 (4) Make a recommendation to the commissioner concerning
 11 whether the commissioner should:
- 12 (A) approve;
 13 (B) modify and approve; or
 14 (C) reject;
- 15 the ~~proposed~~ voluntary remediation work plan.
- 16 (b) At any time during the evaluation of **a voluntary remediation**
 17 **investigation plan or a proposed** voluntary remediation work plan, the
 18 commissioner or the department may request that an applicant submit
 19 additional or corrected information to the department. **If an applicant**
 20 ~~may:~~ **fails to (+)** comply with the request, ~~or the commissioner may:~~
 21 ~~(-)~~ **(1) withdraw from the applicant's proposed voluntary**
 22 **remediation agreement; and work plan from consideration.**
 23 **(2) terminate the applicant's participation in the voluntary**
 24 **remediation program.**
- 25 SECTION 6. IC 13-25-5-10 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 10. Subject to section
 27 11 of this chapter, after receiving a recommendation under section 9 of
 28 this chapter, the commissioner shall:
- 29 (1) approve;
 30 (2) modify and approve; or
 31 (3) reject;
- 32 the ~~proposed~~ voluntary remediation work plan.
- 33 SECTION 7. IC 13-25-5-11 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 11. (a) Before the
 35 commissioner approves or rejects a ~~proposed~~ voluntary remediation
 36 work plan under section 10 of this chapter, the commissioner must:
- 37 (1) notify local government units located in a county affected by
 38 the ~~proposed~~ voluntary remediation work plan of the work plan;
 39 (2) provide that a copy of the ~~proposed~~ voluntary remediation
 40 work plan be placed in at least one (1) public library in a county
 41 affected by the work plan; and
 42 (3) publish a notice requesting comments concerning the



- 1 ~~proposed~~ voluntary remediation work plan.
- 2 (b) A comment period of at least thirty (30) days must follow
- 3 publication of a notice under this section. During a comment period,
- 4 interested persons may do the following:
- 5 (1) Submit written comments to the commissioner concerning the
- 6 ~~proposed~~ voluntary remediation work plan.
- 7 (2) Request a public hearing concerning the ~~proposed~~ voluntary
- 8 remediation work plan.
- 9 (c) If the commissioner receives at least one (1) written request, the
- 10 commissioner may hold a public hearing in the geographical area
- 11 affected by the ~~proposed~~ voluntary remediation work plan on the
- 12 question of whether to approve or reject the work plan. The
- 13 commissioner shall consider all written comments and public
- 14 testimony.

15 SECTION 8. IC 13-25-5-12 IS AMENDED TO READ AS

16 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. If the commissioner

17 rejects a ~~proposed~~ voluntary remediation work plan under section 10

18 of this chapter:

- 19 (1) the commissioner shall, under applicable provisions set forth
- 20 in IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), notify the applicant and
- 21 specify the reasons for rejecting the work plan; and
- 22 (2) the applicant may appeal the commissioner's decision under
- 23 IC 4-21.5.

24 SECTION 9. IC 13-25-5-13 IS AMENDED TO READ AS

25 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 13. If the commissioner

26 approves or modifies and approves a ~~proposed~~ voluntary remediation

27 work plan under this chapter, the commissioner shall notify the

28 applicant in writing, under the applicable provisions set forth in

29 IC 4-21.5-3-5(b) and IC 4-21.5-3-5(c), of the following:

- 30 (1) That the voluntary remediation work plan has been approved
- 31 or modified and approved.
- 32 (2) The date:
- 33 (A) the applicant may begin implementing the work plan; and
- 34 (B) by which the work plan must be completed.
- 35 (3) The applicant's right to appeal the commissioner's decision
- 36 under IC 4-21.5.

37 SECTION 10. IC 13-25-5-15 IS AMENDED TO READ AS

38 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 15. If an applicant who

39 submitted an approved voluntary remediation work plan proceeds with

40 the work plan:

- 41 (1) the department or a person under contract with the department
- 42 shall ~~do the following:~~ (1) oversee and review the implementation



1 of the voluntary remediation work plan; **and**
 2 **(2) Make regular reports at least annually, the applicant shall**
 3 **report** to the commissioner concerning the remediation,
 4 **including the applicant's compliance with the schedule**
 5 **established under section 13(2) of this chapter.**

6 SECTION 11. IC 13-25-5-17 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 17. If the commissioner
 8 determines that an applicant has not successfully completed a voluntary
 9 remediation work plan approved under this chapter, the commissioner
 10 shall notify the applicant of this determination under IC 4-21.5. **A**
 11 **notice of unsuccessful completion given by the commissioner under**
 12 **this section may be appealed under IC 4-21.5.**

13 SECTION 12. IC 13-25-5-18, AS AMENDED BY P.L.78-2009,
 14 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2016]: Sec. 18. (a) If the commissioner issues a certificate to
 16 a person under section 16 of this chapter, the governor shall also
 17 provide the person with a covenant not to sue for any liability,
 18 including future liability, or a claim resulting from or based upon the
 19 release or threatened release of a hazardous substance or petroleum that
 20 is addressed by an approved voluntary remediation work plan under
 21 this chapter.

22 (b) A covenant not to sue issued under this section bars suit against:

23 (1) a person who received the certificate of completion under
 24 section 16 of this chapter; or

25 (2) any other person who receives the certificate of completion:
 26 (A) through a legal transfer of the certificate of completion; or
 27 (B) by acquiring property to which the certificate of
 28 completion applies;

29 from all public or private claims arising under this title or rules adopted
 30 under this title in connection with the release or threatened release of
 31 a hazardous substance or petroleum that was the subject of the
 32 approved voluntary remediation work plan, except as provided in
 33 subsection (c).

34 (c) A covenant not to sue issued under this section may not apply to
 35 future liability for a condition or the extent of a condition that:

36 (1) was present:

37 (A) on property that was involved in an approved and
 38 completed voluntary remediation work plan; and

39 (B) at the time the commissioner issued the certificate of
 40 completion under section 16 of this chapter; and

41 (2) was not known to the commissioner at the time the
 42 commissioner issued the certificate of completion under section



- 1 16 of this chapter.
- 2 (d) A certificate of completion issued under section 16 of this
- 3 chapter may include conditions that must be performed or maintained
- 4 after issuance of the certificate.
- 5 (e) A covenant not to sue issued under this section may include
- 6 conditions that must be performed or maintained after issuance of the
- 7 covenant.
- 8 (f) Except as:
- 9 (1) provided under federal law; or
- 10 (2) agreed to by a federal governmental entity;
- 11 a covenant not to sue issued under this section may not release a person
- 12 from liability to the federal government for claims based on federal
- 13 law.
- 14 (g) After an applicant and the department have signed a voluntary
- 15 remediation agreement, a person may not bring an action, including an
- 16 administrative action, against the applicant or any other person
- 17 proceeding under this chapter on behalf of the applicant for any cause
- 18 of action arising under this title or rules adopted under this title and
- 19 relating to the release or threatened release of a hazardous substance or
- 20 petroleum that is the subject of the agreement. However, this section
- 21 does not apply if:
- 22 (1) the applicant fails to ~~file a proposed voluntary remediation~~
- 23 ~~work plan within the comply with any of the time period periods~~
- 24 established in section ~~8(a)(8)~~ **8(a)** of this chapter;
- 25 (2) the commissioner rejects a ~~proposed~~ voluntary remediation
- 26 work plan submitted in good faith and the rejection is upheld in
- 27 any appeal brought under section 12 of this chapter;
- 28 (3) **the commissioner determines that** the applicant or another
- 29 person proceeding under this chapter on behalf of the applicant
- 30 **fails has failed** to complete a voluntary remediation in accordance
- 31 with an approved voluntary remediation work plan **and the**
- 32 **determination is upheld in any appeal under section 17 of this**
- 33 **chapter; or**
- 34 (4) the commissioner withdraws the commissioner's approval of
- 35 the voluntary remediation work plan and the withdrawal is upheld
- 36 in any appeal under section 19 of this chapter;
- 37 (5) **the applicant withdraws from the voluntary remediation**
- 38 **agreement;**
- 39 (6) **the commissioner withdraws from the voluntary**
- 40 **remediation agreement and the withdrawal is upheld in any**
- 41 **appeal under section 19 of this chapter; or**
- 42 (7) **the commissioner terminates the applicant's participation**



1 **in the voluntary remediation program and the termination is**
 2 **upheld in any appeal under section 19 of this chapter.**

3 However, If the commissioner **rejects a voluntary remediation work**
 4 **plan**, withdraws approval of the plan, **withdraws from a voluntary**
 5 **remediation agreement, or terminates an applicant's participation**
 6 **in the voluntary remediation program** under section 19(a)(2) of this
 7 chapter, the commissioner may bring an action, including an
 8 administrative action, against the applicant.

9 (h) A person who purchases property that is the subject of a
 10 voluntary remediation agreement at the time the property is purchased
 11 may not be subject to an enforcement action to the same extent as an
 12 applicant under subsection (g).

13 SECTION 13. IC 13-25-5-19 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 19. (a) This chapter
 15 does not prohibit or limit the commissioner from **rejecting a voluntary**
 16 **remediation work plan**, withdrawing the commissioner's approval of
 17 a voluntary remediation work plan at any time during the
 18 implementation of the work plan, **withdrawing from a voluntary**
 19 **remediation agreement, or terminating an applicant's participation**
 20 **in the voluntary remediation program** if:

21 (1) the person **proposing or** implementing the work plan fails
 22 substantially to comply with the terms and conditions of:

23 **(A) an approved voluntary remediation investigation plan;**

24 ~~(A)~~ **(B) the an approved** voluntary remediation work plan; or

25 ~~(B)~~ **(C) a voluntary remediation agreement;** or

26 (2) a hazardous substance or petroleum becomes an imminent and
 27 substantial threat to human health or the environment; **or**

28 **(3) the applicant fails to make reasonable progress to meet**
 29 **deadlines set forth in the work plan approval notification**
 30 **given under section 13 of this chapter.**

31 (b) The withdrawal of the approval of a voluntary remediation work
 32 plan, **the commissioner's withdrawal from a voluntary remediation**
 33 **agreement, or the termination of an applicant's participation in the**
 34 **voluntary remediation program under subsection (a)** may be
 35 appealed under IC 4-21.5.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1299, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 13 through 15, begin a new line block indented and insert:

"(5) The applicant, or an affiliate of the applicant, was previously a party to a voluntary remediation agreement involving the same or substantially the same release or threatened release of a hazardous substance or petroleum described in the application, and the participation of the applicant or affiliate under that previous agreement was terminated for one (1) or more of the reasons allowed under this chapter."

Page 2, delete lines 1 through 3.

Page 2, line 19, after "applicant" delete ",".

Page 2, line 19, delete "to".

Page 2, line 20, delete "participate,".

Page 2, line 20, delete "department for approval:" and insert **"department:"**.

Page 2, line 23, delete "(b)," and insert **"(b) or (c), as applicable,"**.

Page 2, line 31, delete "(c);" and insert **"(d);"**.

Page 2, line 33, delete "(d)." and insert **"(e)."**

Page 2, line 36, delete "or a".

Page 2, delete line 37.

Page 2, line 38, delete "investigation".

Page 3, between lines 10 and 11, begin a new paragraph and insert:

"(c) Documentation for a completed voluntary remediation investigation must include:

(1) information on work done to determine the nature and extend of the actual or threatened release, including vapor intrusion, if applicable;

(2) information to demonstrate that the investigation was done in accordance with guidelines established by the department; and

(3) information on quality assurance for the results of the investigation, including sampling and analysis."

Page 3, line 11, delete "(c)" and insert **"(d)"**.

Page 3, line 30, delete "(d)" and insert **"(e)"**.

Page 5, line 15, delete "remediation project:" and insert



"investigation:"

Page 5, line 21, delete "fully" and insert "**adequately**".

Page 5, line 24, delete "plan:" and insert "**plan**".

Page 5, line 25, delete "(A)".

Page 5, line 26, delete "signed; or" and insert "**signed**".

Page 5, run in lines 24 through 25.

Page 5, delete lines 27 through 28.

Page 5, line 32, delete "project:" and insert "**project**".

Page 5, line 33, delete "(A)".

Page 5, run in lines 32 through 33.

Page 5, line 34, delete "fully" and insert "**adequately**".

Page 5, line 37, delete "plan; or" and insert "**plan**".

Page 5, delete lines 38 through 39.

Page 5, after line 42, begin a new line block indented and insert:

"(12) The deadlines described in subdivisions (9) and (10) may be extended by mutual agreement of the parties. The department shall grant an extension to a deadline described in subdivision (9) or (10) if the applicant demonstrates the need for an extension due to circumstances beyond the control of the applicant."

Page 7, line 37, delete "safety based on guidelines established by the department." and insert "**safety**".

Page 7, line 39, after "safety" insert ".".

Page 7, line 39, strike "based on guidelines".

Page 7, strike line 40.

Page 12, line 17, delete "take appropriate and timely action to" and insert "**make reasonable progress to meet deadlines set forth in the work plan approval notification given under section 13 of this chapter**".

Page 12, delete lines 18 through 19.

and when so amended that said bill do pass.

(Reference is to HB 1299 as introduced.)

WOLKINS

Committee Vote: yeas 10, nays 0.

